House of Commons
Exiting the European Union Committee

The progress of the UK’s negotiations on EU withdrawal (March to May 2018): Government Response to the Committee’s Fifth Report

Fifth Special Report of Session 2017–19

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Exiting the European Union Committee

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Publication

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.
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Fifth Special Report


Appendix: Government Response

1. *There has been a successful effort on both sides to prioritise the protection of citizens’ rights and we welcome the progress that has been made on this part of the draft Withdrawal Agreement. However, statements from the Government and European Commission to the effect that the draft Withdrawal Agreement’s citizens’ rights chapter is concluded has led to uncertainty for UK and EU citizens. Both sets of negotiators have failed to explain clearly whether outstanding issues will form part of the negotiations on the future partnership, such as ongoing free movement rights for UK citizens in the EU or protection for groups of people not currently covered by the draft Withdrawal Agreement. The Government and Commission were more transparent on their citizens’ rights objectives in the phase 1 negotiations. We again call on the Government and the Commission to publish a new Joint Technical Note that sets out their negotiation objectives on citizens’ rights for Phase 2, together with the respective UK and the EU positions on each. We also encourage the Government to publish the process for EU citizens applying for Settled Status in more detail as soon as possible and to continue its engagement with EU citizens in the UK on their outstanding concerns.* (Paragraph 10)

The Government has reached an agreement with the EU on citizens’ rights for those citizens currently living in one another’s territories or arriving within the implementation period. This chapter of the Withdrawal Agreement is categorised as green. We have been clear on a number of occasions that there remain a few outstanding citizens’ rights issues to which we want to return to in future. These include issues that are important to many UK nationals living in the EU, and that is why we pushed strongly for these issues, such as onward movement, to be included during the first phase of negotiations. However, the EU made clear they were not ready to include these rights in the Withdrawal Agreement. The Government has not forgotten these issues, and we will raise them with the Commission in this phase of negotiations.

On other areas, such as the right to vote and stand in local elections, the EU Commission said they did not have the mandate to negotiate, as these fell within Member State competency. We have said that we will seek to agree bilateral arrangements with Member States to protect the rights of UK nationals where these rights will not continue. At every stage of these negotiations we are looking to secure the best possible deal for British nationals.

The Home Office have published a statement of intent to provide further detail about how EU citizens and their families can obtain settled status in the UK. The process will be straightforward and streamlined and we will support applicants through it. Most EU citizens will only need to prove their identity, evidence their residence in the UK and
declare any serious criminal convictions. An application will cost £65 and £32.50 for children under 16, less than the cost of a passport. It will be free for those with valid permanent residence or indefinite leave to remain documentation.

The Home Office will continue to design the application process for settled status with users in mind, and the Government will continue to engage with EU citizens every step of the way. The UK has established user groups, consisting of representatives of EU citizens in the UK, and digital, technical and legal experts, to help us factor stakeholder views into the design and operation of the new scheme.

These groups will enable us to test implementation systems and guidance as they are developed, build our understanding of the range of user needs, and develop communications in line with user needs.

The scheme will open for voluntary applications later this year. In the meantime, we encourage all EU citizens to sign up to Home Office email updates via the .gov website, to ensure that they stay informed on the progress of the scheme.

We note the Committee’s request for a new Joint Technical Note, and will take this into consideration with the European Commission as future partnership negotiations progress.

2. While the Home Office faces a number of significant challenges in delivering an orderly transition for EU citizens living in the UK, the Government has at least set out the general, overarching structure of the Settled Status application process. It is important that the process is quick, simple and available to people using a variety of technological platforms. There is little sign, however, that the same level of organisational planning has started in many EU Member States. Member States must set out what UK citizens should do to regularise their residential status, and communicate this information clearly. We recommend that the Government seek urgent clarification from the EU27 on their work on this, the operational requirements for any registration systems and what timeframes UK citizens will be required to meet. The Government should then publish and disseminate this information to UK citizens in the European Union. It would be unacceptable for these outstanding matters to be left to bilateral negotiations.

(Paragraph 12)

The Home Office is currently in the process of developing the settled status scheme and committed to delivering an application process that is streamlined and user-friendly as possible.

The agreement reached allows Member States to determine and implement and their own administrative arrangements for UK nationals but these must be in line with the agreement reached. Under the Withdrawal Agreement any processes for UK nationals must be short, simple and user friendly. Member States may, for example, choose to continue their current registration system, and issue eligible UK nationals with a residence document that confirms their entitlement to the protections of the agreement.

The Government is engaging closely with Member States via the FCO network to understand their plans and encourage them to provide guidance for UK nationals resident in their respective countries.
The Home Secretary was clear when he appeared before the EU Justice Sub-Committee in June, that both the European Parliament and Commission should also encourage Member States to do this as soon as possible. The Government will continue to seek clarification on this matter, and will of course look to disseminate information to UK nationals as soon as it is available.

We continue to engage with Member States across the EU to ensure citizens in the EU and the UK are prepared for our exit. We are holding outreach events with citizens both here in the UK and in Member States to raise awareness and to explain the actions they need to take.

3. The Commission and the Government have said that the draft Withdrawal Agreement chapter on the financial settlement has been finalised. However, the Government has left open the possibility that provisions could be included in the draft Withdrawal Agreement to link payment of the financial settlement to agreement of the future partnership. Any link between the financial settlement and the content of the Political Declaration on the future partnership is a matter for the negotiations and the Government should consider what specific text in the Withdrawal Agreement might achieve the best financial deal for the United Kingdom. (Paragraph 16)

The financial settlement reflects the UK paying its share of the outstanding EU commitments made during the period of our membership. The agreement reached in December 2017 was substantially lower than some of the figures that were being discussed publicly at the beginning of negotiations.

Crucially, we have secured a commitment that our rebate will continue to be applied. The settlement reflects that the UK can continue to participate in programmes funded through the current budget, and it includes safeguards to ensure that any changes to the key EU legislation that determines Member State contributions will not affect what we pay. We have also ensured that the UK will get our paid-in capital in the European Investment Bank returned to us in the event that we cannot secure an ongoing relationship with that institution.

In addition, we have successfully secured the right to appoint auditors to provide more assurance for Parliament and taxpayers that the UK only pays what it should under the terms of the Withdrawal Agreement. There are also provisions that enable future simplifications; for the closure of EU funded programmes; and the period over which we pay for pensions.

In keeping with the spirit of Article 50, and both sides’ commitments to the principle that ‘nothing is agreed until everything is agreed’, the financial settlement is agreed as part of the Withdrawal Agreement and the framework for the future relationship, the two are linked—and so must be concluded together. The Government has been clear that the agreement reached on the financial settlement was made as part of a broader package and in the spirit of our future partnership.

4. The Government has indicated that neither the maximum facilitation proposal nor the new customs partnership, if agreed, is likely to be ready in time during the agreed 21-month transition/implementation period. Each option will have to be judged against the commitment repeatedly made by the Government to have no hard border in Northern Ireland, no infrastructure at the border and to uphold in full the Good
Friday/Belfast Agreement. The Prime Minister has alluded to “contingencies” that can be triggered in this eventuality but has not set them out. The Secretary of State has ruled out any extension of the Customs Union but in the absence of any other plan, such an extension will be the only viable option. The Committee calls on the Government to set out clearly its proposals on customs beyond 2020, and any contingency plans as a matter of urgency. This should include whether it is likely that an extension of the transition/implementation period will be required and whether it intends to seek to include the option for such an extension in the Withdrawal Agreement. It is also highly likely that any special contingencies that are necessary at the border will have to be replicated in other Member States if they are to be effective. (Paragraph 21)

The UK Government in its White Paper has set out a proposal for a new Facilitated Customs Arrangement (FCA) with the EU. The FCA is a business-friendly model that seeks to facilitate the greatest possible trade between the UK and its trading partners, whether in Europe or rest of world, while allowing the UK to set its own tariffs. It removes the need for new customs checks and controls between the UK and the EU. The UK would apply the EU's tariffs and trade policy for goods intended for the EU as if in a combined customs territory. The UK would apply its own tariffs and trade policy for goods intended for the UK. The vast majority of UK goods trade would pay the right or no tariff at the UK border, with the remainder most likely to use the repayment mechanism. The FCA would enable the UK to control its own tariffs for trade with the rest of the world. The model includes a range of facilitations for trade with the rest of the world and the EU that will put the UK at the cutting edge of global customs policy. For businesses that trade between the UK and the EU it should mean no new barriers and no additional paperwork. The White Paper made clear that there will be a phased approach to delivery of the FCA which the UK will discuss with the EU. HMRC is working to ensure that our future customs arrangements with the EU can be in place as soon as possible.

The White Paper also proposes the application of common cross-border processes and procedures for VAT and excise, as well as some administrative cooperation and information exchange. This is aimed at ensuring no new declarations and border checks need to be introduced between the EU and UK for VAT and excise purposes as part of our future economic partnership. HMRC are on course to deliver functioning customs, VAT and excise regimes the UK will need once it leaves the EU in any scenario. This will enable trade to flow, HMRC to collect revenues and the UK to have a secure border.

As the Prime Minister and Secretary of State set out in Parliament on 18 July the Government will be publishing a set of technical notices to help businesses and citizens prepare for March 2019 in the event of a ‘no deal’ scenario.

5. We welcome the Secretary of State’s commitment to publishing the joint mapping exercise on areas of North/South cooperation but we note that no timetable for this has been provided. We request that the Government set out what work on the exercise is ongoing along with a timetable for when it will be concluded and the results published. This is important because this mapping exercise will show us exactly what is needed to meet the commitment made in the agreement reached between the UK and the EU in December 2017. (Paragraph 23)
The UK Government is currently negotiating the detail of the Northern Ireland protocol, including Article 8, which relates specifically to North-South cooperation, and will publish the mapping exercise as soon as negotiations relevant to this issue have progressed sufficiently. As previously set out, as this is a joint exercise any publication will need to be coordinated with the European Commission and Irish Government.

6. The Government and the Commission have agreed that there must be a backstop Protocol in the draft Withdrawal Agreement relating to the Northern Ireland border but any backstop must be acceptable to all sides. The Commission’s current proposal would undermine the constitutional integrity of the United Kingdom by effectively drawing an economic border in the Irish Sea. We support the Government’s rejection of this because whatever solution is reached to resolve issues around the Northern Ireland/Republic of Ireland land border it must involve the whole of the UK. The Government has said that it will set out its alternative backstop and we call upon it to do so as a matter of urgency, while making it clear that it will be seeking a permanent solution. (Paragraph 27)

The UK has always said our goal is to meet the commitments we set out in the December Joint Report through the overall UK-EU future partnership; the proposals set out in our White Paper would enable us to do just that.

The White Paper outlines a comprehensive approach to deal with the customs and regulatory issues central to avoiding a hard border between Northern Ireland and Ireland, while also respecting the economic and constitutional integrity of the United Kingdom. A UK-EU free trade area for goods would avoid friction at the border for goods and agricultural products, while the new Facilitated Customs Arrangement would remove the need for routine customs checks and controls. This would protect jobs and livelihoods across the UK and the EU, support the commitments to no hard border between Northern Ireland and Ireland and preserve the integrity of the Union.

The Government agrees with the Committee that the European Commission’s proposal for the backstop is unacceptable because it imposes a customs border between Northern Ireland and Great Britain. The UK’s counter-proposal on the customs elements of a temporary backstop is that a Temporary Customs Arrangement should exist between the UK and the EU. This would ensure that if a customs arrangement with the EU is not in place by the end of the Implementation Period there will be no hard border between Northern Ireland and Ireland, or between Northern Ireland and the rest of the UK.

We are clear this would only be used in very specific circumstances and that it would be time limited. It is not our preferred option.

In the context of our new proposals for a future relationship, we believe both parties should be able to resolve all remaining issues in the backstop—and we are committed to accelerating those discussions alongside negotiations on the future relationship.

7. During the transition/implementation period the UK will continue to be fully subject to the jurisdiction of the CJEU. Despite this, Article 6 of the Draft Withdrawal Agreement, which seems to have been agreed, provides that the term of office of British judges on the CJEU will cease on 29 March 2019. On the understanding that nothing is agreed until everything is agreed, we urge the Secretary of State for Exiting the European Union to address this anomaly before the Withdrawal Agreement is finalised. (Paragraph 29)
Judges and Advocates General appointed by Member States to the CJEU do not ‘represent’ their home country, nor is there any guarantee that they will sit on cases involving or referred by their home country. The UK will no longer be a Member State from March 2019 and it is right therefore that we withdraw from the institutions. Whilst we may no longer have a UK-nominated judge at the CJEU, during the Implementation Period we will maintain our right to intervene in cases before the Court, and our lawyers will maintain their rights of audience. This will ensure that UK interests can continue to be represented at the Court during the Implementation Period.

8. **It is likely that different types of dispute resolution bodies will be needed to enforce the provisions in the Withdrawal Agreement.** We agree that the CJEU should not be the final arbiter after the transition/implementation period is concluded. However, we do not see how dispute resolution can be left to the Joint Committee for technical and political arbitration alone. The only pragmatic and acceptable solution is a final arbiter whose composition is balanced between representatives from the UK and the EU’s institutions. We recommend that the Government urgently publish an update to its August 2017 position paper which sets out its preferences for dispute resolution, both across all of the relevant provisions in the draft Withdrawal Agreement and in respect of the future partnership. (Paragraph 34)

The dispute resolution mechanism for the Withdrawal Agreement remains a matter for negotiation and we will look to reach a position on governance that reflects the nature, substance and context of the Withdrawal Agreement. We recognise that there needs to be a clear and equitable mechanism for governing and enforcing our Withdrawal Agreement with the EU—as in any international agreement—and will continue to engage constructively on this in the negotiations.

The Government has set out in its White Paper on the UK’s future relationship with the EU proposals for joint institutional arrangements that provide for proper democratic accountability and appropriate mechanisms for dispute resolution, meaning cooperation can be managed effectively and the UK and the EU can address issues as they arise.

This proposal delivers on our commitment to bringing about an end to the jurisdiction of the CJEU in the UK. The EU institutions, including the CJEU, will no longer have the power to make laws for the UK and the principles of direct effect and of the supremacy of EU law will no longer apply in the UK. The new institutional arrangements will respect the UK’s sovereignty and the EU’s autonomy, and be sufficiently rigorous such that people across the UK and its wider family, and across the EU and its Member States can depend on them.

These new institutional arrangements will exist at different levels, in different formats and cover a broad range of issues, through a Governing Body at leader and ministerial level; through a Joint Committee, including sub-committees where relevant, at a technical level; through formal consultation between experts on regulatory issues and legislative changes; and through exchanges between the UK Parliament and the European Parliament. We expect that most issues will be resolved before becoming formal disputes, but where there is a dispute between the UK and the EU we propose that the Joint Committee, or by mutual consent, an independent arbitration panel, would provide clear and equitable mechanism for resolving disputes.
9. We note the Government’s assurances that the Political Declaration will be detailed and substantive. This is important in order to give Parliament the maximum possible information before voting on the Withdrawal Agreement. This objective is shared by the Commission, the European Parliament and some Member States but we also note the Secretary of State’s confirmation that the Political Declaration will not be a draft treaty. We are also not convinced that the Government will be able to negotiate a full trade and market access agreement, along with a range of other agreements, including on foreign affairs and defence cooperation, by 29 March 2019 not least because such negotiations have not apparently even begun. The Government has indicated it will publish a White Paper setting out its proposals. We welcome this and hope it provides much needed clarity on the Government’s intentions for citizens, business, institutions and the UK’s partners in the EU27 and enables the Government to set the terms of the ongoing phase 2 negotiations, in the same way that the Commission was able to do when it published its version of the Withdrawal Agreement in February. (Paragraph 41)

Over the past few months we have made significant progress across the range of issues relating to our withdrawal from the EU, and while this work will continue the most important issue for us must now be focussing on negotiating the right future relationship.

The White Paper published on 12 July sets out the Government’s proposals for the future relationship with the EU, and further details of the UK’s ambition for a bold, ambitious and innovative partnership.

Our negotiating teams are now working at pace with the EU on our future relationship.

They have held discussions with the European Commission on various aspects of the future economic and future security partnerships and we have published presentations setting out the Government’s position following some of these discussions on gov.uk.

Throughout the discussions we have focussed on developing a new partnership with the EU which builds on the breadth and depth of our shared interests and values, and thus goes beyond any existing third country arrangements. We hope to see similar ambition from the EU in response to the serious and workable proposals set out in the White Paper.