

Leaving the EU - Legal and Trade Priorities for the New Britain

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Britain's new prime minister has promised that 'Brexit means Brexit'. In Politeia's next pamphlet, *Leaving the EU – Legal and Trade Priorities for the New Britain*, Martin Howe QC, explains the legal priorities for domestic law and for governing Britain's global trade arrangements.

In particular, the author, a leading EU lawyer

- **Explains that Article 50 is the best legal route for withdrawing from the EU.**

The referendum result gives 'sufficient political and constitutional authority' to the Prime Minister to give formal notice of withdrawal under Article 50. The timing, says the author, should be calibrated by the UK to allow a short period of planning and pre-negotiation. By the time the 2-year period in Article 50(3) expires the UK should have 'completed all necessary internal and external preparations for withdrawal' with all in place by January 2019, in good time before the 2020 election.

- **Proposes two priorities:**

- (1) **To review domestic legislation.**

The author proposes that EU directly applicable law must be replaced by domestic legislation to avoid legal vacuums at withdrawal. Other EU related legislation currently embedded in Acts of Parliament and domestic regulations needs to be reviewed to either retain it, revise it or repeal it on exit. The simplest and most effective approach would be to extend Section 2(2) of the 1972 Act to empower ministers 'to repeal or amend existing EU-derived domestic law as needed to reflect the new domestic and external trade environment of the UK.' As Howe comments, these so called 'Henry VIII' powers 'used to implement the incoming EU law, would now be used to unravel EU law.'

- (2) **To forge trade arrangements for Britain's global trade.**

The UK should start right away to put in place the trade arrangements with third countries globally, i.e. those outside the EU, which now constitute the majority of our trade, to take effect immediately on withdrawal after two years. The most effective, rapid solution would be

- To take over existing EU-third country agreements i.e. to 'roll over' the existing Free Trade Agreements (FTAs) so that they continue to apply to the UK (which is already a co-signatory), on the same terms after exit.
- To apply to re-join the European Free Trade Association (EFTA), thereby ensuring continued free trade relations with the four EFTA countries (Switzerland, Norway, Iceland and Liechtenstein) and also gaining access to EFTA's network of free trade arrangements with countries around the world.
- For other third countries, where no agreement with the EU exists, to negotiate new FTAs ready to come into force on exit day. Without the obstacles experienced by the EU caused by placating special interests within the other 27 member states, there is every likelihood of rapid success.

What about trading with the EU?

Howe argues that the UK must avoid being side tracked by the EU discussions. The UK should *not* focus on the discussions about future relations with the EU: they could be lengthy and difficult, as each of the remaining 27 member states has different priorities and a different agenda.

The aim should be to continue trading freely with the EU outside the Single Market and forge the kind of deal already common between the EU and third countries. Britain should offer to continue trading on the same basis with the EU as now. But if the EU is obstructive, Britain should be ready to walk away with plan B in place, trading under low tariff WTO rules. The aim would be to have access to the Single Market without belonging to it with its damaging restrictions or being forced to allow free movement of people.

On no account should officials or politicians be hoodwinked into embarking on EEA membership for Britain, featuring as it does the worst features of the Single Market: compulsory harmonisation of regulations, the requirement to follow ECJ interpretations of them and to adopt future harmonizing regulations without the right to vote on them, restrictions against trading freely with non-EEA countries, compulsory application of EU employment and social laws including the Working Time Directive, and continued unrestricted freedom of movement of persons from anywhere within the EU.

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