



House of Commons
Exiting the European Union
Committee

**The progress of the
UK's negotiations on EU
withdrawal (December
2017 to March 2018):
Government Response
to the Committee's
Third Report**

Third Special Report of Session 2017–19

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Exiting the European Union Committee

The Exiting the European Union Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Exiting the European Union and related matters falling within the responsibilities of associated public bodies.

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Committee reports are published on the Committee's website at www.parliament.uk/exeucom 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 James Rhys (Committee Clerk), Claire Cozens (Second Clerk), Dr Ariella Huff (Senior Committee Specialist), Shakera Ali (Committee Specialist), Duma Langton (Committee Specialist), Judy Goodall (Committee Specialist), Adrian Hitchins (Committee Specialist), Julian Mazowiecki (Committee Specialist), Eoin Martin (Committee Specialist), Leo Olivera (Senior Committee Assistant), Pansy Barrett (Senior Committee Assistant), Henry Ayi-Hyde (Committee Assistant), Estelle Currie (Senior Media Officer) and Ben Shave (Media and Communications Officer).

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Third Special Report

The Committee on Exiting the European Union published its Third Report of Session 2017–18, *The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018 (HC 884)*, on 18 March 2018. On 18 May 2018, the Committee received the Government response to the Report. It is appended below.

Appendix: Government Response

1. *We recommend that the Government commit to repeating its offer to allow an unlimited return for EU citizens in the UK if UK citizens in the EU retain free movement, alongside the associated rights that flow from that, including recognition of professional qualifications and the right of establishment. The Commission has always insisted that there should be no reduction of EU citizens' rights for those living in the UK. The UK Government has likewise insisted that UK citizens in the EU should be able to expect the same treatment. (Paragraph 17)*

The citizens' rights part of the Withdrawal Agreement is entirely colour-coded "green", which means that all issues have been agreed between the two parties, and we have no plans to reopen these during this stage of the negotiations.

The UK pushed strongly for the inclusion of ongoing movement rights during the first phase of negotiations, but the EU was unwilling to include them. Instead, they noted that this issue was for the next stage of negotiations.

We have now reached a reciprocal agreement on UK and EU citizens who move during the implementation period. UK nationals currently living in the EU who want to move to obtain residency in a different Member State during the implementation period will be able to do so.

The citizens' rights part of the Withdrawal Agreement is of significant interest to the European Parliament and we are aware that onward movement remains an issue which they would like to be included in the agreement.

2. *The Joint Technical Notes have been a valuable resource for citizens affected by Brexit. We recommend that the Government seek to work with the Commission to publish a new Joint Technical Note which sets out the outstanding citizens' rights issues for agreement in Phase 2, with the respective UK and the EU positions on each. This should be done immediately after the European Council meeting in March when the Phase 2 talks are expected to begin. Joint Technical Notes should also be published after each negotiating round. (Paragraph 22)*

The Joint Technical Note was a valuable tool for tracking progress in negotiations on citizens' rights running up to the agreement reached in December 2017. In a similar vein, the draft Withdrawal Agreement text published on 19 March has been colour coded to show areas of agreement, and those that remain outstanding.

As set out above, the citizens' rights part of the Withdrawal Agreement is entirely green, which means that all parts have been agreed.

3. The current proposals define 'residence' by reference to the provisions of the Free Movement Directive. The Directive does not cover a range of vulnerable categories of people who will be experiencing anxiety over their legal status in the UK.

As a matter of priority, the Government must ensure that there are specific provisions and flexibility for such people to ensure eligibility for Settled Status that will cover vulnerable children and adults, particularly women who have had caring responsibilities or have been temporarily unable to work because of domestic abuse. The Government should also ensure that different types of part-time or irregular work are considered fairly and plans detailing this should be published as soon as practicably possible after the March negotiating round. (Paragraph 33)

We have agreed with the EU that the eligibility criteria will be the same as, or more favourable than, those set out in the Free Movement Directive for acquiring permanent residence. Decisions will be based on objective criteria, with no discretion to refuse status, other than for reasons allowed by the Withdrawal Agreement.

The Government has listened to the views of stakeholders and has set the eligibility criteria to suit the demands of this unique situation. For example, we will no longer require evidence that economically inactive EU citizens have previously held comprehensive sickness insurance.

We are also conscious of the need to cater for vulnerable individuals who may struggle to evidence their eligibility to stay or who are not explicitly referenced in the published Joint Report. The agreement that we have reached gives us the flexibility to do that.

The Government are designing a new system from scratch, with new processes, technology, rules and support for applicants. Caseworkers will give applicants the opportunity to remedy any minor errors or omissions, or provide additional evidence where appropriate. A principle of evidential flexibility will also apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to avoid unnecessary administrative burdens. The process will be designed with users in mind, and we will engage with them every step of the way.

The Home Office has been clear on a number of occasions that the new system will be online and straightforward to use, and the default position of the Government will be to accept applications.

We are considering what further provision might be necessary and we will publish further details in due course.

4. The draft Withdrawal Agreement would allow EU Member States to require UK nationals in the EU to apply for a new residence document to ensure that their rights are protected beyond a transition/implementation period following the UK's exit from the EU. While the negotiations on citizens' rights are ongoing it is unclear whether any Member States are considering the introduction of such a requirement, should free movement for UK citizens in the EU by the Specified Date not be agreed and it becomes an option that is desirable to Member States.

The Government should continue to push hard for continued free movement rights for UK citizens in the EU by the specified date and for an EU Member State equivalent to “settled status” for UK nationals living and working in the European Union after the United Kingdom has withdrawn from the EU. (Paragraph 36)

Under the Withdrawal Agreement, UK nationals in the EU will have until at least the end of the grace period, 30 June 2021, to apply for status in the Member State in which they are resident.

It will be for Member States to decide how they will implement the provisions of the Withdrawal Agreement and whether to create a requirement to obtain a new status, such as settled status in the UK. We will continue to discuss with each Member State how they intend to implement the agreement, and if Member States choose to do so the new scheme that they operate must be in accordance with the provisions agreed in the Withdrawal Agreement, for example in respect of administrative procedures.

As stated in answer to the first recommendation, the citizens' rights part of the Withdrawal Agreement is of significant interest to the European Parliament and we are aware that onward movement remains an issue which they would like to be included in the agreement.

5. We agree with the Government's proposal to establish an Independent Authority to “champion” the rights of EU citizens in the UK. We recommend that the Government publish draft proposals on how the Independent Authority will carry out its work. There are a number of important ways in which Parliament can have a role in ensuring the independence of those in charge of public bodies. A number of roles are subject to pre-appointment hearings with departmental select committees. For example, the Treasury Select Committee has a statutory veto over the appointment and dismissal of the Chair of the Office for Budgetary Responsibility. The appointment of the Chief Executive of the Financial Conduct Authority is also subject to a pre-appointment hearing with the Treasury Select Committee and the Government has accepted that if it disagrees with a negative report from the Committee, it will table a motion disagreeing with the Committee in Government time. We call on the Government to publish the details of arrangements for appointing the Chair of the Independent Authority as soon as possible, including which Committee it would envisage as having a statutory veto or the right to an appointment hearing. (Paragraph 40)

The Independent Monitoring Authority (IMA) will oversee the implementation and application of the citizens' rights section (Part 2) of the Withdrawal Agreement in the UK. It will be able to receive complaints from Union Citizens and their family members, and conduct inquiries concerning alleged breaches of this section.

The IMA will also be able to bring appropriate legal action in the UK, with a view to seeking an adequate remedy if the Authority deems that Part 2 of the Withdrawal Agreement is not being implemented or applied correctly.

The Government will publish further details of how the IMA will carry out its work and arrangements for appointments in due course.

6. *We note that the draft legal agreement does not reflect all the options in the December Joint Report. We support the Government's rejection of the Commission's interpretation of what constitutes the previously agreed fall-back position of full alignment in the draft Withdrawal Agreement in the context of the Joint Report's commitment to uphold the Good Friday Agreement.*

This is because the UK Government's commitment was to the United Kingdom—not just Northern Ireland—maintaining “full alignment” with those rules of the internal market and the customs union which support north-south co-operation, the all-island economy and the protection of the 1998 agreement. Whatever solution is reached to resolve issues around the Border must involve the whole of the UK. While we recognise it is the least favoured option for both the Government and the European Union, it has, potentially, far reaching consequences for Northern Ireland, the United Kingdom and Ireland. The Irish Government has said that it sees the Joint Report as an unambiguous commitment to there being no divergence that could lead to a hard border, including any physical infrastructure or related checks and controls. We note that Michel Barnier has already stated that innovative and imaginative solutions must be sought to deal with this issue and believed that given political willingness there are solutions that are worthy of consideration. Because the UK Government has not explained what full alignment means, it should now provide answers to the following questions:

- *Will the commitment to full alignment cover all traded goods?*
- *Which rules of the Single Market and Customs Union are included in the full alignment commitment?*
- *What method of legal adjudication would the Government seek to underpin an agreement that is based on full alignment of regulatory outcomes?*

The Government welcomes the Committee's endorsement of our approach to the Protocol on Northern Ireland put forward by the European Commission. We have been clear that we could never accept a proposal such as this, which would create a border down the Irish Sea and threaten the economic integrity of the UK. We remain determined to implement all aspects of the Joint Report in December, but this must also encompass the clear commitments made in relation to Northern Ireland's place in the UK internal market.

We continue to believe that, as set out in the Joint Report, we should aim to avoid a hard border and any physical infrastructure or related checks and controls between Northern Ireland and Ireland through our overall UK-EU relationship. If this does not prove possible, we should propose specific solutions to address the unique circumstances of the island of Ireland.

We are also committed to developing and agreeing the so-called ‘backstop’ option set out in the Committee's report. As the Prime Minister indicated in her letter to the President of the European Council in March, we agree on the need to include legal text detailing the ‘backstop’ solution for the border between Northern Ireland and Ireland in the Withdrawal Agreement that is acceptable to both sides. Following the March European Council, the UK and EU negotiating teams are now engaged in an intensive round of discussions to negotiate in detail on all the issues and scenarios set out in the Joint Report.

The specific questions posed by the Committee on the nature and scope of alignment are a matter for the negotiations between the UK and the EU over the coming months. The Prime Minister's letter on 19 March to Donald Tusk set out our view that there are some aspects of the Commission's proposals which we agree with – particularly the preservation of the Common Travel Area.

The Prime Minister has made our position on the other elements of the draft text clear, and said that we could never accept these elements.

There is agreement that the scope of the issues covered by the draft Protocol – focusing on goods and agriculture – reflects the right set of issues.

Specifically, that reflects our long standing view that we must have comprehensive solutions to the key issues of customs, the regulation governing goods, and agri-food. In terms of adjudication and governance, the EU treaties and hence EU law will no longer apply in the UK once we have left. The agreement we reach must therefore respect the sovereignty of the legal orders of both the UK and the EU. That means the direct jurisdiction of the ECJ in the UK must end. It also means that the ultimate arbiter of disputes about our future partnership cannot be the court of either party.

7. *What is the exact scope of the all-island economy, given that the Government's aim of an open border for all goods in the context of the all-island economy must by definition be wider than the six areas of North-South co-operation?*

The all-island economy is not a legal term, but reflects the recognition from all parties that supply chains are now deeply integrated across the border in many areas. This term is set out separately to 'North South co-operation' in the Joint Report, although there are clearly linkages between the two. One important example of cross-border economic co-operation and supply chains relates to the agri-food industry. The product journey of milk for example, illustrates the integration of cross-border supply chains. A quarter of the milk produced on Northern Ireland's farms (nearly 600 million litres) goes to Ireland for processing with an estimated value of £124.5m. In addition, around 5% of milk processed in Northern Ireland is also imported from Ireland.

8. *Paragraph 47 of the Phase 1 Agreement said, "The two parties have carried out a mapping exercise, which shows that north south co-operation relies to a significant extent on a common European Union legal and policy framework". We believe the Government should publish the results of this mapping exercise in order to provide clarity about what is covered by north/south co-operation. (Paragraph 50)*

The UK and EU have mapped out areas of co-operation that function on a cross-border North-South basis, in line with the principles of the Belfast Agreement. We identified over 140 areas of cross-border co-operation, demonstrating the wide range of co-operation across different aspects of the economy, public services, and the environment.

There are significant variations in the extent to which areas of co-operation identified here are linked to, or underpinned by, EU legal frameworks at present.

Some areas of co-operation are not underpinned at all, or only to a very minimal extent, by EU law. Some areas of co-operation are linked in some form to EU legal frameworks, and other aspects of co-operation are clearly directly underpinned by EU legal frameworks at present. The precise nature of the legal frameworks necessary to underpin co-operation will need to be negotiated over the coming months.

The Secretary of State for Exiting the European Union has recently written to the Chair of the Committee on the same matter, and has confirmed that he is happy to commit to publishing the results as soon as they are available.

9. If a 21-month transition/implementation period is insufficient time to conclude and ratify the treaties/agreements that will establish the Future Partnership or to implement the necessary technical and administrative measures along with any necessary infrastructure at the UK border, the only prudent action would be for the Government to seek a limited prolongation to avoid unnecessary disruption. It would, for example, be unacceptable for business to have to adapt their import and export processes twice. We therefore recommend that the Withdrawal Agreement include a provision to allow for the extension of the transition/implementation period, if necessary, and with the approval of Parliament. However, we note that there is a risk that a transition/implementation period that lasts much more than two years might exceed the vires of Article 50 and be subject to a legal challenge in the CJEU. (Paragraph 87)

We welcome the EU's commitment to an 'ambitious and wide-ranging free trade agreement', and we have now begun discussions on the future agreement in earnest.

Of course, as a responsible Government, we continue to plan for all scenarios, but with increased confidence that we will leave with a deal, and that a 'no deal' scenario in March 2019 is significantly less likely.

We are working at pace to ensure that the UK is ready for all outcomes and that the arrangements are in place to deliver a smooth, orderly exit and to implement our new relationship. Both the UK and the EU are in agreement that the implementation period should be strictly time-limited and the legal text states that the end date will be 31 December 2020.

This period will protect economic and regulatory cooperation, ensuring that there is no sudden change for businesses or individuals as we build our future partnership with the EU and to ensure that businesses will only have to make one set of changes. Citizens and businesses can plan with confidence for life after withdrawal.

10. The UK will be a 'rule-taker' with few formal rights to consultation under the current proposals for the transition/implementation period. We agree that the Withdrawal Agreement should establish a mechanism under which the UK can have a say on new EU laws that will apply to the UK during the period but which are devised after it has left the European Union's institutions and call on the Government to come forward with proposals for such a mechanism as soon as possible. (Paragraph 99)

As it usually takes around two full years for major legislation to pass through the EU system into law, virtually all of the laws that will come into effect during this time will have been drafted while the UK was a Member State. However, it is important that safeguards are in place. We have therefore agreed that the Joint Committee will allow both parties to discuss and resolve any concerns relating to the implementation of the Withdrawal Agreement.

As a non-member state, the UK will no longer have the same role in the decision making of the EU. However, we have agreed with the EU that it is in the interests of both sides that the UK continues to participate in some EU agencies, bodies and meetings, where we have an interest. The agreement we have reached allows for this; the exact nature of this participation is subject to further negotiations.

Furthermore, during the implementation period, the UK will be able to have recourse to the EU's judicial review structures in the same way as a Member State. The UK could therefore challenge new legislation before the CJEU if it had concerns over its compliance with EU law.

11. *We welcome the Prime Minister's recent speech on the Future EU-UK Partnership because it provided more details on the Government's approach and acknowledged the inevitable trade-offs that will result from the UK leaving the Single Market and Customs Union. Furthermore, it acknowledged that the EU's standards, regulations and enforcement structures would continue to have a significant effect on the UK. However, the speech failed to outline which EU standards and rules the Government expects the UK to continue to abide by and which it wants to diverge from or the economic case for either approach. (Paragraph 131)*

As the Prime Minister reiterated in her Mansion House speech, the UK is seeking the broadest and deepest possible partnership – covering more sectors and co-operating more fully than any Free Trade Agreement anywhere in the world today.

Both the UK and the EU want good access to each other's markets; both want competition to be fair and open; and both want reliable, transparent means of verifying commitments and resolving disputes.

The UK will continue to maintain its high standards after we leave the European Union. The UK is incredibly well placed to make this work. We have an unrivalled track record in promoting high standards, both at home and abroad.

The Prime Minister also set out how the future UK-EU economic partnership must include an ongoing dialogue with the EU, to ensure both parties have the means to consult each other regularly. In particular the UK will want to make sure both sets of regulators continue to work together; as they do with regulators internationally. This will be essential for everything from getting new drugs to patients quickly to maintaining financial stability. We start from the place where our regulators already have deep and long-standing relationships. So the task is maintaining that trust; not building it in the first place.

12. We welcome the Prime Minister's statement that the UK will wish to remain associated with certain EU agencies after exit. However, some EU agencies do not currently permit third country participation and the UK's contribution to decision making would not be guaranteed. It is acknowledged that the UK has great expertise to contribute in a number of fields that is valued within a number of EU agencies. However, the UK needs to make specific proposals for how it envisages continuing to make an important contribution after exit. Clarity must also be provided on what the UK's role will be in EU agencies during the transition period. (Paragraph 132)

On EU agencies, where there is a clear national interest in a future relationship, the Government is carefully examining how we will pursue this. As mentioned in your report, we want to explore with the EU the terms on which we could remain part of certain EU agencies, such as those that are critical for the medicines, chemicals and aerospace industries: the European Medicines Agency (EMA), the European Chemicals Agency (ECHA), and the European Aviation Safety Agency (EASA) respectively - associate membership is one option that we're considering. This is in order to meet our objective that goods should only have to undergo one series of approvals, in one country. Our relationship with these agencies will be a matter for the future relationship discussions.

We have been clear that we accept that this would mean abiding by the rules of those agencies and making an appropriate financial contribution. As it stands, there is longstanding trust and co-operation between UK and EU regulators as they work together very closely now. For example, in medicines, in 2016 the UK regulator assessed more new medicines through EMA structures than any other member state.

We also believe that it is in the mutual interest of both the EU and the UK to explore options for future UK collaboration with other EU agencies, such as those related to our future security partnership, like the European Defence Agency. As you have recognised, the UK has valuable expertise to offer to various EU agencies and we are considering how to continue to contribute in the future.

During the implementation period, as a non-member state, we have been clear that the UK will no longer have the same role in decision making of the EU. However, it is clearly in the interests of both sides that the UK continue to participate in some EU agencies, bodies and meetings. The agreement that we have reached on the implementation period enables UK participation in EU bodies and agencies where the UK has an interest; the exact nature of that participation will be a matter for further discussion.

13. The Commission has suggested that the negotiations on the treaties/agreements will be divided into four pillars to be negotiated in parallel and agreed separately. This structure seems sensible, as it will avoid the rigid, obstructive phasing that has characterised the Article 50 negotiations. However, the Government has not yet set out to Parliament its own view on how this process should be organised or acknowledged that the negotiations on a new partnership will in practice occupy a significant part of the transition/implementation period.

It should now outline exactly how the process should be structured and then seek agreement with the European Union. This must be done well in advance of October. (Paragraph 133)

We are pleased that the final guidelines on the framework for our future relationship were endorsed at the March European Council.

High-level discussions on the scope and priorities for our future relationship are now underway.

As part of ongoing discussions, we will of course agree with the European Union how we structure negotiations under Article 50, as well as any subsequent negotiations as a Third Country.

Article 50 makes clear that the Withdrawal Agreement needs to take account of the future relationship, so we will know the terms of our new partnership with the EU by the time of our exit. That is the basis from which we work.