



House of Commons

Business, Energy and Industrial  
Strategy Committee

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**Pre-appointment  
hearing with the  
Government's preferred  
candidate for Chair of  
Ofgem**

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**Eleventh Report of Session 2017–19**





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**Eleventh Report of Session 2017–19**

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
to be printed 3 July 2018*

## Business, Energy and Industrial Strategy Committee

The Business, Energy and Industrial Strategy Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Business, Energy and Industrial Strategy.

### Current membership

[Rachel Reeves MP](#) (*Labour, Leeds West*) (Chair)

[Vernon Coaker MP](#) (*Labour, Gedling*)

[Drew Hendry MP](#) (*Scottish National Party, Inverness, Nairn, Badenoch and Strathspey*)

[Stephen Kerr MP](#) (*Conservative, Stirling*)

[Peter Kyle MP](#) (*Labour, Hove*)

[Mr Ian Liddell-Grainger MP](#) (*Conservative, Bridgwater and West Somerset*)

[Sir Patrick McLoughlin](#) (*Conservative, Derbyshire Dales*)

[Albert Owen MP](#) (*Labour, Ynys Môn*)

[Mark Pawsey MP](#) (*Conservative, Rugby*)

[Antoinette Sandbach MP](#) (*Conservative, Eddisbury*)

[Anna Turley MP](#) (*Labour (Co-op), Redcar*)

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/beis](http://www.parliament.uk/beis) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are Chris Shaw (Clerk), Ben Sneddon (Second Clerk), Jeanne Delebarre (Senior Clerk), Ian Cruse and Becky Mawhood (Committee Specialists), James McQuade (Senior Committee Assistant), and Gary Calder (Media Officer).

### Contacts

All correspondence should be addressed to the Clerk of the Business, Energy and Industrial Strategy Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5777; the Committee's email address is [beiscom@parliament.uk](mailto:beiscom@parliament.uk)

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# 1 Appointment of the Chair of Ofgem

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## Introduction

1. On 26 June 2018 the Secretary of State for Business, Energy and Industrial Strategy, the Rt Hon Greg Clark MP, wrote to our Chair to inform the Committee of his nomination of Martin Cave to chair the Gas and Electricity Markets Authority (GEMA), the governing body of the Office for Gas and Electricity Markets (Ofgem). This post is known as the Chair of Ofgem. The nomination of Professor Cave as the Government's preferred candidate followed the conclusion of an open recruitment campaign, on which the Chair of the Committee was consulted prior to its launch.

## Diversity

2. From the diversity statistics provided by the Department of Business, Energy and Industrial Strategy we are only aware of one woman being shortlisted for the role. This candidate was subsequently not deemed appointable as Chair.<sup>1</sup> We remain concerned about the diversity of the leadership of the bodies that the Department sponsors, an issue we have previously raised with the Permanent Secretary<sup>2</sup> and in our report on the appointment of the Chair of the Competition and Markets Authority (CMA),<sup>3</sup> with only four of 47 BEIS-sponsored public bodies chaired by women. Announcing Professor Cave's status as preferred candidate for the Chair of Ofgem, the Department also confirmed the appointment of Lynne Embleton and Ann Robinson as non-executive directors at Ofgem.<sup>4</sup> While these appointments are welcome, reflecting the wider trend in business of appointing women in non-executive roles, the Department and the Government must do more to ensure diversity in public bodies.

## The candidate

3. Professor Cave is a regulatory economist who has specialised in competition law and regulation of network industries, including the energy sector. He served as deputy panel chair of the Competition and Markets Authority and was previously deputy chair of the Competition Commission. In these roles, he chaired merger inquiries, market investigations and regulatory appeals.<sup>5</sup> Between 2014 and 2016 Professor Cave was a member of the group responsible for the CMA's Energy Market Investigation, in the final report of which he published a dissenting opinion supporting the introduction of a temporary energy price cap.<sup>6</sup> Professor Cave appeared before this Committee in December 2017 as part of our pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill.<sup>7</sup>

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1 See Appendix 2

2 [Letter from Alex Chisholm to Rachel Reeves following oral evidence session](#), 9 April 2018, [Letter from Alex Chisholm to Rachel Reeves following oral evidence session](#), 8 March 2018, and [Letter from Alex Chisholm to Rachel Reeves on the Gender Pay Gap](#), 8 September 2017

3 Business, Energy and Industrial Strategy Committee, Eighth Report of Session 2017–19, [Pre-appointment hearing with the Government's preferred candidate for Chair of the Competition Markets Authority](#), HC 985, para 1

4 [Energy price cap architect picked to put consumers at the heart of energy watchdog](#), Department of Business, Energy and Industrial Strategy Press Notice, 25 June 2018

5 See Appendix 4

6 Competition and Markets Authority, [Energy Market Investigation: Final Report](#), 24 June 2016, Pp 1415–1417

7 Oral evidence taken on 12 December 2017, HC (2017–19) 517, [Qq46–75](#)

## The pre-appointment hearing

4. The Committee held a pre-appointment hearing with Professor Cave on 3 July 2018. To inform the hearing, we wrote to Professor Cave on 21 June 2018 seeking information on his independence, his interests, and his views on the current state of Ofgem.<sup>8</sup>

5. The hearing addressed Professor Cave's regulatory background, his experience of business and his support of an energy price cap. The Committee questioned Professor Cave on his views on the political challenge of a time-limited price cap and the role of Ofgem in the potential removal of the price cap ahead of the statutory deadline in 2023.

6. We also questioned Professor Cave on the current and potential challenges faced by Ofgem during his proposed tenure as Chair, including the continued trading of energy as the UK leaves the European Union, the impact of regulatory divergence from the European energy market, and plans for the next period of energy network price controls. The Committee also sought Professor Cave's views on the effectiveness of Ofgem in protecting vulnerable customers, the current public and industry perception of the regulator, and its independence from Government. In accordance with the guidelines for pre-appointment hearings agreed with the Liaison Committee, we questioned Professor Cave on his personal independence and relevant financial interests, in writing and during the hearing.<sup>9</sup>

## Conclusion

7. On the basis of his extensive experience in the field of regulation, and his clear grasp of the challenges and opportunities for Ofgem, demonstrated in his evidence during the pre-appointment hearing, **we are satisfied that Professor Martin Cave has the professional competence and personal independence required of the Chair of Ofgem.** We are happy to endorse his appointment and look forward to engaging with him during his tenure as Chair.

8. In endorsing his appointment, *we recommend that Professor Cave ensures Ofgem provides regular formal and informal updates to Parliament and its Committees.*

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8 See Appendix 3

9 Liaison Committee, [Guidelines for select committees holding pre-appointment hearings](#), (November 2013)

## Appendix 1: Letter to the Chair of the Committee from Greg Clark, Secretary of State for Business, Energy and Industrial Strategy, 26 June 2018

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It was announced on 25 June that Martin Cave, former Deputy Chair of the Competition Commission and Deputy Panel Chair of the Competition and Markets Authority, is the preferred candidate for the new Chair of Ofgem.

Mr Cave is an eminent economist who has undertaken a number of roles in Government including as Economic Advisor to Ofcom between 2003 and 2006. He has been appointed to lead a number of high profile reviews within Government, which is testament to his credibility in the energy sector. I believe that his extensive experience and knowledge will have a positive effect on the energy sector and will ensure that consumers are protected while the regulator continues to build an energy market that works for everyone.

Therefore, I am delighted that he will have the opportunity to appear before the Committee on 3 July to outline his vision for Ofgem and answer your questions on his Chairmanship.

My officials will be sending you further information about Martin Cave and the appointment process for the new Ofgem Chair shortly.

The Rt Hon Greg Clark, MP, Secretary of State for Business, Energy and Industrial Strategy

## Appendix 2: Recruitment Diversity Information

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The following information was supplied by the Department for Business, Energy and Industrial Strategy following the Ofgem Chair recruitment campaign.

Of the fourteen applicants, nine completed a diversity form. Of those who declared, five applicants were male, four female, no BAME (five unknown).

Of the three shortlisted candidates, two applicants had completed a diversity form. One female, one male, all white (one unknown).

Of the two appointable candidates, one completed the diversity form. One male and white (one unknown).

## Appendix 3: Questionnaire

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Questionnaire for the Government's preferred candidate for the Chair of Ofgem: Professor Martin Cave

### **Do you intend to serve out the full term to which you are intended to be appointed?**

It is my intention to serve the full term.

### **Do you foresee any conflicts of interest, or potential conflicts of interest, arising as a result of other professional commitments, political activities, personal connections, or any other activities?**

I do not foresee any such actual or potential conflicts of interest. I note below my intentions in relation to professional commitments.

### **Do you have any professional commitments you intend to maintain during your term of office? If so, how do you intend to divide your time between your Chairmanship of Ofgem and these other commitments?**

By agreement with BEIS, I shall initially commit an average of three days a week to the chair role. This seems to me to be proportionate for a post of this nature, and in line with previous practice. However I am aware that there will be an unforeseeable number of times when more input is required, and my proposed activities noted below will not prevent me from working more intensely for Ofgem for as long as necessary.

I currently have two small commitments to offer advice on telecommunications regulation which will not be concluded by October 2018—to a Southern Hemisphere regulator and to the OECD. I intend in the future to be prepared to offer regulatory or similar advice to chosen organisations in sectors other than energy on matters which do not overlap with matters before Ofgem.

I propose (if the London School of Economics is willing) to maintain the visiting professorship I hold there until 2021. This appointment, which has no salary and no prescribed duties, allows me to participate in academic activities. These include the completion with another professor at the School of a short book on regulation for a university press.

In summary, I shall devote at the least an average of three days a week to Ofgem activities, giving priority to those activities. I intend to devote remaining time to the limited activities of the kinds described above.

### **How has your experience to date prepared you for the roles of Chair of Ofgem?**

I have devoted a lot of time in the past thirty so years to studying or engaging in economic regulation, in several sectors and countries. This has included the completion of five independent regulatory reviews for the UK government in the fields of telecommunications and spectrum policy, airports, water, and social housing.

While at the Competition Commission/CMA I chaired three appeals against price cap determinations made by the N Ireland regulator, relating to a gas supplier and distributor, an electricity distribution company, and an electricity systems operator. I was a member

of the CMA group which conducted the 2014–2016 energy market investigation. I chaired two inquiries which reviewed undertakings given some years ago concerning the Rough gas storage facility.

I have advised regulators in the UK and in several other countries in Asia, Australasia, Europe, and North and South America. This advice has covered a large range of issues, including price control, the cost of capital, and expanding the scope for competition and deregulation.

I have written on regulatory matters in a number of books and articles, and provided training on regulation to many organisations.

**In which areas of the regulator's work is your knowledge and experience weakest?**

Ofgem employs over 300 people (a third of the total labour force), in E-Serve, which delivers green energy and social schemes on behalf of government; thus it designs, sets up and operates large scale programmes in the sustainable energy sector. It is thus an important if not widely recognised contribution which Ofgem makes to environmental protection. I am not closely familiar with the details of these activities, so one of my first priorities is to make a fairly protracted visit to Glasgow, where much of the work is done, to learn for myself what it involves and talk to the staff at all levels.

There are many detailed aspects of Ofgem's regulatory activities with which I know I lack familiarity. This includes the details of the licensing arrangements and codes, for example. There may be other aspects of regulation which I don't know that I don't know about. This will require quite a lot of briefing.

Finally, since the completion of the CMA energy market investigation over two years ago I have had only very limited contact with people in the sector in the UK. To rectify this, it is my goal to visit firms, consumer organisations and other interested parties, and talk to the leading actors in the sector about matters including ongoing changes in the sector.

**What is your view of the use of interventions in the market by Ofgem? Would your approach differ?**

Ofgem's writ runs over generation, transmission and distribution and retail. The CMA failed to find major problems with wholesale energy markets. I was a party to that conclusion (which is to Ofgem's credit), and am not aware at present of a reason to take a different view.

Interventions in the other two areas have proved more problematic. Ofgem recently acknowledged that despite a considerable amount of activity it had undertaken to protect vulnerable customers, it had been slow to introduce price cap protection for them. In relation to network regulation, where Ofgem's RIIO approach included many novel and widely copied features, it was acknowledged that recent level of returns to network companies have been higher than expected, and do not reflect the low level of risk these companies face.

Ofgem is rectifying these defects, in a way which seems to be congruent with my own preferred approach. Put simply, my approach is to address regulatory issues through the lens of the end users or customers. These—whether households or firms—want to be supplied with the essential service which energy is at fair prices, and with an appropriate

quality of service, security of supply into the future, and degree of choice. They want quick access to the benefits of innovation. It is also crucially important to recognise that some householders are vulnerable, and require additional attention and protection.

Abuse of market power is a major obstacle to the realisation of these goals, both where the activity is a 'natural monopoly' like a distribution network and where consumers face difficulties in exercising their choice, as in household and small business retail markets. Here the CMA market investigation found that retail suppliers of energy to households and micro-businesses exercised unilateral market power over disengaged customers.

In the network case, intervention is inevitable, but must keep prices down without stifling investment and innovation.

In the case of retail markets, a balance has to be struck between empowering customers to exercise choice and intervening directly to protect them; where that balance depends heavily upon the severity of the immediately harm customers are suffering. Where the harm is very large, as the CMA found it to be in the case of household customers (at £1.4bn. per year), I have consistently argued in favour of a temporary direct intervention by price controls, combined with pro-engagement measures. Subject to the passage of legislation currently before Parliament, Ofgem will impose such a price cap shortly, in addition to other more restricted caps already imposed.

I favour this intervention in part because I do not think that any alternative will protect consumers' interests in a reliable and timely fashion. When less intrusive interventions are likely to fail, regulators should be prepared to apply more direct methods, even in the teeth of resistance by suppliers.

Vulnerable households require particular attention. I am pleased that Ofgem is in its current work programme taking systematic measures to address these issues by updating its vulnerability strategy, and also that Energy UK has set up a Commission for Customers in Vulnerable Circumstances, under Lord Whitty.

### **What does a successful regulatory environment in the UK for energy look like? Is the current culture of regulation working?**

The regulatory approach to energy in the UK to date has involved mandating shared access at regulated prices to assets which are persistent bottlenecks (such as distribution networks), the use of often regulator-designed markets for other more competitive inputs (electricity pools are an obvious example), and a mixture of free and price-controlled retail markets.

The CMA market investigation broadly gave wholesale energy markets a clean bill of health, but as noted above network regulation has encountered difficulties. I know from my own experience of setting energy network price controls that the devil is in the detail—the myriad individual decisions which go into the determination of the regulated firm's allowable revenue. This puts a premium on having a relatively simple and intelligible regime, by means of which the regulator can guide firms into patterns of behaviour which benefit customers. It is also important to have in place risk avoidance mechanisms such as a moderate price control period and limits on excessive returns. Both of these aspects are under discussion in setting the next round of GB network controls coming into effect in 2021 and 2023 under RIIO-2.

As noted above, the position of energy as an essential service in my opinion imposes a strong obligation on the regulator to act in a timely and effective way to protect households from substantial harm, and Ofgem has already circulated much material about the design of the temporary default price cap, which can speedily be implemented if legislated by Parliament. I have noted Ofgem's work programme on vulnerable customers above.

Finally, I note that the period of the new network controls, which is likely to take us to 2026–28, will see significant steps towards a major set of changes associated with demand for new energy services, further alterations in the composition of generation leading to further carbon reduction, greater availability of storage, and the broader digital transformation of the energy sector, including possibilities for more flexibility, delegation and automation of customer choice in retail markets. This will widen and deepen the range of technologies in use, better achieve the goal of a low-carbon economy, and impose more competitive constraints on existing players in generation, distribution and retail, not least by attracting new players.

It will be appropriate in the coming years for Ofgem to lead a broader discussion of the regulatory consequences of these changes, again from the end users' standpoint. This involves, first, offering an enthusiastic welcome to innovators, and secondly ensuring that while companies are rewarded for assuming the risks of this transformation, end users get a quick and fair share of the benefits.

In summary, my impression is that going forward the culture of UK energy regulation is appropriately focussed on the long term interests of end users. Among end users, vulnerable customers, household customers and small businesses are of primary importance. Because the focus is on long term interests, opportunities for product innovation, greater efficiency and carbon reduction are particularly relevant in the years to come.

**What are your priorities for your first two years in post? What would success look like at the end of this period?**

These four are my priorities:

- To see an effective temporary default price cap put in place and in operation, while simultaneously developing measures to empower consumers to make their own choices;
- To review regulation to ensure that there is not and will not be any shortfall in serving the interests and meeting the needs of vulnerable customers;
- To impose a simpler and more effective regime of network regulation, via revisions to the current RIIO process; the evidence of this would be a more detailed blueprint of the controls, with the characteristics described above;
- To see Ofgem play a leading, but not a directing role in analysing the regulatory implications of the fundamental changes occurring in the organisation of the energy sector in GB; this would be accomplished by organising discussion and a heightened level of understanding of the issues on the part of Ofgem and stake holders.

These priority tasks to be accomplished within a continuing framework of independent regulation.

## Appendix 4: Candidate CV

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**Professor Martin Cave, B.A., BPhil, DPhil**

### Education

BA, First Class, Philosophy, Politics and Economics, Balliol College, University of Oxford, 1969

BPhil in Economics, Nuffield College, University of Oxford, 1971

DPhil, Nuffield College, University of Oxford, 1977

### Principal Academic Employment

1974 to 1989 - Lecturer, Senior Lecturer and Professor of Economics, Brunel University.

1989 to 2001 - Dean of the Faculty of Social Sciences, Pro-Vice Chancellor and Vice-Principal (Deputy Vice Chancellor), Brunel University.

2001 to 2010 - Professor and Director, Centre for Management under Regulation, Warwick Business School, University of Warwick

2010 to 2011 - BP Centennial Professor, London School of Economics and Political Science

2011 to 2017 - Visiting Professor, Imperial College Business School, London.

2018 to 2021 - Visiting Professor, Law Department, London School of Economics.

### Principal Public Sector Advisory and Other Activities

From January 2012 to January 2018 I was successively deputy chair of Competition Commission and deputy panel chair of the Competition and Markets Authority. My role was to chair merger inquiries, market investigations and regulatory appeals.

I have conducted a number of independent reviews for the UK Government, as follows:

- Appointed by the Chancellor of the Exchequer and the Secretary of State for Trade and Industry to conduct an independent review of radio spectrum Management 2001–02
- Appointed by the Chancellor of Exchequer to conduct an independent audit of major spectrum holdings, 2004–05
- Appointed by Secretary of State for Communities and Local Government to undertake an independent review of the regulation of social housing, 2006–07
- Appointed by the Chancellor of the Exchequer and the Secretary of State for DEFRA to conduct a review of competition and innovation in the water sector, 2009–10.
- Appointed by the Secretary of State for Transport to chair an expert panel on airport regulation, 2008–09

Also:

- Member, panel advising UK Government on spectrum valuation, 2014/5
- Member, panel advising French Government on fibre policy, 2013/14
- Consultant to the UK Office of Railway Regulation on competitive and contestable regulation, 2010–11
- Regulatory adviser to Hooper review of Royal Mail, 2008
- Member, UK Payments Council, 2006–2011; Acting Chair, Nov 2009-April 2010.
- Special adviser to European Commissioner Reding on the reform of European telecommunications regulation, 2006.
- Adviser to Lord Chancellor's Department on reforms in legal regulation 2004–5.
- Economic Advisor to Ofcom, 2003 to 2006.
- Non-Executive Advisory Director at OFWAT, 2001–2005.
- Member, MMC/Competition Commission, 1996–2002.
- Adviser to Oftel, 1990–2000.
- Economic Adviser, part-time, at HM Treasury, 1986–90.

I am joint academic director, at the Centre on Regulation in Europe (CERRE), a Brussels-based think tank.

# Formal minutes

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**Tuesday 3 July 2018**

Members present:

Rachel Reeves, in the Chair

Vernon Coaker

Mark Pawsey

Peter Kyle

Antoinette Sandbach

Sir Patrick McLoughlin

Anna Turley

Albert Owen

Draft Report (*Pre-appointment hearing with the Government's preferred candidate for Chair of Ofgem*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 8 read and agreed to.

Appendices agreed to.

*Resolved*, That the Report be the Eleventh Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 11 July at 9.00 am

## Witness

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The following witness gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

**Tuesday 3 July 2018**

**Professor Martin Cave**

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	A framework for modern employment	HC 352 (HC 966)
Second Report	Leaving the EU: implications for the civil nuclear sector	HC 378 (HC 881)
Third Report	The safety of Electrical Goods in the UK	HC 503 (HC 920)
Fourth Report	Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill	HC 517 (HC 865)
Fifth Report	The impact of Brexit on the automotive sector	HC 379 (HC 1018)
Sixth Report	The impact of Brexit on the aerospace sector	HC 380 (HC 1049)
Seventh Report	The impact of Brexit on the processed food and drink sector	HC 381
Eighth Report	Pre-appointment hearing with the Government's preferred candidate for Chair of the Competition and Markets Authority	HC 985
Ninth Report	The impact of Brexit on the pharmaceutical sector	HC 382
Tenth Report	Carillion	HC 769
First Special Report	Industrial Strategy: First Review: Government Response to the Committee's Second Report of Session 2016–17	HC 337
Second Special Report	Corporate governance: Government Response to the Committee's Third Report of Session 2016–17	HC 338
Third Special Report	Apprenticeships: Government Response to the Second Joint Report of Session 2016–17	HC 450
Fourth Special Report	Leaving the EU: negotiation priorities for energy and climate change policy: Government Response to the Committee's Fourth Report of Session 2016–17	HC 550
Fifth Special Report	Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill: Government Response to the Committee's Fourth Report	HC 865

Sixth Special Report	Leaving the EU: implications for the civil nuclear sector: Government response to the Committee's Second Report	HC 881
Seventh Special Report	The safety of Electrical Goods in the UK Government Response to the Committee's Third Report	HC 920
Eighth Special Report	A framework for modern employment: Government response to the Second Report of the Work and Pensions Committee and First Report of the Business, Energy and Industrial Strategy Committee of Session 2017–19	HC 966
Ninth Special Report	The impact of Brexit on the automotive sector: Government Response to the Committee's Fifth Report	HC 1018