



# Queen's Policy Engagement Brexit Clinic

06 November 2018



Professor David Phinnemore (@DPhinnemore)



March 2019						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
25	26	27	28	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
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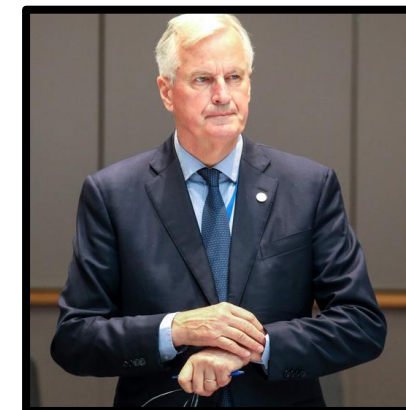
587 days since the UK government triggered Article 50 on 29 March 2017:

- terms of withdrawal have still to be agreed
- political declaration on future UK-EU relationship has still to be agreed





# Is a deal on a Withdrawal Agreement in sight?



'A mess': Irish border issue continues to hamper Brexit progress

Theresa May's chances of striking Irish border deal '50-50', say EU officials

As the  
prop

EU and British red lines remain incompatible as negotiations enter final stage



## Ingredients of a Solution?

(a) 'all-weather' NI backstop (including EU customs union and regulatory alignment for free movement of goods)

*plus*

(b) 'time-limited' UK-wide customs union backstop from which UK can unilaterally withdraw

*plus*

(c) Political declaration on future UK-EU relationship

# A deal ... and an orderly withdrawal?



European Union  
(Withdrawal) Act 2018

CHAPTER 16

Explanatory Notes have been produced to assist in the  
understanding of this Act and are available separately

£16.50

## Four conditions for UK ratification:

1. the following have been laid before Commons and Lords: a statement that political agreement has been reached; a copy of the negotiated Withdrawal Agreement; a copy of the framework for the future UK-EU relationship
2. the negotiated Withdrawal Agreement and the framework for the future UK-EU relationship have been approved by a resolution of the Commons
3. a subsequent debate has taken place in the Lords
4. Parliament has passed legislation to implement the Withdrawal Agreement.

## Process for EU approval

### European Parliament:

simple majority of  
MEPs

### Council:

super-qualified  
majority: 72% of  
member states (i.e. 20)  
comprising at least 65  
% of the population

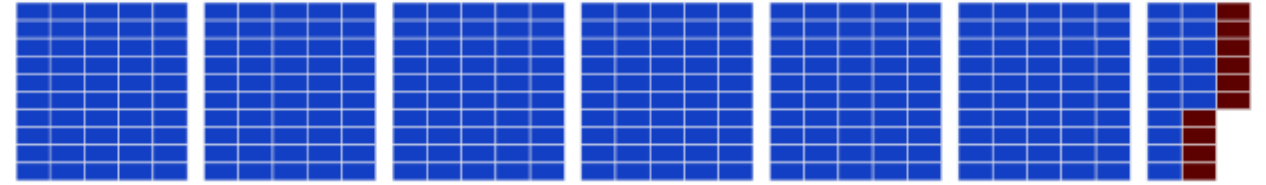
November	Withdrawal Agreement/ Political Declaration
December	Meaningful vote – Commons
January	Lords debate
February	Implementing legislation
March	UK ratification; EP Consent; Council Approval

# A deal ... but no deal?



The Government has 326 voting MPs

316 Conservatives have a confidence and supply deal with 10 DUP MPs



Opposition parties have 313 voting MPs

260 Labour MPs



Non-voting members (11 MPs)

7 Sinn Fein MPs

4 Speakers



*Daily Telegraph, 16 October 2018*

- Conservative Brexiteers (30-80 MPs) to vote against government?
- DUP (10 MPs) to vote against government?
- Opposition to vote against government?
- Labour rebels to vote with the government?
- Opposition MPs to abstain?

**29 March 2019**  
**... an orderly**  
**withdrawal or**  
**not?**



# Ireland / Northern Ireland & “Brexit” – state of affairs from EU legal perspectives

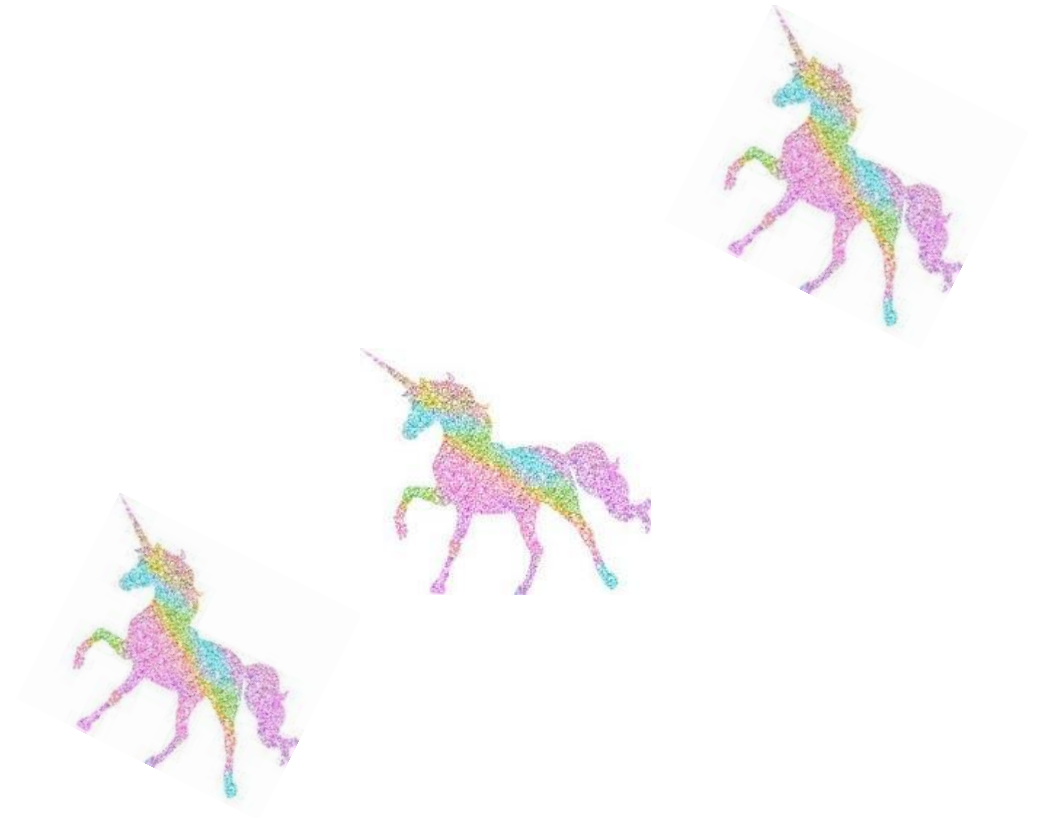
Dagmar Schiek @dschiek, @treup

Professor of Law, Director of Centre for European and Transnational Studies



# Overview

- What is the unique position again?
- Can the Good Friday / Belfast / 1998 Agreement be safeguarded by
  - the withdrawal agreement
  - Its extension to include the whole UK
  - Without a withdrawal agreement?



# UNIQUE POSITION OF IRELAND / NI FROM EU (LAW) PERSPECTIVE

- Territorial dispute between UK and Ireland over NI plus governance of NI in partial conflict with EHRC did not hinder concurrent accession to EEC
- 1993: 1<sup>st</sup> edition of Custom's Code and EU Citizenship created preconditions for all island economic and civic integration
- Common EU membership precondition for Good Friday Agreement
  - International Agreement: wishing to develop relationships (...) as partners in the European Union
  - Strand one: paragraph 31 (EU issues to be ensured by devolution)
  - Strand two: NMSC to consider EU dimension of matters, represent views at EU level (paragraph 17)
  - Strand three: discuss approaches to EU issues (paragraph 5)
- Prominence of Ireland / NI in EU Commission's withdrawal negotiation mandate confirms EU's position as co-guarantor



# N IRELAND AFTER THE GFA– HYBRID TERRITORY, HYBRID CITIZENSHIP

- Ensured impartial government of Northern Ireland, whether within the UK or Ireland
  - Specific protection for “nationalist” and “unionist” community
- Made NI common responsibility of UK, Ireland and EU (disputed)
- Gave “people of Northern Ireland” specific rights to either or dual citizenship (hybridity)
- “Rights, Safeguards and Equal Opportunity”
  - Includes socio-economic improvement of Northern Ireland



# EU LAW UNDERPINNING GFA

## Good Friday Agreement

### Hybridity

- Territory
- Citizenship

### Rights, Equal Opportunity

- No discrimination

### Socio-economic improvement

- All-island economy
- Transcending GB dependency

## EU law

### Hybridity

- Territorial: Internal Market
- Identity: EU citizenship

### Rights Equal opportunity

- Direct effect, supremacy, judicial protection
- EU anti-discrimination acquis

### Socio-economic

- Economic integration as peace project
- Overcoming national limitations

# WILL THE DRAFT PROTOCOL FIX IT?



- It interprets the unique position as a border problem, which is predominantly based on free trade in goods

→ Chapter III as solution?

## • Chap III: Common regulatory area

- Alludes to Internal Market, but only partial coverage
- Devious: full coverage by state aid law, but not full advantage of economic freedoms
- These provisions are directly effective, supreme and protected by ECJ, no guarantee for Irish/Northern Irish judge or AG

**Citizenship rights & equality acquis  
unprotected: no direct effect, supremacy  
nor judicial protection**



# WHAT ABOUT THE RECENT EXTENSION PLANS?



- UK in custom's union with EU
  - Will not resolve the necessity of border controls related to
    - VAT territory
    - Phytosanitary standards
  - Creates competitive advantage for UK if not coupled with state aid control and standards
- Betrays indivisibility of the Internal Market
- Northern Ireland's specific position remains
  - Fully integrated into free movement of goods, including electricity, agriculture
  - Plus state aid control
- Betrays indivisibility of Internal Market
- Does not protect citizenship rights



# PROBLEMS: CITIZENSHIP RIGHTS IN NI

- “Unionist Community”

- Expects to retain equal rights even if not opting for Irish citizenship
- Arguably least protected for the EU dimension, but better protected in relation to UK

- “Nationalist Community”

- Will experience problems if not opting for dual citizenship in relation to UK
- Even retaining Irish citizenship will not secure rights to vote in EP elections, nor full economic citizenship rights for those who are not already active in UK
- Status of “pure” citizenship rights such as educational, leisure and civic engagement?



# Pure Article 50 TFEU scenario

## (“no deal”)

- Border controls for customs, VAT, phytosanitary standards and all other standards added to Custom's code (environment) needed
  - No rights to travel, work and leisure across borders
    - CTA does not grant rights, has no legal quality
    - EU citizens other than “people of NI” wholly unprotected
    - Not even protection of those who relied on free movement rights
  - Transborder health care, other care, education, transport, electricity no longer guaranteed
- ➔ NI as the new bargaining chip?
- ➔ UK government proposals?





# Queen's Policy Engagement Brexit Clinic

6 November 2018

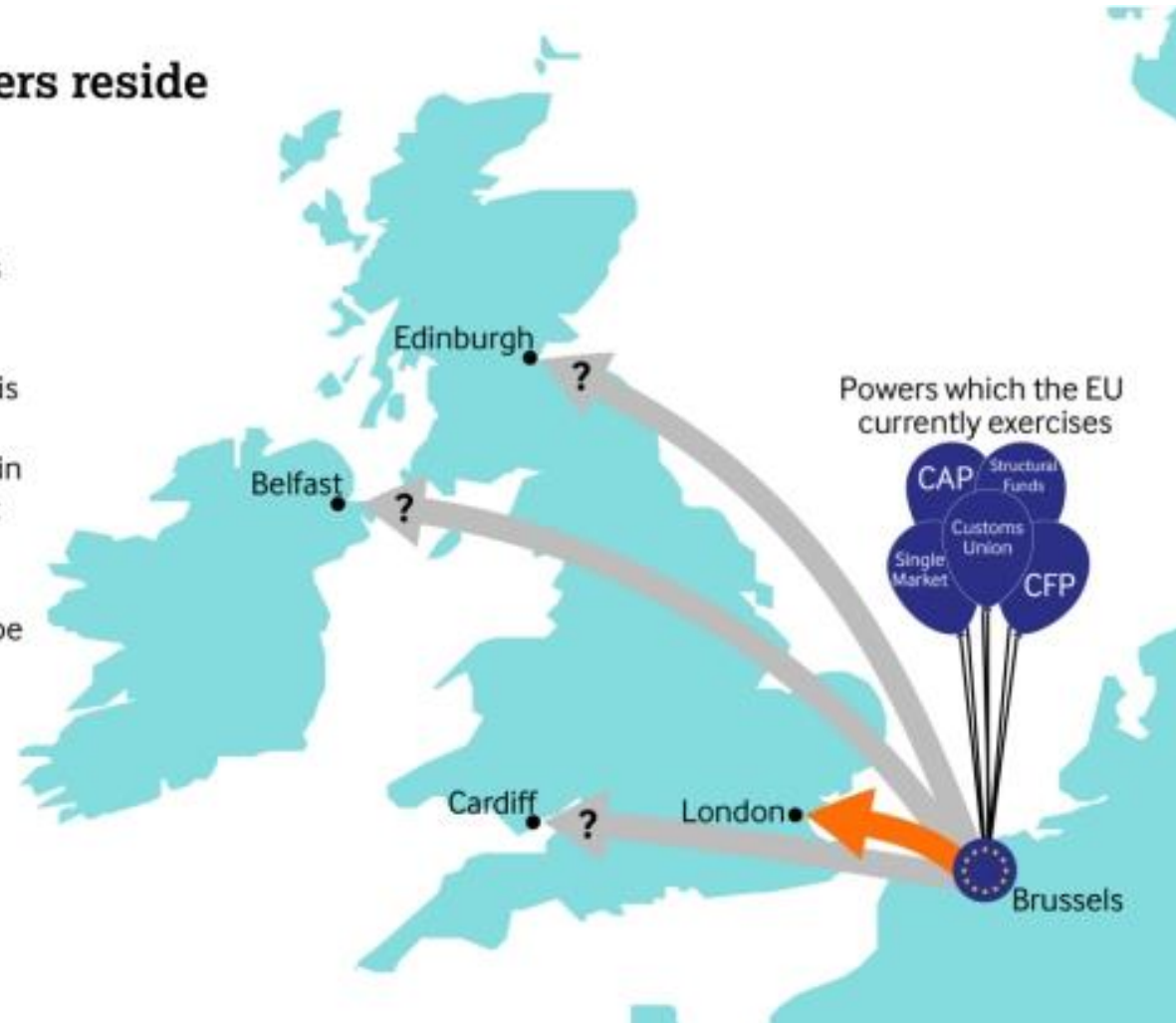


Dr Viviane Gravey (HAPP, @VGravey)

# What does taking back control entail in practice?

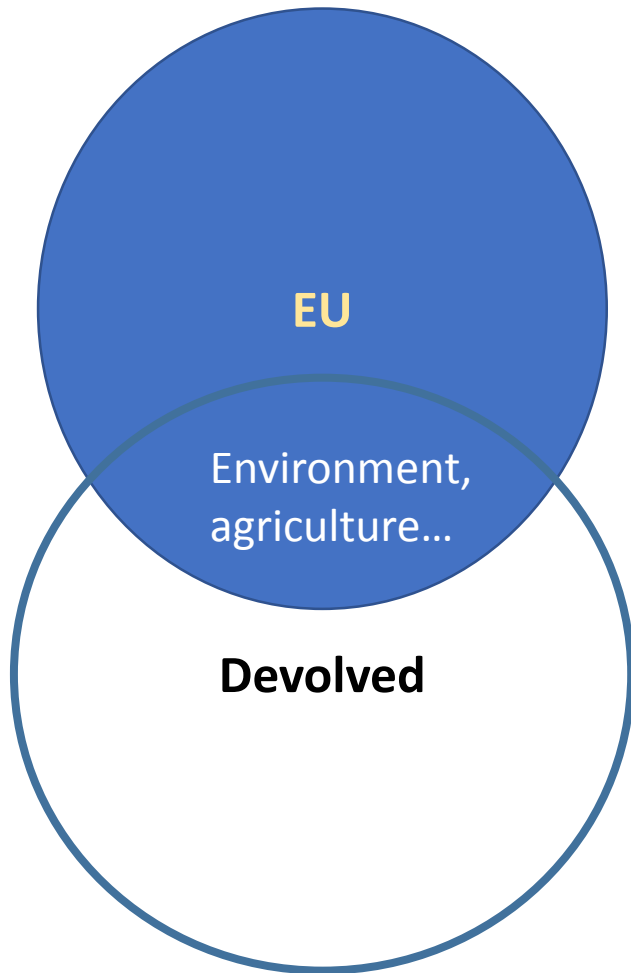
## Where will EU powers reside after Brexit?

One way of looking at powers which the EU currently exercises – such as setting the Common Agricultural Policy or rules on regional development funding - is as self-contained 'balloons', anchored in Brussels. Looked at in this way, these balloons will float back across the English Channel on Brexit Day and there will be a choice as to where they should be brought to land.



**QUEEN'S  
UNIVERSITY  
BELFAST**

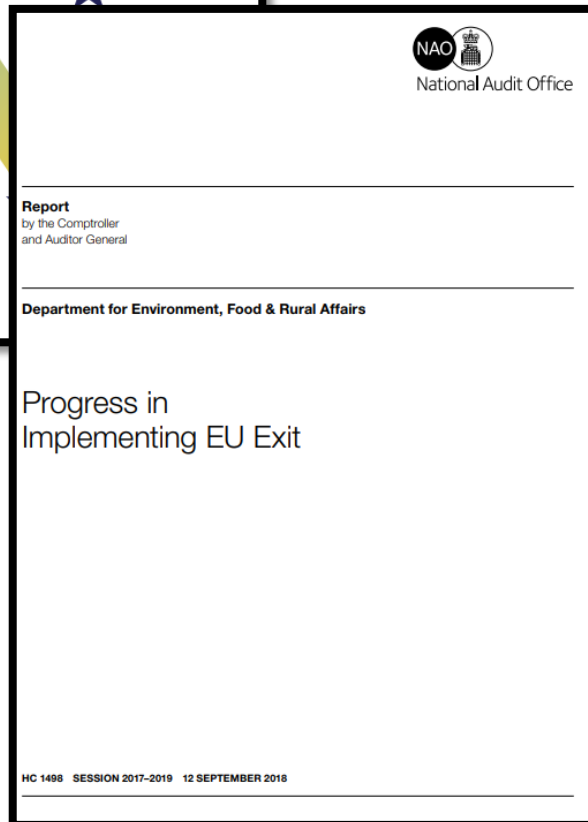
# What does taking back control entail in practice?



- ✓ Opportunity for change
- ✓ Capacity
- ✓ Legitimacy
- ✓ Divergence



“Political tensions are encouraging secrecy, where access to key documents is highly restricted. Important information is not being shared between departments, and those outside government with a legitimate reason to be kept informed, such as Parliament and business, are being kept in the dark.”



“The risk of Defra not delivering all its EU Exit portfolio in a no-deal scenario is high and, until recently, not well understood (...) In a no deal scenario, there is a high risk that Defra will be unable to deliver all the Statutory Instruments (SIs) it needs in time and it is identifying those that it needs to prioritise.”

# What next for the environment after Brexit?



<https://www.brexitenvironment.co.uk/policy-briefs/>

# What does taking back control entail in practice? ... in NI

Northern Ireland  
(Executive  
Formation and  
Exercise of  
Functions) Bill

- ✓ Opportunity for change?
- ✓ Capacity?
- ✓ Legitimacy?
- ✓ Divergence?



# No Deal:

# What would it mean for NI?



**Katy Hayward**

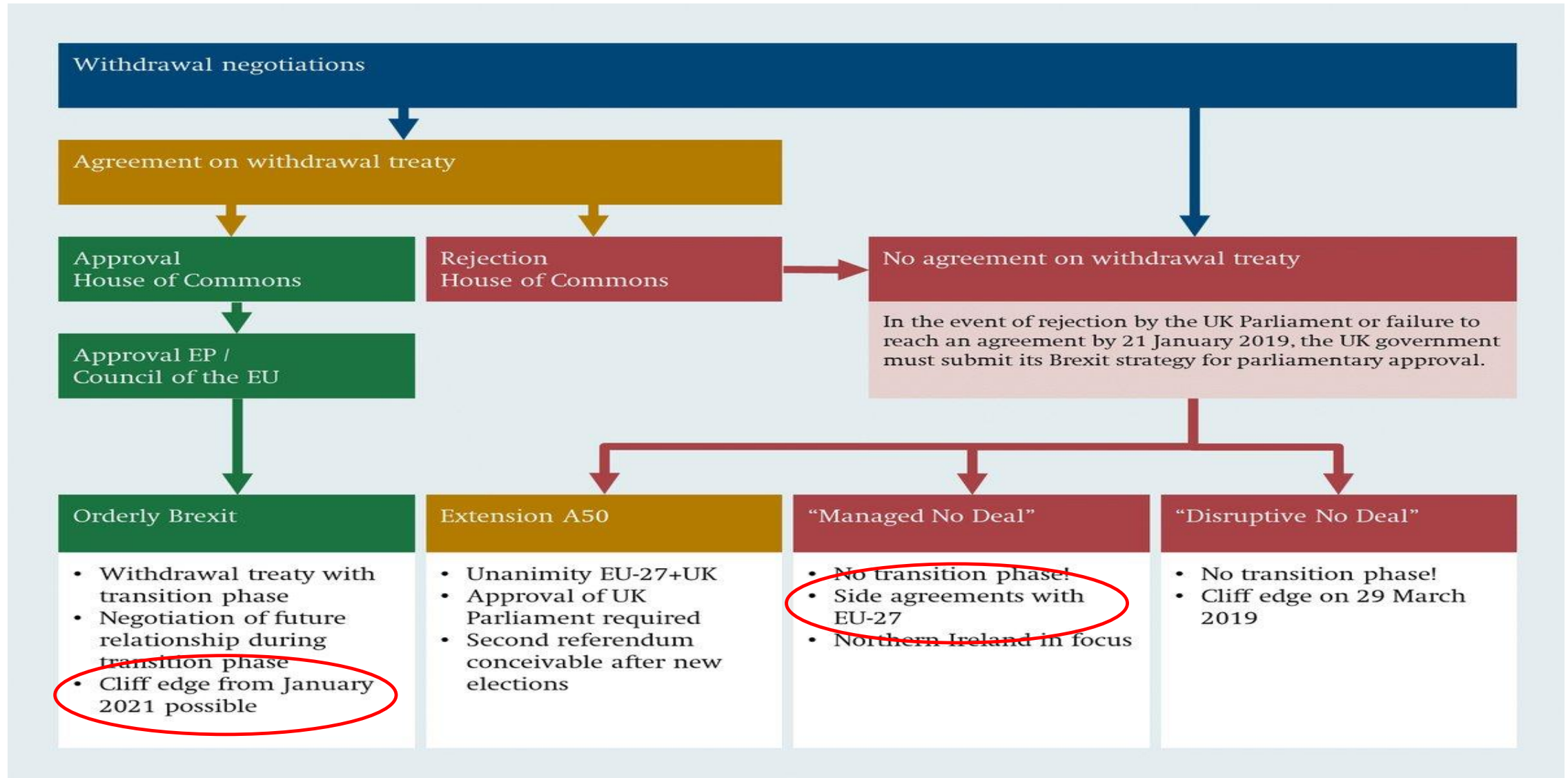
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# What has to happen to get a deal through

(credit: Nicolai von Ondarza)



# What the UK Government is doing

- **Plans already in place**

- For 2 yrs govt has been implementing a programme of work to prepare for all scenarios, inc. 'no deal'
- 2017 Autumn Budget, HM Treasury made £3 billion of funding available for departments and devolved administrations could prepare effectively for Brexit. [[N.Ireland portion](#): £15.2 million – 0.5% of the total]

- **Legislation**

- The European Union (Withdrawal) Act 2018 ensures there will be a functioning statute book whatever the outcome of negotiations.
- PLUS The Nuclear Safeguards Act 2018; The Sanctions and Anti-Money Laundering Act 2018; The Haulage Permits and Trailer Registration Act 2018
- The Taxation (Cross-border Trade) Bill and the Trade Bill for customs & trade regimes

- **Statutory Instruments**

- The government has started laying statutory instruments (c.800) to prepare the statute book for exit.
- Section 8 of the EU Withdrawal Act conferred powers on Ministers to amend EU regulations and EU-derived laws so they will work post-Brexit.
- This will be done through statutory instruments (SIs), covering a wide range of topics and identifying certain deficiencies in the law that need to be 'fixed' at the point the UK withdraws from the EU.

# Technical notices of No Deal

Commission and its priorities Policies, information and services

European Commission

English EN

Home > Brexit > Brexit preparedness > Preparedness notices

## Preparedness notices


[Read more on Brexit preparedness notices](#)


PAGE CONTENTS

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- MARE
- MOVE
- SANTE
- SG
- TRADE/TAXUD

**CNECT**

Communications Networks, Content and Technology

 **E commerce**  
English (37.6 KB - PDF)

 **Network security**  
English (52.5 KB - PDF)

## EU Commission:

[https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en)

## UK Government:

<https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal#overview>

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## Collection

### How to prepare if the UK leaves the EU with no deal

Guidance on how to prepare for Brexit if there's no deal.

Published 23 August 2018  
Last updated 12 October 2018 — [see all updates](#)  
From: [Department for Exiting the European Union](#)

#### Contents

- Overview
- Applying for EU-funded programmes
- Driving and transport
- Farming and fishing
- Handling civil legal cases
- Importing and exporting
- Labelling products and making them safe
- Meeting business regulations
- Money and tax
- Personal data and consumer rights
- Protecting the environment
- Regulating energy

# What is at risk in a No Deal



if the UK leaves the EU and becomes a third country at 11pm GMT on 29 March 2019  
without a Withdrawal Agreement and framework for a future relationship in place...

Air services	EU space programmes	Organic food production
Animal breeding	European regional development fund	Organs, tissue, & cells
Aviation safety	European social fund	Passports
Aviation security	Export control regulation	Payments to farmers
Batch testing of medicine	Fertilisers	Pesticides regulations
Blood safety	Financial services	Pet travel
Broadcasting	Firearms	Plants and seeds
Chemicals regulation	Fisheries, fish and seafood	Procurement
Civil judicial cooperation	Fluorinated gases and	Product regulation
Civil nuclear	Ozone depleting substances	Registration of veterinary medicines
Climate	Food labelling	Renewable electricity issues
Commercial road haulage	Genetically modified organisms	Rural Development Programme for England
Common Travel Area	Geographical indicators	Seafarer certification
Company law	Health and identification marks for products of animal origin	Services
Competition	Horizon 2020	State aid
Consumer protection	Imports of food and feed	Telecoms
Cross-border gas trading	Insolvency	Timber trade
Customs and borders	Intellectual property	Tobacco Trade agreements continuity
Data	Life sciences	Trade in endangered species
Driver licensing	Live animals and animal products	Trade remedies
Drugs	Maritime security	Trans-European energy infrastructure
e-Commerce and geo-blocking	Motor insurance	UK citizens in the EU
Electricity trading	New car and van CO2 emissions	UK LIFE projects
Environmental standards	NGOs	UK trade tariff
Equine movements	Nuclear research	Upholding industrial emissions
Erasmus	Objects of cultural interest	VAT Vehicle standards
EU citizens in the UK	Oil & gas	Veterinary medicine products
EU programmes and structural funds		Workplace rights.

# Ireland/Northern Ireland copy&paste

- **“We are clear that in a ‘no deal’ scenario we must respect our unique relationship with Ireland, with whom we share a land border and who are co-signatories of the Belfast Agreement.**
- ...We recognise the basis it has provided for the deep economic and social cooperation on the island of Ireland. This includes North-South cooperation between Northern Ireland and Ireland, which we are committed to protecting in line with the letter and spirit of Strand two of the Agreement.
- The Irish government have indicated they would need to discuss arrangements in the event of ‘no deal’ with the European Commission and EU Member States. **The UK stands ready in this scenario to engage constructively to meet our commitments and act in the best interests of the people of Northern Ireland, recognising the very significant challenges that the lack of a UK-EU legal agreement would pose in this unique and highly sensitive context.**
- It remains, though, the responsibility of the UK government, as the sovereign government in Northern Ireland, to continue preparations for the full range of potential outcomes, including ‘no deal’. **As we do, and as decisions are made, we will take full account of the unique circumstances of Northern Ireland.”**

# Cross-border trade

- A customs border
  - those trading across it border would have to be **registered** to do so
  - they would have to make **customs declarations** on all goods being transported, which must include the correct commodity code and value of the goods.
  - In many instances, **tariffs** would have to be applied to these goods. This can be ad valorem (charged as a percentage of the value of the goods), unit based charges (by quantity or weight), or both.
  - As well as tariffs, **excise duties** and **VAT** will have to be paid on entry to the other jurisdiction – another layer of bureaucracy for traders to manage.
  - Agri-food products should (strictly) go through Border Inspection Posts.
- Ameliorative measures
  - Trusted trader scheme
  - Customs clearance agents

# Daily concerns

- Regulation of Energy, Medicines, Medical equipment, labelling etc.
- E.g. Electricity
  - The Single Electricity Market operates within the framework of common EU rules on electricity markets.
  - If there is no deal, the EU rules will cease to apply in Northern Ireland leaving key elements of the Single Electricity Market without any legal basis, with the risk it can no longer continue.
- Other issues:
  - E.g. Mobile Phone Roaming
  - E.g. Cross-border rail services
  - E.g. Consumer protection
- *Theme: much of it is out of the UK's hands. A lot depends on what operators and EU /EU MS decide to do.*

# What's all the fuss about?

- Could ignore the border!
  - WTO rules are intended to reduce disparities and unnecessary bureaucracy when it comes to managing customs controls.
  - Smuggling not only means losses to public revenue; it causes harm to legitimate traders, poses risks to consumers, and funds criminal activity.
  - If UK ignored it, would severely damage its reputation as a serious trading partners
- Could use other systems to cover it!
  - These other systems come as part of the EU package. No deal means no deal.
- Could rustle up some bilateral sticking plasters!
  - Can only stretch so far, not least because limits to how far Ireland can act given its responsibilities as an EU member-state. (*Note UK recognised this in the Joint Report*)