



HM Government

**Explainer for the agreement on arrangements
between Iceland, the Principality of Liechtenstein
and the Kingdom of Norway, and the United
Kingdom of Great Britain and Northern Ireland,
following the withdrawal of the United Kingdom
from the European Union**

20 December 2018

EEA EFTA SEPARATION AGREEMENT

1.1. Summary

1. The United Kingdom has now reached an agreement on separation issues with Iceland, Liechtenstein and Norway ('the EEA EFTA states'). In particular, this includes a deal on citizens' rights that protects the rights of EEA EFTA nationals in the UK and UK nationals in the EU, ensuring that they can continue to contribute to their communities and live their lives broadly as they do now.
2. The EEA EFTA states participate in the EU's Single Market and a number of other EU-led initiatives by virtue of the EEA Agreement and other international agreements. This agreement includes separation provisions that wind down certain arrangements that the UK has with the EEA EFTA states by virtue of these agreements. This will ensure an orderly withdrawal and smooth transition, noting that the majority of these provisions could be superseded by future agreements between the UK and the EEA EFTA states.
3. This document is intended as a guide to support understanding of the legal drafting of the UK-EEA EFTA separation agreement as published on 20 December following a format of:
 - a. Preamble
 - b. Part One: Common provisions
 - c. Part Two: citizens' rights
 - d. Part Three: Separation provisions
 - e. Part Four: Institutional and final provisions
 - f. Annexes to the separation agreement

1.2 Implementing the UK-EEA EFTA separation agreement

4. This agreement will require domestic legislation to implement it in the UK. In November 2017, the Government announced its intention to introduce the EU (Withdrawal Agreement) Bill (the "Bill") to give effect to the UK - EU Withdrawal Agreement in UK law. This Bill will also be the primary vehicle for the implementation of this agreement.
5. This agreement will also be subject to the provisions of the Constitutional Reform and Governance Act (CRaG) 2010. Following this, the treaty will be ratified and can enter into force. The majority of this agreement will come into force after the end of the implementation period. For the duration of the implementation period, the UK will remain bound by relevant EU agreements with these countries, including the EEA Agreement.
6. In line with established constitutional arrangements, the UK Government has negotiated this agreement on behalf of the whole of the UK including the devolved administrations, as well as the Crown Dependencies and Gibraltar. The Crown

Dependencies and Gibraltar will need to introduce their own legislation in order to implement domestically those elements of the separation agreement that apply to their jurisdictions.

PREAMBLE TO THE UK-EEA EFTA SEPARATION AGREEMENT

7. The recitals in this section will be used to support legal interpretation of the agreement, describing some of the key points for consideration in the text.

PART ONE: COMMON PROVISIONS (*Articles 1-7*)

8. Part one of the agreement establishes definitions and the framework provisions for the entire agreement.

What is covered in part one:

9. The purpose of the agreement is to lay out the arrangements for the withdrawal of the UK from the EEA Agreement and other international agreements. The UK is a party to the EEA Agreement by virtue of its membership of the EU. This agreement will cease to apply when the UK leaves the EU, although the UK will remain bound by relevant EU agreements with these countries, including the EEA Agreement, for the duration of the implementation period.
10. All references in the agreement to the EEA Agreement refer to the EEA Agreement (and EU law incorporated into the EEA Agreement) as applicable on the last day of the implementation period. The exception to this is for certain legislation relating to social security coordination. Should the EEA Agreement change after the end of the implementation period, those amendments would not apply to the UK except in this area.
11. Part one sets out the obligation on all parties to implement the agreement in domestic legislation. It also sets out how the agreement should be interpreted. This will ensure that individuals are able to make use of the rights they have under the agreement. It also states that, where the provisions are the same in both this agreement and the Withdrawal Agreement, the agreement as implemented and applied should be interpreted in conformity with the Withdrawal Agreement. This will ensure consistency in the domestic regimes that implement the two agreements.
12. Part one binds the UK and the EEA EFTA states to a duty of good faith, meaning that neither side should act in a way to undermine the agreement, and the UK and the EEA EFTA states should work to support each other in carrying out the tasks set out and flowing from the agreement.

PART TWO: citizens' rights (articles 8-37)

Summary

13. The Government has been clear that its first priority as part of securing a smooth and orderly exit from the EU was to provide certainty for citizens. EEA EFTA nationals are valued members of their communities and play an integral part in the economic, cultural and social fabric of the UK, as do UK nationals living in the EEA EFTA states, who are equally valued by their host countries and communities.
14. Individuals require assurance that their rights will be protected and this agreement provides that certainty. Those falling within scope of the UK-EEA EFTA separation agreement will have broadly the same entitlements to work, study and access public services and benefits as now, in as far as these entitlements have derived from UK participation in the EEA Agreement.

What is covered in part two:

Eligibility and scope of citizens' rights

15. Part two provides that all UK nationals lawfully residing in an EEA EFTA state at the end of the implementation period will be able to stay, as will all EEA EFTA nationals lawfully residing in the UK. Their family members resident in the host state by 31 December 2020 will also be covered by the rights set out in the UK-EEA EFTA separation agreement. Individuals in scope of the agreement can be joined by close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) who live in a different country at any point in the future, if the relationship existed on 31 December 2020 and still exists when the person wishes to come to the UK. Any child born to an individual in scope is also protected by the agreement if the individual has custody of the child. The agreement also protects the rights of those citizens who reside in one state and work in another ('frontier workers').

Rights related to residence

16. UK nationals who have been living in an EEA EFTA state continuously and lawfully for five years at the end of the implementation period will have the right to reside permanently in that state. Equally, EEA EFTA nationals who have been living in the UK continuously and lawfully for five years at the end of the implementation period will have the right to reside permanently in the UK.
17. Those who have not yet resided continuously and lawfully for five years in their host state by the end of the implementation period will also be able to stay until they have reached the five year threshold, at which point they will have the right to reside permanently. The UK-EEA EFTA separation agreement enables the host state to restrict these rights if the individual is a serious or persistent criminal, or if they seek to abuse or defraud the system.

18. In the UK, EEA EFTA nationals and their family members can apply for a residence status through the EU Settlement Scheme. Further information on the EU Settlement Scheme can be found on [gov.uk](https://www.gov.uk). The EEA EFTA states have a choice whether to require UK nationals and their family members to apply for a residence status or not.
19. As set out in the UK-EEA EFTA separation agreement and in line with the EU Settlement Scheme, any application process adopted by EEA EFTA states for UK nationals must be short, simple and user-friendly. The residence status shall be issued free of charge, or for a charge not exceeding that imposed on citizens or nationals for the issuing of similar documents, for example a national identity card or passport. The right to reside permanently in the host state can only be lost through an absence from the country of more than five years unless it is restricted due to a person's conduct.

Rights of workers and the self-employed

20. Workers and self-employed persons, including frontier workers, will be guaranteed broadly the same rights as they currently enjoy. They have a right to not be discriminated against due to nationality, and the right to equal treatment with host state nationals. For example, equal treatment in respect of the right to pursue economic activity, the right to employment assistance, conditions of employment, the right to tax and social advantages, collective rights, access to housing and the right for their children to receive an education.

Equal treatment

21. The UK-EEA EFTA separation agreement protects the existing rights to equal treatment and non-discrimination. EEA EFTA nationals residing or working in the UK, UK nationals residing or working in the EEA EFTA states, and their family members will have broadly the same entitlements to work, study and access public services and benefits as now where these entitlements have derived from UK participation in the EEA Agreement. These entitlements for EEA EFTA nationals will be subject to any future domestic policy changes which apply to UK nationals.

Mutual recognition of professional qualifications

22. The UK and the EEA EFTA states have agreed that EEA EFTA professionals resident or frontier working in the UK, or vice versa, will continue to have their professional qualifications recognised, where they obtained or applied for a recognition decision before the end of the implementation period.
23. This will cover the European Professional Card, qualifications recognised under the Professional Qualifications directive for the purpose of establishment (but not for the temporary and occasional provision of services), lawyers practising under host state title, approved statutory auditors, and persons engaged in the trade and distribution of toxic products.

Coordination of social security systems

24. EU Regulations on social security coordination will continue to apply across the whole of the UK at the end of the implementation period for individuals in scope of the UK-EEA EFTA separation agreement. This will ensure that citizens who have moved between the UK and the EEA EFTA states before the end of the implementation period are not disadvantaged in their access to pensions, benefits and other forms of social security, including healthcare cover. The UK-EEA EFTA separation agreement also provides protections in a number of other circumstances, such as where a UK national, although not living in an EEA EFTA state at the end of the implementation period, has paid social security contributions in an EEA EFTA state in the past. The rights that flow from those contributions such as benefits, pension and reciprocal healthcare rights will also be protected.
25. EEA EFTA states will be required to take into account contributions paid into their respective social security systems by individuals within scope of the UK-EEA EFTA separation agreement. As now, the amount of State Pension to which those individuals will be entitled as a result of the contributions will be determined according to each state's social security legislation.
26. Persons who are in scope of the UK-EEA EFTA separation agreement for full social security coordination purposes will also continue to benefit from the coordination rules, for as long as they remain within the scope of that section. This will ensure that the worker (and their employer) only pays into one social security system at a time, and that the right to aggregate both contributions paid, and periods of insured residence completed, for the purposes of meeting different states' benefit entitlement conditions continues. This includes all contributions made both in the UK and the EEA EFTA states before and after the implementation period, and the rules will also protect the rights that flow from such contributions.
27. Where the UK, or an EEA EFTA state, is responsible for the healthcare of those within scope of the social security coordination part of the UK-EEA EFTA separation agreement, such individuals will be entitled to reciprocal healthcare cover from their competent country.
28. The UK-EEA EFTA separation agreement will also protect the rights of individuals who are in a cross-border situation at the end of the implementation period (for example a UK national who is in an EEA EFTA state for a holiday or for the duration of a course of study), and who are entitled to a European Health Insurance Card (EHIC), to continue to benefit from that scheme for as long as that cross-border situation in the state they are in continues.
29. The UK-EEA EFTA separation agreement also protects the rights of people visiting the UK or the EEA EFTA states for planned medical treatment, where authorisation was requested before the end of the implementation period, so they are able to commence or complete their treatment. This guarantees that patients will be able to complete a course of treatment and provides the certainty that patients need during a vulnerable time in their lives.

Protections for rights and monitoring authority

30. This agreement will be faithfully implemented in both the UK and the EEA EFTA states, providing additional assurance for EEA EFTA nationals living in the UK and UK nationals living in EEA EFTA states.
31. To oversee the implementation and application of the citizens' rights part of the EU Withdrawal Agreement in the UK an independent monitoring authority will be established. The UK has agreed with the EEA EFTA states that this authority (the Independent Monitoring Authority for the Citizens' Rights Agreements or IMA) will also oversee the implementation and application of the citizens' rights part of the UK-EEA EFTA separation agreement. The IMA will be fully capable of monitoring the domestic interpretation and application of the UK-EEA EFTA separation agreement. It will be able to receive complaints and conduct inquiries concerning any alleged breaches of the UK-EEA EFTA separation agreement by UK public authorities with respect to the citizens' rights part of this agreement.
32. The IMA will also be able to bring legal action in the UK, with a view to seeking an adequate remedy if it deems that the citizens' rights part of the UK-EEA EFTA separation agreement is not being implemented or applied correctly.
33. In the EEA EFTA states, the EFTA Surveillance Authority will perform the equivalent role of monitoring compliance in the EEA EFTA states. This arrangement will ensure the faithful implementation of the citizens' rights agreement in both the UK and the EEA EFTA states.

PART THREE: SEPARATION PROVISIONS (articles 38-63)

34. At the end of the implementation period, it will be important that the application of the EEA Agreement in the UK is brought to an orderly conclusion, particularly in respect of ongoing processes and arrangements. Part three of the UK-EEA EFTA separation agreement provides the technical basis for the winding down of those arrangements to ensure an orderly withdrawal. These largely mirror arrangements agreed with the EU in the Withdrawal Agreement.
35. These arrangements aim to provide legal certainty, although future agreements between the UK and the EEA EFTA states could supersede the separation provisions agreed in many cases. The arrangements set out in this part are without prejudice to negotiations on future agreements with the EEA EFTA states.
36. This part of the Withdrawal Agreement covers arrangements for:
- a. Title I: Goods placed on the market;
 - b. Title II: Intellectual property;
 - c. Title III: Ongoing police and judicial cooperation in criminal matters;
 - d. Title IV: Data and information processed or obtained before the end of the transition period or on the basis of this agreement;
 - e. Title V: Ongoing public procurement and similar procedures;
 - f. Title VI: Judicial procedures.

What is covered in part three:

TITLE I: GOODS PLACED ON THE MARKET (articles 38-45)

37. The title sets out the arrangements for goods that are covered by the EEA Agreement at the end of the implementation period. Goods that are placed on the UK or the EEA EFTA market under the EEA Agreement before the end of the implementation period may continue to circulate freely between the UK and the EEA EFTA states. Where an entity (i.e. a business or other organisation which supplies goods, works or services) uses these provisions they shall bear the burden of proof to demonstrate that the good was placed on the market before the end of the implementation period. These goods will not require product modifications or relabelling and any compliance activity already undertaken for these goods, such as conformity assessments, will continue to be recognised in both the UK and the EEA EFTA states.
38. There are additional procedures required for live animals, germinal products and animal products which will have to comply with EU third country import rules (as incorporated in the EEA Agreement), before being exported to the EEA EFTA states from the UK.
39. The title sets out the measures which will enable continued cooperation between the UK and the EEA EFTA states' authorities in relation to the goods that benefit from the title. In addition, the title also requires certain UK authorities to transfer files or documents related to certain ongoing product assessments to an

EEA EFTA state Authority. This applies to assessments of medicines and chemicals being carried out by the Medicines and Healthcare products Regulatory Agency (MHRA), the Veterinary Medicines Directorate (VMD) and the Health and Safety Executive (HSE). The title also provides for the transfer of information related to testing between relevant testing bodies in the UK and the EEA EFTA states.

40. The title also sets out measures relating to ongoing customs procedures. Goods that are in transit or temporary storage at the end of the implementation period may continue to be treated under the customs procedures that applied as at the end of the implementation period for up to 12 months. This means that these goods will not have to restart customs processes or be subject to additional procedures.

TITLE II: INTELLECTUAL PROPERTY AND GEOGRAPHICAL INDICATIONS (articles 46-49)

41. With respect to Geographical Indications (GIs), this title sets out arrangements which mean that existing EEA EFTA GIs will remain protected in the UK until a future agreement comes into effect and supersedes those arrangements. Existing UK GIs will continue to be protected by the current EU regime.
42. Where a database qualified for protection in the UK before the end of the implementation period, it will continue to be protected in the UK after its end, and rights owned by UK nationals that qualified for protection in the EEA EFTA states before exit will also continue to be protected after the end of the implementation period.
43. Finally, as regards intellectual property rights, goods placed on the market in the EEA EFTA states before the end of the implementation period can continue to circulate freely between the UK and the EEA EFTA states.

TITLE III: ONGOING POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS (articles 50-54)

44. The title sets out how ongoing police cooperation and judicial cooperation in criminal matters would be brought to a close at the end of the implementation period to provide clarity for law enforcement authorities and the judiciary. For example, a request for evidence may be outstanding under the Norway-Iceland Agreement on Mutual Legal Assistance, or a request for law enforcement information under the Swedish Initiative may have been issued, awaiting a response. These arrangements are without prejudice to what may be agreed in future with the EEA EFTA states.
45. The title specifies a 'trigger point' for each procedure listed. If this point is reached before the end of the implementation period, then the procedure will continue to completion. For example, the title makes clear that an extradition request will be seen to completion where the individual has been arrested before the end of the implementation period.

TITLE IV: DATA AND INFORMATION PROCESSED OR OBTAINED BEFORE THE END OF THE TRANSITION PERIOD, OR ON THE BASIS OF THIS AGREEMENT (articles 55-58)

46. The UK and the EEA EFTA states have exchanged data and information for a range of purposes. It is important that data and information exchanged between the UK and the EEA EFTA states before the end of the implementation period or processed on the basis of the UK-EEA EFTA separation agreement (the 'stock' of data), is protected appropriately after the UK's withdrawal from the EEA Agreement. This title of the UK-EEA EFTA separation agreement sets out these protections.
47. The stock of personal data will continue to be protected to high standards. During the implementation period, Union law such as the General Data Protection Regulation, as applied through the EEA Agreement, will continue to apply. The EU has an established mechanism to facilitate the free flow of personal data to countries outside the EU - this mechanism is also included in the EEA Agreement. The European Commission can make 'Adequacy Decisions' that find that a third country provides an adequate level of protection for personal data. The UK is seeking Adequacy Decisions to allow for the continued free flow of personal data from the EU to the UK as part of its future relationship with the EU. The Political Declaration on the future relationship sets out that the EU will begin its assessment of the UK with a view to adopting Adequacy Decisions by the end of the implementation period. Because EU Adequacy Decisions on free flow of data to countries outside the EU also apply to the EEA EFTA states when incorporated into the EEA Agreement, any Adequacy Decision adopted with respect to EU-UK flows of personal data will ultimately apply to EEA EFTA-UK flows of data.
48. The provisions of Union law on the protection of personal data referred to in the UK-EEA EFTA separation agreement will continue to apply to the stock of personal data until Adequacy Decisions have been granted, after which time UK domestic rules on personal data protection will apply. In the unlikely event the UK subsequently lost those Adequacy Decisions, the UK would apply data protection standards which are "essentially equivalent" to those in the Union and the stock of personal data would be held in accordance with UK domestic law.
49. UK authorities, official bodies and certain contracting entities will continue to apply specific and sectoral provisions in the EEA Agreement and provisions in other agreements applied by the UK-EEA EFTA separation agreement (confidential treatment, restriction of use, storage limitation and requirement to erase) on non-personal data and information received before the end of the implementation period, or obtained on the basis of the UK-EEA EFTA separation agreement.
50. The EEA EFTA states will ensure that UK data and information transferred to the EEA EFTA states before the end of the implementation period, or under the provisions of the UK-EEA EFTA separation agreement, is not treated differently from data and information obtained from an EEA EFTA state or EU Member State on the sole ground of the UK having withdrawn from the EU. As such, UK data and information will continue to be protected to high standards.

TITLE V: ONGOING PUBLIC PROCUREMENT AND SIMILAR PROCEDURES (articles 59-62)

51. Public procurement rules under the EEA Agreement, which are currently implemented in domestic regulations, will continue to apply to public procurement and similar procedures which are ongoing at the end of the implementation period. The rules cover the procedures for the award of public contracts for works, services and supplies, utilities contracts, concessions contracts and non-exempted defence and security contracts above the relevant financial threshold values.
52. The title outlines which rules will continue to apply, confirms that particular types of procurements are covered and defines when a procurement procedure is ongoing. The UK-EEA EFTA separation agreement also contains a commitment by the UK and the EEA EFTA states to continue applying the non-discrimination principle, which prohibits discrimination against suppliers on the grounds of nationality.
53. The current review and remedies rules outlined in the EEA Agreement will also continue to apply to breaches of the procurement rules in respect of ongoing procurement and similar procedures.
54. The UK procuring authorities will continue to use the EU's online certification database, use of which by the EEA EFTA states is provided for by the EEA Agreement, for up to nine months after the end of the implementation period for ongoing procurement and similar procedures.

TITLE VI: JUDICIAL PROCEDURES (article 63)

55. The title sets out how the involvement of UK lawyers involved in proceedings before or relating to the EFTA Court should be wound down after the end of the implementation period.
56. UK qualified lawyers will be able to continue to represent or assist clients in all cases pending before the EFTA Court at the end of the implementation period until final resolution of that case.

PART FOUR: INSTITUTIONAL AND FINAL PROVISIONS

Summary

57. The UK and the EEA EFTA states agree that the UK-EEA EFTA separation agreement should provide legal certainty and clarity to citizens, businesses and organisations. It is therefore important that there is a shared understanding between the UK and the EEA EFTA states on what the agreement means, how it will be upheld and how disputes will be handled.

What does part four cover:

58. Part four sets out the procedures to provide for consistent interpretation of the agreement, the institutional framework for the agreement and the procedure for settling disputes after the end of the implementation period.

Consistent interpretation and application:

59. Title I confirms that the implementation and application of the citizens' rights part of the UK-EEA EFTA separation agreement will be monitored in the UK by an independent monitoring authority (see above). This will be the same authority as that which will be established under Article 159 of the UK-EU Withdrawal Agreement. In the EEA EFTA states, this monitoring function will be provided by the EFTA Surveillance Authority.

60. The title sets out reporting arrangements for the UK's authority and for the EFTA Surveillance Authority to report to the UK-EEA EFTA Joint Committee (more detail below) on the application of the citizens rights' provisions within the UK and the EEA EFTA states respectively. The other functions that these authorities will have are also set out, including the ability for them to receive complaints from relevant individuals. This title also provides for this monitoring requirement to be removed, if both the UK and the EEA EFTA states agree to do so, after a minimum of eight years.

Institutional provisions:

61. Title II sets out arrangements for the institutional architecture for the UK-EEA EFTA separation agreement, through the creation and functioning of the Joint Committee, which will be responsible for the implementation and application of the agreement. The Joint Committee will be co-chaired by the UK and one of the EEA EFTA states. The UK or the EEA EFTA states may refer to the Joint Committee any issue relating to the functioning of the agreement. The Joint Committee will then be empowered to make decisions and recommendations by mutual consent. To assist it in its functioning, the Joint Committee can decide to establish specialised committees to carry out certain functions.

62. The Joint Committee will meet at the request of either party and in any case at least once a year. To ensure transparency, the Joint Committee will issue an annual report on the functioning of the agreement.

Dispute settlement:

63. Title III sets out arrangements for resolving disputes regarding the interpretation and application of the agreement after the end of the implementation period. Any party to the agreement may bring any dispute which concerns the interpretation or application of this Agreement before the Joint Committee. The Joint Committee will then consult over the dispute, making use of all information that is relevant to the dispute, with the aim of settling the dispute by way of a binding decision.

Final provisions

64. The final provisions to the UK-EEA EFTA separation agreement states that this agreement will enter into force on 30 March 2019, provided that it has been ratified by at least one party to the agreement by that point. There are some exceptions to this, as set out in Article 71.