ITALIAN TRADE AGENCY

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INSTITUTE FOR GOVERNMENT

Getting Brexit done
What happens now?

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L'***Institute for Government***, think tank leader, opera per rendere il lavoro del governo più efficace. Fornisce ricerche e analisi rigorose, commenti di attualità ed eventi pubblici per esplorare le principali sfide che il governo deve affrontare. Inoltre, offre uno spazio di discussione e nuove idee per aiutare politici e dipendenti pubblici a pensare in modo alternativo ed apportare cambiamenti.

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In allegato un insight redatto in questo mese dallo stesso Istituto, il quale tratta principalmente la fase dei negoziati successiva all'uscita del Regno Unito dall'UE il 31 gennaio. Tale fase avrà portata molto ampia e riguarderà le relazioni economiche, la cooperazione in materia di sicurezza e questioni come la condivisione dei dati.

I **negoziati** con l'UE sono solo uno degli aspetti della Brexit che il governo dovrà affrontare nel 2020.
Dovrà inoltre **ratificare** l'accordo di recesso, compreso il protocollo dell'Irlanda del Nord (la parte di accordo che impedisce un confine duro sull'isola d'Irlanda) e **implemtare/attuare** le decisoni prese per il futuro del Regno Unito al di fuori dell'UE.
Per il Regno Unito questo significherà: stabilire nuove funzioni e politiche governative, definire ruoli e responsabilità di organismi pubblici nuovi ed esistenti.

L'adattamento alla vita al di fuori dell'UE sicuramente si estenderà ben oltre il dicembre 2020. Il governo dovrà quindi decidere se è pronto a terminare la transizione senza proroghe o se è disposto a cercare altri modi per trovare più tempo.

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Il documento esamina i principali compiti che il governo britannico dovrà affrontare e le decisioni chiave che dovrà prendere durante il periodo di transizione. Inoltre valuta la misura in cui la Brexit sarà "eseguita" entro il 31 gennaio e il 31 dicembre 2020 da cui trae varie conclusioni.

Il documento si divide in 5 capitoli chiave, i quali rappresentano i 5 compiti fondamentali del governo dopo il passaggio dell'accordo di ritiro:

1. Prepararsi ai negoziati sulle relazioni future

2. Negoziare le relazioni future

3. Ratificare le relazioni future

4. Attuazione dell'accordo di recesso

5. Attuare le relazioni future

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Summary

The UK is now set to leave the EU on 31 January 2020 – 34 months after the then prime minister, Theresa May, began the Article 50 exit process. But the biggest task is still to come.

The first phase of the negotiations covered only withdrawal questions – the UK's financial contribution, protecting the rights of EU and UK citizens, and avoiding a hard border on the island of Ireland. The next phase is going to be much broader in scope – covering the economic relationship, security co-operation and questions such as data sharing – and in theory will need to be negotiated before the currently scheduled transition period, during which the UK will continue to follow EU rules despite leaving EU institutions, ends on 31 December 2020.

Negotiations with the EU are only one aspect of the Brexit task facing the government in 2020. It will also need to implement the Withdrawal Agreement – including the Northern Ireland Protocol (the part of the deal preventing a hard border on the island of Ireland) – and prepare for the UK's future outside of the EU; passing legislation, establishing new government functions and policies, and setting out the roles and responsibilities of new and existing public bodies.

This paper looks at the biggest tasks facing the government and the key decisions it will need to make during the transition period. It assesses the extent to which Brexit will be 'done' by 31 January 2020 and 31 December 2020, and makes the following conclusions:

- **The UK government still needs to agree its priorities in the negotiations and set up structures to effectively manage any trade-offs.** During the first phase of the negotiations, the UK was slow to set out what it wanted, which gave the EU the upper hand. The prime minister needs to ensure that the right structures are in place both across government and with the devolved administrations to be able to draw on expertise to make political decisions during the negotiations.
- **The time for negotiation will limit any agreement.** The prime minister has said he will not extend the transition period; but 11 months is much less time than previous EU trade negotiations have taken. This will mean that it will probably only be possible to cover a narrow range of issues, with both sides ending up prioritising a largely goods-only free trade agreement. Any negotiations on services are likely to be postponed until after December 2020.
- **No agreement on a future relationship is very possible** – with many of the same implications as no deal in March or October 2019. It is still possible that the UK and the EU will not be able to reach agreement on their future relationship by the end of December 2020. Unlike in March or October, when there was a prospect that the UK might leave the EU without even a Withdrawal Agreement (and no transition period), citizens' rights would be protected in this scenario, the UK would be obliged to honour the financial settlement with the EU, and the terms for trade in goods for Northern Ireland have already been agreed. But for businesses across Great Britain, no deal on the future relationship would be almost identical to the result if the UK left without a deal in March or October. The same is true for UK–EU security co-operation.
- **The government's plans mean that Members of the European Parliament (MEPs) will have more of a say in the future relationship than MPs in Westminster** – although Parliament will need to pass primary legislation to implement the future deal. With the role of Parliament in the next phase of the negotiations being stripped back by the government after the general election in the second version of the Withdrawal Agreement Bill, MPs will not have a vote to approve any deal. Parliament will probably be required to pass legislation to give the government powers to implement a new treaty, and earlier and more proactive engagement with MPs would help that passage go smoothly.
- **Westminster was the obstacle to ratifying the Withdrawal Agreement, but the EU is now the more likely source of any delay or demands for last-minute changes.** Member states and the European Parliament will need to approve the deal. If the agreement covers areas of EU and member-state law, national parliaments – and possibly regional parliaments – will also have to ratify the deal. Individual demands and interests will be more powerful in the next phase. The full ratification process usually takes years; this will not be possible by the end of December 2020. Parts of the agreement could be provisionally applied – but risk being reopened if rejected by any of the member states.

- **The Brexit job in Parliament will not be 'done' once the Withdrawal Agreement Bill is passed** – the government still needs to pass at least six pieces of Brexit legislation to 'take back control'. Negotiations are just one part of the task. The government needs to pass legislation for new policies in agriculture, fisheries and immigration, set up new public bodies including the Independent Monitoring Authority and the Trade Remedies Authority, make changes to existing public bodies and prepare for changes at the UK border. These pieces of legislation are required to give ministers powers in areas where previously the EU set the rules.
- **The government will almost certainly be unable to implement the Northern Ireland Protocol by December 2020**. This could result in the UK being taken to the European Court of Justice (ECJ) and cause practical and political disruption in Northern Ireland. The Protocol involves complex customs arrangements and regulatory and customs checks between Northern Ireland and Great Britain – but key details are yet to be decided by the Joint Committee established in the Withdrawal Agreement and not yet up and running. The deal has the support of no Northern Irish political parties and it looks almost impossible to complete the practical changes, for government and business, by the end of the year. Failure to comply with the Withdrawal Agreement could see the European Commission begin infringement proceedings and the UK ending up at the ECJ.
- **The challenge of being operationally ready for Brexit at the end of the transition period is the biggest job yet** – if the government is unprepared to secure additional time, the UK could face major disruption. The end of the transition period is the point at which things will really change as a result of Brexit – at the border, across the economy, and in policy areas such as immigration, agriculture and internal security. By March, there is expected to be almost 30,000 civil servants working on Brexit. There could be just a matter of weeks between a deal being agreed and it coming into force in December 2020. If the UK and the EU do not secure more time to allow for the implementation of a deal, it could result in disruption.
- **British businesses will not have enough time to prepare for life outside the EU by December 2020.** While negotiations are continuing, businesses will not know what the final relationship will be. Many businesses have said they would need a year to prepare once the details of the deal are clear, and in traditional trade agreements the biggest changes are sometimes phased in over two or three years. The kinds of changes businesses will face as a result of Brexit are likely to be much bigger in scale but with possibly just weeks of knowing details such as what paperwork is required, which tariffs apply (if any) and what they do and do not need to change in terms of how they operate. Again, the government will face a choice of securing additional time, with the associated political consequences, or providing support to struggling businesses.

- **Brexit will not be 'done' in 2020** – it will continue to dominate government for years to come. The prime minister may hope to end Brexit's dominance in the public debate after 31 January, but in Whitehall it will continue to be the biggest and most challenging task faced by a government in decades. The UK will formally leave the EU at the end of January, and in that sense Brexit will be done, but many of the biggest Brexit jobs will be far from over – there is no agreed future relationship with the EU, all major practical changes are yet to take place, the policy questions in areas like agriculture and immigration are still not answered and how the UK's union and internal market will operate outside an EU framework is still disputed.

The task of adjusting to life outside the EU will stretch well beyond December 2020. The government will need to decide whether it is prepared to end the transition if these jobs are only partially complete, or whether it is willing to look for other ways to find more time.

The scale of the task

This section looks at the five key tasks facing the government after it passes the Withdrawal Agreement Bill (WAB):

1. Preparing for the negotiations on the future relationship
2. Negotiating the future relationship
3. Ratifying the future relationship
4. Implementing the Withdrawal Agreement
5. Implementing the future relationship

1. Preparing for the negotiations on the future relationship

With the Withdrawal Agreement set to be ratified and the UK formally leaving the EU on 31 January, the focus is already turning to negotiating the future relationship. If the UK had left the EU as originally planned on 29 March 2019, the two sides would have had 21 months to negotiate the future relationship. But multiple Article 50 extensions have eaten into that time. The transition period is still due to end in December 2020, meaning only around half the time that was available can now be used (11 months).

A compressed timetable makes it tempting to launch head on into talks, but that would be a mistake. The UK needs to take some crucial steps to prepare for the negotiations. Above all, it needs to develop a clear, detailed and realistic picture of what it hopes to achieve and what it wants the future relationship to look like.

The UK needs to quickly decide what it wants – in detail – from a future relationship with the EU and what it is prepared to give to get it

In the Conservative Party manifesto, the government pledged "a new relationship based on free trade and friendly cooperation"[1] with the EU. That future UK–EU arrangement will cover a much broader set of issues than those covered in the Withdrawal Agreement, which tackled only the immediate issues around UK exit, most notably the financial settlement, guarantees on citizens' rights and the framework for how to avoid a hard border on the island of Ireland.[2]

The Political Declaration, agreed on 17 October 2019, outlines the UK's and the EU's aspirations for their future relationship. It sets out a long list of areas where the two parties will seek to agree:

- **economic –** covering the key elements in free trade agreements, including both goods and services, intellectual property, public procurement and the 'level playing field' (referring to provisions on state aid, environment, labour laws and competition), as well as energy co-operation, transport and mobility (including travel)

- **security –** covering co-operation on internal security (such as criminal justice and policing), as well as defence and foreign policy
- **institutional arrangements –** covering the mechanisms through which the two sides oversee and enforce the new agreement(s)
- **cross-cutting areas** – covering things like fishing rights, personal data and co-operation in areas such as research.

In each of these areas, the UK and the EU could try to agree something ranging from comprehensive – and perhaps unprecedented – through to using the basic mechanisms through which the EU co-operates with other third countries. The two sides could also fail to agree in some, or aspects, of all the areas, falling back on standard ways of co-operating between countries, with no preferential deal in place.

One issue that will, in principle, be exempt from these negotiations is trade in goods across the Irish border and the status of Northern Ireland. The Northern Ireland Protocol in the Withdrawal Agreement sets out special arrangements for Northern Ireland.[3]

But it is far from clear how much detailed thought the Johnson administration has given to what it wants from Great Britain's relationship with the EU. The Conservative manifesto was clear on what it did not want – no single market, no customs union and no ECJ jurisdiction or "political alignment" – the same formal position of the UK since 2016.[4] The prime minister's letter to EU Council President Tusk said that regulatory flexibility is a priority, something that he felt was insufficient in the type of relationship outlined by his predecessor, Theresa May.[5]

A lot of the detailed cross-government work on the future relationship was, however, done by May's government.[6] The overwhelming focus of Whitehall under Boris Johnson has been on preparations for no deal and changes to the Withdrawal Agreement.

An immediate task for the new government will be revisiting that work on the future UK–EU relationship, before reaching collective agreement within the Cabinet on the detailed negotiating objectives.

The government should build broader support for its negotiating objectives

But it is not just about getting broad support within the Cabinet. The government should reach into Parliament, different layers of government – particularly the devolved administrations – and business to try to build as much support as possible for its negotiating objectives.

The government must ensure that its objectives are realistic – that they are negotiable with the EU and that it has considered what impact its objectives will have on business, civil society and other actors. It also needs to ensure they are robust, that they are both legally and practically sound and that they can be delivered if agreed. Finally, it needs to ensure it has got broad backing. The government is more likely to secure early support for its mandate and future deal if it gives business and civil society a chance to voice their concerns.

The government will not have much time and will need to act quickly. May and her government were criticised for being slow to engage the devolved administrations and take into account the views of external groups, including businesses, unions and non-governmental organisations, during the first phase of negotiations.

The importance of engaging externally ahead of trade negotiations is not just about getting political support for a deal. Striking a deal does not, in itself, deliver benefits – those benefits come from businesses trading with the partner country taking advantage of the terms of the deal and the preferential access on offer. Not all businesses do, however – whether it is due to lack of understanding, the deal not reflecting their needs or because the administrative burden necessary to prove eligibility for the preferential access outweighs the benefits. A study in 2015 showed the UK had an average 'utilisation rate' (the percentage of eligible trade taking advantage of preferential access) of 81%. A study in 2012 showed the US had an average utilisation rate of over 90%.[7]

If the government wants to ensure businesses take advantage of any deal it strikes with the EU, involving them early in the process to find out what they want would help to achieve that.

The government should quickly set up consultation groups, akin to the Department for International Trade's Strategic Trade Advisory Group (STAG), for cross-sectoral engagement on future trade deals.[8] These groups should be representative and involve experts, business and civil society leaders and officials from all relevant government departments. Given the time constraints, STAG could prove a useful starting point.

MPs will have no formal role in approving the negotiating mandate – but should not be ignored

Under the October version of the Withdrawal Agreement Bill, the House of Commons would have had to pass a motion approving the objectives before ministers could begin negotiating a future relationship with the EU. But the version that was put to Parliament in December dropped the clauses giving Parliament this role[9] – and it is far from clear what role, if any, the government now envisages for Parliament. By sidelining Parliament, the government has greater flexibility in terms of when to start the negotiations – but ministers still need to think about how to update MPs during the talks.

Parliament used select committees as a key route for scrutiny during the first phase of talks. In the House of Commons, the primary committee was the Exiting the EU Committee; however, it is not clear whether the committee will continue to be in place, following the general election and the government's decision to abolish the Department for Exiting the EU (DExEU).[10]

MPs will need to decide what committee structure they want to set up for scrutinising the future relationship negotiations with the EU. They could seek to retain a central, dedicated Brexit committee or decide to give departmental select committees a greater role in scrutiny, drawing on their expertise and avoiding putting too much of a burden on a single committee. Whatever they decide, ministers should be prepared to properly engage.

Select committee scrutiny is a vital route for the government to publicly justify the choices – and trade-offs – it makes during the talks. And would prove useful in understanding where the challenges could be when it comes to legislating later on.

On the EU side, the European Commission leads negotiations on the EU's behalf. EU negotiators can only begin their work once they have received formal approval from the Council of the EU, the ministerial grouping of EU member states.[11] EU ministers are expected to take this decision in early 2020. The European Commission will then publish its draft negotiating directives online and send a copy to EU governments, national parliaments and the European Parliament.

The UK government must involve the devolved administrations to properly reflect Scottish, Welsh and Northern Irish interests in the talks

The Brexit process has undoubtedly put a serious strain on relationships between the governments of the UK. The Scottish government has used the UK government's approach to Brexit to make the case for a second Scottish independence referendum. Meanwhile in Northern Ireland – where the executive has still not been re-established[12] three years since it collapsed and the civil service makes day-to-day decisions – all five major political parties oppose the Withdrawal Agreement; and the latest polls suggest an increase in support for reunification.[13] If not handled correctly, there is a risk that leaving one union means breaking up another.

Many of the areas included in the future relationship negotiations will have direct implications for devolved competencies. Decisions made in Westminster will constrain devolved activity, in particular in terms of agriculture, fisheries and any level playing field commitments on the environment.

The devolved administrations will also be responsible for implementing parts of the future trade agreement, and any legislation implementing a new UK–EU trade deal will almost certainly require the consent of the devolved legislatures. A failure to actively involve the devolved administrations throughout the next phase of negotiations will increase the risk of practical and political fallout when a deal is brought back from Brussels.

So far in the Brexit process, the devolved administrations have been highly critical of how the UK government has engaged them in its negotiations with the EU. The UK government has taken major decisions on the Brexit deal unilaterally, despite objections from the devolved governments. This includes sending the Article 50 letter triggering the entire exit process, passing the European Union (Withdrawal) Act 2018 without the consent of the Scottish Parliament, limited engagement over the Chequers White Paper[14] and, under Johnson's government, agreeing a new Northern Ireland Protocol despite the objections of Northern Ireland parties.

In a joint letter to the new prime minister in July 2019, the first ministers of Scotland and Wales called for greater engagement in the next phase of negotiations, stating that:

> **this will require a significant shift in the culture and approach to intergovernmental relations we have experienced over the past three years, to ensure that proper respect is given to devolved interests and institutions.**[15]

Despite this, the devolved ministers and officials reported that the UK government became more reluctant to share information or work co-operatively with the devolved administrations ahead of the 31 October deadline.[16]

The UK government must do more to involve the devolved administrations in the next phase of negotiations in a meaningful and systematic way. A review of intergovernmental relations is under way, including work towards an agreement on new working arrangements for trade negotiations.[17] The UK government should agree and set out detailed plans on how it will involve the devolved administrations in this next phase as soon as possible.

In the first phase, the government's structures were not set up for effective negotiation – it cannot afford to make the same mistake again

The government now faces a much bigger negotiation with the EU. It will need to ensure it can effectively co-ordinate, make the necessary trade-offs and take advantage of the expertise that exists right across government and its public bodies. To do so, it will need to look carefully at its structures.

The government has announced that it will be abolishing DExEU at the end of January.[18] The responsibility for negotiations will fall to a centrally run unit called 'Taskforce Europe', sitting in the Cabinet Office and Number 10.[19] This is likely to avoid some of the problems that characterised the first phase, where DExEU struggled to play the co-ordination role and there was tension between the prime minister and the secretary of state.[20]

In the next phase, far more departments will be involved across a much wider range of issues. The ability to make trade-offs between potentially competing views of multiple departments will be essential. The Cabinet Office is better equipped as a trusted broker that can pool departmental expertise and quickly feed up issues that require political decisions.

In addition to moving the negotiations into the Cabinet Office, the Cabinet Office should also be given formal responsibility for ensuring that departments are operationally ready for Brexit. This was previously done ad hoc through Cabinet committee structures and after July 2019 the team in DExEU began reporting to Michael Gove in the Cabinet Office.

The government must also address the role of the Department for International Trade, which currently has no role in the EU negotiations. In the next phase, sidelining the trade department where the expertise on trade negotiations resides makes little sense.

The UK will be less prepared for talks than the EU – again – giving the EU the upper hand

The compressed timetable means talks will need to begin within weeks of the UK formally leaving the EU at the end of January.

Most cross-government thinking on the future relationship was done under May's government. Johnson's government has been preoccupied with both no deal and the Withdrawal Agreement. The work on the future relationship, and the decisions about trade-offs, will take time to be refreshed and revitalised and it will take time for the Cabinet-level discussions and decisions to take place. The UK has yet to reveal it has the necessary understanding and information to know what it wants in some areas – for example, in rules of origin, where detailed analysis is required to inform the UK's negotiating positions.[21]

In addition to uncertainty about what the UK is trying to negotiate, there is also little clarity about how the UK intends to negotiate – what the structures will be, who will lead and how officials from across government will feed in. The prime minister and his senior advisers may have a clear sense in their minds on structure, but it will take time for that to be worked through and established.

In Europe, over the past few months, while the UK has been focusing on the domestic challenges and consequences of Brexit, the EU has been working through detailed options for mandates and establishing its structures for negotiations.[22] The UK will, again, enter talks in Brussels being less prepared than its counterpart.

2. Negotiating the future relationship

The breadth of issues and time constraints of the next phase will mean the negotiations will be unprecedented – going much further than any normal free trade agreement. The Withdrawal Agreement took far longer to negotiate (more than two years) and yet it covered a much smaller number of issues.

Failure to reach an agreement would not mean, as it does in usual trade talks, that there is simply a continuation of the status quo. It would mean that Great Britain would default to trading with the EU on World Trade Organization (WTO) terms, and that all other arrangements resulting from EU membership would cease.

It would be different from no deal at the end of March or October 2019: the withdrawal treaty would be in place, the UK would be obliged to continue making payments under the financial settlement (the bulk of payments would in practice have already been made), citizens' rights would be covered by the agreement and Northern Ireland's trade in goods would be covered by the Northern Ireland Protocol, with a customs and regulatory border in the Irish Sea between Northern Ireland and Great Britain but unfettered access to the single market and the EU customs union.

There is very little time in which to negotiate

If the UK leaves the EU on 31 January 2020, 34 months will have passed since the UK triggered Article 50 in March 2017. The two sides will have spent almost three years settling the terms of exit. The UK will then have just 11 months to agree the future relationship, before the scheduled transition period ends on 31 December 2020. When you factor in the need to agree mandates, set up negotiating structures and set the number and structure of treaties the UK and the EU hope to agree – the UK and the EU will have less than nine months to do detailed 'in the room' discussions.

Conventional free trade agreements are negotiated over years, not months. For the EU–Canada agreement, often considered the benchmark for the kind of deal the government is seeking to negotiate, negotiations lasted more than five years. The EU–Japan and EU–Singapore agreements took more than four years.[23] But these talks were different, with no deadline after which failure to reach an agreement would result in anything other than a continuation of the status quo. Normal free trade agreement talks involve short, sharp negotiating rounds – punctuated by lengthy breaks in talks. A UK–EU deal will need a very different approach.

But breaks in talks are vital for the other negotiations that government officials are inevitably involved in – with their colleagues, parliamentarians, businesses and the public. The government needs time to lay the groundwork for concessions back home, for this set of negotiations will inevitably need concessions if a deal is to be reached.

The first set of negotiations will be about how to structure the talks and the agreements – the UK needs to better argue for its interests this time round

The first set of negotiations will be the 'talks about the talks'. The UK and the EU will need to agree what they are broadly trying to negotiate and the sequence in which they approach them.

Although the Political Declaration includes some key dates – for example, an ambition to reach equivalence decisions on financial services by the end of June 2020 and agreement on access to fishing waters by July 2020 – decisions will have to be made on the rest of the negotiations.[24]

The two sides will need to decide the form and number of agreements they hope to strike. It might seem like a point of dull process, but it will have implications both for ratification – discussed below – and for negotiations.

The EU called the shots on the sequencing and structure of the first phase of negotiations, which put the UK at an immediate disadvantage.[25] The risk for the UK is that the EU does this again – prioritising its key interests in goods, fishing rights and level playing field provisions, and relegating UK interests, for example services. The UK will need a clear sense of how it would like to run the negotiations and argue the case, well before discussions on the 'meat' of the future relationship get under way.

At one end of the spectrum, the two sides could decide to opt for a comprehensive agreement – in the form of an association agreement similar to the EU's agreement with Ukraine.[26] Negotiations would cover many sectors – from tariffs to internal security – and the agreement would only be adopted once all negotiations had been completed. An agreement of this scope is also likely to involve areas of EU and member-state law – and would almost certainly take longer than 11 months to negotiate and ratify. Such a broad agreement would allow negotiators to trade off unrelated issues.

Alternatively, the two sides could choose to strike separate agreements covering specific areas – similar to Switzerland but with far fewer agreements and a clear institutional architecture. A decision to do this would most likely be a result of the short timeframe, with the priority being agreement of a basic deal covering the principal areas of trade in goods[27] – with more difficult talks delayed until after 2020. For those areas not covered by the agreement, the UK and the EU could issue unilateral, time-limited measures to try to provide a legislative stopgap.

This could in theory limit the amount of 'horse-trading' that happens between unrelated issues, but in practice that looks unlikely. The EU and the UK are likely to combine issues – even those unrelated to the direct negotiations, for example within the Joint Committee overseeing the Withdrawal Agreement – wherever possible to increase leverage in talks.

Some areas of the negotiations will be extremely contentious – and for some, the UK could face a choice between concession or the failure to get a deal

Once the broad structure and sequencing of talks are agreed – which could take until at least March – the substance of the negotiations will begin.

The government is aiming for a deal that will need to unpick 40 years of integration and replace it with a new, more distant partnership. It is already clear that particular issues such as fisheries and committing to a level playing field will be flashpoints in the negotiations.

Taking back control of the UK's fishing waters was a central, and successful, message in the UK Brexit referendum campaign. Since the referendum, rival industry bodies – the European Fisheries Alliance (EUFA) – and eight member states have been lobbying intensely to ensure that access to UK fishing waters is linked to any overall deal. Some member states, most recently Denmark, have also been vocal about making the issue of such access central to the EU–UK negotiations.[28]

The fishing industry accounts for just 0.1% of the UK's economy,[29] but nonetheless it has symbolic significance and is a vital part of local economies and communities in parts of the UK – Scotland in particular. The Political Declaration makes clear that the UK and the EU must make best endeavours to reach a decision by July 2020 and that a failure to do so could have implications for fishing opportunities in 2021.[30]

Likewise, securing a settlement on the level playing field could be fraught with difficulty. The EU's objectives, first published in 2017, are unambiguous about wanting to prevent the UK from being able to lower standards in order to gain a competitive advantage. Yet Johnson, during the election campaign, emphasised regulatory flexibility.

The EU may also want to include provisions that continue to give EU institutions a role in decisions made by UK public bodies – for example, under May's Withdrawal Agreement, the European Commission would have had the authority to sign off state-aid decisions by the Competition and Markets Authority.[31] The government has already made it clear that it wants no future role for the ECJ,[32] so any suggestion (outside the Northern Ireland Protocol) that it might have continuing oversight would be hugely contested.

It is not just the economic partnership where there will be political sensitivities. The security and foreign policy partnership could also raise difficult issues of sovereignty for the UK. Michel Barnier, the EU's chief Brexit negotiator, made clear that "the same degree of [security] cooperation is simply not possible with a third country that is outside the Schengen area".[33]

For the UK, there could be many more areas in the negotiations where the aim of 'taking back control' conflicts with the objective of securing beneficial terms of trade and security co-operation. That will force difficult and contentious trade-offs, which ministers will have to be prepared to make.

For the EU, member states could agree on priorities for the first phase of negotiations – protecting citizens' rights, ensuring the UK settles its debt and avoiding a hard border on the island of Ireland. But the next phase of talks will bring in individual issues, from fishing to financial services, where different member states will have very different interests. Ensuring there is unity and a coherent approach on the EU side, which does not result in an approach dominated by the lowest common denominator, will be much more of a challenge. The EU's position will be a delicate compromise of member-state interests, which will make compromising for British demands even harder.

The government will need to decide whether to extend the transition period

When Theresa May was prime minister, she was concerned that the transition period – which was due to be 21 months if the UK had left the EU in March 2019 – would provide insufficient time, and so included in her deal the prospect of a one-off extension of up to two years to buy more time for talks. That option is in theory available to Boris Johnson, although he is legislating to prevent himself from using it. With his parliamentary majority, however, this could always be overturned if necessary.

The Withdrawal Agreement states that a decision on whether to extend the transition should be taken by 1 July 2020.[34] While extra time might prove extremely valuable, it would come at a price. If the UK wants to stay in the transition period beyond 2020, it would need to reach agreement with the EU on budget contributions for the extra period.*

* The financial settlement obliges the UK to make good the contributions it committed to under the 2014–20 financial framework – but makes no provision for the UK to contribute in the EU's next budgeting period.

The decision to extend would almost inevitably be bundled up with other negotiating issues, too. The two sides are aiming to reach a decision on the controversial question of fishing rights at around the same time as the agreement on transition. The financial and political cost of agreeing a transition extension could prove to be significant.

There is some disagreement around whether 1 July presents a hard deadline for this decision. The EU's position is that a decision must be made by then.[35] Others have argued that under the Vienna Convention on the Law of Treaties, it would be possible for both sides to agree to amend the terms of the Withdrawal Agreement later in the year – allowing for more negotiation time if the UK requested it and the EU was willing and able to give it.[36]

No deal is still a risk – in December 2020

The combination of tight timelines and uncomfortable trade-offs, for both sides, means the prospect of negotiations ending in failure is far from over. The UK could still leave the EU without a deal in December 2020, but this type of 'no deal' would look different from the one on 29 March 2019, 31 October 2019 or 31 January 2020.

First, the Withdrawal Agreement would still be in force. Both sides would be bound by their commitments on citizens' rights, the UK's financial settlement would be due and the provisions for avoiding a hard border on the island of Ireland would come into effect – although many of the details of exactly how it would work are still to be agreed.

But for all other areas of UK–EU co-operation, no deal on the future relationship in December 2020 would be no different from no deal in the first phase of Brexit negotiations. Businesses in the UK and EU would face the same consequences – with implications for UK–EU trade in goods, services, data transfers and security co-operation.

The likelihood of no deal being reached on the future relationship in December 2020 is arguably greater than no deal was during Withdrawal Agreement discussions. The level of ambition the UK has set in the Political Declaration means that in many areas – and for many industries – the realities of failing to reach a deal would be very similar to the kind of loose relationship envisaged.

The scale of political concession required to seal that deal may see the UK or the EU decide that it is not worth the political cost for what could be marginal economic gain in many areas. Coupled with the most complex and contentious no-deal issue – the Irish border – being resolved through the Withdrawal Agreement, the risk of no deal becomes increasingly likely.

3. Ratifying the future relationship

Reaching agreement does not mean the deal is done. Any agreement needs to be approved and ratified. The December 2019 general election result means that the prime minister can be more confident that he should not face barriers to ratifying his deal in the UK Parliament. However, ratification by the EU and EU member states will be much more demanding.

Parliament will probably need to pass primary legislation to implement the future relationship

During the first phase of negotiations, Parliament managed to force the government into accepting that MPs could have a vote on the final Withdrawal Agreement – by amending the European Union (Withdrawal) Act 2018. Although the October version of the Withdrawal Agreement Bill included a vote for MPs ahead of ratification of a future relationship treaty – or treaties – this was removed after the 2019 general election.[37]

This means the ratification process in the UK is back to 'business as usual' for international treaties: under the Constitutional Reform and Governance Act (CRAG) 2010, the government must lay a treaty before Parliament 21 days ahead of ratification, which, in theory, MPs can vote to delay. But as the government controls the House of Commons' timetable, there is no obligation for it to make time for a vote. This means the European Parliament could end up having a formal vote on approving the deal while MPs in the UK Parliament will not.

But the government will still likely need to pass new primary legislation to give ministers powers to implement aspects of the future relationship. This would need to pass both Houses of Parliament and be open to amendment. But as the government will find with the Withdrawal Agreement Bill in January 2020, as long as the Conservative Party continues to support Boris Johnson's approach to negotiations, passing the legislation should not necessarily prove a problem.

As the government will already be able to ratify the treaty, Parliament will not have the same leverage as it had in 2019. But timing is still likely to be an issue. Past legislation implementing EU treaty changes has taken longer to pass through Parliament than the entire transition period – for example, Maastricht took 437 days – whereas others such as the Lisbon Treaty took six months.[38] But the need to hit a deadline and the prime minister's majority mean it can be done much more quickly, for example the government hopes to pass the Withdrawal Agreement Bill in a month.

But passing legislation at pace risks more mistakes – and badly drafted law ending up on the statute book.

The big hold-up on ratification could come from the EU – forcing delay or possibly even renegotiation

But that is only what the UK needs to do. And while it has been ratification in the UK that has caused so many issues for the Withdrawal Agreement, the nature of the next phase of talks means that the problems are much more likely to come from the continent.

The EU's process for ratification varies depending on the type of agreement that is struck – something that is still uncertain for the future relationship.

The ambition in the Political Declaration suggests it is likely to be what the EU calls a 'mixed agreement': that is, an agreement that covers EU and member-state laws. But the tight timeframe means that the EU and the UK could decide to prioritise areas where the EU has exclusive competence.

A mixed agreement would need to be ratified by EU governments and the European Parliament for areas of EU law, as well as follow each member state's domestic process for ratification in areas of national law. Ratification of mixed agreements normally involves the national parliaments of each member state – and sometimes also regional parliaments, as was the case for the EU–Canada agreement. This is because in some EU countries like Belgium, it is regional parliaments – rather than national parliaments – that have the final say over how to apply legislation, for example in the area of workers' rights. Voting requirements also vary in each country.*

By comparison, an agreement covering areas where the EU has exclusive law-making power would require the approval of EU governments and the EU Parliament only – although in practice, EU governments rarely give their consent without having discussed the agreement in national parliaments first.

Incomplete ratification on the EU side would not necessarily mean exit with no deal. The EU Council could decide to provisionally apply the agreement in areas where the EU has exclusive law-making power (for example, tariff rates, competition rules and the Common Fisheries Policy) until ratification is complete.[39] Member states could also decide to provisionally apply those parts of the agreement that are governed jointly by EU and member-state rules, or exclusively cover member-state laws (like many law enforcement provisions).

For example, although the EU and Canada finalised their agreement in 2016 and only half of EU member states have ratified it (including the UK in November 2018), most of the agreement has been provisionally applied since September 2017.[40]

But while provisional application can help provide a stopgap in some areas, it will not be a panacea. Even if the EU and the UK government complete negotiations by the end of 2020, the EU may still only be able to apply a proportion of that agreement at that point and the European Parliament would still need to give consent.[41] If it is a mixed agreement, then national or regional member-state parliaments could force the EU and the UK to revisit parts of the agreement. For example, the ratification process in the Netherlands for the Ukraine Association Agreement was nearly jeopardised by the agreement's rejection in a national referendum.[42]

* For a full list on how each member state ratifies agreements, see Eschbach A, *The Ratification Process in EU Member States*, Institute for Comparative Public Law and International Law, (no date), https://ttip2016.eu/files/content/docs/Full%20documents/Eschbach_Ratification-TTIP-CETA-in-EU-MS.pdf

Likewise, the parliament of Wallonia, one of Belgium's regional parliaments, rejected the EU–Canada agreement.[43] In both cases, the EU was asked to make some clarifications to the language of the agreement.

Feedback to member states and the European Parliament throughout the negotiations could help ratification down the line; Michel Barnier has been praised for his engagement throughout the first phase of negotiations where he identified and addressed obstacles early on. This is expected to continue. But unlike the first phase, the EU Parliament and national parliaments will want more time to debate and scrutinise the final agreement.

4. Implementing the Withdrawal Agreement

The transition period means that, although the UK leaves the EU institutions and ceases to be a full member state on 31 January 2020, on the ground very little changes. The practical implications of the UK leaving the EU will not be felt until the transition ends.

Before that happens, the UK government has two key tasks. The first is implementing the Withdrawal Agreement – ensuring it can deliver on the commitments made in that deal. The second is preparing for the new relationship with the EU, whether that involves a new deal or the two sides being unable to reach agreement.

The first task alone presents the government with some huge logistical challenges.

The government will need to start work immediately on a border between Northern Ireland and Great Britain – without knowing key details

The Withdrawal Agreement contains special arrangements for Northern Ireland to avoid a hard border on the island of Ireland. The Northern Ireland Protocol would see a trade border introduced between Great Britain and Northern Ireland – with new obligations and checks required for both customs and regulations for goods entering Northern Ireland from mainland UK.

Northern Ireland will formally remain part of the UK customs territory, but would continue to follow EU customs rules.[44] Traders selling into Northern Ireland would need to prove their goods are due to stay within Northern Ireland or pay the EU tariff. Northern Ireland will also continue to follow EU rules in areas related to trade in goods and the necessary EU regulatory checks will take place on trade between Great Britain and Northern Ireland. There will also be new obligations, albeit much less significant, for trade going from Northern Ireland into Great Britain.

The Withdrawal Agreement defers some major decisions on the detail of how the border will function. The Joint Committee – the body responsible for overseeing the implementation of the Agreement, yet to be set up – will be responsible for determining under what conditions fisheries and aquaculture products from Northern Irish ports will be exempt from duties, overseeing the implementation of VAT provisions and, most importantly, developing criteria according to which it will be determined whether goods moving from Great Britain to Northern Ireland are 'at risk' of moving into the EU.[45]

The Agreement states that these criteria must be agreed by the end of the transition period, but this leaves little, if any, time to make practical preparations for the Great Britain–Northern Ireland border for the same deadline. There are also outstanding decisions the UK government will need to make, as reflected in the leaked analysis from the Treasury during the general election campaign, in particular how it plans to maintain 'unfettered' access for goods moving from Northern Ireland to Great Britain.[46] The decision made on the latter issue could destabilise a fragile political situation in Northern Ireland – where no major political party supports the deal.

The extent to which regulatory processes will be required will also depend on the degree of regulatory alignment between the UK and the EU. This will not become clear until a trade deal is concluded, making it difficult for businesses and the UK government to know exactly what will be required of them before a deal is reached.

The Northern Ireland Protocol is almost certainly undeliverable by December 2020 – which means the UK could find itself at the European Court of Justice

The new border will need to be up and running at the end of the transition period, due to end in December 2020. But it looks impossible to deliver.

According to the UK government, "these processes will be largely electronic in nature and any checks on goods will principally relate to regulatory alignment rather than customs compliance".[47] The government will need to undertake significant work to ensure that the appropriate systems are in place and there is sufficient capacity to carry out such processes, which will introduce new friction and involve some form of checks for goods moving from Great Britain to Northern Ireland. There will also need to be decisions about how to treat goods moving from Northern Ireland to the rest of the UK – forcing the government to make difficult political choices.

With regards to the proposed customs arrangement, Sir Jonathan Thompson, former chief executive of HMRC, said that a similar customs system involving rebates depending on the final destination of the goods would take up to five years to develop and implement.[48]

The government will also need to prepare businesses to help them comply with any new regulatory or customs requirements. Goods crossing the Great Britain–Northern Ireland border may need declarations on animal health, VAT, tariffs, standards, rules of origin and, perhaps, rules of destination. If businesses are not ready for the new regime, this could result in major disruption at UK ports, and serious damage to UK businesses. It will be Northern Irish businesses, as the importers, that are likely to face the majority of the new administrative burden and associated costs.

With the details of how the border will operate still unclear – and likely to be so for some months – and no preparatory work having happened for checks between Great Britain and Northern Ireland, the 11-month timeline is almost certainly undeliverable.

The responsibility for implementing the provisions falls entirely on the UK. Failure to deliver would mean the European Commission could start infringement proceedings and the UK could end up being fined by the ECJ. It could also result in major disruption to trade across the Irish Sea, with Northern Irish businesses importing British goods facing problems.

The government could also run out of time to implement other key parts of the Withdrawal Agreement – leaving the rights of citizens uncertain or unprotected

The UK government must also implement other key elements of the Withdrawal Agreement. The biggest practical challenge, aside from the new border in the Irish Sea, will be putting in place the provisions on citizens' rights. The Home Office has already designed and developed the 'EU Settlement Scheme', the system through which EU citizens in the UK can acquire 'settled status' and secure their rights. But despite the impressive speed with which the system was put in place, the task of ensuring that all of those who are eligible can guarantee their status is enormous.

As of 30 November 2019, the Home Office has given status to 2.2 million people.[49] The total number reflects 59% with 'settled status', which offers permanent access to rights under the Withdrawal Agreement, and 41% with pre-settled status – where the individual will have rights for five years, after which they will then need to apply for full settled status.[50]

UK and international precedent suggests that the likelihood of the Home Office securing the status of all eligible people is almost non-existent – not least because there is no information on exactly how many EU citizens in the UK are affected so there is no way of knowing who needs to apply and whether or not they have.[51] EU citizens in the UK face a cliff-edge in the summer of 2021 (if the transition period is not extended), by which time, if they have not got either settled or pre-settled status, they will immediately become illegal immigrants – unable to work in the UK, access public services or rent a place to live – overnight. The number of people affected could reach into the hundreds of thousands.

The Home Office must decide whether it wants to immediately apply the full suite of its normal immigration enforcement – so-called hostile environment – measures to this group. Legally, those EU citizens might not have rights, but many in the UK would recognise that those who have lived in the UK for years – sometimes decades – should not be treated as illegal immigrants as a result of Brexit. It would not be consistent with a large number of political commitments made over the past few years.

Alongside the settlement scheme, the UK government will also need to set up the Independent Monitoring Authority – a public body designed to oversee the implementation of the citizens' rights element of the deal. This needs to be in place, with leadership and staff, at the end of the transition period. The government has set out a few outlines in the Withdrawal Agreement Bill but has yet to set out any sort of blueprint; and most of the detailed decisions – including which department is responsible for its budget and oversight – have not been made public, even if they have been made within government.

5. Implementing the future relationship

The end of the transition period will signal the first point in the Brexit process where things really change on the ground; for most people in the UK and across Europe, the practical realities of Brexit will not be felt on 1 February 2020. The transition is largely a standstill agreement, preserving the status quo.

The change at the end of the transition will, on the other hand, be significant. Under the deal envisaged by the government, border controls and checks will come into force, a new immigration system must be in place to replace free movement, changes to fisheries and agricultural policy will begin, and public bodies and regulators will need to take on new roles and responsibilities. The realities of Brexit, from a practical and administrative perspective, will be obvious for the first time – government, businesses and individuals will need to be ready.

The government will be judged for the first time on how well prepared it is for Brexit. If critical systems are not ready or if they experience major issues, it will be evident. Major changes to government systems at the border, or in regulation, often take years from the point at which the policy is decided. Critical details for how new systems and processes will work after Brexit may be unavailable until after a UK–EU future relationship has been agreed. It would leave government with just a matter of weeks to reflect a new deal in those new systems and processes.

Passing legislation to set up new domestic policies after Brexit should be easier this year – but there is still not much time

New primary legislation will be needed in some areas to set up new institutions, create new domestic policy frameworks and uphold international agreements. In particular, new bills are required to replace the EU's Common Agricultural Policy and Common Fisheries Policy with new domestic regimes, as well as to end freedom of movement. The government has also committed to establishing an Office for Environmental Protection (OEP) in a new Environment Bill to replace the oversight functions of EU institutions in environmental policy, as well as the Trade Remedies Authority – already established in shadow form – in a Trade Bill. These bills all featured in the Queen's Speech on 19 December 2019.[52]

The May government introduced Agriculture, Fisheries, and Immigration Bills but none progressed further than Committee Stage in the House of Commons as the government faced numerous hostile amendments, meaning it held the bills back rather than try to make progress. Although it progressed further than the others, the Trade Bill also never became law following amendment in the House of Lords. It is unclear whether there will be any significant changes to the detail of the legislation under a new Conservative government.

The new government will make passing Brexit legislation a key priority in order to be able to replace EU frameworks by the end of December 2020. It should face far fewer problems getting them through with its clear majority. But the timetable is now urgent.

For example, the permanent secretary of the Department for Environment, Food and Rural Affairs (Defra) told a parliamentary select committee in September 2019 that the Agriculture Bill would need to have passed by summer 2020 to give the UK time to set up a replacement payments system.[53] May's government had also previously pledged to have the OEP up and running by January 2021.[54]

The fractious relationship between Westminster and the Scottish and Welsh governments could prove a bigger obstacle. Under the Sewel Convention, the UK Parliament does not 'usually' legislate in areas of devolved competency without the consent of the devolved legislatures.[55] The Fisheries and Immigration Bills introduced by the previous government both required consent from all of the devolved legislatures, and the Agriculture Bill required consent from the Welsh and Northern Irish Assemblies (had power-sharing been restored).

The devolved relationship has come under increasing strain during the Brexit process, in part due to the UK government's decision to press ahead with the European Union (Withdrawal) Act 2018 despite not securing consent from the Scottish Parliament. The Scottish government has since gone on a 'Sewel strike' – only giving consent to the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019. If the UK government chooses to pass more legislation without the consent of the devolved legislatures, the relationship will only deteriorate further.

The government needs to complete the rollover of EU trade agreements – and negotiate new trade deals

As part of the transition, the EU has agreed to ask third countries with whom it has trade deals to continue to treat the UK as a member state. But the UK's access to those preferential trade agreements ceases at the end of the transition. So far, the UK has put in place rollover agreements with 20 of the 39 countries or blocs with whom the EU has deals.[56] But there are some big areas outstanding, not least Canada, Japan and Turkey.

As part of this process, the government will need to finalise its independent tariff regime. The decision of Theresa May's government to cut most tariffs to zero in the event of no deal meant the Canadian government refused to roll over the EU trade agreement – there was not much value in spending time negotiating when the UK had opened up access anyway.[57] The final decision on the UK's independent tariff schedule – to be applied to those countries with whom it does not have a trade agreement – will be an important indicator of the type of trade policy it wishes to pursue, and should come out of consultation with industry and business.

The government's ambition is to negotiate international trade agreements with Australia, Japan, New Zealand and the US in parallel with the negotiations with the EU.[58] The government will struggle to undertake such resource-intensive negotiations at the same time as the negotiations with the EU. These negotiations will likely be hugely contentious in their own right – the government will need to be prepared to make trade-offs to get deals worth having. These are likely to be in politically sensitive areas like agriculture and the movement of people where other countries have an interest in the UK's market.

The government will need a process for engaging the devolved administrations and identifying where implementing the terms of trade deals will require devolved competency. In addition, the government should have a process in place to develop a mandate for the negotiations. Finally, it will need time to ensure that business and other civil society voices have the opportunity to help shape the objectives of the prospective deals. In particular, if UK businesses do not see the value of a deal, it will not be used and the resources sunk into negotiating would be wasted.[59]

Civil servants will need to prepare for all eventualities at the end of December 2020 – including no agreement

Ahead of December 2020, the government will need to undertake these preparations for leaving with a deal at the end of the transition alongside continuing to prepare for the prospect of no deal being reached on a future relationship.

This possible outcome will not be averted until the deal has been agreed and ratified – with huge risks in both processes. The government will need to continue to prepare for no deal until the end of the transition period – but also possibly beyond. Even if the UK is able to leave the transition period with a deal, which has been provisionally applied pending full ratification, the prospect of that deal being blocked by a member-state parliament or regional parliament could hang over the UK for possibly years to come. It means some no-deal planning could continue long beyond any successful negotiation is concluded.

But while under Theresa May's government, the civil service was having to work to multiple – quite different – scenarios,[60] the practical realities of having no future trade relationship and the kind of loose future UK–EU relationship envisaged by Johnson's government are very similar. Both would require the same – or very similar – administrative processes for trade in goods and services, security, and data co-operation. This could make it easier for civil servants preparing for a new relationship with the EU at the end of 2020 – deal or not.

Regardless, the number of civil servants working on preparations – for both deal and no deal – is likely to reach almost 30,000 by March.[61] The focus for departments on getting the systems and processes in place for the practical changes will be huge, likely drowning out a lot of other work in key Brexit-affected departments.

Business is unlikely to have any clarity on changes until late in the day

The delivery task for Brexit goes well beyond government. Business and citizens will need to adapt to changing rules and the changing relationship, as well as the new systems and processes the government puts in place.

But exactly what changes and how businesses must adapt will not be clear until very late in the day. Whether there is no agreement or different variations of a deal, it could be still uncertain until just weeks before the end of the transition.

It could be that the details of a deal are only agreed, and ratification begins, with too little time for business to properly adapt. Trade agreements often involve phased implementation, sometimes for up to several years, to give industry an opportunity

to prepare for changes. On current plans, with no transition extension or further 'implementation phase', there could be just weeks for UK business to prepare.

With the absence of any certainty over a deal and the prospect of there being no deal on the future relationship hanging over the talks, many businesses will simply choose to prepare for that eventuality. The time taken to fully prepare means any business that wants some level of confidence that they will be ready for potential changes in December 2020 will need to prepare for the prospect of no arrangement being agreed. In some industries, such as services, much of the no-deal preparation undertaken for March and October 2019 will mean they are already well prepared. But in areas such as goods, businesses may face another set of decisions in order to prepare again.

The focus on preparing for no deal on the future relationship will mean that the value of any deal, or any additional time to help with implementation, will be diminished. Businesses will have already sunk time and money into preparing for one outcome, even if a negotiated deal means the cost of change and compliance is reduced and some of the changes made become nugatory.

The government will need to communicate far more effectively than it did in the first phase of Brexit negotiations, where business readiness was poor in critical areas – such as among traders. The National Audit Office has found that the government's communications campaign was limited in its impact, largely due to the uncertainty about what is going to change and when. That uncertainty is likely to be inevitable for most of 2020.[62]

Businesses have told the government they need at least a year to prepare for changes once known, but the government will not be able to provide them with that if a deal is to enter into force in December 2020. The government will need to decide what it is going to advise business to do to prepare and when – does it recommend preparing for the UK to leave the EU without a future relationship agreed or does it stay silent until the end of the year when more of the details should be clearer?

The government may claim it has 'got Brexit done', but Brexit will impact both the Budget and the spending review

The UK is overdue a Budget (postponed from November) and a multi-year spending review – in the autumn of 2019 the chancellor set departmental budgets for 2020–21 but deferred subsequent decisions. The government will inevitably want the focus of both to be on making good its commitments from the election, including to raise the threshold for starting to pay National Insurance contributions, to raise levels of spending on public services, and to start its programme of significant infrastructure investment.

But it will not be able to ignore Brexit.

First, the new forecast from the Office for Budget Responsibility (OBR) will need to incorporate the impact of Johnson's preferred Brexit deal on the economy. The long-term analyses produced by the government in November 2018[63] suggested that a free trade agreement would reduce GDP by 4.9% (compared with where it would have

been had the UK remained a member of the EU), compared with an estimated reduction of between 0.7% and 2.2% if Theresa May's White Paper[64] deal had been adopted. What the OBR will need to show is the year-by-year impact of Brexit on the economy as it adjusts to its new trade relations with the EU and before it will have negotiated any significant new deals with other countries.*

So far, the OBR has based its five-year forecasts on some average of the range of possible Brexit outcomes. But Boris Johnson's Political Declaration makes clear that the eventual deal will be towards the harder end of the spectrum, implying a greater impact on UK economic output.

Second, the previous chancellor, Philip Hammond, built in 'fiscal headroom' to allow him to adjust policy in the event of a no-deal Brexit – that is, he set out tax and spending plans that implied he was on course to meet his 2020/21 fiscal mandate (to keep public borrowing below 2% of national income) by a sizeable margin. But the spending decisions made by the current chancellor, Sajid Javid, in September 2019, combined with more recent forecast revisions, suggest that what headroom there was has already disappeared. Sajid Javid will need to decide whether he wants to build back in more headroom for use later in the year in case the end of the transition is disruptive.

Third, he will also need to consider how to help businesses adjust to the new post-Brexit trading world. Last year the so-called 'Operation Kingfisher' was developed to help cope with the fallout from no deal.[65] But no details were ever published and it is unclear whether there was a comprehensive programme. The adjustment could take the form of either tax measures (such as postponing payment of bills to help with temporary cash-flow problems) or specific grants.[66] The former would feature in the Budget, while the latter would more likely feature in the spending review.

This will be the first post-Brexit spending review. The last full one took place before the EU referendum (in summer 2015). Since then, the government has had to announce extra cash for departments to help them prepare for and deliver Brexit, as well as ad hoc increases to key public services.[67] But in this spending review, they will have to:

- consolidate staffing changes, particularly at the borders and in new or expanded regulatory agencies to manage the post-Brexit regime
- substitute for EU programmes where the UK no longer has access – some of these are already covered by specific government commitments (such as the Common Agricultural Policy support payments – where the government has guaranteed to maintain the same level of funding to the end of the parliament – and the new Shared Prosperity Fund, which takes over from EU structural funds)
- allow for any payments into EU programmes where the UK may continue to participate (for example, if the UK decides to participate in Horizon Europe, the successor to the Horizon 2020 research programme)

* The government analysis suggested that the benefits of these, even over the long run, would be pretty minimal. In both a free trade agreement scenario and under Theresa May's White Paper deal, the government analysis suggested the UK economy would only be boosted by 0.1% by new trade deals signed with non-EU countries. (See Table 4.12 of HM Government, *EU Exit: Long-term economic analysis,* 2018.)

- provide for the outstanding elements of the financial settlement with the EU, which the OBR forecasts at £22.2 billion between 2021/22 and 2023/24.[68]

Against that, the UK will no longer be making a continuing contribution to the EU budget.

Can the government 'get Brexit done' by December 2020?

The UK is entering the next phase of Brexit negotiations with almost all the biggest questions around its relationship with the EU unanswered. The breadth and depth of the relationship are still little more than a broad outline, the UK's detailed priorities are still unclear and negotiations have yet to begin. The legislation necessary to 'take back control' of huge swathes of policy areas has not been passed. The big practical changes that are inevitable under the version of Brexit the government is seeking have yet to happen.

But the prime minister has said he does not intend to extend the transition period. There will be just 11 months of transition, almost a year shorter than when the period was originally negotiated. The two sides will have less than a third of the time than was required for the Withdrawal Agreement, with a much bigger job to do.

The UK's refusal to extend the transition period does not mean it is not possible to do a deal, but it will have serious implications for the next phase of Brexit negotiations.

Only a very basic deal can be agreed and in force by January 2021 – unless the government is willing to do a significant U-turn

If the UK government's priority in these negotiations is speed and meeting the December 2020 deadline, there is likely to be three big implications for the negotiations.

First, the UK will need to sacrifice the level of ambition in the negotiations. From a technical perspective, it will be harder for the two sides to move beyond established mechanisms and templates for co-operation. Although it is certainly not impossible – twice the two sides have quickly negotiated technically complex issues concerning the Irish border – the EU is less likely to show the same ability to break from precedent at the same speed in the next phase – there was extensive pre-work done ahead of those breakthroughs and, in October, it was based on adjusting an existing EU proposal.

Above all, the fact the UK wants the agreement to come into force at the end of December 2020 will automatically constrain the type of deal it can be. EU ratification rules will mean any deal that comes into force in January will be unlikely to include areas that touch on member-state competence like intellectual property, civil judicial co-operation, intellectual property and mutual recognition of professional qualifications. It could end up covering as little as tariffs, quotas, rules of origin and provisions to allow some movement of people and some basic reduction in regulatory barriers to trade. But a deal that basic will come at a cost.

The second implication of the rushed timeframe is that the EU will use it for negotiating leverage and if the UK wants to reach a deal under a quick timeframe then it will be expected to make significant concessions. The EU is likely to make commitments on the

level playing field and fish a proviso for any deal, as we have already discussed. The tight timeframe is likely to mean the EU presents a relatively strict mandate in these areas, or provides a draft text and makes it clear that any substantive changes would be unachievable in the timeframe. It is an approach the EU used successfully when the UK set itself a deadline to agree the transition period in early 2018, offering a draft text and telling the UK that any changes would see the deadline missed.

Likewise, the deadline of October 2019 forced the UK to move from a focus on 'alternative arrangements' for the Irish border to accepting checks and controls between Great Britain and Northern Ireland.

The final key implication of the focus on short deadlines is that the risk of there being no deal on the future relationship is heightened. The fact that an agreement is likely to be relatively basic and that concessions are likely to be contentious means the government may decide that it is no longer in its interests to reach an agreement.

There are likely to be areas that will need to be negotiated beyond December 2020

If the UK focuses on a quick deal, stripped back in order to avoid problems with ratification, then it is likely that negotiations on other areas will continue beyond the transition deadline.

Any areas requiring lengthy ratification processes or prolonged negotiation could stretch out past the end of transition. For issues such as security co-operation, particular parts of services trade and areas such as intellectual property and the mutual recognition of professional qualifications, the UK could find that it hits the Brexit deadline with no clarity or certainty about future arrangements.

The two sides will face a decision on whether to fall back on standard third-country mechanisms for co-operation – leaving without a deal in these areas – or to try to patch together some kind of bridging arrangements. These could just be unilateral measures – similar to those put in place by each side for no deal – to try to buy more time.

And the implementation challenge will also require more time

The area that is much harder to fudge, or to reduce levels of ambition about, is the practical challenge waiting at the end of the transition period.

The task of changing government systems and processes, of guiding businesses and citizens through major changes, is one that will take time. The UK government will need to build its capability at the border, put new public bodies in place or make big changes to existing ones, design new systems to replace ones that currently exist at EU level and make changes in areas such as immigration rules. In some areas these will be ready for December 2020; in other areas there will only be partial readiness by the end of the transition period. The consequence of failing to deliver, or failing to support businesses through the change, will be disruption.

The government will therefore have to decide whether it needs to ask for more time to prepare. If it does, it will need to try to agree mechanisms with the EU to allow implementation to be phased in over a longer period. It cannot take for granted that such mechanisms, for example agreeing a 'bridging period', will be found.

The government will need a plan to help businesses that struggle to adapt

It is almost certain that there will be a large number of businesses that are not prepared for the changes that will come into force at the end of the transition or implementation phase. In part this will reflect the fact that some businesses are simply not set up to operate outside the EU, whereas in other cases the necessary advice and guidance will have been either not seen or not acted on.

The government will need to decide whether it will support businesses that are affected by the change – whether that is because they have yet to make the administrative or operating model changes necessary, because they face costs from tariff or non-tariff barriers or because there is a drag on their business due to knock-on implications of disruption in other areas such as the ports.

The government decided to support businesses in certain areas in the event of no deal in March and October 2019 – through Operation Kingfisher, mentioned earlier. If it decides to do so again, it will need to make difficult trade-offs about which industries to support, what kind of businesses to support and how long to offer support.[69]

Brexit will not be 'done' by December 2020

The UK will leave the EU on 31 January 2020 – so in that sense, the withdrawal issues will have been agreed. But the scale of the task in negotiating, ratifying and implementing the future relationship with the EU is enormous. It will occupy government for a long time to come.

The hard deadline Boris Johnson has set himself of 31 December 2020 will force the government to make a difficult political choice. First, the prime minister will need to decide whether to prioritise concluding negotiations quickly over taking the time to ensure it is a deal he wants and which reflects the UK's strategic interests. Prioritising a goods-only trade agreement could prove more advantageous to the EU.

But following continued assurances – including in legislation – that the government will not extend the transition period, breaking this promise could also result in a political backlash. And agreeing any other ways to extend the time for negotiating – and implementing – a deal would rely on a willing EU.

Whether the transition period ends on 31 December 2020 or not, there will be negotiations with Brussels and practical changes, driven by the UK's decision to leave the EU, that continue for years.

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