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The Brexit Withdrawal Agreement the effect on North-West businesses

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How will the Brexit Withdrawal Agreement affect North-West Businesses?

The Withdrawal Agreement came into force at 11.00 pm (UK time) on 31 January 2020 (Exit Day), when the UK left the EU.

Theresa May had agreed a previous version of Withdrawal Agreement, which failed to win the support of Parliament. We discussed the effects of that Withdrawal Agreement [here](#). The Withdrawal Agreement was subsequently renegotiated by Boris Johnson and passed by Parliament.

This briefing note addendum serves as a reminder of the some of the key differences between the two Withdrawal Agreements and what the effects will be of the final Withdrawal Agreement.

The vast majority of the Withdrawal Agreement did not change from the version that was negotiated by Theresa May. However, the changes that were agreed by Boris Johnson have the potential to have a big effect on businesses throughout the UK.

The changes were mostly made (and this briefing note concentrates on) to the section of the Withdrawal Agreement known as the “Northern Ireland Protocol” (the Protocol), which deals with trading arrangements following Exit Day in the event that no trade agreement is in place with the EU by this date.

Backstop

The “backstop”, which was the most controversial aspect of Theresa May’s version of the Protocol, has now been removed from the Protocol. The backstop provided that there would be a single EU-UK customs territory, which would have meant that there are no tariffs, quotas or checks on rules of origin between the UK and the EU.

There would also have been rules to ensure a “level playing field” between the EU and UK and the UK was to remain aligned with EU single market rules that are needed in order to prevent a hard border.

UK customs territory

After Exit Day the UK will have its own customs territory and will not form part of the EU’s customs territory. The UK will manage its own tariffs and will, for example, be able to sign agreements to lower them. Northern Ireland is to remain part of the UK’s customs territory, so Northern Ireland would be included within any free trade agreement signed by the UK with another country.

This has an impact beyond trade with Northern Ireland. Under Theresa May’s deal, goods would have moved tariff-free between the UK and the EU, whereas under Boris Johnson’s deal, there will now be tariffs on trade with the EU (potentially in both directions) which may make trade much more costly.

Businesses should now seek to examine the extent to which they will be affected by this (either directly or by costs being passed along their supply chain) and take steps to mitigate it where possible.

Customs and movement of goods

The new Protocol sets out that customs checks will apply to goods moving from Great Britain to Northern Ireland, to ensure that customs checks are not needed between Northern Ireland and the Republic of Ireland.

Goods moving directly from Great Britain to Northern Ireland will not be subject to tariffs unless they are “at risk” of being moved into the EU afterwards. Similarly, goods from countries outside of the EU which enter Northern Ireland will be subject to UK tariffs, unless they are at risk of being moved to the EU.

Where goods are deemed to be at risk of being moved into the EU, the EU tariff will be applied. However, if the UK tariff is lower, and those goods are later proved to have stayed in Northern Ireland, traders can be reimbursed by the UK.

No tariffs or restrictions will apply to trade between Northern Ireland and the Republic of Ireland and Northern Ireland will still be subject to most of the EU’s customs rules, as in Theresa May’s Protocol.

Consent and exit mechanism

The UK must give the Northern Ireland Assembly the opportunity to consent to the trade elements of the Protocol four years following the end of the transition period. It is up to the UK to decide the decision-making process. The Northern Ireland Assembly will then periodically vote on whether to consent to the continued operation of the Protocol. The frequency of the vote will depend on how the decision is made but will range between four and eight years.

If the Assembly votes against the Protocol at any point then the arrangements will cease to apply two years later, following which, in the absence of any agreement negotiated during that period, Northern Ireland would not be treated any different to the rest of the UK and there would be a “hard border” on the island of Ireland.

Northern Ireland would not have been able to exit from the Protocol of its own volition under Theresa May’s Protocol.

Summary

In summary, the vast majority of the Withdrawal Agreement is as previously drafted and described [Click here to view](#), however the changes to the Protocol mean that any businesses which rely on trade with the EU, whether directly or indirectly, will need to prepare for tariffs and customs checks being imposed.

Any businesses involved with trade between Great Britain and Northern Ireland will need to adapt to the novel approach to customs checks and tariffs that will affect goods moving between these areas of the United Kingdom. Of course, it remains a possibility that a trade agreement will be agreed with the EU before Exit Day, in which case the Protocol would not apply, but it would be prudent for businesses to prepare now for a “no deal” scenario on trade.