

# Renewables After Brexit

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## *Solar Trade Association*

### **About us**

Since 1978, the Solar Trade Association (STA) has worked to promote the benefits of solar energy and to make its adoption easy and profitable for domestic and commercial users.

A not-for-profit association, we are funded entirely by our membership, which includes installers, manufacturers, distributors, large scale developers, investors and law firms.

Our mission is to empower the UK solar and storage transformation. We are paving the way for solar to deliver the maximum possible share of UK energy by enabling a bigger and better solar industry.

### **Renewables after Brexit workshop summary**

On 22 October, the Solar Trade Association (STA) presented the Renewables after Brexit workshop in partnership with the Department for Business, Energy and Industrial Strategy (BEIS). The workshop featured presentations from Frontier Economics, BEIS, the Cabinet Office, and Bird & Bird LLP on the potential impacts of Deal and No-Deal scenarios on the electricity market and broader renewables sector. This note provides a summary of the day's content. The full materials, including all slide decks and video recordings of the presentations, are available on the STA website: <https://www.solar-trade.org.uk/brexit/>

# Frontier Economics

## Possible implications of Brexit for the UK renewables industry

Dan Roberts and Sam Street of Frontier Economics provided an overview of different possible impacts of both deal and no-deal scenarios in terms of macroeconomic effects, UK domestic climate policy, taxes and import/export duties, market design and regulation impacts (regarding the EU Internal Energy Market, or IEM).

### Macroeconomic impacts:

A near- to medium-term slow-down in economic growth under any Brexit scenario (as has already been observed) will presumably give rise to a reduced rate of growth in electricity demand.

The fall in the exchange rate would be expected to have a significant impact on the short-run marginal cost of gas (and remaining coal) generation and thus the wholesale electricity price, although the impact on solar capture prices depends on the degree to which gas plants are setting prices during sunshine hours.

It is likely that Brexit uncertainty will, with all else being equal, lead to higher investor hurdle rates for new-build generation assets, increasing their levelised cost of electricity.

### Domestic climate policy:

There is a relatively low probability that the UK government will abandon its ambitious domestic climate agenda (2050 Net Zero) given they already go beyond EU policy.

In the longer term under a Brexit deal, the UK's preferred option would be UK tradeable permits linked with the EU Emissions Trading Scheme; Alternatively, as a fall-back option if we leave the ETS without such a scheme being established, permits could be replaced by a fixed £16/t CO<sub>2</sub>e price on emissions.

The existing £18/t Carbon Price Support (CPS) provides important tax revenue, in particular while coal generation remains on the system, and therefore it is unlikely that Treasury would be quick to abandon it (at least pre-coal closure), unless the UK economy were facing extremely severe competitiveness concerns. Therefore, the overall carbon pricing signal for electricity generation is unlikely to be significantly affected by Brexit.

### Taxes and import/export duties:

It is unlikely that there would be any significant increase in import duties on capital equipment for the power sector under a no-deal scenario, and similarly unlikely that electricity or gas would face duties from either the UK or the EU.

### Market design and regulation:

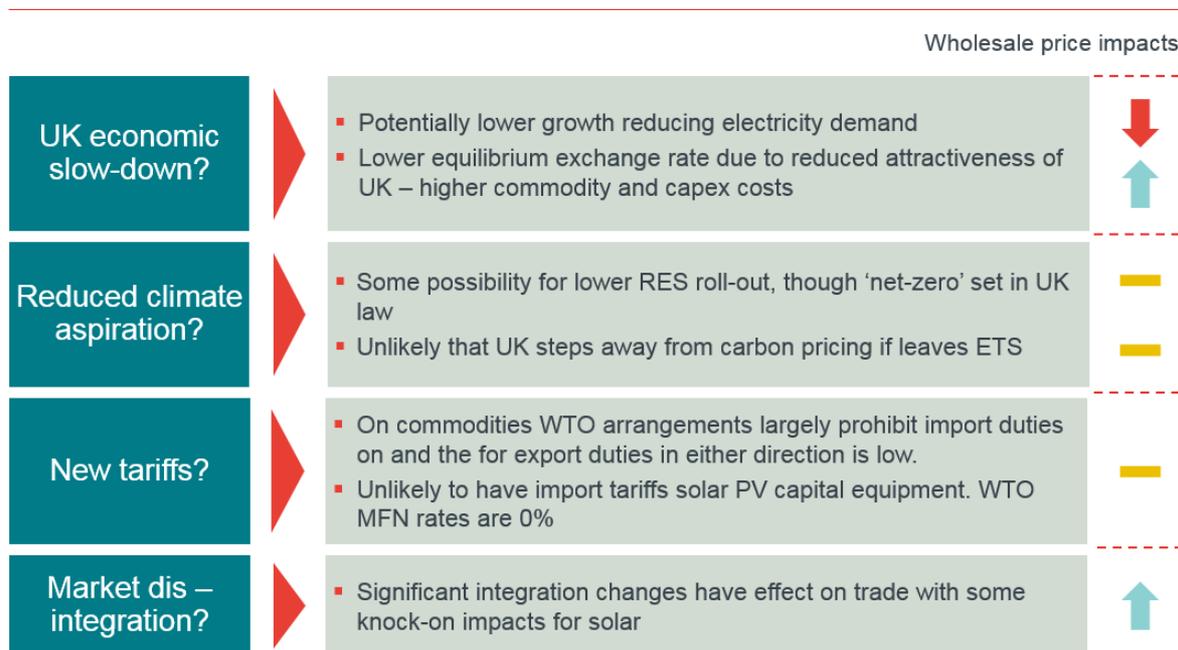
Brexit will almost certainly result in the UK leaving the IEM, resulting in less effective utilisation of interconnectors which could affect the viability of future growth in interconnector capacity. This would have a mixed impact on UK wholesale prices: potentially higher capture prices for solar when GB is importing, but also a reduction in the ability of interconnection to provide a buffer against the cannibalisation of UK solar capture price at times of high renewables output.

Under a No Deal scenario, the UK would cease to be bound by EU state aid restrictions, which could allow for some changes to subsidy support schemes for renewables and storage (e.g. the removal of the need for foreign

participation, though this does not reflect current policy either). However, similar State aid rules are likely to be a part of any future trade deal i.e. UK may be required to agree to these rules for tariff free access to Single Market.

It is unclear to what extent UK would be compelled to implement the EU Clean Energy Package of electricity sector regulations under a Deal scenario, but impacts expected to be limited on new renewables, relative to the domestic reforms underway (e.g. the Targeted Charging Review)

## Overview of Brexit impacts on solar



# BEIS EU Exit Energy and Climate Change

## Guidance Available to Businesses

Matthew Ramsden of BEIS' EU Exit Energy and Climate Change provided a summary of the key no-deal implications for Energy and Climate policy as well as non-energy issues: movement of people, parts and data. However, businesses should visit [gov.uk/Brexit](http://gov.uk/Brexit) for full information.

### Energy and Climate Policy

**Carbon Pricing:** the UK will not participate in the EU ETS for 2019 if the UK leaves without a deal on 31 October. In this event, current participants in the EU ETS, who are UK operators of installations, will no longer take part in the system and will no longer be subject to EU ETS obligations, and the UK government will introduce a Carbon Emissions Tax to help meet the UK's legally binding greenhouse gas reduction commitments under the Climate Change Act 2008. The tax would apply from 4 November 2019 to all UK stationary installations currently participating in the EU ETS. The aviation sector would not be subject to the Carbon Emissions Tax. The tax rate for 2019 would be £16 per tonne. The UK government will maintain Monitoring, Reporting and Verification arrangements to ensure continuing transparency over greenhouse gas emissions.

Operators and traders with EU ETS allowances in their account in the UK section of the registry should plan for a loss of registry access as of the withdrawal date in a no-deal scenario, and consider taking action to manage the risks this may create. Operators wishing to retain access to their allowances after the withdrawal date should consider opening an account in another member state's registry to move allowances into, and should consider the amount of time this is likely to require. The risk of loss of registry access should similarly be considered in relation to any open futures, options or other derivative contracts and hedging positions for any allowances in the registry.

The Government and the Devolved Administrations jointly published a consultation document on 02 May 2019 on future approach to carbon pricing and accompanying Impact Assessment. The Government's response to the consultation will be published in due course.

**Interconnectors:** The mechanisms of cross-border trade of gas are not expected to fundamentally change. Cross-border flows across electricity interconnectors will no longer be governed by EU legislation which provides for efficient trade and cross-border cooperation in operating the electricity system. Regulators in the UK and EU have worked closely to ensure that new access rules, which set the terms and conditions for this trade, are in place.

**Security of Supply:** In Great Britain, government has worked with Ofgem and National Grid to ensure existing measures are in place to deliver continuity of supply. National Grid Electricity & Gas System Operators have had Brexit related risks included in the usual planning for both control rooms, and are therefore prepared to manage and mitigate the impacts of Brexit and to ensure continuity of supply.

**Market surveillance:** The EU's Regulation on Energy Market Integrity and Transparency (REMIT) prohibits insider trading and energy market manipulation and makes provision for monitoring of the market by regulators. The majority of the existing REMIT regime will be maintained domestically with minimal changes. Market participants will need to register with an EU regulatory authority to avoid a disruption to cross-border trade, trade within EU wholesale energy markets, or trade within the Single Electricity Market. Ofgem issued an open letter on 4 December 2018 and the Northern Ireland Utility Regulator issued an open letter on 6 February 2019, outlining actions for market participants in Great Britain and Northern Ireland respectively.

**Energy Using Product Standards:** In the event that UK leaves without a deal on 31 October, there will be no immediate change in regulatory standards affecting suppliers and retailers, or to consumer choice. For Ecodesign and energy labelling regulations which entered into force and applied before 29 March 2019, regulatory alignment was maintained by bringing relevant EU regulations into domestic law. Following the extension of Article 50 and the UK's new departure date of 31 October, further legislation is being prepared to ensure any new EU laws that have come into force continue to function in the UK after Brexit.

## **Non-Energy Issues – Movement of people, parts and data**

### **Movement of Parts: Importing and Exporting in a 'no deal'**

The UK will trade with the EU on the same basis that it trades with much of the rest of the world - so tariffs, quotas, checks and regulation will apply. Similar changes will apply to trade with many non-EU countries, e.g. Japan.

**Tariffs and duties:** the UK will implement the Temporary Tariff Regime, a short-term tariff policy that will be applied for up to 12 months. Business should check the rate of duty and tax (incl. VAT on exports) they will be liable to pay, and consider applying for duty deferment if they import regularly.

**VAT:** Postponed accounting will be introduced for imports from the EU and Rest of the World.

**Customs processes:** Businesses who trade with the EU need to act now to ensure that they are prepared in the event of a no deal EU exit, including: apply for a UK EORI number and check if they need an EU EORI, if they import apply for Transitional Simplified Procedures (TSP) to make it easier, confirm they can complete each data field in customs declarations, agree responsibilities with customs agent and logistics provider for each part of the process and update contracts to reflect this, and identify software for submitting documents if not using a customs agent.

## **Movement of People: business travel, existing EU/EEA/Swiss citizens, new EU/EEA/Swiss citizens, recognition of qualifications**

**Short term movement (business travel)** – Short-term travel to the UK will remain largely unchanged until a new immigration system is in place from 2021. EU rules will vary in each Member State. In the short-term, EU citizens arriving after 31 October 2019 will still be able to come to the UK for visits or short stays as they do now, and border crossing arrangements will not change. The EU will allow UK citizens to travel to the EU for 90 days in any 180 days for business meetings, training, sports and cultural events, and short-term study.

**EU settlement scheme** – In a no deal exit, EU EEA and Swiss citizens and their family members living in the UK by 31 October 2019 can apply to the EU Settlement Scheme. They have until 31 December 2020 to apply. The Scheme enables EU citizens to obtain the status they will require in order to live, work and study in the UK after Brexit. It is a free, online application. Applicants only need to complete three key steps – prove their identity, show that they live in the UK, and declare any criminal convictions. Applicants who have been continuously resident in the UK for >5 years usually receive settled status. Applicants who have been continuously resident in the UK for <5 years usually receive pre-settled status, a pathway to settled status. Both pre-settled and settled status allow successful applicants to continue to live, work and study in the UK after Brexit.

European temporary leave to remain is a temporary UK immigration status that will allow EU, EEA and Swiss citizens who move to the UK after Brexit to continue living, working and studying in the UK after 31 December 2020. Citizens will need to apply for Euro TLR if they want to stay in the UK after 31 December 2020. Citizens will be able to apply for Euro TLR when the scheme opens after the UK leaves the EU without a deal. The EU Settled and Pre-Settled Status Scheme will affect any business that employs EU citizens.

**Employers should:** support employees by sharing Scheme information e.g. use the Employer's toolkit, continue to carry out current right to work checks on EU, EEA and Swiss citizens as now, and continue to accept EU/EEA/Swiss passports/national ID/digital status as evidence.

**Employers should not:** monitor whether staff have applied to the Scheme or check the status of current employees, discriminate against EU citizens either as a prospective or current employer, or feel obliged to interpret government information or provide immigration advice.

**Mutual recognition:** If the UK leaves the EU without a deal, there will be no system of mutual recognition of professional qualifications between the EU and the UK. The UK will introduce a new system for the recognition of EEA and Swiss professional qualifications. Businesses should check the detailed guidance 'Providing services including those of a qualified professional after Brexit' on [gov.uk/brexit](https://gov.uk/brexit) and check their appropriate regulators for restrictions on UK services.

## **Movement of Data – trading in goods, trading in services, cross-border operations**

There will be no immediate change to the UK's data protection standards. The General Data Protection Regulation (GDPR) will be brought into UK law and the Information Commissioner will remain the UK's independent supervisory authority on data protection. The UK Government has committed to allow personal data to continue to flow freely to the EU, EEA, and 'adequate' third countries without restrictions.

When the UK leaves the EU, we will become a 'third country' under EU GDPR. Transfers from the EEA will become restricted and require additional legal safeguards. UK and EU organisations will need to ensure their data transfers are lawful through additional steps.

**Businesses should:** find out if their organisation receives personal data from the EU/EEA. If so, consult Information Commissioner's Office guidance to ensure appropriate measures are in place. The Information Commissioner's Office has created step-by-step guidance to help you prepare your organisation, visit [ico.org.uk/brexit](https://ico.org.uk/brexit). Check [gov.uk/brexit](https://gov.uk/brexit) for specific data protection guidance.

**Case study Example:** What the implications would be for a UK developer lining up a large-scale solar PV Project, requiring a substantial inverter import from Germany.

No Deal: businesses will need to consider implications across their business activities, but in particular should consider implications for movement of goods, people, and data for the construction of new projects, such as new tariffs and duties, and border arrangements, applied to import and export of relevant goods.

Post transition period under the scenario where a deal is agreed – implications will be dependent on negotiations, and businesses will need to consider implications across their business activities in particular taking into account implications for movement of goods, people, and data for the construction of new projects.

# Cabinet Office

## Procurement Regulations Post EU- Exit

Lois Devey outlined the Cabinet Offices advice on public sector procurement policy and the new UK e-notification service (FTS). These resources can be found in full here: <https://www.solar-trade.org.uk/renewables-after-brex-it-videos-from-the-event/>

# Bird&Bird

## Navigating the commercial, legal and practical risks in the post-Brexit energy landscape

*NOTE: This summary is provided here for general information purposes only, and does not constitute legal advice. Whilst we endeavour to ensure that the information is correct, no warranty, express or implied, is given as to its accuracy, and neither Bird&Bird nor the STA accept any liability for error or omission.*

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### Continuity of trade deals with both the EU and non-EU countries

The session opened with an overview of each of the four possible scenarios for a post-Brexit EU-UK trade relationship:

- **EEA membership** (seamless continuation of existing access to the EU single market)
- **A Free Trade Agreement** (UK could enjoy benefit of no tariffs/ charges, but would slow trade due to lack of regulatory harmonisation)
- **EU Customs Union membership** (Would likely cover goods only; UK would not be able to conclude trade agreements independently)
- **WTO terms** (No Deal: Massive disruption of the flow of goods and services)

The UK currently benefits from 70 bilateral trade agreements concluded by the EU on behalf of Member States with countries all over the world (including USA and Japan). The benefit of these agreements will cease to apply to the UK immediately upon the expiration of the EU extension if no deal has been agreed (31 January 2020), or at the end of the transitional period if an exit deal is agreed (currently 31 December 2020). 18 Trade Continuity Agreements have been signed which roll over the provisions of the EU bilateral trade agreements post-Brexit (whether deal or no deal). Several mutual recognition agreements have also been signed (such as with the US, Australia and New Zealand), which extend mutual recognition of conformity assessments (e.g. compliance with technical standards) in order to streamline trade. These mutual recognition agreements are not as far reaching as the Trade Continuity Agreements.

## **Future of access to the Internal Energy Market (IEM)**

The presenters described how, as a principle architect of the IEM, the UK government and major industry players have expressed reluctance to leave the market, but that leaving would be the default outcome. IEM participation is not covered in the Withdrawal Agreement as it currently stands. Specific Brexit risks to electricity market access include:

- Loss of shared algorithm/central IT system to arrange cross-border electricity trades – less efficient trading
- Loss of decision-making power, including participation in the EU Agency for the Cooperation of Energy Regulators (ACER)
- Loss of EU "Projects of Common Interest" funding for future electricity interconnector development

## **Other key policy and regulatory considerations:**

### **Carbon pricing and emissions trading**

The UK's future involvement in the EU Emissions Trading System (ETS) remains in doubt. The Government have signalled a desire to maintain existing monitoring and reporting standards and/or to link a domestic ETS with the EU ETS. Under No Deal planning, the Government have prepared a carbon tax which would drop in to replace the EU ETS, with a £16/t floor price for CO<sub>2</sub>.

### **EU Clean Energy for All Europeans implementation**

Known as the "clean energy package", this is a suite of reforms aimed at improving integration of renewables, promoting energy efficiency and improving the functioning of the IEM. ACER has indicated a potential 3<sup>rd</sup>-country relationship with the UK post-Brexit, but this remains unclear.

### **Renewable energy subsidies and certificates**

- UK subsidies (RO, FiT, CfD) will be unaffected by Brexit.
- The UK has committed to recognising EU Guarantees of Origin (GOO) certificates for renewable generation post-Brexit; there is no reciprocal commitment yet for any EU recognition of UK Renewable Energy Guarantees of Origin (REGOs)

### **Electrical safety and product standards**

- BSI's membership of ISO and IEC is unaffected by Brexit
- UK's membership of CEN and CENELEC post-Brexit is under review
- Post-Brexit, if any products have been conformity assessed by a UK-based notified body, such products will need to be reassessed by an EU notified body or files transferred to an EU notified body

### **Intellectual Property**

- UK Government has confirmed that its aim is to "ensure the continuity of protection" and to "avoid the loss" of existing rights
- It is important for businesses to secure trademark and design protection as soon as possible

## Brexit-proofing contracts

When reviewing a new contract, always check: Does the contract offer flexibility/apportion risk in relation to:

- New tariffs levied by the EU (when exporting goods to the EU)
- Tariffs at the UK border (when importing parts from the EU)
  
- Increased storage/transport costs due to delays at the border
- The general administrative burden of Brexit (e.g. legal advice!)
- Exchange rate fluctuations

Consider the possibility that delays at port may trigger **Liquidated Damages**, and whether any flexibility around delivery exists or can be built into the contract between manufacturer and EPC Contractor.

Also, consider:

- Whether compliance with applicable law (i.e. H&S, environmental standards or product compliance, including RoHS for PV panels) should cover both UK and EU law to ensure discrepancies do not result in non-compliance
- Stating whether **Change in Law** provisions will bite due to Brexit, since it may be considered as foreseeable in your contract if you remain silent (note the argument for unforeseeability – Brexit implications are still not known so can they realistically be priced in?)
- **Force Majeure (FM)**: The impact of Brexit is generally unlikely to qualify as an FM event, as both parties will be expected to have prepared for it and such preparations are within their reasonable control. Some consequences (e.g. delay due to backlogs at Dover) could qualify as FM depending on how the clause is drafted. It is worth considering what the parties should do if Brexit causes significant delays or increased costs.

## Immigration and employment post-No Deal

- *People already in the UK or who move to the UK pre-31 October 2019* can apply to the EU settlement scheme before the end of 2020. This process is analogous to the EU Freedom of Movement permission.
- *People moving to the UK after 31 October 2019 if no deal* can apply for a European temporary leave to remain visa. The scheme will "open" on exit day in the event of a hard exit.
- *People moving to the UK after 31 January 2020 but before 31 December 2020 in the event of a deal and assuming this is the end of the transition period* can also apply to the EU settlement scheme. Under Johnson's government, time spent in the UK will in theory carry over when applying for settled status.
- ***People moving to the UK after 1 January 2021 will need to comply with a new immigration system***

For more detailed advice tailored to your business, we highly recommend you contact a solicitor.