



House of Commons  
Exiting the European Union  
Committee

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**Response to the vote  
on the Withdrawal  
Agreement and Political  
Declaration: Assessing  
the Options**

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**Twelfth Report of Session 2017–19**

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

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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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# Conclusions and recommendations

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## Introduction

1. On 15 January 2019, the House of Commons voted by 432 votes to 202 not to approve the Withdrawal Agreement and Political Declaration on the Future Framework for Relations between the EU and the UK. We published our response the following day, calling on the Government to hold a series of indicative votes on a series of options for how to proceed that the Committee set out. The Government has now tabled a motion in neutral terms following the rejection of the Withdrawal Agreement. The House will meet on 29 January to debate this and any amendments tabled. (Paragraph 1)
2. We welcome the Prime Minister's undertaking to increase her engagement with Parliament in negotiations on the future partnership if a Withdrawal Agreement is reached. We also welcome her undertaking to give an enhanced role to the devolved administrations. If a deal is agreed, we look forward to seeing the PM's proposals on this increased engagement and will undertake further work on the role that the UK Parliament and the devolved administrations might play in shaping negotiations on the future partnership. (Paragraph 7)

## No deal

3. A lack of transparency and a lack of time have hampered Whitehall's preparations for a no deal exit. The scale of the task and the short timeframe in which to put new processes and systems in place and to prepare the statute book raise significant risks—risks to the quality of scrutiny, risks to the quality of the solutions and most importantly risks that there will be points of failure for which we will not have prepared. (Paragraph 16)
4. We are deeply concerned about the readiness of business, particularly small businesses, for a no-deal exit. Brexit was always going to lead to change for business with a range of new challenges but also opportunities. However, businesses have had no certainty about what to prepare for and, in the event of a no-deal exit would face an abrupt change in trading circumstances which would represent a cliff edge for many—an abrupt change which concerned our predecessor Committee two years ago for which, it is clear, many businesses have not prepared. The Government's belated efforts to engage with business and provide some form of guidance is unlikely to be sufficient to mitigate the worst effects of a no-deal exit for businesses because it is being provided so late in the day, many smaller businesses do not have the capacity to fully engage with what is required and because so much of that guidance is based on assumptions about how the EU might respond in a no-deal scenario which could turn out to be unjustified. (Paragraph 26)
5. Moving from trading with the EU as a member of the Single Market and the Customs Union to trading on WTO terms would be likely to mean a move from trading with zero tariffs with the EU to trade at tariff rates set in line with the EU's current Most Favoured Nation schedule at the WTO. Whilst the average tariff rate that would apply on goods is relatively low, the rates applicable to cars are 10% and

for some agricultural goods are very much higher. Tariff rates alone would have a very significant impact on the competitiveness of certain UK exports, in particular agricultural exports. (Paragraph 50)

6. The UK could decide to set a zero-tariff policy towards all its WTO partners. If it did so, the UK would lose the ability to offer tariff reductions or removal in trade negotiations, and would therefore have less leverage in future trade deals. We have previously suggested that the UK could apply a ten-year exemption within the WTO to allow it to continue to apply zero-tariffs to EU imports as part of an interim agreement. However, this is not a simple solution and, in any event, would require the EU's consent. In the meantime, there could be a risk of challenges at the WTO to any perceived breach of MFN provisions. (Paragraph 51)
7. However, more significant for most UK exporters would be the non-tariff barriers that would be faced by exporters of goods under WTO rules, including increased product standard checks and checks on rules of origin. These would all increase the cost and reduce the competitiveness of UK exports to the EU. Many UK goods exporters, including a large number of SMEs, have no experience of customs processes and, without significant preparation and support, are likely to simply withdraw from these markets. Some will be able to find other markets but others will not. We have seen scant evidence of preparations being made by business or sufficient support being provided by Government. (Paragraph 52)
8. A no-deal exit would also lead to an abrupt change in circumstances for those exporting services, half of which go to the EU. For many, barriers to trade will not be mere frictions, but a loss of authorisation to conduct business. Some larger operators have been able to prepare for a no deal outcome, in part by moving operations to the EU. Smaller operators may not have had the capacity to take such steps. (Paragraph 53)
9. The absence of any agreement on the transfer of data will be particularly significant, as the Government has acknowledged, and will create a substantial and costly burden for many businesses. The fact that UK data protection provisions will be aligned with those of the EU on exit day will not be sufficient. Without either a comprehensive agreement or an adequacy decision from the Commission, it will be illegal to transfer personal data from the EU to the UK without separate contractual arrangements. This is essential in a range of services, from sales of financial products to the management of client data in all aspects of the digital economy. Solutions may be possible but they will be burdensome and costly compared to the current position and will have a significant, as the Government has acknowledged, impact on the competitiveness of UK businesses involved. (Paragraph 54)
10. The rules of the Single Market and the Customs Union are enforced by the European Commission under the jurisdiction of the Court of Justice of the European Union. Any trade agreement will include dispute resolution provisions. The dispute resolution provisions of the WTO are not comparable—any dispute could take years to resolve, with the only remedy available for the UK to impose punitive tariffs on EU imports, a measure that would increase costs for UK consumers. In practice, a reversion to WTO rules would leave UK trade reliant on continuing goodwill with the EU. (Paragraph 55)



11. There is scope for major disruption at the UK's borders from a no-deal exit. Changes to trading arrangements, requiring increased checks, could lead to very significant delays, creating serious disruption to supply chains, particularly those that are time critical—fresh produce; pharmaceuticals; and components in just-in-time manufacturing processes. We are not convinced that the steps being taken by the Government to mitigate the worst effects of this disruption will be sufficient. Equally importantly, the avoidance of disruption will be dependent on steps that are taken in Calais and other cross-channel ports to prepare for any increased checks. However successful the Government's preparations are on this side of Channel, they will not avoid major disruption if reciprocal effective steps are not taken by EU Member States to ensure that trade continues smoothly. (Paragraph 69)
12. The UK Government accepted the need to avoid a hard land border in Ireland in December 2017, committing to no new infrastructure and no related checks and controls. We supported that commitment and continue to do so. It is clear that the Republic of Ireland and the EU also have no desire to re-create a border. However, a no-deal outcome poses questions as to whether it would be possible to maintain an open border. Given the EU's expressed concerns about maintaining the integrity of the Single Market and the Customs Union, it is difficult to see the EU, in the long-term, accepting a soft land border in Ireland whilst the UK maintained an independent regulatory policy and independent trade policy. (Paragraph 79)
13. Co-operation in policing and law enforcement are of vital importance for the security of the UK and highly valued by the police and law enforcement bodies. An aspiration to maintain many of the advantages of the current arrangements, or mitigate the effects of their ending, has been included in the non-binding Political Declaration. However, were the UK to leave the EU without an arrangement in place, there is a risk that the UK would lose both the current arrangements for cooperation and exchange of information and the trust that has accrued over decades. Alternative and mitigating measures would be more difficult to negotiate following such an exit and this could risk harming the security of both the EU and the UK. (Paragraph 88)
14. In the event of a no-deal exit, it is possible that solutions could be worked out to maintain co-operation on security and other matters which would be in the interests of both the EU and the UK, from exchanges of information on food health to educational exchanges. However, there is no guarantee that, in an acrimonious separation these arrangements could be established in the short to medium term. Even in a relatively harmonious no-deal separation, it may take time to establish the legal structures necessary to reconstruct these arrangements. (Paragraph 89)
15. The negotiated Withdrawal Agreement provides for a transition period of 21 months, during which EU citizens in the UK will be able to make an application for Settled Status and free movement of people will continue. If the UK leaves without the agreement, the Government has said there would be a 21 month period for EU citizens in the UK to apply for Settled Status, but it is not clear when the rules on free movement will end—the UK does not expect its new immigration system to be in place before 1 January 2021. At the same time, there is no way of knowing, with any confidence, how quickly the 3 million EU citizens in the UK will be able to apply and receive Settled Status. In a no deal, there will be large numbers of EU citizens in the UK with no certainty as to their legal status nor evidence to prove it. There

is a clear risk that EU citizens in the UK could face a hostile environment—where immigration law is applied by the landlord, the employer, or the service provider—because there would be confusion as to how they demonstrated their legal status, and landlords, employers or service providers may not know what would be required of them. (Paragraph 95)

16. We welcome the Commission Communication encouraging Member States to be ready to issue temporary residence permits in the event of a no deal, and to take a generous view as to whether UK nationals in their territory could be given long term residence status, and the public proposals that several Member States have put forward to give UK nationals a legal status. If giving these proposals legal effect requires legislation in each Member State, then it will take time, may lead to inconsistency between different countries, and there are strong indications from some EU Member States that they are waiting to see how the UK will manage EU citizens in the UK in the event of no deal before deciding on the rules that they will apply to UK nationals on their territory. The UK is asking EU citizens in the UK to make an application for Settled Status, which can be refused. In a no deal scenario, there will be considerable confusion as to the legal status of EU citizens in the UK before they all have secured Settled Status. (Paragraph 101)
17. We recommend that the Government provide to this Committee a written summary setting out the healthcare provision for UK nationals currently resident in each EU27 Member State, in the event of the UK leaving the EU without a Withdrawal Agreement. (Paragraph 102)
18. The aggregation of contributions made in more than one Member State and the ability to draw on benefits in another as a result is a benefit of free movement enjoyed by many UK and EU citizens, and clearly for many pensioners. Such co-operation would continue, for those citizens covered by the Withdrawal Agreement, in the event of a deal. In the event of leaving without a deal, this co-operation would be lost. (Paragraph 107)
19. The Government states that some UK nationals may be forced to return to the UK in the event of a no deal depending on the approach taken by their current host EU country. This would raise a number of questions around access to services, especially healthcare, but also how quickly they could access housing and social security. In the absence of the reciprocal arrangements that enable contributions in one Member State to be aggregated and relied upon in another State, there is a clear risk that the onus for providing documentary evidence of contributions in another Member State will fall on the individual. (Paragraph 110)
20. Both the UK and the EU have said that resolving the issue of citizens' rights were priorities for the withdrawal negotiations and are contained in the Withdrawal Agreement text. The importance placed on how EU citizens are treated in the UK will not change. The UK leaving the EU without a deal would cause real anxiety both for UK citizens living in the EU and EU citizens in the UK. (Paragraph 113)
21. In the event of the UK leaving the EU without a deal, the UK should offer to the EU that it is ready to ring-fence the citizens' rights contained in the Withdrawal

Agreement, and agree the relevant sections as a separate Treaty under Article 50. It should call on other Member States to respond positively to this proposal. (Paragraph 114)

22. The Government's no-deal technical notices place significant weight on assumptions about how the EU will respond in the event of no-deal. This is at odds with the assumptions of most of our witnesses that the scope for side deals will be quite limited and will focus on areas of the EU's greatest interest rather than the interests of the UK. It is also clear that any side deals also require the maintenance of a degree of goodwill between both sides. This will require some settlement of financial obligations and a generous guarantee of the rights of EU citizens. It is also difficult to see goodwill being maintained without an indication of the path that can be followed to ensure that a hard border in Ireland can be maintained while the UK maintains the right to establish an independent trade policy and pursue policies that may entail regulatory divergence. (Paragraph 122)

### Renegotiation of the deal

23. The House could decide that the Political Declaration, which offers no certainty on the UK's end state relationship with the EU, should be amended to provide clarity on a shared understanding between the UK and the EU about a mutually agreeable end state. This would require re-negotiation which would, most likely, require a limited extension of the Article 50 process. We would expect that, within reason, the EU would accede to any such limited request, although such a decision does require the unanimity of the 27. The pronouncements of the EU indicate that any request to re-open negotiations on the legally binding Withdrawal Agreement would not receive a positive response. (Paragraph 151)
24. If the House decides to accept the Withdrawal Agreement but to amend the Political Declaration in a way that sets out a clear end state for the future UK-EU relationship, there will inevitably be trade-offs between the level of UK regulatory autonomy and the level of market access and opportunities for future EU/UK co-operation in a range of fields. (Paragraph 152)
25. We note that the Government is seeking an economic relationship that would enable frictionless trade to continue. This would not be possible under a CETA-style free trade agreement with the EU. Furthermore, under this arrangement, Northern Ireland would not be included and would trade under different rules from the rest of the UK, as set out in the backstop Protocol, resulting in a trade and regulatory border in the Irish Sea. (Paragraph 153)
26. A Norway Plus relationship between the UK and the EU, or a variation of this option, would enable frictionless trade on the condition that the UK continued to adhere to EU rules. Along with following Single Market rules, the UK would need to be in a UK-EU customs union, which would further constrain its trade policy. The Government has not faced up to these trade-offs. (Paragraph 154)

### A second referendum

27. A second referendum is logistically and politically complex, but not out of the question if political will existed in the UK Parliament. It should not necessarily be seen as an alternative to the other options discussed in this report but could be combined with any one of them. Even if there was the political will, however, there would not be time for the UK to hold a referendum before 29 March 2019. If the UK chose to hold another referendum before the UK left the EU, then it would need to make a request to the European Council for an extension to the Article 50 period. (Paragraph 159)
28. The UK notified the EU on 29 March 2017 that it would leave the EU and, in accordance with Article 50, unless the process is extended or revoked or earlier exit is agreed, the UK will cease to be a Member State of the EU on 29 March 2019. (Paragraph 164)
29. It is possible to extend the Article 50 period beyond 29 March 2019. The UK cannot do this unilaterally but would need to ask the European Council for an extension which could only be agreed by unanimity. (Paragraph 165)
30. There have been indications that the EU27 would look favourably on a request for an extension if it was to allow time for the ratification process to be completed, for a second referendum, or for a general election. The EU27 appear unlikely to look favourably on a request for an extension to allow more time for negotiations, although it has been suggested that there would be a greater chance of allowing some further negotiations on the Political Declaration. If the EU were to agree an extension, it is likely to be time limited rather than open ended. (Paragraph 166)
31. It is possible for the UK unilaterally to revoke the notification to leave under Article 50. However, in the Wightman judgment, the CJEU said that revocation must be unequivocal and unconditional—it is not a mechanism to buy time—and it brings the withdrawal process to an end. The CJEU also said that the decision to revoke should follow a democratic process and comply with domestic constitutional requirements. The CJEU declined to define what this requires but it is likely that either a resolution of the House of Commons or primary legislation would be sufficient. (Paragraph 170)

### Conclusions

32. There is no majority in the House for the Prime Minister's deal in its current form. We repeat our recommendation from our January 2019 Report that "It is vital that the House of Commons is now given the opportunity to identify an option that might secure a majority". (Paragraph 171)
33. There appears to be no majority in the House of Commons in favour of a no deal exit, although that remains the default outcome if the House of Commons is unable to approve the deal that has been reached or pass the legislation required to implement it in domestic law. While the EU might agree to side deals to mitigate the worst of the disruption of a no deal outcome, this cannot be guaranteed, and we are concerned by the extent to which assumptions of an ongoing cooperative

relationship underpin the Government's no deal planning. Since these assumptions cannot be guaranteed, a "managed no deal" cannot constitute the policy of any responsible Government. (Paragraph 172)

34. Any co-operative relationship with the EU following a no deal exit will likely require the UK to come up with a reasonable offer on settling its outstanding financial obligations, undertake some guarantee of the rights of EU citizens in the UK, and provide some indication of how a hard border in Ireland will be avoided in the event that the UK pursues an independent trade policy and a policy of regulatory divergence. Without guarantees in these three areas, which have been the EU's priorities since the beginning of the process, expectations of maintaining cooperation to minimise disruptions to trade, security co-operation and a whole range of areas of mutual interest could be misplaced. (Paragraph 173)
35. However, there are options to pursue if the Government is able to identify a course of action that will be supported by the House of Commons. The UK has the right to revoke Article 50 and, if there is a majority for such a course of action, Parliament could, if necessary legislate for a referendum. This would most likely require an extension of the Article 50 process which, for this purpose, we are confident would be granted. (Paragraph 174)
36. Another option is re-negotiation. There is little to suggest that a request to the EU to re-open negotiations on the legally binding provisions of the Withdrawal Agreement would be welcomed. However, a majority in the House of Commons may be able to accept the terms of the Withdrawal Agreement if it has a greater degree of confidence that the Government is on track to negotiate a future relationship that it would find acceptable after exit. None of the future relationship options that have been discussed are "off the shelf" and it may be necessary to request an extension for further negotiations on the Political Declaration to seek to define before exit a future relationship that the House of Commons can accept. (Paragraph 175)

# 1 Introduction

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1. On 15 January 2019, the House of Commons voted by 432 votes to 202 not to approve the Withdrawal Agreement and Political Declaration on the Future Framework for Relations between the EU and the UK. We published our response the following day, calling on the Government to hold a series of indicative votes on a series of options for how to proceed that the Committee set out. The Government has now tabled a motion in neutral terms following the rejection of the Withdrawal Agreement. The House will meet on 29 January to debate this and any amendments tabled.

2. The First Option that we identified on 16 January was to hold another vote in Parliament on the draft Withdrawal Agreement and Framework for the Future Relationship. In our report of 16 January we said “the scale of the defeat on 15 January would suggest that a repeat of the vote without significant changes would be futile.”<sup>1</sup> Furthermore, we examined those documents in detail in our tenth Report and therefore we have not done so again here.<sup>2</sup>

3. The Second Option that we identified was to leave the EU with no deal on 29 March 2019. The implications of such an outcome are examined in further detail in Chapter 2.

4. The Third Option was to call on the Government to seek to re-negotiate the deal to achieve a specific outcome. The three main renegotiations possibilities that we identified were:

3(a) Seeking changes to the text in the Withdrawal Agreement on the backstop arrangements;

3(b) Seeking a Canada-style deal; and

3(c) Seeking to join the EEA through the EFTA pillar and remaining in a customs union with the EU or a variation on this.

5. We comment further on each of these possibilities in Chapter 3. We also carried out detailed scrutiny of a number of models for the future UK-EU relationship in our Fourth Report of this Session, including the current relationship between Norway and the EU, based on the EEA Agreement, and the Deep and Comprehensive Free Trade Agreement negotiated between the EU and Canada. While these “off the shelf” models provided a useful guide, we noted in our report that “there is no precedent for Brexit and any deal reached between the UK and the EU on the UK’s future relationship will, by its nature be bespoke.”<sup>3</sup>

6. The Fourth Option that we identified was that Parliament could decide to hold a second referendum to allow the British people to decide either which kind of Brexit deal they want or whether they wished to remain in the EU. We set out the procedural and logistical questions that would need to be addressed if the House were to pursue this course of action in Chapter Four. Holding a second referendum would certainly require

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1 Eleventh Report of Session, 2017–19, HC1902, para 7

2 Tenth Report of Session 2017–19, HC1778

3 Fourth Report of Session 2017–19, HC935, para 174

an extension to the Article 50 period and we also examine the practicalities of seeking such an extension, either for this purpose or for any other purpose, including seeking a renegotiation of the deal, in that chapter.

**7. We welcome the Prime Minister’s undertaking to increase her engagement with Parliament in negotiations on the future partnership if a Withdrawal Agreement is reached. We also welcome her undertaking to give an enhanced role to the devolved administrations. If a deal is agreed, we look forward to seeing the PM’s proposals on this increased engagement and will undertake further work on the role that the UK Parliament and the devolved administrations might play in shaping negotiations on the future partnership.**

## 2 No deal

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8. If no withdrawal agreement is ratified under the terms of Article 50 before 29 March 2019 and there is no extension or revocation of the process, the UK will leave the EU without a deal at 11pm on that day and will be treated as a third country from that point onwards. This is the default scenario.<sup>4</sup> The UK's trading relationship with the remaining EU27 Member States will move from the arrangements of the Customs Union and the Single Market to that of the WTO at that moment. Other elements of the UK's current relationship with the EU will also come to an end, including security co-operation and exchanges in research and education. Such an outcome was described by Chris Heaton-Harris MP, the Parliamentary Under Secretary of State responsible for contingency planning, as "suboptimal."<sup>5</sup> The extent to which, as a third country, the UK can maintain arrangements in areas of mutual interest is unknown.

### The Government's preparations for exiting without a deal

#### *Co-ordination across Whitehall*

9. The Department for Exiting the EU has overall responsibility for co-ordination of preparations for "no deal" across government.<sup>6</sup> Other government departments have also been preparing for exit and have been subjected to the scrutiny of other Select Committees of the House.

10. A key challenge to no deal planning has been a lack of direction and transparency in Whitehall. According to the Institute for Government, the "political climate has created a culture of extraordinary secrecy, which is incompatible with a task that is so dependent on co-ordination."<sup>7</sup> They noted that the flow of information across departments and public bodies had been stifled by extraordinarily high levels of security clearance and limited engagement. Secrecy had made it difficult for departments to align plans and there was a lack of clarity following the March 2018 agreement in principle on transition about what that meant for contingency planning.<sup>8</sup> Sir Amyas Morse, Comptroller and Auditor General, repeated this message, telling us that the changes in urgency for no deal planning had been disorientating for departments,<sup>9</sup> having found that the Department for Environment, Food & Rural Affairs (Defra) had paused its no deal preparations after the March agreement.<sup>10</sup> Sir Amyas Morse had also been aware of civil servants using NAO reports to find out what was happening with EU exit preparations across Whitehall which, he added, was not "a good state of affairs."<sup>11</sup> He told us that the secrecy and withholding of information had all been "taken a bit too far, frankly."<sup>12</sup>

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4 [Q3169](#)

5 [Q3554](#)

6 [Q2564](#)

7 Institute for Government, [Preparing Brexit: How ready is Whitehall?](#) June 2018, p4

8 *Ibid*

9 [Q2713](#)

10 National Audit Office, [Department for Environment, Food and Rural Affairs: Progress in Implementing EU Exit](#), HC 1498, 12 September 2018, para 3

11 [Q2700](#)

12 [Q2700](#)



11. Sir Amyas Morse believed that the arguments for not revealing information which might damage the UK's negotiating position would “decay” as the Article 50 deadline approached. He told us in October that “the sense of urgency generated by the approach of the March date [had] led to more openness, clearer messages and clearer prioritisation.”<sup>13</sup> He used HM Revenue & Customs (HMRC) and Defra as examples of departments which had successfully reprioritised their programme of work to allow for greater focus on preparations for both a deal and no deal. Although, as we heard from the Minister, Whitehall had only belatedly been able to focus on no-deal planning as Government had spent “so much time, energy and effort on trying to get a deal, and as the sole focus of everybody in Government—not sole focus, but the priority focus—has been trying to get the deal over the line.”<sup>14</sup>

12. Notwithstanding this delay to no-deal preparations, according to the Institute for Government there has been insufficient time for more than “temporary sticking plasters, attempting to limit disruption where possible with work needing to continue long beyond Brexit.”<sup>15</sup> Mike Thompson from the Association of the British Pharmaceutical Industry (ABPI) told us that the scale of what the UK is trying to do by the end of March 2019 means that some things will go wrong.<sup>16</sup> Sir Amyas Morse agreed, saying:

There is so much concentrated risk. If you think about it, if you pardon me saying, you would not start from here. A lot of things are going forward with very short timescales and, generally speaking, the civil service is putting a terrific effort behind this, but because of the large number of unresolved risks that will be there in March, some are bound to come to reality. Rather than saying it will fall apart like a chocolate orange, what will happen is there will be points of failure.<sup>17</sup>

13. Jon Thompson, Chief Executive and Permanent Secretary, HMRC, argued that the risks with no deal are compounded by the unknowns. Looking particularly at the border, he told us:

We cannot give you or Ministers any assurances whatsoever of what will actually happen in the event that there is no deal, or what will happen between the point when you reach that and 31 March. We do not know. We can plan—we would need to swiftly engage, have a conversation and see whether we could practically navigate our way around these issues—but we do not know, I cannot speculate and we also cannot talk. There are multiple problems here. I cannot say it will all be fine. I absolutely cannot tell you that.<sup>18</sup>

## Legislation

14. A further aspect of the Government's preparedness for leaving the EU without a deal concerns the statute book. The Government has so far managed to pass six exit-related bills - the EU (Notification of Withdrawal) Act, the EU (Withdrawal) Act and four other

13 [Q2701](#)

14 [Q3555](#)

15 Institute for Government, [Brexit: six months to go](#), September 2018, p3

16 [Q2795](#)

17 [Q2690](#)

18 [Q2914](#)

Acts covering nuclear safeguards, international sanctions, road haulage and customs. The Minister confirmed to us the list of primary legislation currently before Parliament which would need to be passed by the end of March:

We have the Trade Bill, the Fisheries Bill, the Agriculture Bill, the Financial Services (Implementation of Legislation) Bill especially for no deal, the Healthcare (International Arrangements) Bill, the Immigration and Social Security Co-ordination (EU Withdrawal) Bill and the EU (Withdrawal [Agreement]) Bill itself, introduced when Parliament has approved the final deal [ ... ] The in-flight financial services Bill makes sure there is certainty for pieces of legislation that are currently on track.<sup>19</sup>

15. In terms of secondary legislation, the Minister suggested in October that around 100–150 Statutory Instruments (SIs) would be laid in each of December and January, and 10–50 in each of February and March.<sup>20</sup> In his evidence to us in January, the Minister told us he anticipated 600 SIs, of which 304 had already been laid. He said he was confident that the remainder would be passed in time, having undergone the proper scrutiny, and without the need to cancel the February recess.<sup>21</sup> By contrast, Jill Rutter, Programme Director, Institute for Government, expressed concerns about the amount of work Parliament would face if the SIs did not come through in an even flow and the demand this was placing on legislation and drafting capacity in Government. She argued that the number of SIs would have implications for the “quality of scrutiny” in Parliament.<sup>22</sup>

**16. A lack of transparency and a lack of time have hampered Whitehall’s preparations for a no deal exit. The scale of the task and the short timeframe in which to put new processes and systems in place and to prepare the statute book raise significant risks—risks to the quality of scrutiny, risks to the quality of the solutions and most importantly risks that there will be points of failure for which we will not have prepared.**

### **Government expenditure**

17. In a speech in August the then Secretary of State for Exiting the EU, Rt. Hon. Dominic Raab MP, outlined the Government’s preparations for no-deal. He noted the need to establish the legislative framework for a no-deal exit and the need to recruit additional staff—there were 7000 civil servants currently working on Brexit with funding for an additional 9000 to be recruited. The Government was also working on bolstering the UK’s institutional capacity and ensuring that the UK was able to continue with international agreements.<sup>23</sup> In the November 2017 Budget the Chancellor made £3 billion of funding available for departments and the devolved administrations over the next two years to implement plans for various exit scenarios, including no deal. There was a subsequent increase by £0.5 billion in the 2018 Budget.<sup>24</sup>

19 [Qs3732–3](#)

20 Secondary Legislation Scrutiny Committee, Forty Second Report, [Letter from Mr Chris Heaton-Harris MP, Parliamentary Under Secretary of State for Exiting the European Union](#), 25 October 2018

21 [Qs3629–33](#)

22 [Q2762](#)

23 DExEU, [Secretary of State Dominic Raab’s speech on no deal planning](#), 23 August 2018

24 Commons Library, [What if there’s no Brexit deal?](#), 28 December 2018

18. In December, the Cabinet approved the allocation of £2 billion of those funds on preparations for a no-deal exit.<sup>25</sup> It was reported that £480 million been allocated to the Home Office to employ more border force officers and “boost national security”, DEFRA would receive £410 million and HMRC would receive £375 million allowing for the recruitment of 3,000 new staff to deal with increased customs activities and to invest in new IT.

19. However, the Chancellor of the Exchequer has apparently expressed concerns that only one third of the £1.5 billion previously allocated has been spent.<sup>26</sup> This raises concerns about the capacity of the Government to effectively absorb extra spending in a matter of weeks before exit. John Manzoni, Permanent Secretary for the Cabinet Office, told the Public Administration and Constitutional Affairs Committee in December that, ultimately, he expected even more money to be required.<sup>27</sup>

### **Government engagement with business**

20. In order to assist businesses in their contingency planning, Government departments have been publishing guidance in the form of technical notices covering a number of areas; over 100 have been published so far.<sup>28</sup> These have been complimented by Partnership Packs detailing changes at the border.<sup>29</sup> The Institute for Government has highlighted that the technical notices outline an ambitious agenda for the Government which, in the event of no deal, intends to negotiate agreements with the EU/EU Member States; negotiate other international agreements; pass further legislation; establish new systems and processes; and create new or expand the capacity of existing UK bodies. The recommendations for UK businesses include reregistering/re-authorising products or services in the EU; changing processes to maintain EU market access; establishing an EU presence; complying with different UK processes; and seeking professional advice.<sup>30</sup> Much of this advice is predicated on a degree of continuing co-operation with the EU in the event of a no deal exit; we consider the validity of this assumption further at the end of this chapter.

21. Richard Burnett, Chief Executive of the Road Haulage Association, told us in October:

It was not really until the early part of this year—maybe February or March—that we had the first detailed conversations [with Government] to say, “You are not engaging enough with business to understand what the practical handshakes are that would need to be undertaken at that point in time in order to make sure that we are protecting the flow of goods.”<sup>31</sup>

22. Martin McTague, Policy and Advocacy Chair of the Federation of Small Businesses (FSB), cautioned that many FSB members have “tuned out” of the Brexit process. He warned that 86% of small businesses had made no preparations at all for a no-deal scenario<sup>32</sup> and that virtually every small business has taken it for granted that they currently have

25 BBC, [Brexit: Cabinet ‘ramps up’ no-deal planning](#), 18 December 2018

26 The Sun, [Government gives Britain’s 6 million businesses 101 days to prepare for a No Deal Brexit](#), 17 December 2018

27 PACAC, [Oral evidence: The work of the Cabinet Secretary, Q145](#), 13 December 2018

28 UK Government, [How to prepare if the UK leaves the EU with no deal](#)

29 UK Government, [Partnership pack: preparing for changes at the UK border after a ‘no deal’ EU exit](#)

30 Institute for Government, [The UK still isn’t ready for a no deal Brexit](#), 28 September 2018

31 [Q2778](#)

32 [Q2772](#)

“completely frictionless trade.”<sup>33</sup> He added that it will come as a “pretty rude shock if they are faced with a lot of additional time constraints and bureaucracy that they were not prepared for.”<sup>34</sup>

23. Jon Thompson from HMRC admitted that his department’s biggest concern about business customers is regarding “readiness and awareness for day one of no deal.” He told us that there has been “limited engagement” with the 145,000 intra-EU traders. Additionally, he believed that there are a further 100,000 intra-EU traders who HMRC are not aware of because they have not informed HMRC that they conduct intra-EU trade.<sup>35</sup> These include many small and medium-sized enterprises that are below the VAT threshold but are trading within the EU.

24. Julian Jessop, Chief Economist, Institute of Economic Affairs, described the degree of uncertainty among businesses as “clearly very high.” However, he believed that businesses “will deal with whatever they are given. If that is an increase in frictions that is what businesses do; they can deal with frictions.”<sup>36</sup>

25. Our predecessor Committee warned back in January 2017 that:

A “cliff edge” change in circumstances could be extremely disruptive in some sectors to businesses both in the UK and in the EU27, whether it be the need to adjust to new provisions for regulatory approval, new customs requirements, or the need to adjust to new costs or restrictions in employing EU workers.<sup>37</sup>

**26. We are deeply concerned about the readiness of business, particularly small businesses, for a no-deal exit. Brexit was always going to lead to change for business with a range of new challenges but also opportunities. However, businesses have had no certainty about what to prepare for and, in the event of a no-deal exit would face an abrupt change in trading circumstances which would represent a cliff edge for many—an abrupt change which concerned our predecessor Committee two years ago for which, it is clear, many businesses have not prepared. The Government’s belated efforts to engage with business and provide some form of guidance is unlikely to be sufficient to mitigate the worst effects of a no-deal exit for businesses because it is being provided so late in the day, many smaller businesses do not have the capacity to fully engage with what is required and because so much of that guidance is based on assumptions about how the EU might respond in a no-deal scenario which could turn out to be unjustified.**

## The implications for trade

27. The Economists for Free Trade have pointed out that “far from being a leap into the unknown, trading with the EU under WTO rules would be a leap into the familiar.”<sup>38</sup> Pascal Lamy, former Director General of the WTO and former EU Commissioner, explained to us that:

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33 [Q2839](#)

34 [Q2840](#)

35 [Q2863](#)

36 [Q2750](#)

37 First Report of Session 2016–17, HC815, para 163

38 Economists for Free Trade, [No Deal is the Best Deal for Britain](#), 13 January 2019

If you look at trade on the planet, seen from the moon, you have four leagues. You have league number one, which is the domestic system and the Internal Market. League number two is for bilateral trade agreements. League number three is the WTO regime. League number four is for countries who are not members of the WTO—basically, North Korea, Algeria and a few others.<sup>39</sup>

28. The Single Market is based on the free movement of goods, people, services and capital, and aims to make trade between Member States easier through the removal of barriers to trade, and harmonisation of national rules. Without a deal in place ahead of 29 March 2019, businesses will have to adapt to trading in services and goods on World Trade Organisation (WTO) terms. The UK in a Changing Europe has pointed out that trading on WTO terms alone is the default position for WTO members, but in practice no member does so without additional agreements. Although many trade barriers have been lowered through WTO membership, all countries seek even less friction. All 164 WTO members have better access to at least one market either through a free trade agreement or duty-free preferences, which are often offered to developing countries. In fact, most have several deals. For example, the US, Brazil, China and India all have trade agreements with their closest neighbours. Even as it stands, the UK does not trade merely on WTO terms with many countries outside the EU. With the US, for instance—the UK’s biggest non-EU trade partner—trade is regulated by over 100 sectoral agreements, derived from EU membership, that go well beyond WTO provisions.<sup>40</sup>

## Services

29. Services make up the majority of the UK economy and around 80% of UK jobs. Around half of the UK’s trade in services is with the EU.<sup>41</sup> Pascal Lamy acknowledged to us that the Single Market is still imperfect in services,<sup>42</sup> however, the House of Lords EU Committee in the last Parliament noted that “it would be a mistake to conclude that it is unimportant. In fact, the Single Market remains the most integrated regime for services trade in the world.”<sup>43</sup> Trading on WTO terms in a no-deal exit would mean the UK would rely only upon its commitments made on services in the General Agreement on Trade in Services (GATS) in its trade with the EU. The Treasury Committee in the last Parliament noted that, under GATS, countries choose which sectors they are prepared to liberalise and the time scale over which they wish to do so. The principle of non-discrimination applies, meaning that any restrictions on market access must be applied equally across all countries. However, there is no presumed right of market access, nor any means of tackling non-discriminatory barriers. The Treasury Committee noted that “the WTO has made virtually no progress whatsoever in breaking down barriers to the trade in services” and that, compared to the Single Market, it “offers a much more limited freedom to provide services ... on equal terms with domestic service providers.”<sup>44</sup>

39 [Q1106](#)

40 The UK in a Changing Europe, [What would trading on WTO terms mean?](#), 6 December 2018

41 UK Government, [EU Exit: Long-term economic analysis](#), November 2018

42 Committee on Exiting the EU, [The future UK-EU relationship, Fourth Report of Session 2017–19](#), HC 935, 4 April 2018

43 Lords European Union Committee, [Brexit: trade in nonfinancial services, 18th Report of Session 2016–17](#), HL 135, 22 March 2017

44 Treasury Committee, [The economic and financial costs and benefits of the UK’s EU membership, First Report of Session 2016–17](#), HC 122, 27 May 2016

30. Trade in services inside the Single Market is facilitated by the recognition of some professional qualifications. Under a no-deal exit, the recognition of professional qualifications of UK nationals in an EU-27 Member State will be governed by the national policies and rules of each Member State, rather than by the EU framework. The recognition of professional qualifications is particularly important for the accounting and audit professions,<sup>45</sup> as well as for legal services.<sup>46</sup> We were told that the larger firms were likely to be able to find solutions but small or medium-sized businesses “just do not have the bandwidth to do anything other than business as usual.”<sup>47</sup>

### *Financial services*

31. The Single Market for financial services is highly integrated, underpinned by common rules and standards, and extensive supervisory co-operation between regulatory authorities at an EU and Member State level. Firms, financial market infrastructure, and funds authorised in any EEA country can carry out many activities in any other EEA country through a process known as “passporting”, as a direct result of their EU authorisation without requiring authorisation or supervision from the local regulator. Furthermore, some types of financial services entities operating in the UK are currently supervised by EU agencies. The Government has highlighted that it is preparing a series of unilateral measures to minimise disruption to the continuity of financial services provision, to protect the existing rights of UK consumers, and to ensure financial stability.<sup>48</sup>

32. We heard concerns about the risks in particular for the continuity of contracts for derivatives and insurance once the passporting system falls away.<sup>49</sup> The European Commission has stated that over-the-counter derivatives will, in principle, remain valid and executable until maturity. As regards cleared derivatives, the Commission believes that existing systems of equivalence provide appropriate tools, which can be swiftly deployed. Should the Commission need to act, it has said that it will adopt temporary and conditional equivalence decisions to ensure that there will be no disruption.<sup>50</sup> Mark Carney, Governor of the Bank of England, has confirmed that “a few” necessary SIs to enable the Bank of England to deal with these matters with regards to firms that are being wound up are outstanding. He added that the Bank is in “regular discussions” with the Treasury about ensuring that the minimum authorities are given to make sure that the market runs smoothly.<sup>51</sup>

33. We were told in April that there was a “good” working relationship between UK and EU regulators.<sup>52</sup> The Bank of England and the European Central Bank have convened a technical working group, focusing on risk management in the period around exit.<sup>53</sup>

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45 [Q1308](#)

46 [Q1309](#)

47 [Q1309](#)

48 HM Treasury, [Banking, insurance and other financial services if there’s no Brexit deal](#), 23 August 2018

49 [Qs 1311](#) and [1340–4](#)

50 European Commission, [Communication, “Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan”](#), 13 November 2018

51 Treasury Committee, [Oral evidence: Bank of England Financial Stability Reports, HC 681, Q118](#), 16 January 2019

52 [Q1329](#)

53 HM Treasury, [Banking, insurance and other financial services if there’s no Brexit deal](#), 23 August 2018

The Commission has encouraged the European Supervisory Authorities to prepare co-operation arrangements with UK supervisors to ensure that exchange of information is possible immediately after the withdrawal date in the case of a no deal scenario.<sup>54</sup>

34. The Commission has noted that many EU financial services firms have prepared for a scenario in which the UK is no longer part of the Single Market, for example by adjusting their contracts or relocating capacities and activities to the EU-27. The Commission has called on this work to be accelerated, but has cautioned that it will not be possible to complete it in time in all areas. While this could cause risks to financial stability in the EU, the Commission believes the risks to the EU financial services sector linked to a no-deal scenario have diminished significantly.

### Data

35. We have commented previously on the value of the UK maintaining high standards in data protection and ensuring that data can continue to be transferred across borders as it is now.<sup>55</sup> The EU's data protection framework has been implemented into UK domestic law.<sup>56</sup> In its response to our report on data, the Government noted that: "data flows envelop all trade in goods and services as well as other business and personal relations. They are critical for both sides in a modern trading relationship."<sup>57</sup> With regard to law enforcement, the Government also said that being able to transfer data within the EU and with third countries was "crucial in our efforts to fight cross border crime and prevent terrorism."<sup>58</sup>

36. The preferred solution for the UK would be for the Commission to make an adequacy decision and so enable data to continue to be transferred on a legal basis after the UK has left. However, the adequacy process will not start before the UK leaves the EU and the current assumption in Government is for this process to take place during the 21-month transition period.<sup>59</sup> The Political Declaration states that the Commission will endeavour to adopt a decision by the end of 2020.<sup>60</sup> The value of being able to move data, and the need to secure an adequacy agreement, was raised with us not just in respect of the digital industries, but across a range of sectors from medical research to financial services. For example, Huw Evans, Director General, Association of British Insurers, told us:

The agreement on the transition allows enough time to negotiate an adequacy agreement that could then come into force at the point the transition period ends. It is vital it does. Nobody knows how you would possibly manage any form of gap. Data transfers are absolutely central to how all our businesses work and how individuals and businesses are served.<sup>61</sup>

54 European Commission, [Communication, "Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan"](#), 13 November 2018

55 Seventh Report of Session 2017–19, HC 1564

56 The Data Protection Act 2018 provides the legal basis for data protection in the UK. The legislation ensures compliance with the General Data Protection Regulation (GDPR) and transposed the Law Enforcement Directive. This regime permits the transfer of personal data within the European Economic Area (EEA)—28 EU Member States plus Norway, Iceland and Liechtenstein.

57 The progress of the UK's negotiations on EU withdrawal: Data: [Government Response to the Committee's Seventh Report](#), Sixth Special Report of Session 2017–2019, HC 1564

58 The progress of the UK's negotiations on EU withdrawal: Data: [Government Response to the Committee's Seventh Report](#), Sixth Special Report of Session 2017–2019, HC 1564

59 [European Committee B, Exchanging Data with non-EU Countries, 23 October 2018](#)

60 Political Declaration setting out the framework for the future relationship between the EU and the UK, para 8

61 [Q1357](#)

37. There are other legal frameworks that could allow personal data to be transferred, other than an adequacy decision.<sup>62</sup> However, the alternatives are cumbersome, time consuming and would place a bureaucratic burden on individual businesses. In the event of a no deal exit, with no arrangement on data in place, those wishing to transfer personal data between the EU and the UK would have to explore such alternatives.<sup>63</sup> The UK has said that it would allow personal data to move from the UK to the EU—this would be a UK decision and kept under review.<sup>64</sup> The EU position is that when the UK leaves, it becomes a third country and is subject to the rules for data transfers to a non-Member State.<sup>65</sup> In its November Communication on contingency planning for the UK leaving the EU without an agreement,<sup>66</sup> the Commission notes that different methods are used to transfer data between the EU and third countries that do not have an adequacy agreement, adding that:

The adoption of an adequacy decision is not part of the Commission’s contingency planning.<sup>67</sup>

### **Trade in Goods**

38. The UK has submitted its own tariff schedules to the WTO, because it needs to separate its commitments ahead of exit from those that have been agreed for the EU as a whole. Although some WTO members have objected to these schedules (which effectively continue the tariff rates of the Common External Tariff applied by the EU), and full certification of the UK’s schedules may take time, this is not expected to be an obstacle to the UK trading on WTO terms and the submitted schedule will still form the basis of the UK’s trade policy.<sup>68</sup>

39. Jon Thompson from HMRC told us his assumption was that the EU would apply its Common External Tariff under a no-deal exit to UK exports to the EU.<sup>69</sup> Whilst the average tariff rate is only 3.2%, the tariffs on some goods are much higher, for example, tariff rates on one in ten agricultural imports to the EU exceed 25%, with the equivalent of 189% on some dairy products being the highest.<sup>70</sup> Michael Gove, the Environment Secretary, has pointed out that “nobody can be blithe or blasé about the real impact on food producers of leaving without a deal.”<sup>71</sup> Mike Thompson from the ABPI told us that if tariffs on UK medicinal exports were higher than in the EU-27 it would be harder for UK manufacturers to compete.<sup>72</sup>

40. The European Commission has stated that UK authorisations for goods and services will not be accepted in the Single Market. Furthermore, UK goods will be subject to

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62 [Commission document on data protection](#): Standard data protection clauses, Binding corporate rules, Approved Codes of Conduct, or Approved certification mechanisms

63 Committee report on Data, paras 52–57

64 [DCMS, Data protection if there’s no Brexit deal, 13 September 2018](#)

65 [European Commission, document on data protection](#)

66 European Commission, Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan, COM/2018/880 final, 13 November 2018

67 European Commission, Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan, COM/2018/880 final, 13 November 2018

68 Defra, [Letter from George Eustice MP to Neil Parish MP](#), 25 October 2018

69 [Q2951](#)

70 The UK in a Changing Europe, [What would trading on WTO terms mean?](#), 6 December 2018

71 Defra, [Oxford Farming Conference 2019 address by the Environment Secretary](#), 3 January 2019

72 [Q2830](#)



the full range of EU regulatory and customs checks.<sup>73</sup> The Government has stated that businesses exporting goods to the EU “will be required to follow customs procedures in the same way that they currently do when exporting goods to a non-EU country.”<sup>74</sup>

41. The Government has stated that, in the event of no deal, for goods entering the UK from the EU “an import declaration will be required, customs checks may be carried out and any customs duties must be paid.”<sup>75</sup> It is unclear at this stage whether Government has the capacity to collect tariffs. Moreover, additional checks both to imports into the UK and on exports of UK goods to the EU are expected to create a greater obstacle to trade than the tariffs themselves.

42. Tariffs under the WTO system follow the principle of non-discrimination (the most-favoured nation principle, or MFN). If the UK wanted to remove all tariffs and checks on goods arriving from the EU, it would have to do the same for every other WTO member.<sup>76</sup> We noted in our Fourth Report that the UK could choose to offer zero tariffs on goods between the EU and the UK, outside of a trade deal and would be able to use a ten-year exemption before offering the same tariff rates to other nations if the UK were negotiating a trade deal with the EU at that time. After this period, if the UK did so, it would have to offer the same zero tariff to all its trading partners.<sup>77</sup> Others have also suggested applying the ten-year exemption, contained in Article 24 of the General Agreement on Tariffs and Trade (GATT). However, the Prime Minister has said that it is not that simple.<sup>78</sup> Article 24 contains detailed conditions.<sup>79</sup> Any application in the form of an interim agreement would require the consent of the EU.<sup>80</sup> In the meantime, there could be a risk of challenges at the WTO to any perceived breach of MFN provisions.<sup>81</sup>

43. The Government has not indicated whether it will set a zero-tariff policy. If it did so, the UK would lose the ability to offer tariff reductions or removal in trade negotiations, and would therefore have less leverage in future trade deals. The UK could unilaterally decide to reduce tariffs on selected goods such as those where there is no UK production, such as oranges. The Economists for Free Trade have highlighted that if the UK did decide to impose tariffs on imports from the EU, possibly causing UK prices to rise, it would be open to the UK Treasury to take offsetting action to counteract the rise in inflation and maintain consumer real incomes. Alternatively, the Treasury could announce a temporary cut in VAT, funded by the new tariffs.<sup>82</sup>

44. Julian Jessop told us that the challenge will be to minimise the increase in trade frictions with the EU as a result of exiting in such a way that does not also limit the potential upsides from leaving.<sup>83</sup> Jon Thompson from HMRC warned us that at least 145,000 UK companies trade only within the EU. For these businesses, customs processes would represent a completely new administrative burden.<sup>84</sup> He also told us that the

73 European Commission, [Brexit: preparedness notices](#)

74 HM Revenue and Customs, [Trading with the EU if there's no Brexit deal](#), 23 August 2018

75 HM Revenue and Customs, [Trading with the EU if there's no Brexit deal](#), 23 August 2018

76 The UK in a Changing Europe, [What would trading on WTO terms mean?](#), 6 December 2018

77 Fourth Report of Session 2017–19, HC935, para 144

78 HC Debate 21 January 2019 [Col 42](#)

79 WTO, [Article 24 of the GATT](#)

80 Lorand Alexander Bartels, 'Interim agreements' under Article XXIV GATT, April 2009

81 HC Debate 21 January 2019 [Col 48](#)

82 Economists for Free Trade, [No Deal is the Best Deal for Britain](#), 13 January 2019

83 [Q2750](#)

84 [Q2928](#)

current UK customs system, the Customs Handling of Import & Export Freight (CHIEF), would have to be scaled up until a new system, the Customs Declaration Service (CDS), is running. This was meant to be implemented in 2020, then brought forward to 2019 to prepare for exit, but has now been “slightly moved back.”<sup>85</sup> He stated that CDS will be ready to cope with the increased transactions, but he was doubtful that traders will be ready to submit that many.<sup>86</sup>

45. Martin McTague from the FSB warned us that if exports to neighbouring markets were shut off then it would damage productivity in the long run.<sup>87</sup> He told us that “a lot of small businesses” would react to a loss of exporting to neighbouring countries by shrinking their business rather than exporting to countries that they had not considered before.<sup>88</sup>

46. A further dimension to UK exports beyond tariffs is the issue of approvals, standards and licensing. Bernadette Kelly, Permanent Secretary, Department for Transport, told us that her department is working towards ensuring there is continuity in areas such as vehicle type approvals, aviation security and maritime security.<sup>89</sup> She suggested that UK vehicle manufacturers could go to an EU type-approval agency to have their type approvals recognised.<sup>90</sup> She confirmed that the proposed plan is for the UK to recognise EU type-approvals, even if they do not recognise the UK’s.<sup>91</sup> As regards aviation exports, she confirmed that the fall-back in the absence of EU recognition would be to grant the Civil Aviation Authority responsibility for type-approvals.<sup>92</sup>

47. The UK in a Changing Europe has pointed out that the WTO’s enforcement procedures are very different from the EU’s. Citizens and companies can only access its dispute settlement procedures via their governments, which means that they must persuade their governments to bring a claim on their behalf. Given how expensive, complex and political WTO litigation is, governments filter complaints and only a very small number of them are brought before the WTO’s panels. Furthermore, because claims can only be brought against states, if a breach of trade rules is committed by a competitor company, the WTO dispute resolution system is generally of no help.<sup>93</sup>

### ***Continuing application of EU agreements with non-EU countries***

48. A further consideration for exporters is that the continuing application of EU agreements with non-EU countries will fall in the event of no-deal. Jill Rutter from the Institute for Government said that third countries will have their own ratification processes to go through and they may seek to change the terms of the deals. She warned that there will “inevitably be businesses, transactions and those types of things that fall through those gaps, however much effort we put into all of those. It will be messy, bumpy and uncomfortable.”<sup>94</sup> The International Trade Committee concluded in its Report on the matter that:

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85 [Q2937](#)

86 [Q2936](#)

87 [Q2830](#)

88 [Q2831](#)

89 [Q2856](#)

90 [Q2954](#)

91 [Q2955](#)

92 [Q2959](#)

93 The UK in a Changing Europe, [What would trading on WTO terms mean?](#), 6 December 2018

94 [Q2752](#)

The Government would risk appearing naïve if it assumed that assent-in-principle to roll over an agreement constitutes a guarantee that roll-over is actually certain to occur at the point of Brexit. It must be realistic about the steps that are necessary to get new agreements in place—and have contingency plans for the eventuality that the third countries concerned change their minds. This must include the pursuit of bilateral arrangements with each party with whom the UK currently has arrangements by virtue of its membership of the EU.<sup>95</sup>

49. The Minister admitted that a large number of agreements “are not at the stage when we can initialise agreements and put them on the Floor of the House for the CRAG process to take place.”<sup>96</sup> He told us that not all of the EU agreements need to be rolled-over, because some have been superseded, some are not applicable to the UK and some have been signed by the UK in its own right in a multilateral context. He stated that ten aviation and five nuclear agreements with important markets are ready.<sup>97</sup> He also stated that an agreement was announced in December with Switzerland.<sup>98</sup> However, the International Trade Committee have raised concerns over the scope of any agreement, given the large number of bilateral agreements between the EU and Switzerland.<sup>99</sup> The *Financial Times* recently reported on a leaked internal Whitehall memorandum that apparently states that the UK has failed to finalise most trade deals needed to replace the EU’s 40 existing trade agreements with leading global economies and will not be close to doing so by 29 March, meaning most will lapse without a transition period.<sup>100</sup> Even with a transition period, the rolling-over of the EU’s agreements with third countries would still require the consent of the other party.

**50. Moving from trading with the EU as a member of the Single Market and the Customs Union to trading on WTO terms would be likely to mean a move from trading with zero tariffs with the EU to trade at tariff rates set in line with the EU’s current Most Favoured Nation schedule at the WTO. Whilst the average tariff rate that would apply on goods is relatively low, the rates applicable to cars are 10% and for some agricultural goods are very much higher. Tariff rates alone would have a very significant impact on the competitiveness of certain UK exports, in particular agricultural exports.**

**51. The UK could decide to set a zero-tariff policy towards all its WTO partners. If it did so, the UK would lose the ability to offer tariff reductions or removal in trade negotiations, and would therefore have less leverage in future trade deals. We have previously suggested that the UK could apply a ten-year exemption within the WTO to allow it to continue to apply zero-tariffs to EU imports as part of an interim agreement. However, this is not a simple solution and, in any event, would require the EU’s consent. In the meantime, there could be a risk of challenges at the WTO to any perceived breach of MFN provisions.**

95 International Trade Committee, [Continuing application of EU trade agreements after Brexit](#), First Report of Session 2017–19, HC 520, 7 March 2018

96 [Q3574](#)

97 [Q3569](#)

98 [Q3570](#)

99 International Trade Committee, [Letter from the Chair to the Secretary of State on the rollover of EU Swiss trade arrangements](#), 8 January 2019

100 *Financial Times*, [UK fails to close global trade deals ahead of Brexit deadline](#), 17 January 2019

52. However, more significant for most UK exporters would be the non-tariff barriers that would be faced by exporters of goods under WTO rules, including increased product standard checks and checks on rules of origin. These would all increase the cost and reduce the competitiveness of UK exports to the EU. Many UK goods exporters, including a large number of SMEs, have no experience of customs processes and, without significant preparation and support, are likely to simply withdraw from these markets. Some will be able to find other markets but others will not. We have seen scant evidence of preparations being made by business or sufficient support being provided by Government.

53. A no-deal exit would also lead to an abrupt change in circumstances for those exporting services, half of which go to the EU. For many, barriers to trade will not be mere frictions, but a loss of authorisation to conduct business. Some larger operators have been able to prepare for a no deal outcome, in part by moving operations to the EU. Smaller operators may not have had the capacity to take such steps.

54. The absence of any agreement on the transfer of data will be particularly significant, as the Government has acknowledged, and will create a substantial and costly burden for many businesses. The fact that UK data protection provisions will be aligned with those of the EU on exit day will not be sufficient. Without either a comprehensive agreement or an adequacy decision from the Commission, it will be illegal to transfer personal data from the EU to the UK without separate contractual arrangements. This is essential in a range of services, from sales of financial products to the management of client data in all aspects of the digital economy. Solutions may be possible but they will be burdensome and costly compared to the current position and will have a significant, as the Government has acknowledged, impact on the competitiveness of UK businesses involved.

55. The rules of the Single Market and the Customs Union are enforced by the European Commission under the jurisdiction of the Court of Justice of the European Union. Any trade agreement will include dispute resolution provisions. The dispute resolution provisions of the WTO are not comparable—any dispute could take years to resolve, with the only remedy available for the UK to impose punitive tariffs on EU imports, a measure that would increase costs for UK consumers. In practice, a reversion to WTO rules would leave UK trade reliant on continuing goodwill with the EU.

### The implications for the UK's border

56. We visited Dover in October 2017 and in our Second Report we noted the quantity of trade that passes through the port each day and the efficiency of the processes at both Dover and Calais in minimising the time taken. We noted that these processes had:

introduced a predictability to the delivery timetable that is important for sectors with time sensitive supply chains, such as the automotive sector, and the agri-food sector. The current processes - involving roll on roll off ferries and short turnaround times - have developed while the UK has been in the Customs Union and the Single Market [ ... ] A no deal scenario, especially

if it was before any of the necessary adjustments had been made in areas such as IT systems, infrastructure, recruitment and training of staff, would cause major disruption.<sup>101</sup>

57. The Port of Dover informed us on our visit that an additional two-minute delay per freight vehicle (the Port handles 2.6 million annually) in the Ferry Terminal would cause 17 miles of queues on the motorway in Kent.<sup>102</sup> We were also informed that Calais would be severely affected. The Port's President has said that it might have to shut in the event of a no deal.<sup>103</sup> Bernadette Kelly informed us in October 2018 that there are arrangements in place to deal with any traffic disruption in Kent.<sup>104</sup> Operation Brock would entail arrangements to stack lorries on a section of the M20, to have a holding space for lorries on the M26, and to hold lorries in Manston Airport. Trials at Manston Airport featuring over 80 Heavy Goods Vehicle took place on 7 January.<sup>105</sup> The Minister described them as a success in terms of measuring traffic flow,<sup>106</sup> although the Road Haulage Association has pointed out that the exercise cannot duplicate the reality of 4,000 trucks being held at Manston airport in the event of no-deal.<sup>107</sup>

58. It was recently reported that the Government has awarded contracts for extra ferry services in the event of trade disruption at Dover. One of the firms, Seaborne Freight, has come under scrutiny for its suitability as a ferry service provider because it has not previously run ferry services, does not apparently own any ships and has used website terms and conditions that appear to be intended for a takeaway food firm.<sup>108</sup> We questioned the Minister on the award of contracts to operate ferry services between the UK and the EU as part of the Government's contingency planning.<sup>109</sup> He pointed out that a range of operators were invited to tender, including new entrants into the market and longstanding providers; Seaborne was one of the three to be awarded contracts.<sup>110</sup>

59. Sir Amyas Morse, Comptroller and Auditor General, told us that it was "inevitable that the areas that will be under most stress will be at the border."<sup>111</sup> Jon Thompson from HMRC raised the possibility of avoiding delays and queues through the application of technology. He cited the possibility of an inventory linking system and use of inland pre-clearance.<sup>112</sup> However, he cautioned that it would take between two and three years for a system to be up and running. He suspected that businesses "would be smart enough to change their behaviours" to reduce some of their costs.<sup>113</sup> He also told us there was some scope for reducing the customs burden if the UK was to diverge from the EU's Customs Code, but this was primarily in terms of reducing the number of data fields in the customs declaration.<sup>114</sup>

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101 Second Report of Session 2017–19, HC 372, para 121

102 Port of Dover, [Written evidence to the Public Accounts Committee inquiry on Brexit and the Borders](#)

103 Second Report of Session 2017–19, HC 372, para 121

104 [Q2856](#) and [Q2858](#) and Committee on Exiting the EU, [Letter from Bernadette Kelly to Chair Hilary Benn](#), 26 October 2018

105 BBC, [Brexit: Manston Airport hosts lorry park trial](#), 7 January 2019

106 [Q3697](#)

107 RHA, [Manston truck trial will need to be repeated says RHA](#), 7 January 2019

108 BBC, [Brexit ferry firm Seaborne in terms and conditions gaffe](#), 3 January 2018

109 [Qq3666–3677](#).

110 [Q3671](#). See also HC Deb 8 January 2019 cols 189–203.

111 [Q2691](#)

112 [Qs 2910, 2945–7](#)

113 [Q2910](#)

114 [Q2941](#)

60. Jon Thompson also emphasised that it was unclear how Calais might respond to a no deal outcome. Any kind of delay or queue in Calais would lead to delays and queues in Dover.<sup>115</sup> He told us that there were plans to engage with the French authorities in the event of no-deal to work through the problem.<sup>116</sup> The Minister informed us that the Government “have had plenty of discussions at a technical level with various people in Calais,”<sup>117</sup> as well as with Ostend, Rotterdam and Zeebrugge.<sup>118</sup> Technical discussions have also taken place with the French no-deal co-ordinator.<sup>119</sup> He said that the French authorities would be increasing the number of border checkpoints in Calais from two to ten and had committed to set up a border inspection point to process phytosanitary and animal checks. However, his subsequent answer to a written parliamentary question suggested that the position at Calais was less certain than that.<sup>120</sup> They also have planning permission for a site south of Calais for consignments on lorries that might not have the correct paperwork to move away from the port itself and ensure flow-through.<sup>121</sup> Jon Thompson said HMRC did not know if the UK’s other neighbours might be “reasonable or legalistic” either.<sup>122</sup> He told us it is “extremely difficult” to have bilateral conversations with any of the EU-27 or with any of the individual ports, although there have been some “limited conversations” with Calais, Zeebrugge, and Rotterdam.<sup>123</sup> He stated the impact on northern France, Belgium, Ireland, and the Netherlands would be “dramatic.”<sup>124</sup>

61. The Mayor of Calais has insisted that under no-deal “trucks will be passing as they are doing today.”<sup>125</sup> However, the Minister told us that the European Commission can insist on checks being carried out at the EU border, although France could apply for a waiver.<sup>126</sup> Dr Holger Hestermeyer, Shell Reader in International Dispute Resolution at King’s College London, suggested there are “certainly” business deals that ports can arrange with each other, but “there are limits to what they can do because of the way that nations are structured.”<sup>127</sup> Sam Lowe, Research Fellow at the Centre for European Reform, suggested that any such emergency provisions could be “fine” in the WTO, but that they would only happen “because of EU choices in different areas, and it can only ever last for a short period of time, because after a while [the EU] will be obliged to treat the UK as they do any other third country with which they do not have a preferential arrangement.”<sup>128</sup>

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115 [Q2903](#)

116 [Q2903](#)

117 [Q3582](#)

118 [Q3586](#)

119 [Q3561](#)

120 In his answer to [WPQ 206715](#) on 16 January 2019, the Minister said the UK was aware that the French were planning for ‘border control posts’ that would be ‘able to process products of animal origin at the ports of entry for the Channel’ but did not specify Calais. The Minister also said that the UK would ‘continue to monitor the situation in Calais and until any such border inspection post is operational’. (There is currently no Border Inspection Post at Calais. We note that there is a Border Inspection Post at Dunkerque.)

121 [Q3562](#)

122 [Q2875](#)

123 [Q2888](#)

124 [Q2907](#)

125 [Brexit will not cause delays at Calais, insists port chief, Press Association, 9 January 2019](#)

126 [Q3635](#)

127 [Q3288](#)

128 [Q3505](#)

62. Government departments told us that they have been putting in place contingency planning to reduce trade frictions at the border for some time.<sup>129</sup> Jon Thompson said the UK will have “a functioning border but it will be suboptimal.”<sup>130</sup> He stated that if the UK did not want to “feel any impact of no-deal,” then action should have been taken “a long time ago.”<sup>131</sup>

### Supply chains

63. The Business, Energy and Industrial Strategy Committee noted in its 16th Report that “potential border delays could seriously undermine just-in-time supply chains.” Many of the businesses they took evidence from operate just-in-time, international supply chains, where goods cross multiple borders before final product assembly, and are often sent back and forth between UK and EU partners for processing before reaching consumers. Adding just 15 minutes of delays at key border points could cost millions of pounds for the biggest manufacturers.<sup>132</sup>

64. We took evidence in October on the supply of food and medicine, two of the sectors most vulnerable to delays in trade flows caused by trade frictions. We heard about the challenges of supplying fruits and vegetables ahead of peak consumption over Easter and the lack of seasonal UK produce.<sup>133</sup> 79% to 80% of food imports come from the EU. Food from non-EU sources face specialist procedures when they come in to the UK.<sup>134</sup> We were told that switching supply chains is “not something that any supermarket is going to look to do lightly.”<sup>135</sup>

65. We heard concerns that Calais was a “real pinch-point” for retailers<sup>136</sup> and that any delay within the supply chain would have a knock-on effect on the ability of the road haulage industry to move products<sup>137</sup> and incur costs on already tight margins.<sup>138</sup> However, Julian Jessop described suggestions that food would run out by August 2019 as “clearly ludicrous.”<sup>139</sup>

66. As regards the supply of medicines, the Government has asked the pharmaceutical industry to stockpile an additional six weeks supply on top of their normal stock levels.<sup>140</sup> The Government has stated the UK would continue to accept batch testing of human medicines carried out in the EU, EEA or other third countries with whom the EU has a Mutual Recognition Agreement.<sup>141</sup> Mike Thompson from the ABPI explained that because the EU have not reciprocated, GSK and AstraZeneca have had to spend money to replicate batch-testing facilities in the EU-27.<sup>142</sup>

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129 [Qs2978–81](#)

130 [Q2981](#)

131 [Q2983](#)

132 Business, Energy and Industrial Strategy Committee, [The response from business to the Withdrawal Agreement and Political Declaration](#), Sixteenth Report of Session 2017–19, HC 384, 10 December 2018

133 [Qs2771](#) and [2802](#)

134 [Q2791](#)

135 [Q2791](#)

136 [Q2771](#)

137 [Q2840](#)

138 [Qs 2794](#) and [2844](#)

139 [Q2764](#)

140 UK Government, [Letter to the health and care sector: preparations for a potential no-deal Brexit](#), 23 August 2018

141 Department of Health and Social Care, [Batch testing medicines if there’s no Brexit deal](#), 23 August 2018

142 [Q2787](#)

67. Supply could be disrupted by border frictions and, although the majority of medicines are held in ambient temperature warehousing, some require temperature control of between two to eight degrees celsius. We were also told that there is not enough cold-chain warehousing available to build the stockpile the industry is being asked to hold.<sup>143</sup> Air freight was not an option for those medicines that could not be x-rayed.<sup>144</sup> Mike Thompson told us that pharmaceutical companies have probably already collectively spent, “hundreds of millions of pounds to prepare.”<sup>145</sup>

### *Road haulage permits*

68. The EU Community licence for road haulage facilitates the physical movement of goods into the UK. The UK road haulage industry will lose the right to a Community licence upon exiting without a deal. The only contingency in place are permits under the European Conference of Ministers of Transport (ECMT) scheme. However, we heard that there are 1,224 of those ECMT permits, whereas there are currently 38,000 trucks that are licensed to operate in the EU.<sup>146</sup> The only other fall-back position would be bilateral agreements or bilateral permits. The Government has stated that ECMT permits allocated after exit will take account of a haulier’s role in the economy and use an element of random allocation.<sup>147</sup> The European Commission has proposed that UK hauliers be allowed to carry goods into the EU for a nine-month period, if the UK reciprocates.<sup>148</sup>

**69. There is scope for major disruption at the UK’s borders from a no-deal exit. Changes to trading arrangements, requiring increased checks, could lead to very significant delays, creating serious disruption to supply chains, particularly those that are time critical—fresh produce; pharmaceuticals; and components in just-in-time manufacturing processes. We are not convinced that the steps being taken by the Government to mitigate the worst effects of this disruption will be sufficient. Equally importantly, the avoidance of disruption will be dependent on steps that are taken in Calais and other cross-channel ports to prepare for any increased checks. However successful the Government’s preparations are on this side of Channel, they will not avoid major disruption if reciprocal effective steps are not taken by EU Member States to ensure that trade continues smoothly.**

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143 [Q2804](#)

144 [Q2805](#)

145 [Q2842](#)

146 [Q2776](#)

147 UK Government, [International road haulage permits guidance on determining permit allocations](#), 5 November 2018

148 European Commission, [Communication, “Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission’s Contingency Action Plan”](#), 19 December 2018; this provision is only for bilateral carriage, a journey from the UK to a single destination in the EU and then back to the UK rather than for multiple stops.



## The implications for Northern Ireland

### *The border with the Republic of Ireland*

70. Northern Ireland is the only part of the UK with a land border with the EU. The Joint Report, agreed by both the UK and the EU in December 2017, recalled the commitment of the UK “to the avoidance of a hard border, including any physical infrastructure or related checks and controls.”<sup>149</sup> In a speech on 2 March 2018, the Prime Minister said:

We have ruled out any physical infrastructure at the border, or any related checks and controls. But it is not good enough to say, ‘We won’t introduce a hard border; if the EU forces Ireland to do it, that’s down to them’. We chose to leave; we have a responsibility to help find a solution. But we can’t do it on our own. It is for all of us to work together. And the Taoiseach and I agreed when we met recently that our teams and the Commission should now do just that.<sup>150</sup>

71. At the launch of the Irish Government’s contingency plans in the event of a no deal, on 21 December 2018, the Taoiseach Leo Varadkar, said:

We are not preparing for a hard border between Northern Ireland and Ireland. [ ... ] We have made no preparations whatsoever for physical infrastructure or anything like that. We certainly do not want it to become a self-fulfilling prophecy.<sup>151</sup>

72. However, in the event of no-deal, maintaining an open border would be problematic. We were told that both sides would be obliged to enforce a border under international law and the EU would expect the Republic of Ireland to enforce its external customs border.<sup>152</sup> Sabine Weyand, the European Commission’s Deputy Chief Negotiator, cited the examples of the need for checks in respect of food safety, anti-dumping and VAT on goods crossing between the EU and the UK.<sup>153</sup> Dr David Shiels, Policy Analyst at Open Europe, suggested that a breach of WTO rules on enforcing borders “might be okay in the short term,” but there was a possibility of another country bringing remedial action in the WTO, although this was likely to be a slow process<sup>154</sup>.

73. Karen Bradley MP, Secretary of State for Northern Ireland, told the Northern Ireland Affairs Committee in November 2018, that while she understood the Irish Government would not want a hard border:

I think what the Taoiseach said was that he did not want to see one and he would work hard to avoid one, but there would be pressures from the European Union. That is because, in the event of no deal, we would have two separate customs territories: a separate customs territory for the United Kingdom and a separate customs territory for the EU, and the Irish

149 Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union, 8 December 2017

150 PM speech on our future economic partnership with the European Union, 2 March 2018

151 [Ireland has no plans for hard border after Brexit, says Varadkar](#), The Guardian, 21 December 2018

152 [Q3010](#)

153 [Q2546](#)

154 [Q3014](#)

are part of the EU customs arrangement. From a WTO perspective, the negotiations for Ireland are conducted by the European Union, as they are for the United Kingdom today. The WTO rules are clear that there needs to be, between two separate customs territories, the possibility of checks, and contemporaneous forms need to be filed to ensure that, when goods are passing across the border, the right tariff has been applied, they meet the country of origin test, the [sanitary and phytosanitary] tests are correct, and health and safety and everything else has been complied with.<sup>155</sup>

74. Maintaining an open border would be problematic in the long-term for making new trade deals as there would be a lack of clarity about border arrangements and access to UK markets for goods from other countries. It would also exacerbate the risk of smuggling, where differences applied in relation to tariff rates and regulatory standards.<sup>156</sup> Dishonest businesses and criminal gangs would look to exploit any opportunities.<sup>157</sup> In Northern Ireland, smuggling operations have been associated for some time with paramilitary organisations.

### ***Impact on business in Northern Ireland***

75. The Government’s technical notices are applicable to Northern Ireland. Stephen Kelly, Chief Executive, Manufacturing NI, said that the UK’s notices for no deal originally suggested that businesses in Northern Ireland might contact the Irish Government for advice. He said that businesses were looking for guidance and support to help them through the process, but the notices were doing the opposite.<sup>158</sup>

76. Representatives from Northern Ireland business organisations told us that they did not want a no deal. Declan Billington, Vice-Chair of the Northern Ireland Food and Drink Association, described no deal as “devastating to our industry” and said that there was “a strong fear of the consequences of leaving Europe on 29 March without a deal or without a transition, and that we are facing the tariff wars.”<sup>159</sup> Aodhan Connolly, Director, Northern Ireland Retail Consortium, said “Let me be clear about this: no deal is not an option for us in Northern Ireland.” He told us that MFN tariffs with the WTO could lead to consumers paying 37% more for beef, 43% more for cheese, and 8% more for tomatoes.<sup>160</sup> We also heard about the nature of trade both on the island of Ireland and between Northern Ireland, Ireland and Britain. Mr Connolly gave examples of a cow slaughtered in Northern Ireland, transported through Ireland to England, where it is processed, to be transported back to be further processed in Northern Ireland or Ireland, and by the end the cow has “crossed the border twice before it eventually gets on the shelves.”<sup>161</sup> Seamus Leheny, Policy Manager, at the Freight Transport Association, said:

We have 4.6 million commercial vehicles crossing the Irish border every year. The big conundrum for us is the sanitary checks. A third of that traffic is agri-food, so we would probably be looking at in the region of 4,000 commercial vehicle movements daily that would have to stop for

155 NIAC oral evidence, Karen Bradley 21 November 2018, Q373, see also Q334.

156 [Qs3006–7](#)

157 [Q3066](#) and [Q3071](#)

158 [Q3062](#)

159 [Qs3062–3](#)

160 [Q3064](#)

161 [Q3080](#)

documentary ID checks, and then a proportion of that—up to 50%—actually having to have the physical inspection. The costs and the delays of that mean we would have to completely reinvent the supply chain for the movement of these goods on the island of Ireland, and even going over to GB.<sup>162</sup>

77. We heard that some businesses were investing in facilities in the Republic of Ireland and in warehousing for buffer stock, but this may not be feasible for smaller businesses, who were adopting a “wait and see” approach.<sup>163</sup> It was argued that, with perhaps five years notice, cheese producers, for example, could have adapted and replicated facilities to avoid barriers to moving milk over the border, but it would have risked being an unjustifiable investment if a deal was reached.<sup>164</sup> It was recognised that there were opportunities to export to third country markets around the world, but it was argued that it takes time to get into those markets and to get veterinary agreements.<sup>165</sup> We also heard about the lack of resources and capacity to handle customs declarations for future cross-border trade.<sup>166</sup>

### Healthcare

78. Healthcare is a devolved matter and arrangements with the Republic of Ireland predate EU membership.<sup>167</sup> We were told that there was a lot of movement across the border to access healthcare and because of its importance, “everyone will be sensible and want people to go on living their lives as they do.”<sup>168</sup> We were told that some cross border health initiatives work in the context of EU membership, such as data protection.<sup>169</sup> The UK Government’s own technical note on the joint UK-EU mapping exercise on North-South co-operation refers to EU law on the recognition of professional qualifications and the supply of medicines and medical devices across the border, as part of the All Island Congenital Heart Disease Network.<sup>170</sup>

**79. The UK Government accepted the need to avoid a hard land border in Ireland in December 2017, committing to no new infrastructure and no related checks and controls. We supported that commitment and continue to do so. It is clear that the Republic of Ireland and the EU also have no desire to re-create a border. However, a no-deal outcome poses questions as to whether it would be possible to maintain an open border. Given the EU’s expressed concerns about maintaining the integrity of the Single Market and the Customs Union, it is difficult to see the EU, in the long-term, accepting a soft land border in Ireland whilst the UK maintained an independent regulatory policy and independent trade policy.**

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162 [Q3087](#)

163 [Q3062](#)

164 [Qs3076–8](#)

165 [Q3080](#)

166 [Q3065](#)

167 [Qs 2915](#) and [2917](#)

168 [Q2916](#)

169 See [Qs 2996–7](#) and [3004–5](#) See also written evidence from the British Medical Association (BDR0031); the House of Lords EU Committee, Oral evidence: Brexit: Reciprocal Healthcare, Wednesday 15 November 2017

170 TECHNICAL EXPLANATORY NOTE: NORTH-SOUTH COOPERATION MAPPING EXERCISE, The six areas of co-operation agreed by the North-South Ministerial Council, under Strand II of the GFA are: agriculture, environment, transport, health, tourism, and education.

## The implications beyond the trading relationship

### *Security and Law enforcement*

80. Rob Wainwright, the former Executive Director of Europol, told us that the current security co-operation between the UK and EU was “the most integrated and probably the most successful cross-border police mechanism of any region in the world.”<sup>171</sup> The UK benefits in various ways from this relationship through membership or participation with: Europol which co-ordinates police co-operation across Europe; the European Arrest Warrant which allows for the rapid extradition of individuals in one Member State to another for a serious crime; Eurojust which co-ordinates cross-border investigations and prosecutions; and various EU criminal justice databases, such as the Schengen Information System (people and objects of interest, such as missing people, terrorists, or stolen vehicles), Prüm databases (DNA and fingerprint data), ECRIS (EU nationals that have committed criminal offences in another EU Member State), and Passenger Name Records (names and details of air passengers).<sup>172</sup> The ability of the UK to benefit from information exchange and practical co-operation using law enforcement databases is possible because the UK follows the EU data protection regime. The EU allows personal data to be shared between Member States, or countries outside the EU but who are in Schengen, because there is a legal basis, and the EU is satisfied that those countries will be fully compliant with all aspects of EU data protection laws.<sup>173</sup>

81. The UK Government would like to preserve as much of this co-operation as possible. It has said that, if the UK was to leave the EU without a deal, it would no longer be part of, or able to access EU databases, systems and networks; no longer participate in, have access to, or form agreements with EU agencies, bodies or institutions of the EU; and the restrictions on the exchange of personal data would reduce co-operation between UK and EU data protection authorities. It has also noted that without a deal, there would not be an implementation period, and that:

any operational cooperation that relies on EU tools and instruments at the point of exit, would stop. This would create immediate legal and operational uncertainty with the risk of operational disruption and potential security implications.<sup>174</sup>

82. This would include losing use of the European Arrest Warrant and making it more difficult to apprehend people who have committed a crime in the UK and fled abroad.<sup>175</sup> Several countries have constitutional bans on extraditing their own nationals. Due to the European Arrest Warrant, every single Member State is bound to extradite its own nationals to other Member States. That does not happen outside the EU for legal and jurisdictional reasons.<sup>176</sup> Leaving without a deal would reduce the speed at which front line police officers will be able to check whether an individual is a person of interest on EU wide databases and get an automatic response.<sup>177</sup> Cressida Dick, the Metropolitan Police

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171 [Q3233](#)

172 CER, [Plugging in the British Completing the Circuit](#), June 2018

173 [Qs3246–7](#)

174 UK Government, [EU Exit Assessment of the security partnership](#), 25 November 2018, para 2.1.2

175 The Law Society, [No-deal Brexit risks putting UK’s ability to extradite criminals in jeopardy](#), 24 October 2018

176 [Qs3252](#) and [Q3262](#). See also [Qq3238–40](#) for the Norway/Iceland extradition agreement with the EU

177 Lynne Owens, Director General of the National Crime Agency, [Oral evidence before the Home Affairs Committee](#), 30 October 2018

Commissioner, has said that no deal would have to replace such mechanisms with others that are “costly, slower and potentially put [the] public at risk [ ... ] There is no doubt about that.”<sup>178</sup> In October 2017, the then Home Secretary told the Home Affairs Committee that it would be unthinkable for the UK to leave the EU with no comprehensive security agreement.<sup>179</sup> The Minister told us that if we left the EU and had to replace mechanisms such as the European Arrest Warrant:

there is a host of things we could do; it just would not be as good as the current system we have.<sup>180</sup>

### **Policing**

83. In November, the Home Office approved funding of £2.4 million as part of a ‘no deal safety net’ unit after asking the National Crime Agency and National Police Chiefs’ Council (NPCC) in September to draft plans for a ‘no deal, no implementation period’.<sup>181</sup> The PSNI has benefitted from £16.5 million in Brexit funding from the Treasury to recruit an extra 308 officers and staff by April 2020.<sup>182</sup> This followed news that the PSNI were drawing up a business case for extra resources in May 2018.<sup>183</sup> The Minister told us that recent media reports of preparations for a no-deal scenario that involved requests for police from parts of England and Scotland preparing to be deployed in Northern Ireland was in anticipation of the marching season in July, rather than in anticipation of a no-deal Brexit at the end of March.<sup>184</sup> Requests for mutual aid from other forces during the marching season has happened in previous years, but Mr George Hamilton, Assistant Chief Constable, PSNI, is reported as saying he does not “have any reason to believe we will need to request mutual aid during 2019.” At the same time, additional resources will be available from 29 March in line with national contingency planning.<sup>185</sup>

### **Regulatory databases**

84. The UK would also lose access to other databases in the event of no-deal. These include the EU scheme for food and feed safety alerts (RASFF), which provides for access to information on potential food health incidents<sup>186</sup> and the transfer of information between the UK’s Medicines and Healthcare products Regulatory Agency (MHRA) and the European Medicines Agency (EMA).<sup>187</sup> Concerns have been raised that the files of medicines that are going through the process of being licensed will not be available to the MHRA; this could lead to delay in medicines coming to patients in the UK. The UK contributes 38% of all public health safety signals that are picked up for the whole of the EU and therefore there would be mutual interest in reaching a constructive agreement.<sup>188</sup> We were told that relying on the World Health Organization (WHO) would not be equivalent.

178 [BBC Today programme](#), 27 December 2018

179 Home Affairs Committee, Oral evidence: The work of the Home Secretary, 17 October 2017, Q12; and Home Affairs Committee, 4th Report of 2017–19, UK-EU security cooperation after Brexit, HC 635 para 132, para 139

180 [Q3568](#)

181 [Metropolitan police rush to set up no-deal Brexit ‘safety net unit’](#), 5 November 2018

182 [BBC, Brexit: PSNI to recruit an extra 308 officers after funding boost](#), 19 December 2018

183 [BBC, Police ask for more resources ahead of Brexit](#), 31 May 2018

184 [Qs3575–80; Q3720](#)

185 [Belfast Telegraph, PSNI has no reason to believe it will require outside help if there’s hard Brexit: top officer](#), 5 January 2019; [The Guardian, Police reinforcements for Northern Ireland in case of no-deal Brexit](#), 4 January 2019

186 [Q2790](#)

187 [Q2786](#)

188 [Q2788](#)

### Research, technology and higher education

85. We have taken evidence from a range of voices in the sciences, research, innovation and higher education sector. Several witnesses talked about the closeness of the UK to the EU regulatory regime<sup>189</sup> and the importance of migration within the EU for students and staff.<sup>190</sup> When we visited the life sciences sector in Cambridge, we were told about the importance of the relationship with the EMA,<sup>191</sup> and the importance of participation in the EU intellectual environment and the EU clinical environment.<sup>192</sup> The value of EU funding through the European Research Council and Horizon 2020 was also emphasised.<sup>193</sup> We have heard about the important role the UK plays in European bodies to set the policy agenda, such as in the Galileo and Copernicus space programmes,<sup>194</sup> and Horizon Europe—the successor to Horizon 2020.<sup>195</sup>

86. Outside an agreement with the EU, there is no transition period to negotiate the future relationship or to adapt to a change in the regulatory or immigration regime. Universities UK have raised concerns around what no deal would mean for freedom of movement and the UK's future immigration system, and the lack of certainty over the UK's future participation in Horizon 2020 and Erasmus+.<sup>196</sup> A recent open letter to MPs from several higher education providers said that the risk of no deal was creating “significant uncertainty” for the 50,000 EU staff and 130,000 EU students in the UK, plus 15,000 UK students studying in Europe. They argued that without cast-iron assurances, “world-leading academics and researchers may leave for countries where access to ERC funding is not at risk.”<sup>197</sup> In the private sector, Tech UK has said “Put simply, No Deal doesn't work for tech” and that the consequences of no deal, including the impact on attracting talent and being able to service contracts in the EU, are “incredibly concerning.”<sup>198</sup>

### Travel arrangements

87. Bernadette Kelly, Permanent Secretary, Department for Transport, told us that passengers who have booked to fly from the UK to an EU country, or within the EU on a UK airline, will be able to do so.<sup>199</sup> It was suggested that there is a “very strong mutual interest” in the EU in ensuring that people can fly to and from the UK and that the European Commission have indicated that it would consider a “barebones agreement” would be appropriate to ensure the continuity of flights.<sup>200</sup> In its December Communication, the European Commission has proposed that in a no-deal exit UK carriers would continue to perform existing direct flights for 12 months after 29 March. But they will not be able to add new schedules nor fly between EU airports.<sup>201</sup> We were informed that discussions

189 [Q1713](#)

190 [Qq1717–1718](#)

191 Q651. See also [CBI, Making a success of Brexit, Life Sciences](#)

192 Q670

193 Q646 and Q1750

194 Q634, Q662

195 Q1719

196 [Universities UK, 'No deal' Brexit: implications for universities and minimising risk](#), December 2018

197 The letter was signed by representatives of Universities UK, the Russell Group, Guild HE, Million Plus and University Alliance. Universities UK, [University leaders warn against No Deal as vital research comes under threat](#), 4 Jan 2018

198 TechUK, [How would a No Deal Brexit impact tech?](#) Monday 14 January 2019

199 [Q2862](#)

200 [Q2862](#)

201 European Commission, [Communication, Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission's Contingency Action Plan](#), 19 December 2018

with the French authorities have already begun on continuity of rail services through the Channel Tunnel.<sup>202</sup> Furthermore, the Commission has proposed that UK citizens be allowed for the time being to visit (for up to 90 days in a 180 day-period) the Schengen area after exit without the need for visas.<sup>203</sup>

**88. Co-operation in policing and law enforcement are of vital importance for the security of the UK and highly valued by the police and law enforcement bodies. An aspiration to maintain many of the advantages of the current arrangements, or mitigate the effects of their ending, has been included in the non-binding Political Declaration. However, were the UK to leave the EU without an arrangement in place, there is a risk that the UK would lose both the current arrangements for cooperation and exchange of information and the trust that has accrued over decades. Alternative and mitigating measures would be more difficult to negotiate following such an exit and this could risk harming the security of both the EU and the UK.**

**89. In the event of a no-deal exit, it is possible that solutions could be worked out to maintain co-operation on security and other matters which would be in the interests of both the EU and the UK, from exchanges of information on food health to educational exchanges. However, there is no guarantee that, in an acrimonious separation these arrangements could be established in the short to medium term. Even in a relatively harmonious no-deal separation, it may take time to establish the legal structures necessary to reconstruct these arrangements.**

## The implications for the rights of citizens

90. On 6 December 2018, the Department for Exiting the EU published a policy paper on citizens' rights giving details of what the UK will do in the event of no deal. The paper said that "the reciprocal deal with the EU, as set out in the Withdrawal Agreement, is the only way to protect the rights of both UK nationals in the EU and EU citizens in the UK."<sup>204</sup> The UK has already taken steps to implement aspects of the Withdrawal Agreement to protect EU citizens in the UK, but in its paper acknowledged that "The UK cannot act unilaterally to protect the rights of UK nationals in the EU"<sup>205</sup> and repeated calls on Member States "to uphold their commitments to citizens and to protect the rights of UK nationals in the EU in the event of a 'no deal' scenario."<sup>206</sup>

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202 [Q2874](#)

203 European Commission, [Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation \(EC\) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union](#), COM (2018) 745, 13 November 2018. Also to note: A new system, European Travel Information and Authorisation System (ETIAS), will eventually replace the visa-free scheme. Once fully implemented from 2022, UK visitors will have to register online and pay €7 for a three-year visa.

204 Department for Exiting the EU, [Citizens' Rights – EU citizens in the UK and UK nationals in the EU Policy Paper](#), 6 December 2018, para 2

205 [Citizens' Rights – EU citizens in the UK and UK nationals in the EU Policy Paper](#), para 5

206 [Citizens' Rights – EU citizens in the UK and UK nationals in the EU Policy Paper](#), para 18

### *EU citizens in the UK and Settled status*

91. If the Withdrawal Agreement was agreed, free movement would continue in UK law until the UK changes EU retained law.<sup>207</sup> In addition, the UK is introducing a Settled Status scheme which enables EU citizens to apply for the equivalent of indefinite leave to remain. In order to do so, they will need to meet the qualifying criteria—being legally resident, submitting proof of identity, and passing a criminal check. On 21 January, the Prime Minister announced that the Government will waive the fee for EU citizens to apply for settled status in the UK.<sup>208</sup> We welcome this decision. In the event of a no deal scenario, and therefore without the Withdrawal Agreement and no transition period, the qualifying date for when an EU citizen would have to be legally resident in the UK to apply for Settled Status moves forward to 29 March 2019 (the Withdrawal Agreement would allow until 31 December 2020).<sup>209</sup> EU citizens would still have the 21 months until 31 December 2020 to apply for Settled Status. The UK’s policy paper of 6 December said that:

Until this time [31 December 2020] EU citizens will continue to be able to rely on their passport (as a British citizen may) or national identity card if they are asked to evidence their right to reside in the UK when, for example, applying for a job, as they do currently.

92. In a no deal scenario, EU citizens granted Settled Status would still be able to leave the UK for up to five years without losing their right to return.<sup>210</sup> EU citizens with Settled Status will be able to bring close family members to join them by 29 March 2022, as long as the relationship existed by 29 March 2019. For future spouses where the relationship started after 29 March 2019, EU citizens with Settled Status will be able to be joined with their spouse in the UK until 31 December 2020.<sup>211</sup> In the event of a Settled Status application being refused, there will be a right to challenge the decision “in line with the remedies generally available to non-EEA nationals refused leave to remain”, i.e. administrative review and judicial review. There would be no independent monitoring body or reference procedure to the Court of Justice of the EU (CJEU).<sup>212</sup>

93. The Immigration Minister, Caroline Nokes MP, told the Home Affairs Committee in October that, in a no deal scenario, there would be no additional checks for EU citizens at the border and acknowledged that it will be “impossible to differentiate between somebody who has been here and not yet applied for Settled Status and somebody who has just arrived.”<sup>213</sup> The Exiting the EU policy paper said that EU identity cards will remain valid for entry into the UK ‘initially’ but it will not be guaranteed after the new immigration

207 HM Government, [The UK’s future skills-based immigration system](#), December 2018. At the same time, the UK has introduced the [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#), which will make provision to end free movement under retained EU law.

208 Home Office, [EU Settlement Scheme: Statement of Intent](#), 21 June 2018, para 3.3 and HC Deb 21 Jan col 27 and col 36

209 The UK Government [No Deal technical notices](#) came out in tranches on 23 August 2018, 13 September 2018, 14 September 2018, 24 September 2018, 12 October 2018, 19 October 2018, 22 October 2018, and 29 October 2018, and did not include a No Deal technical note for citizens. The [Citizens’ rights – EU citizens in the UK and UK nationals in the UK. Policy Paper](#) was published on 6 December 2018

210 [Citizens’ rights – EU citizens in the UK and UK nationals in the UK. Policy Paper](#), para 10

211 [Citizens’ rights – EU citizens in the UK and UK nationals in the UK. Policy Paper](#), para 12

212 See the Government’s response to the Committee’s report: [The progress of the UK’s negotiations on EU Withdrawal: The rights of UK and EU citizens](#), HC 1872

213 Home Affairs Committee, Oral evidence: [Government Preparations for Brexit: Border and Security Operations](#), HC 1674, 30 October 2018, Q15



system will be introduced from 1 January 2021. On 19 December 2018, the Home Secretary said that there would be no changes to the checks employers might be asked to carry out for EU citizens before the new immigration system comes in, i.e. 1 January 2021.<sup>214</sup>

94. A recent letter from the 3million and British in Europe to Donald Tusk concerning the consequences of no deal for EU in the UK said:

As things stand, on Brexit day their rights derived from EU law will ‘fall away’ and they will have to apply for the less protected ‘settled status’ under UK immigration law [ ... ] In the event of a no deal, their status will be further diminished<sup>215</sup>

95. **The negotiated Withdrawal Agreement provides for a transition period of 21 months, during which EU citizens in the UK will be able to make an application for Settled Status and free movement of people will continue. If the UK leaves without the agreement, the Government has said there would be a 21 month period for EU citizens in the UK to apply for Settled Status, but it is not clear when the rules on free movement will end—the UK does not expect its new immigration system to be in place before 1 January 2021. At the same time, there is no way of knowing, with any confidence, how quickly the 3 million EU citizens in the UK will be able to apply and receive Settled Status. In a no deal, there will be large numbers of EU citizens in the UK with no certainty as to their legal status nor evidence to prove it. There is a clear risk that EU citizens in the UK could face a hostile environment—where immigration law is applied by the landlord, the employer, or the service provider—because there would be confusion as to how they demonstrated their legal status, and landlords, employers or service providers may not know what would be required of them.**

### ***UK citizens in the EU and preparations across the EU27***

96. The European Commission has published three Communications on its contingency planning in case the UK leaves the EU without an agreement: in August 2018, November 2018 and December 2018.<sup>216</sup> In the latest Communication, it pointed out that without an agreement:

UK nationals in the European Union would be subject, as of the withdrawal date, to the general rules that apply to third country nationals in the EU. This would have an impact on their right to stay and work where they currently live as well as on the social security protection they benefit from.<sup>217</sup>

97. A Third Country National (TCN) is any person who is not a citizen of the EU and who is not a person enjoying the EU right to free movement. The British in Europe have raised concerns about the third country national status. Jane Golding, Chair British in

214 HC Deb 19 December 2018, col 814

215 Letter from the 3million and British in Europe to the President of the European Council Donald Tusk, 16 January 2019

216 [Communication from the Commission, Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan, 27 August 2018, COM\(2018\) 556 final](#); [Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan, 13 November 2018, COM\(2018\) 880 final](#); [Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission’s Contingency Action Plan, 19 December 2018 COM\(2018\) 890 final](#)

217 [Preparing for the withdrawal of the UK from the EU on 30 March 2019, 19 December 2018](#)

Europe, told us in June that: “the conditions are far more stringent and in no way compare with being an EU citizen”<sup>218</sup> and in response to the November Communication from the Commission, British in Europe said TCN status would be insufficient for many of the UK nationals in the EU, as it is not automatic and requires the applicant to be legally resident. There are conditions to qualify for TCN status which all UK nationals in the EU will not satisfy and Member States would need a transition period to enable applications to be processed. They said the rights conferred on TCNs compared to EU citizens are more limited on family reunion, more limited on mobility compared to free movement, and there are some limitations on how equal treatment applies in areas such as employment. As such, the rights conferred as a TCNs “fall well short of the rights” which the UK in the EU currently have as EU citizens.<sup>219</sup>

98. In its latest Communication, the Commission has called on Member States to consider UK residents on their territory on 29 March 2019 as legal residents, and be ready to issue residence permits as evidence of their legal right to stay and right to work. In particular, it said that where there are large UK populations, Member States should be ready to issue temporary residence documents until ‘definitive residence permits’ can be issued, preferably by the end of 2019. It further called on Member States “to take a generous approach to UK nationals who are already resident in their territory.” This includes asking that those UK third country nationals, who have been a legal resident in a Member State for five years—and that calculation should include years spent resident in the EU27 before the withdrawal date—be given long-term residence status.<sup>220</sup> The Long Term Resident Directive states that a person who holds a long-term residence permit, “should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.”<sup>221</sup>

99. Several Member States have announced intentions or produced legislative proposals to cater for the UK nationals on their territory.<sup>222</sup> We are aware of proposals in Italy,<sup>223</sup> Germany,<sup>224</sup> France,<sup>225</sup> Poland,<sup>226</sup> the Netherlands, Belgium,<sup>227</sup> the Czech Republic,<sup>228</sup>

218 [Q1978](#); British in Europe, [Where does the March Agreement Leave Me?](#) March 2018. See also British in Europe [NEG0021 paras 23–35](#); and [MPI report, Next Steps](#), pp.22–25

219 British in Europe, [No Deal Brexit preparedness--why the Commission’s proposal does not work](#), December 2018

220 [Preparing for the withdrawal of the UK from the EU on 30 March 2019, 19 December 2018](#), [Preparing for the withdrawal of the UK from the EU on 30 March 2019, 13 November 2018](#)

221 Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

222 [Q3611](#). The 3million and British in Europe letter to Donald Tusk of 16 January said, “To date, some EU27 countries have set out what they propose to do, but legislation will need to be put in place to implement these proposals.”

223 [Italian foreign ministry plays Babbo Natale in Brexit pantomime, 20 December 2018](#),

224 [Preparations by the Federal Ministry of the Interior, Building and Community for the UK leaving the EU](#), and

225 [LOI n° 2019–30 du 19 janvier 2019 habilitant le Gouvernement à prendre par ordonnances les mesures de préparation au retrait du Royaume-Uni de l’Union européenne](#), [The Local](#), [No-deal Brexit: What France’s draft law means for Brits in France](#), 17 October 2018

226 [Polish Government Legislative Process, Projekt ustawy o zasadach pobytu na terytorium Rzeczypospolitej Polskiej obywateli Zjednoczonego Królestwa Wielkiej Brytanii i Irlandii Północnej oraz członków ich rodzin oraz świadczeniach z zabezpieczenia społecznego w związku z wystąpieniem tego państwa z Unii Europejskiej i Europejskiej Wspólnoty Energii Atomowej](#), 11 January 2019, and British Embassy Warsaw, [Translation of the Polish government’s consultation draft on rules of stay for UK citizens in a no deal scenario](#)

227 [Brits in Belgium thrown no-deal Brexit lifeline, 16 January 2019](#);

228 [No-deal Brexit: Poland and Czech Republic to allow Britons to stay if UK crashes out, 15 January 2019](#)

Estonia,<sup>229</sup> Sweden,<sup>230</sup> and Portugal.<sup>231</sup> On 9 January 2019, the Minister told us that the Government in Spain—the Member State with the largest population of UK nationals—had not yet published its proposals. The Spanish have since published their proposed contingency plans for UK nationals in Spain in terms of residence, healthcare and social security. In addition, Spain and the UK have signed a reciprocal agreement on voting rights in local elections.<sup>232</sup> In France, British nationals have been encouraged to apply for a Carte de Sejour residency card (usually a voluntary process), which they will be able to exchange for a residency permit after the UK has left. However, the French Government has said that the measures they take for the British in France “will take into account” the status the UK grants to French nationals in the UK.<sup>233</sup> It remains unclear whether UK nationals would continue to have access to healthcare.<sup>234</sup> The German Government have said that, whatever happens, British citizens will need some proof of their right of residency in order to stay in Germany. In the event of a ‘disorderly Brexit’ they plan an initial three-month period for British citizens in Germany to register and complete an online form with their local Foreigners Registration Office. From April, the authorities will contact them and consider their application for a form of residency. The applicant can continue to reside and work in Germany until a decision has been taken on the application.<sup>235</sup>

100. Generally, of the proposals that have been made public, they follow the pattern of providing a transition period after 29 March 2019—the length of which varies from the three months in Germany to 15 months in the Netherlands—to allow time for UK citizens to apply for an interim permit, followed by a long-term residence permit.<sup>236</sup>

**101. We welcome the Commission Communication encouraging Member States to be ready to issue temporary residence permits in the event of a no deal, and to take a generous view as to whether UK nationals in their territory could be given long term residence status, and the public proposals that several Member States have put forward to give UK nationals a legal status. If giving these proposals legal effect requires legislation in each Member State, then it will take time, may lead to inconsistency between different countries, and there are strong indications from some EU Member States that they are waiting to see how the UK will manage EU citizens in the UK in the event of no deal before deciding on the rules that they will apply to UK nationals on their territory. The UK is asking EU citizens in the UK to make an application for Settled Status, which can be refused. In a no deal scenario, there will be considerable confusion as to the legal status of EU citizens in the UK before they all have secured Settled Status.**

229 [Riigikogu committee to submit bill protecting UK citizen rights in Estonia, 14 January 2019](#)

230 [Government Offices of Sweden, Proposals to counter the most serious consequences of a no-deal Brexit for UK nationals in Sweden, 15 January 2019](#)

231 [Portuguese Government, United Kingdom nationals keep their right of residence](#)

232 [Q3615 and Government of Spain, What is Brexit?](#) See also [Residence](#), [Social Security](#), [Healthcare and Health Professionals](#) and [Suffrage rights](#)

233 [EU Exit: what you need to know](#), updated 11 January 2019, [www.gov.uk](#); ‘We must ensure Britons can stay in France’-minister, [The Connexion](#), 3 October 2018; [No-deal Brexit: What France’s draft law means for Brits in France](#), [The local](#), 17 October 2018

234 [WPAQ 209279](#) answered on 21 Jan 2019 included “We have informally approached other Member States and are prioritising those that are the major pensioner, worker and tourist destinations. We will shortly be writing to all EU Member States, along with the EU Commission, formally outlining our generous offer on reciprocal healthcare. This will be subject to ongoing discussions.

235 [Landesamt für Bürger und Ordnungsangelegenheiten, Departure of the United Kingdom from the European Union \(Brexit\)](#), 3 January 2019, and [FAQs on right of residence in the context of Brexit](#)

236 [The Guardian, Dutch government assures residency of UK citizens in event of no Brexit deal](#), 7 January 2019

102. We recommend that the Government provide to this Committee a written summary setting out the healthcare provision for UK nationals currently resident in each EU27 Member State, in the event of the UK leaving the EU without a Withdrawal Agreement.

### *Social security co-ordination*

103. The UK has said that EU citizens in the UK would “retain entitlement” to health, education, benefits, social housing, and be able to access benefits and services on “broadly” the same terms as now. However, it has acknowledged that reciprocal healthcare, social security and pension co-ordination, as negotiated and agreed in the Withdrawal Agreement,<sup>237</sup> “require reciprocity from the EU or individual Member States and cannot be protected unilaterally”,<sup>238</sup> and that the UK is “exploring options” to protect past social security contributions made anywhere in the EU, and reciprocal healthcare arrangements in the event of a no deal.<sup>239</sup>

104. The UK has introduced the Immigration and Social Security Co-ordination (EU Withdrawal) Bill which will repeal the relevant EU law on free movement and amend retained EU law governing social security co-ordination,<sup>240</sup> the Healthcare (International Arrangements) Bill which will enable the UK to give effect to healthcare agreements between the UK and other countries including those in the EU,<sup>241</sup> and secondary legislation to correct deficiencies in EU retained law relating to the operation of the social security co-ordination in a no-deal scenario.<sup>242</sup> The explanatory notes for the Social Security Statutory Instruments state that the “whole system” of social security co-ordination relies on co-operation and reciprocity, and this cannot be relied upon after the UK has left. Without the obligations to exchange data, e.g. to establish which Member State is responsible for payment of benefits, the SIs will enable the UK:

to ask claimants to provide (within reasonable time) the relevant data to determine competence in cases where the relevant EU MS does not do so, if asked. However, in the event that the information provided by the claimant is insufficient, the UK will no longer be required to fulfil any obligation under the Coordination regulations.<sup>243</sup>

105. The December Communication from the Commission also pointed out that Union law provides common rules on social security of EU citizens who have moved to another

237 The3million, [EU Settlement Scheme: Statement of Intent. An analysis by the3million](#), 11 July 2018

238 Department for Exiting the EU, [Citizens' Rights – EU citizens in the UK and UK nationals in the EU Policy Paper](#), 6 December 2018

239 [Citizens' Rights – EU citizens in the UK and UK nationals in the EU Policy Paper](#), 6 December 2018

240 [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill 2017–19](#)

241 [Healthcare \(International Arrangements\) Bill 2017–19](#)

242 [The Social Security Coordination \(Regulation \(EC\) No 883/2004, EEA Agreement and Swiss Agreement\) \(Amendment\)\(EU Exit\) Regulations 2018; The Social Security Coordination \(Regulation \(EC\) No. 987/2009\) \(Amendment\)\(EU Exit\) Regulations 2018; The Social Security Coordination \(Council Regulation \(EEC\) No 1408/71 And Council Regulation \(EC\) No 859/2003\)\(Amendment\)\(EU Exit\) Regulations 2018; and The Social Security Coordination \(Council Regulation \(EEC\) No 574/72\)\(Amendment\)\(EU Exit\) Regulations 2018.](#) “These instruments make amendments to the retained Coordination regulations, principally to remedy deficiencies that arise as a result of provisions that do not apply to the UK, confer functions on EU entities that no longer have functions in relation to the UK and make provision for, and in connection with, reciprocal arrangements between the UK and EU MS.”

243 [Explanatory Memorandum to the Social Security Coordination \(Regulation \(EC\) NO 883/2004\) EEA Agreement and Swiss Agreement\)\(Amendment\)\(EU Exit\) Regulations 2018](#)

Member State, that this co-ordination covers rights derived from national law linked to “sickness, maternity and paternity, pensions, invalidity, unemployment, family benefits, accidents at work and occupational diseases”, and that “previous periods of insurance, work or residence in other Member States are taken into account when authorities determine a person’s eligibility for a benefit.” The Commission has exclusive competence on social security co-ordination “for facts and events that occurred before the withdrawal date.” Without the Withdrawal Agreement, EU rules on social security co-ordination will no longer apply to the UK. The Commission called on Member States to inform their citizens that they should keep appropriate documentation to show evidence of work in the UK before 30 March 2019.

106. The Minister told us that UK nationals living abroad would be able to continue to receive pensions.<sup>244</sup> The UK has said that it will continue to pay an uprated UK state pension to eligible UK nationals living in the EU, but this would be “subject to reciprocity.”<sup>245</sup> We note that the Public Accounts Committee reported in 2017 that the UK paid for 190,000 UK state pensioners living abroad, mainly in Spain, France and Ireland, but there were only 5,500 state pensioners from Europe living in the UK.<sup>246</sup> This comparison was most unbalanced between about 70,000 British pensioners living in Spain but only 62 Spanish pensioners living in the UK.<sup>247</sup>

**107. The aggregation of contributions made in more than one Member State and the ability to draw on benefits in another as a result is a benefit of free movement enjoyed by many UK and EU citizens, and clearly for many pensioners. Such co-operation would continue, for those citizens covered by the Withdrawal Agreement, in the event of a deal. In the event of leaving without a deal, this co-operation would be lost.**

### *UK nationals returning to the UK*

108. The UK has said that it would act “where possible” to support UK nationals but that:

If [ ... ] UK nationals were unable to continue to live their lives as they do now in a ‘no deal’ scenario and returned to the UK to live, there are a number of steps the Government would consider to address concerns that have been raised.<sup>248</sup>

109. The concerns raised by UK nationals who might return to the UK listed in the policy paper include the ability to access employment, NHS healthcare, social security and pensions, housing, education, and be able to register and vote in local and national elections on return.<sup>249</sup> The paper also recognised that there were concerns about the right to be able to bring EU and non-EU citizen family members into the UK.<sup>250</sup> The Minister

244 Q3616

245 [Citizens’ Rights – EU citizens in the UK and UK nationals in the EU Policy Paper](#), 6 December 2018

246 [NHS treatment for overseas patients](#), Thirty-seventh Report of Session 2016–17, HC 771, para 12 (EEA and Switzerland).

247 [Public Accounts Committee, Oral evidence taken on Monday 21 Nov 2016](#), Qq48–51

248 [Citizens’ Rights – EU citizens in the UK and UK nationals in the EU Policy Paper](#), 6 Dec 2018, para 21

249 [Citizens’ Rights – EU citizens in the UK and UK nationals in the EU Policy Paper](#), 6 Dec 2018, paras 18 22, 24, 31

250 [Citizens’ Rights – EU citizens in the UK and UK nationals in the EU Policy Paper](#), 6 Dec 2018, para 23

provisionally told us that UK nationals returning to the UK would have to satisfy the Habitual Residence Test. This could delay access to the social security system for UK nationals returning to the UK.<sup>251</sup>

**110. The Government states that some UK nationals may be forced to return to the UK in the event of a no deal depending on the approach taken by their current host EU country. This would raise a number of questions around access to services, especially healthcare, but also how quickly they could access housing and social security. In the absence of the reciprocal arrangements that enable contributions in one Member State to be aggregated and relied upon in another State, there is a clear risk that the onus for providing documentary evidence of contributions in another Member State will fall on the individual.**

### **Ring-fencing rights**

111. In March 2017, our predecessor Committee said “It would be unconscionable for EU citizens in the UK and UK citizens in the EU not to have clarity about their status for another two years.”<sup>252</sup> Ministers in the UK Government have made several public statements that EU citizens in the UK will be able to stay and their rights will be protected, even in the event of no deal.<sup>253</sup> We have welcomed such positive statements and called on EU Member States to make similar public commitments to assure all UK citizens living in their territory.<sup>254</sup> While some Member States have initiated legislation to protect British citizens in their territory, it is evident from the no deal planning in the UK and across the EU that it is not possible to mitigate a no deal outcome unilaterally. Ring fencing of citizens’ rights involves lifting out the relevant sections of the Withdrawal Agreement that apply to citizens’ rights and agreeing them separately because the UK and the EU cannot agree the other requirements of withdrawal. It has been argued that this could be done as a separate Treaty under Article 50.<sup>255</sup>

112. The 3million and British in Europe joint letter to Donald Tusk said:

We ask the EU and the UK to sign and implement under Article 50 the citizens’ rights part of the Withdrawal Agreement now, or at least to commit now unequivocally in a joint political statement that this will be done prior to Brexit coming into force.<sup>256</sup>

**113. Both the UK and the EU have said that resolving the issue of citizens’ rights were priorities for the withdrawal negotiations and are contained in the Withdrawal**

251 Qq3617–3618. Ibid, para 24. We note that the Government paper recognised that the concern over access to benefits and housing was described as “quickly”

252 Second Report of Session 2016–17, [The Government’s negotiating objectives: the rights of UK and EU citizens](#), HC 1071, para 49

253 For example, following the Salzburg summit, the Prime Minister said: “that even in the event of no deal your rights will be protected.”, [PM Brexit negotiations statement: 21 September 2018](#); [Oral evidence to the House of Lords EU Justice Sub-Committee on Citizens’ rights post-Brexit, Thursday 21 June 2018, Q23](#); [Citizens’ rights – EU citizens in the UK and UK nationals in the UK. Policy Paper](#)

254 Eighth Report of Session 2017–19, [The progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens](#), 23 July 2018, HC 1439

255 Prof Stijn Smismans, Cardiff University, [Brexit: a separate citizens’ rights agreement under Article 50 TEU, 16 June 2017](#); Prof Stijn Smismans, Cardiff University, [Six Brexit scenarios for citizens’ rights, UK in a Changing Europe, 12 October 2018](#); Prof Steve Peers, University of Essex, [Ending the limbo: the case for ring-fencing EU27 and UK citizens’ rights after Brexit](#), 1 March 2018;

256 Letter from 3million and British in Europe, 16 January 2019

**Agreement text. The importance placed on how EU citizens are treated in the UK will not change. The UK leaving the EU without a deal would cause real anxiety both for UK citizens living in the EU and EU citizens in the UK.**

**114. In the event of the UK leaving the EU without a deal, the UK should offer to the EU that it is ready to ring-fence the citizens' rights contained in the Withdrawal Agreement, and agree the relevant sections as a separate Treaty under Article 50. It should call on other Member States to respond positively to this proposal.**

### A “managed no deal”

115. Jill Rutter estimated that roughly a quarter of the technical notices issued by the Government indicate the need to negotiate some form of agreement with the EU and/or EU Member States in the event of withdrawal from the EU without an overall deal on the terms of exit or therefore a transition period.<sup>257</sup> Sir Ian Cheshire, Government Lead Non-Executive Director, told us that the assumption inside Government has been that the UK “would have to have a series of departmental” and “geographic specific” deals.<sup>258</sup> He admitted that they “will not necessarily provide the longer-term answer, but the immediate issue is to deal with the urgent and highly impactful issues.”<sup>259</sup>

116. However, the EU’s Chief Negotiator, Michel Barnier told us in September that:

if there is a no deal there is no more discussion. There is no more negotiation. It is over and each side will take its own unilateral contingency measures, and we will take them in such areas as aviation, but this does not mean mini-deals in the case of a no deal.<sup>260</sup>

This position was reiterated in the European Commission’s latest Communications which emphasise that Member States should refrain from bilateral agreements with the UK, which would undermine EU unity.<sup>261</sup>

117. Sir Simon Fraser, Deputy Chairman, Chatham House, pointed out that “Michel Barnier is not going to say, while he is negotiating a deal, that if we do not get the deal we will do something else.” He also believed that there would be “very big pressure” on the EU side to reach “pragmatic arrangements”. However, he concluded that the EU’s approach to side-deals “would be quite limited [and] focused on areas of their principal concern, not ours.”<sup>262</sup> Holger Hestermeyer felt that some of the mini-deals might be designed to “become regular deals”. However, any deals would likely require a dispute settlement mechanism, which had been a problem with the negotiations thus far.<sup>263</sup>

118. The “time consuming” nature of the EU’s legislative process was also pointed out to us. European Parliament elections will take place in May 2019 and the EU will not be “mobilised at all in this period to deal with urgency.”<sup>264</sup> A new Commission will also be established in autumn 2019 and this will absorb much of the focus of the new Parliament.

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257 [Q2739](#)

258 [Q2920](#)

259 [Q2874](#)

260 [Q2563](#)

261 See the Communications of [13 November 2018](#) and [19 December 2018](#)

262 [Q2766](#)

263 [Q3288](#)

264 [Q3287](#)

119. Sir Amyas Morse emphasised that any mini-deals “require mutual good will to put them in place.”<sup>265</sup> Jill Rutter felt that “at the point at which there is no withdrawal agreement,” the atmosphere “could be quite acrimonious.”<sup>266</sup> Julian Jessop suggested that if the UK made “a good offer on citizens’ rights, which it has effectively already done,” if it confirmed it would pay “at least some” of the financial settlement,<sup>267</sup> and if there was “a satisfactory backstop on Northern Ireland” that would maintain goodwill. Furthermore, “if the economic imperative is there, all of these problems, however complicated and numerous they may be, are fixable.”<sup>268</sup>

120. The idea of some form of ‘managed no-deal’, with side arrangements mitigating the effects of leaving the EU without a deal, was met with scepticism by our panel of witnesses on 19 December. Professor Catherine Barnard, Professor of European Union Law, University of Cambridge, said that “a managed no deal requires bilateral agreements, and the EU has come out very clearly and said, ‘No bilateral agreements. We will do unilateral decisionmaking, which helps the EU27’”; Sam Lowe described the term as “a political slogan of no substantive worth”. Henry Newman, Director of Open Europe, said that:

There are some substantive things the UK can do unilaterally to mitigate the effects of no deal in certain areas. That is indisputable, but overall, unless you can agree side agreements, there will be very significant disruption.<sup>269</sup>

121. The Minister told us he did not use the phrase ‘managed no deal’.<sup>270</sup> However, he insisted the UK would not be “crashing out” of the EU in the absence of a deal; a “huge amount of preparation” has gone on.<sup>271</sup>

**122. The Government’s no-deal technical notices place significant weight on assumptions about how the EU will respond in the event of no-deal. This is at odds with the assumptions of most of our witnesses that the scope for side deals will be quite limited and will focus on areas of the EU’s greatest interest rather than the interests of the UK. It is also clear that any side deals also require the maintenance of a degree of goodwill between both sides. This will require some settlement of financial obligations and a generous guarantee of the rights of EU citizens. It is also difficult to see goodwill being maintained without an indication of the path that can be followed to ensure that a hard border in Ireland can be maintained while the UK maintains the right to establish an independent trade policy and pursue policies that may entail regulatory divergence.**

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265 [Q2706](#)

266 [Q2740](#)

267 Chris Heaton-Harris told us that some of the financial settlement would have to be paid, “because there are legal obligations that we have. We have had thousands of civil servants working in Europe over a long period, so there is lots of pension liability that resides there, but it would be nowhere near [£39 billion]” [Q3556](#)

268 [Qs2739–40](#)

269 [Q3482](#)

270 [Q3623](#)

271 [Q3703](#)



## 3 Renegotiation of the deal

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### Finding a majority

123. In our December 2018 Report, we said that the Political Declaration was neither detailed nor substantive and that it allowed for a “spectrum” of outcomes for the future UK-EU relationship. We concluded that the document failed to provide certainty on the UK’s objectives for the upcoming negotiations on the future UK-EU relationship:

... the Political Declaration expresses a high level of ambition about the nature and scope of the future relationship, but ambition is no guarantee of success, nor is it clear how it would deliver at least the same outcomes as we have under our current relationship with the EU. People, businesses and institutions will therefore continue to face significant uncertainty about the future terms of EU-UK trade, which will affect future investment in the UK economy.<sup>272</sup>

124. It is clear from the vote on 15 January 2019 that there is no majority in the House for the Government’s deal, including the Political Declaration.<sup>273</sup> On 13 December 2018, however, the EU27 issued a conclusion on the deal which said, “The Union stands by this agreement and intends to proceed with its ratification. It is not open for renegotiation.”<sup>274</sup> Nevertheless, on 19 December 2018, witnesses told us that while the Withdrawal Agreement is not open for renegotiation, it is likely that the Political Declaration can be amended. Sam Lowe told us that there “is probably scope to tweak the Political Declaration, if it was deemed to help the Prime Minister to do so, because it does not bind either side.”<sup>275</sup> Similarly, Dr Kirsty Hughes, Director of the Scottish Centre of European Relations, told us that the Political Declaration could be changed “quite substantively.”<sup>276</sup>

125. It remains unclear whether there is a majority in the House for any of the possible end state options that could form the basis of the Political Declaration, or even if a change to the controversial backstop provisions in the Withdrawal Agreement would be sufficient to ensure that the deal is approved. The Government has sought to find a way to identify which changes might gain the support of the House. We have set out further analysis of what we identified as the three main renegotiation possibilities:

- a) Seeking changes to the text in the Withdrawal Agreement on the backstop arrangements;
- b) Seeking a Canada-style deal;
- c) Seeking to join the EEA through the EFTA pillar and remaining in a customs union with the EU or a variation on this.<sup>277</sup>

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272 Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal - The Withdrawal Agreement and Political Declaration](#), Tenth Report of Session 2017–19, HC 1778, 9 December 2018, para.

273 The House voted against the Government’s motion to approve the Withdrawal Agreement and Political Declaration by 432 votes to 202. See HC Deb 15 January 2019 Vol. 652, Col. [1122](#)

274 European Council, [Special meeting of the European Council \(Art. 50\) \(13 December 2018\) - Conclusions](#), 13 December 2018, para. 1

275 [Q3490](#)

276 [Q3491](#)

277 Exiting the European Union Committee, [Response to the vote on the Withdrawal Agreement and Political Declaration: Options for Parliament](#), Eleventh Report of Session 2017–19, HC 1902, 16 January 2019, paras. 14–19

If the House indicates a preference, and subsequent negotiations with the EU take place, the deal could be amended to resemble the option favoured by the House.

## Next steps: options

### *Renegotiating the backstop*

126. The EU has said unequivocally that the backstop, as set out in the Withdrawal Agreement, is not open to further negotiation. On 16 January 2019, Michel Barnier was reported to have said, “The withdrawal agreement—and, I repeat, the withdrawal agreement—... is not open for renegotiation.”<sup>278</sup> He has also said previously that “To be clear: without a backstop, there can be no Withdrawal Agreement.”<sup>279</sup> Witnesses told us that other options were available that could provide reassurance to the UK, although the primacy of the legal text of the Withdrawal Agreement would remain as it is. While the House could instruct the Government to seek substantive changes to the backstop, the Prime Minister has sought amendments and clarifications already, both during the Article 50 negotiations and after the finalisation of the Withdrawal Agreement, albeit before the House voted down the Agreement on 15 January 2019.

127. On 19 December 2018, Henry Newman told us that one option the Government could undertake would be to create “a role for the Stormont institutions.” He said that this could be done through the UK-EU Joint Committee and it would “give reassurance that the commitments made in December [2017] by both sides in the Joint Report were being met.”<sup>280</sup> On 9 January 2019, the Government published a series of commitments in relation to Northern Ireland and the backstop. This included a commitment to provide a role for the Northern Ireland Executive through the UK’s presence in the governance arrangements that will be established by the Withdrawal Agreement, namely the Joint Committee, Specialised Committee on the Northern Ireland Protocol and the Joint Consultative Working Group. This role would be based on a memorandum of understanding with the Northern Ireland Executive setting out processes for ensuring that “the Northern Ireland voice was represented and heard at each level of the institutional structures that would give effect to the Protocol.”<sup>281</sup>

128. Witnesses also suggested that the Government could seek greater clarity on the operation of the exit mechanisms for the backstop that are contained in the Withdrawal Agreement. On 14 January 2019, in response to a letter from the Prime Minister, Donald Tusk, President of the European Council, and Jean-Claude Juncker, President of the European Commission, set out clarifications on the backstop. However, their letter offered no significantly revised interpretation of the backstop and stated, “we are not in a position to agree to anything that changes or is inconsistent with the Withdrawal Agreement ...”<sup>282</sup> We were told that changes, subject to deliberations in the European Council, could, in theory, be achieved through a form of ‘interpretive declaration’. Professor Catherine Barnard said that such a declaration would most likely take the form of a ‘decision of

278 Reuters, [EU open to closer ties with Britain but no renegotiation of withdrawal deal](#), 16 January 2019

279 European Commission, [Speech by Michel Barnier at the All-Island Civic Dialogue](#), 30 April 2018

280 [Q3480](#)

281 HM Government, [UK Government commitments to Northern Ireland and its integral place in the United Kingdom](#), 9 January 2019, paras. 24–27

282 Department for Exiting the European Union, [Response from President Juncker and President Tusk to the Prime Minister](#), 14 January 2019

Heads of State or Government’, i.e. an intergovernmental agreement, which would stand separate and independent from the Withdrawal Agreement. She said that this approach was used for clarifications when Denmark voted against the Maastricht treaty, when Ireland voted against the Lisbon treaty, and for the 2016 Cameron renegotiations.<sup>283</sup>

129. In the Prime Minister’s letter to President Tusk and President Juncker on 14 January 2019, the Prime Minister repeated a proposal to agree a “legal commitment to have our future partnership in place by the end of 2021 at the latest.”<sup>284</sup> Henry Newman suggested that such an approach could, “create a new negotiation cliff edge, which you then rush towards and take actual power away from the UK negotiating team. I do not think they are going to give us that, and it is not a very sensible approach.”<sup>285</sup>

### **‘Canada Plus’**

130. The House could seek to amend the Political Declaration so that it set out an end state comparable with the Comprehensive Economic and Trade Agreement (CETA), a free trade deal between the EU and Canada.

131. CETA is one of the most ambitious free trade deals that the EU has concluded to date.<sup>286</sup> A UK-EU relationship on similar terms would be much less close than a Norway/EEA-style arrangement. Under the CETA model, the UK would not be required to make financial contributions to the EU. Moreover, the UK would not have the rights or the obligations that flow from being party to the Single Market’s four freedoms. This would mean, for example, that the UK would not be required to accept the principle of free movement of people, an objective of the UK Government. However, outside the Single Market and its constituent four freedoms, there would be less access to the Single Market and more bureaucracy for UK firms that trade with the EU.

132. The main benefit that the UK would derive from a CETA-style relationship is that it would be able to adapt its trade and regulatory policies to secure better market access in non-EU countries. However, this would inevitably increase barriers to trade with the EU, which is the UK’s nearest and largest market. It is possible that some barriers could be reduced in the future, with additional UK-EU agreements and the use of technology to reduce some friction to trade, but these mitigations would take time to negotiate and to implement.

133. Northern Ireland would have to be outside any CETA-style relationship that the rest of the UK negotiated with the EU, as a relationship on these terms would not entail the level of regulatory alignment between Northern Ireland and Ireland that is necessary to maintain an open border between them. The Government committed to maintain an open border in December 2017.<sup>287</sup> Sam Lowe said, “if you want a Canada-style relationship it can only be for Great Britain, because Northern Ireland will have to have supplementary

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283 [Q3480](#)

284 Department for Exiting the European Union, [Letter from the Prime Minister to President Juncker and President Tusk](#), 14 January 2018

285 [Q3480](#)

286 See, Cecilia Malmström, [CETA Europe’s Next Step, Speech at European Parliament](#), 9 December 2015 and, European Commission Press Release, [European Commission proposes signature and conclusion of EU-Canada trade deal](#), 5 July 2016

287 European Commission & Department for Exiting the European Union, [Joint report on progress during phase 1 of negotiations under Article 50 TEU on the UK’s orderly withdrawal from the EU](#), 8 December 2017, para 49

provisions.”<sup>288</sup> Dr Kirsty Hughes told us, “If you go down the Canada route, you are only going to get joint agreement to go down the Canada route by having a border in the Irish Sea.”<sup>289</sup> The Government has said previously that technology could provide a solution, and it is for this reason that the model has been called ‘Canada Plus’. However, the Government’s technological proposals were rejected by the EU as unworkable.<sup>290</sup>

134. In the absence of a technological solution to maintain an open border, Northern Ireland would have to trade under the backstop provisions set out in the Withdrawal Agreement. The Withdrawal Agreement states that the backstop can be terminated “in whole or in part”, if the two sides deem that the Protocol “in whole or in part” is no longer necessary. This allows for the possibility to leave the backstop provisions that apply to Northern Ireland in place but to remove the backstop provisions that apply to the rest of the UK, so that it can enter into a new trade relationship with the EU, including a CETA-style arrangement.<sup>291</sup> This arrangement would result in a customs border between Northern Ireland and Great Britain, increasing trade friction across the Irish Sea. On 28 February 2018, the Prime Minister said this was an outcome that “no UK Prime Minister could ever agree to”.<sup>292</sup> Furthermore, any free trade agreements concluded between the UK and non-EU countries that cover goods would be unlikely to apply to Northern Ireland.<sup>293</sup>

135. For trade between the EU and the UK, a CETA-style deal would almost certainly entail no duties or tariffs on goods. The Political Declaration already states an ambition to negotiate an economic partnership that will “ensure no tariffs, fees, charges or quantitative restrictions across all sectors”.<sup>294</sup> However, as we noted in our September 2018 Report, a relationship on these terms would not, on its own, ensure the type of friction-free trade with the EU that many UK companies with just-in-time supply chains need, as friction free trade is not possible outside the Single Market and Customs Union.<sup>295</sup> There would be more administrative costs for businesses that trade with the EU, and there would be additional checks and controls at the UK border.

136. CETA includes some provision for trade in services, including access to the Canadian market in telecoms, energy and maritime sectors. It also enables EU companies to bid for public procurement contracts in Canada. There are also some limited provisions for financial services, although these falls far short of Single Market passporting rights and rely on the EU’s equivalence framework.<sup>296</sup> The UK-EU financial services relationship would also probably be based on the EU’s equivalence regime, as already set out in

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288 [Q3490](#)

289 [Q3534](#)

290 See, Department for Exiting the European Union, [Future customs arrangements](#), 15 August 2017. See also, Department for Exiting the European Union, [Northern Ireland and Ireland](#), 16 August 2017, and, Politico, [EU rejects UK’s post-Brexit customs fixes for Northern Ireland](#), 24 April 2018

291 European Commission & Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), Protocol on Ireland/Northern Ireland, article 20

292 HC Deb 28 February 2018, Vol. 636, [Col. 823](#)

293 [Q3282](#) [Dr Holger Hestermeyer]

294 European Commission & HM Government, [Political Declaration setting out the framework for the Future Relationship between the European Union and the United Kingdom](#), 22 November 2018, para. 23. Under CETA, 98% of EU goods enter Canada free of tariffs and duties.

295 Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal \(June to September 2018\)](#), Ninth Report of Session 2017–19, HC 1554, 18 September 2018, para 63

296 Institute for Government, [Trade after Brexit: Options for the UK’s relationship with the EU](#), 18 December 2017, page 13

the Political Declaration. This does not cover all financial services and access can be withdrawn with as little as 30 days' notice. Nevertheless, the Political Declaration already includes a commitment to keep UK and EU equivalency frameworks under review, and to be transparent and consult on decisions to adopt, suspend or withdraw equivalency decisions.<sup>297</sup>

137. Under a CETA-style arrangement, the UK would not be under the jurisdiction of the CJEU. However, enforcement mechanisms contained in free trade agreements can be highly controversial, as was the case with the investment protection and dispute settlement provisions in CETA. Critics said that these provisions would allow foreign companies to sue governments in special tribunals outside domestic legal systems, if they had been affected adversely by changes in policy. This famously led to a delay in ratifying CETA when the Belgium region of Wallonia threatened to veto the agreement.

### **'Norway Plus'**

138. The European Economic Area (EEA) Agreement brings together the 28 EU Member States and three of the four EFTA States—Norway, Iceland and Liechtenstein ('the EEA EFTA states').<sup>298</sup> The Agreement provides the EEA EFTA states with effective membership of the Single Market by requiring them to accept the legal rights and obligations that flow from the four freedoms (goods, services, capital and people), and EU level playing field rules. The EEA EFTA states have made a firm choice to align their trade and regulatory policies with the EU, to secure deeper access to the Single Market with less bureaucracy. Compared with EU membership, EEA EFTA states are not in the room when decisions about EU law are taken and they do not have the ability to put regulatory standards, covered by the EEA Agreement, on the table during trade negotiations with non-EU/EEA countries, which could otherwise provide EEA EFTA states with more access to those markets. However, while they do not have a vote through the formal processes in the EU institutions, they do have a right under the Treaties to be consulted about draft EU legislation.

139. There are significant differences between being a third country that is party to the EEA Agreement and being a full EU Member State. EEA EFTA states do not participate in the Common Agricultural Policy, the Common Fisheries Policy, the Customs Union, the Common Commercial Policy, the Common Foreign and Security Policy, justice and home affairs rules, or the Euro.<sup>299</sup> The EEA EFTA states are also not under the direct jurisdiction of the CJEU but accept the jurisdiction of the EFTA Court instead. There is no concept of 'direct effect' under the EEA Agreement and therefore the EFTA Court is a separate and independent court covering a separate and independent jurisdiction. Currently, each EFTA state has one judge on the EFTA Court. The EFTA Court gives 'advisory opinions' on the interpretation of the EEA Agreement, when requested by national courts of the three EFTA EEA states. These are not binding on the national courts unlike the rulings of the CJEU which are binding on EU Member States. Nevertheless, the EFTA Court is

297 European Commission & HM Government, [Political Declaration setting out the framework for the Future Relationship between the European Union and the United Kingdom](#), 22 November 2018, paras. 37–39

298 Switzerland is in EFTA but is not party to the EEA Agreement. Its relationship with the EU and the Single Market is established in a series of bilateral agreements.

299 EFTA.int, [EEA Agreement](#)

ultimately bound to follow the relevant rulings of the CJEU closely,<sup>300</sup> although it has also established its own precedents in case law.<sup>301</sup> If an EEA EFTA state is not satisfied with a proposed Single Market law they can contest the relevance of new EEA law to the functioning of the Single Market and seek to secure changes, adaptations or derogations. This occurs through the EEA Joint Committee where representatives from the EU and EEA3 meet to ‘decide’ on whether to ratify the proposed new EEA law. New EEA law is only incorporated into the EEA Agreement with the unanimous agreement of the EU and the EEA EFTA states (unlike in the EU Council where voting is on the basis of a qualified majority).

140. The EEA Agreement provides considerable tariff-free access to the Single Market in industrial goods, although there are some restrictions on agricultural and fish products. Furthermore, outside the Customs Union, Norwegian businesses are subject to Rules of Origin requirements. Therefore, trade that crosses the Norway-Sweden border, for example, is not frictionless despite these two countries being closely integrated, with one state in the EEA and the other in the EU. Service providers from EEA EFTA states have similar levels of access to the Single Market as businesses from EU Member States, including the right of establishment. Financial services firms based in EEA EFTA states also have the right to provide services using the Single Market passport.

141. As well as covering many of the EU’s rules for goods and services, the EEA Agreement covers cooperation in research and development, education, social policy, environmental protection, consumer protection, tourism and culture.<sup>302</sup> The Government has already indicated a willingness to continue to cooperate with the EU in many of these areas, as set out in the Political Declaration.<sup>303</sup> EEA EFTA states make financial contributions to the EU to participate in its agencies and programmes, and to Europe-wide cohesion efforts. For example, Norway makes a net contribution of approximately £536 million (€597 million) a year to the EU.<sup>304</sup> The UK makes a net contribution of £8.9 billion a year to be a full member.<sup>305</sup>

142. EEA EFTA states are not represented in the EU’s institutions, but they have some limited rights to consultation on policy at an early stage of development.<sup>306</sup> Nevertheless, Dr Kirsty Hughes told us that Norway’s Europe policy suffered from a democratic deficit and that the country’s influence on EU rules was limited:

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300 The EFTA Court is bound to interpret the EEA Agreement in conformity with the relevant rulings of the CJEU that were issued prior to the signing of the EEA agreement in 1992. For rulings issued after that date, the EFTA Court is obligated to pay ‘due account’ to relevant rulings.

301 [Q1029](#) [Professor Carl Baudenbacher, former Judge of the EFTA Court]

302 EFTA.int, [EEA Agreement](#)

303 European Commission & HM Government, [Political Declaration setting out the framework for the Future Relationship between the European Union and the United Kingdom](#), 22 November 2018

304 House of Commons Library Briefing Paper, [The European Economic Area](#), Number 8129, 21 December 2018, page 16

305 House of Commons Library Briefing Paper, [The UK’s contribution to the EU Budget](#), Number CBP 7886, 23 November 2018, page 3. The Government has published a long term economic analysis in which it estimated that, based on Norway’s contribution of 0.15% of GDP, the UK would contribute £6.2 billion to participate in the Single Market through the EEA in 2035/36. See, HM Government, [EU Exit: Long-Term Economic Analysis Technical Reference Paper](#), November 2018, section 8.5

306 EFTA.int, [EEA Agreement](#), Part IV, Chapter 2

I worked in the Commission for two years. How countries influence laws and outcomes that are in their interest depends on being at the table. From my two years at the Commission, I cannot remember hearing Norway's views being brought up by somebody in any meeting that I was at.<sup>307</sup>

We note that the UK joining the EEA would be likely to make the EFTA pillar of the EEA more influential. An EEA EFTA state can ultimately reject a change to EU law if it is prepared to see its market access suspended in relevant areas. Estimates vary on how much of the EU's acquis has been adopted by Norway. According to the Institute for Government:

Norway, like other EEA countries, has agreed to follow almost the entire Single Market acquis—a body of nearly 900 EU directives and over 3,600 regulations—and relevant ECJ case law. This acquis includes about 45% of all EU directives, which amounts to about 30% of all EU legislation that the UK currently adopts as an EU country member.<sup>308</sup>

Norway obtained derogations from 55 legal acts and Iceland from 349 acts up until June 2011. The amount of EU law that applies to EEA states appears to vary. For example, the Icelandic Government considers that only 10% of EU legislation applies in Iceland.<sup>309</sup>

143. There are provisions in the Agreement to allow EEA EFTA states to trigger safeguard measures—an 'emergency brake'—to suspend aspects of the Agreement if "serious economic, societal or environmental difficulties of a sectorial or regional nature" arise and are deemed liable to persist. This can include suspending aspects of the Agreement that relate to the free movement of people. The Agreement states that safeguard measures "shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation" and it sets out a process for consultations in the EEA Joint Committee for resolving the issues and identifying long-term solutions.<sup>310</sup> Only Liechtenstein has triggered these provisions to control migration,<sup>311</sup> and this was on account of its unique circumstances but they were also offered to Switzerland had the country voted to join the EEA in their 1993 referendum. Sam Lowe told us that the EU is likely to have significant concerns over the possibility of the UK exercising the emergency brake provisions, if the UK decides to seek a Norway-style relationship with the EU. He said, "There is also talk that we could trigger article 112 and do something on freedom of movement. We cannot pretend the EU has not noticed this and would not put in something in a bespoke arrangement to prevent that from happening."<sup>312</sup> However, this would be a matter for negotiation.

144. EEA EFTA states have trade policies that are more independent than those of EU Member States, as EEA EFTA states are not members of the Customs Union, nor are they party to the Common Commercial Policy. EEA EFTA states do not benefit from the EU's trade deals with third countries, but they can negotiate their own trade deals as a block

307 [Q3527](#)

308 Institute for Government, [Trade after Brexit Options for the UK's relationship with the EU](#), 18 December 2017, page 10

309 Iceland Monitor, [Iceland has adopted 10% of EU laws](#), 21 October 2015

310 EFTA.int, [Agreement on the European Economic Area](#), updated 1 August 2016, Articles 112–114

311 Liechtenstein subsequently secured an amendment to the EEA Agreement to enable it to continue to apply restrictions to free movement of people provisions. Iceland used the safeguard measure to control movement of capital after the financial crisis in 2008.

312 [Q3528](#)

or individually. The EEA Agreement inevitably places constraints on these negotiations. While EFTA EEA states can negotiate tariffs and quotas, they cannot alter the standards and regulations which are required for them to be part of the Single Market, under the EEA Agreement.

145. The UK's commitment to maintain an open border on the island of Ireland would constrain the UK's trade independence further. Sam Lowe told us that a UK-EU relationship on the same terms as Norway would not maintain an open border. The Government would also need to negotiate a series of additional agreements on top of the EEA Agreement, including a UK-EU customs union. He said:

it would have to not only cover fish and agriculture, but you would probably need to be in a customs union. Even deeper than a customs union, you would probably need to be within the Union Customs Code, as Northern Ireland is under the backstop, and you would also need provisions on VAT and excise.<sup>313</sup>

Dr Kirsty Hughes told us that joining a customs union would also require the UK to seek a derogation from the EFTA Convention, to exempt the UK from the bloc's free trade agreements.<sup>314</sup> The necessity of these additional agreements, particularly the need for a UK-EU customs union, have led to the model being known as 'Norway Plus'. Within a customs union, the Government could not negotiate wide ranging trade deals with non-EU countries which included goods, but it could still conclude more limited agreements in other areas, such as on measures to facilitate trade in services.<sup>315</sup>

146. Witnesses were clear that 'Norway Plus' is not an 'off-the-shelf' option that could be negotiated rapidly. The additional agreements that the UK requires will result in longer and more complicated negotiations. Dr Kirsty Hughes said, "It would take time to negotiate. Issues like fisheries and the level playing field conditions would come back up, but you could get there."<sup>316</sup> Henry Newman, described a negotiation on Norway Plus as "very messy", with the UK holding little leverage. He said that during the transition/implementation period, the Government would "come up against all kinds of negotiating cliff edges, where the price is going to be, fish, level playing field, Gibraltar, tighter regulations on our services and divergence."<sup>317</sup>

147. We also heard that the EEA Agreement is not designed for countries with economies the size of the UK's, and that the EU would almost certainly require stronger commitments from the UK than it does for a state the size of Norway, for example on level playing field provisions or on the parts of the EEA agreement that allow for the option to delay or reject the implementation of EU rules.<sup>318</sup> Sam Lowe said that a Norway-style future UK-EU relationship would more likely be a separate, bespoke agreement, rather than a straightforward adoption of the exiting EEA Agreement with additions and derogations.

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313 [Q3528](#)

314 [Q3527](#)

315 Centre for European Reform [Sam Lowe], [An effective UK trade policy and a customs union are compatible](#), December 2018

316 [Q3527](#)

317 [Q3530](#)

318 [Q3528](#) [Sam Lowe]



He said, “Actually, what the EU and EEA countries would prefer, and it is probably more in the UK’s interests to take this route, is a bespoke arrangement that is built on similar terms to the EEA agreement.”<sup>319</sup>

148. One option for a separate, “bespoke agreement” could include a UK-EU customs union, combined with continued alignment with certain EU rules on goods to maintain frictionless trade at the border. Turkey has a partial customs union with the EU, which covers industrial goods but not agriculture.<sup>320</sup> Turkey is expected to align with EU rules, particularly industrial standards, but not for rules on services and is outside the EU’s free movement of people rules.<sup>321</sup>

149. Unlike Turkey, the UK would require a full customs union that covered goods and agriculture, including alignment with relevant EU rules, to maintain an open border on the island of Ireland, and between Northern Ireland and Great Britain. The backstop Protocol in the Withdrawal Agreement sets out what a ‘bare bones’ customs union between the EU and the UK might look like, although this contains deeper Single Market obligations for Northern Ireland, when compared to the rest of the UK. To make a UK-EU customs union sustainable in the long-term, both sides would need to negotiate additional agreements, including on trade in fish and access to waters, and an agreement to eliminate sanitary and phytosanitary checks between the two sides. The EU would also, almost certainly, insist on the UK signing up to further level playing field rules, as it would wish to avoid the risk of the UK undercutting it on social, tax and environmental standards, while having privileged access to the Single Market in goods.

150. A UK-EU customs union would constrain the UK’s ability to negotiate trade deals with non-EU countries that covered goods. However, the UK would be freer to strike trade deals with non-EU countries in services than it would be as a party to the EEA Agreement. Nevertheless, outside the Single Market, the UK’s services sector would face increased barriers to trade with the EU, without additional agreements on data, labour mobility, the mutual recognition of professional qualifications or equivalency agreements for financial services. New barriers to trade would affect both the EU and the UK. Under the EU-Turkey customs union, the Turkish government is not consulted before the EU negotiates new free trade agreements, and Turkey is required to open its market to the EU’s FTA partners without it necessarily having reciprocal agreements in place. It is possible that the UK could negotiate better terms than Turkey, for example through agreeing a mechanism under which the EU could consult with the UK before or during trade negotiations with third countries, in the similar way that Norway is able to be consulted on the development of certain EU rules, albeit without a vote.

**151. The House could decide that the Political Declaration, which offers no certainty on the UK’s end state relationship with the EU, should be amended to provide clarity on a shared understanding between the UK and the EU about a mutually agreeable end state. This would require re-negotiation which would, most likely, require a limited extension of the Article 50 process. We would expect that, within reason, the EU would accede to any such limited request, although such a decision does require**

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319 [Q3528](#) [Sam Lowe]

320 Except processed agricultural products.

321 European Commission, [Turkey](#)

**the unanimity of the 27. The pronouncements of the EU indicate that any request to re-open negotiations on the legally binding Withdrawal Agreement would not receive a positive response.**

**152. If the House decides to accept the Withdrawal Agreement but to amend the Political Declaration in a way that sets out a clear end state for the future UK-EU relationship, there will inevitably be trade-offs between the level of UK regulatory autonomy and the level of market access and opportunities for future EU/UK co-operation in a range of fields.**

**153. We note that the Government is seeking an economic relationship that would enable frictionless trade to continue. This would not be possible under a CETA-style free trade agreement with the EU. Furthermore, under this arrangement, Northern Ireland would not be included and would trade under different rules from the rest of the UK, as set out in the backstop Protocol, resulting in a trade and regulatory border in the Irish Sea.**

**154. A Norway Plus relationship between the UK and the EU, or a variation of this option, would enable frictionless trade on the condition that the UK continued to adhere to EU rules. Along with following Single Market rules, the UK would need to be in a UK-EU customs union, which would further constrain its trade policy. The Government has not faced up to these trade-offs.**

## 4 A second referendum

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155. It is not Government policy to hold a second referendum. We do not express a view on the arguments for or against holding a second referendum but set out some of the procedural and logistical matters that are relevant to any forthcoming debate.

156. Researchers from the Constitution Unit at UCL produced a report into the mechanics of holding a second referendum<sup>322</sup> and suggested that there were several routes whereby a further referendum might happen:

- the House of Commons could make approval of the Withdrawal Agreement subject to a referendum;<sup>323</sup>
- the legislation implementing the Withdrawal Agreement in domestic law could be amended to require the holding of a referendum;<sup>324</sup>
- The Government may come under pressure to commit to a referendum following a rejection of the Withdrawal Agreement by the House.

157. According to the Constitution Unit at UCL, several stages are required before a referendum could take place:

- Parliament needs to pass primary legislation to give the referendum a legal basis. The Constitution Unit research said that if it chose to have a second referendum, the Government “would probably prefer to bring forward separate legislation” rather than amend the Bill brought forward to implement the agreement, and risk delaying that Bill;<sup>325</sup>
- The Electoral Commission has a statutory duty to assess the ‘intelligibility’ of the referendum question, a process that usually takes 12 weeks, and which could be completed during the passage of the legislation. The question for the 2016 referendum was a single question with a binary choice. Testing a question with three possible options is likely to take longer than testing a question with two options;
- The legislation must specify the franchise for the referendum. The franchise for the 2016 EU referendum was those eligible to vote in UK parliamentary elections, plus Gibraltar residents who are eligible to vote in European Parliament elections and members of the House of Lords;<sup>326</sup>

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322 Constitution Unit, UCL, *The mechanics of a further referendum on Brexit*, October 2018

323 The Constitution Unit argue that this would only be politically binding. An amendment calling for a referendum was proposed to the motion under Section 13(1)(b) of the European Union (Withdrawal) Act 2018 in December, but the amendment was withdrawn when the debate resumed in January 2019. We note that Parliament would need to pass primary legislation to give a referendum a legal basis.

324 S 13(1)(d) of the European Union (Withdrawal) Act 2018

325 Constitution Unit, UCL, *The mechanics of a further referendum on Brexit*, October 2018, Page 27. All UK referendums, except the devolution referendums in 1979, have been initiated by the government

326 EU residents in the UK are not able to vote in UK general elections and were not able to vote in the 2016 referendum. The EU Referendum Bill was delayed by ‘ping pong’ between the Commons and the Lords over extending the franchise to those aged 16 and 17.

- The Electoral Commission and local officials need time to prepare for administering the poll and regulating campaigners;<sup>327</sup>
- The Political Parties, Elections and Referendums Act (PPERA) specifies a minimum 10-week period for the regulated stages of the campaign including the designation of campaign groups.<sup>328</sup>

The UCL research concluded that a minimum of 22 weeks would be needed to allow for the above requirements to be carried out.<sup>329</sup>

158. The IFG have said it could possibly be done in 21 weeks.<sup>330</sup> It may be possible to reduce this further, but there is a risk that the legitimacy of any such referendum would be questioned if such issues were not given the appropriate amount of scrutiny.<sup>331</sup>

**159. A second referendum is logistically and politically complex, but not out of the question if political will existed in the UK Parliament. It should not necessarily be seen as an alternative to the other options discussed in this report but could be combined with any one of them. Even if there was the political will, however, there would not be time for the UK to hold a referendum before 29 March 2019. If the UK chose to hold another referendum before the UK left the EU, then it would need to make a request to the European Council for an extension to the Article 50 period.**

## Timetable

### *Extending Article 50*

160. Article 50(3) of the TEU states that:

The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.<sup>332</sup>

161. Article 50(3) does not specify which party has to propose an extension of the time period, merely that all Member States must agree to an extension.<sup>333</sup> Article 50 does not provide a list of circumstances in which an extension would be granted, and it is not guaranteed that the EU would grant an extension if the UK asked for one. As agreeing

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327 The EU Referendum Bill received Royal Assent on 17 December 2015 for a referendum held on 23 June 2016. The Electoral Commission recommended that legislation should be clear at least six months before it is due to be complied with. The UCL report said “A general election necessitates most of the same tasks as a referendum, and in 2017 such an election was held just over seven weeks after it was announced. This suggests that, if circumstances required it, a poll could be held as little as 10 weeks after legislation had passed.”

328 Constitution Unit, [How long would it take to hold a second referendum on Brexit?](#), Jess Sargeant, Alan Renwick and Meg Russell, 30 August 2018,

329 Constitution Unit, [How long would it take to hold a second referendum on Brexit?](#), Jess Sargeant, Alan Renwick and Meg Russell, 30 August 2018, Table 1

330 Institute for Government, [How would a second referendum on Brexit happen?](#) 21 December 2018

331 See Q3514 [Barnard]

332 Consolidated versions of the [Treaty on European Union and the Treaty on the Functioning of the European Union](#) 2012/C 326/01. The UK notified the European Council by letter on the 29 March 2017 so the default position is that the UK will leave the EU two years later, on the 29 March 2019.

333 [Written submission from the European Council to the CJEU in Wightman, para 46](#)

an extension would require unanimity, it could take time and individual Member States could use it as an opportunity to bargain.<sup>334</sup> We discussed how the time period might be extended with our panel on 19 December 2018. Dr Kirsty Hughes said she did not think the EU would grant an extension just because the UK had failed to decide “what sort of Brexit” it wanted. Sam Lowe said the EU would probably agree an extension as long as it led to “a certain outcome”. Henry Newman said that extending Article 50 for further negotiations “is simply not on offer.” There was broad consensus among our witnesses that it is likely that a request for an extension would be agreed for a general election or a referendum, if they could not take place before the end of March.<sup>335</sup>

162. It is not clear what length of extension might be agreed to by the EU or that would be acceptable to Parliament. The European Parliament will rise on 18 April to hold elections on 23–26 May, and will not sit again till 2 July 2019.<sup>336</sup> This could complicate calculations around an extension to hold a referendum beyond the dates of the elections or the first sitting of the new European Parliament; the temporary presence of UK MEPs would have a potentially distorting impact on calculations around the respective weights of the political groups with implications for decisions on the workings of the new Parliament. It would raise questions around how the UK could exercise its rights as a Member State without its own MEPs in the European Parliament.<sup>337</sup> However, Jean Claude Piris, former Legal Counsel of the European Council and Director General of the EU Council Legal Services, has suggested that some legal solution could be found to allow the article 50 period to extend beyond 1 July.<sup>338</sup>

163. Article 50(3) allows for the Treaties to apply in the departing Member State until the date of entry into force of the Withdrawal Agreement. It is possible to change the date on which any Agreement comes into force. This may be appropriate where agreement has been reached on the terms of exit but, for example, the UK had not completed the process for ratification by 29 March or required time for other legislation to be considered. The EU Withdrawal Act specifies that “exit day” will be 29 March 2019 at 11.00 p.m. but allows Ministers to amend this date by regulation.<sup>339</sup> This, of course, would only change exit day in domestic law. Changing the date at which the Treaties cease to apply would require both the UK and the EU to agree.<sup>340</sup> Professor Barnard thought that any such agreement on changing the date the agreement would come into force would “likely” be by qualified majority voting.<sup>341</sup>

**164. The UK notified the EU on 29 March 2017 that it would leave the EU and, in accordance with Article 50, unless the process is extended or revoked or earlier exit is agreed, the UK will cease to be a Member State of the EU on 29 March 2019.**

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334 Q3484, Qq3520–3521

335 Q3484, Q3521

336 [Run-up to European elections: key dates](#). This will be followed by the process to appoint a new Commission in October.

337 Institute for Government, [What would it take for the EU to extend Article 50?](#) 18 January 2019

338 Q3485. [https://twitter.com/piris\\_jc/status/1072415172306890752](https://twitter.com/piris_jc/status/1072415172306890752)

339 Section 20(1) EU Withdrawal Act 2018 defines exit day as 29 March 2019 at 11.00 p.m. Section 20(4) EU Withdrawal Act 2018 enables a Minister of the Crown to amend the definition of “exit day” by regulation to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the UK. Schedule 7 requires that changing exit day using section 20(4) cannot be done unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

340 See also Robert Craig: [Can the Government Use the Royal Prerogative to Extend Article 50?](#) UK Constitutional Law Association, 9 January 2019.

341 Q3484

165. It is possible to extend the Article 50 period beyond 29 March 2019. The UK cannot do this unilaterally but would need to ask the European Council for an extension which could only be agreed by unanimity.

166. There have been indications that the EU27 would look favourably on a request for an extension if it was to allow time for the ratification process to be completed, for a second referendum, or for a general election. The EU27 appear unlikely to look favourably on a request for an extension to allow more time for negotiations, although it has been suggested that there would be a greater chance of allowing some further negotiations on the Political Declaration. If the EU were to agree an extension, it is likely to be time limited rather than open ended.

### *Revocation of Article 50*

167. The Wightman case concerns the UK's potential ability to revoke its notification of Article 50 of the Treaty on European Union (TEU). The Scottish Inner House of the Court of Session referred a question to the CJEU to ascertain whether unilateral revocation of Article 50 TEU notification was possible, with or without conditions. On 10 December 2018, the CJEU found that where a Member State had notified the European Council of its intention to leave the EU, then that Member State could revoke that notification unilaterally. The revocation would have to be made before any Withdrawal Agreement had entered into force or, if there was no agreement, before the Article 50 negotiating period had expired (including any extension). The decision to revoke notification must follow a democratic process, in accordance with national constitutional requirements, be an unequivocal and unconditional decision, and be in writing to the European Council. The Member State would remain in the EU on unchanged terms.<sup>342</sup>

168. Professor Barnard explained the implications of two aspects of the ruling. First, that as the ruling in Wightman required an unequivocal and unconditional decision, this made it unlikely to use it to 'pause' the process, as "a pause does not seem to be unequivocal or unconditional, because by definition a pause is just that."<sup>343</sup> Furthermore, the judgment of the CJEU said that the unequivocal and unconditional revocation "brings the withdrawal procedure to an end."<sup>344</sup> Others have pointed out that the CJEU appears to balance the risk of flip-flopping between notification and revocation, by requiring a democratic process for both.<sup>345</sup>

169. Secondly, Professor Barnard expanded on what those national constitutional requirements might be. She said:

The Court of Justice does not specify that. All it requires is that it respects our constitutional requirements [ ... ] The choice is either it can be done by an Executive Act or it needs an Act of Parliament. I think it would need to be an Act of Parliament, not just because of Miller but because we know

342 Commons Library briefing paper, [Brexit: Article 50 TEU at the CJEU](#), 10 December 2018

343 Q3484

344 [Wightman C621/18](#), para 74. This has prompted debate as to what would happen in the event of the UK revoking its notification to leave and subsequently continuing the debate on the UK-EU relationship with the possibility of notifying its intention to leave again. For example: Ronan McCrea, Professor of Constitutional and European Law, UCL, [The legal issues of revoking the notification to leave the EU – but then notifying to leave again](#), 20 December 2018; and Phil Syrpis, Professor of EU Law, University of Bristol, [The time has come to revoke Article 50](#), 21 December 2018.

345 Sylvia de Mars, [Does Revoking Art 50 Mean Staying... Forever?](#) 11 December 2018

from earlier case law that the prerogative cannot be used to frustrate the will of Parliament as expressed in statute. Statute has actually spoken twice. It spoke first in the notification Act. That is less problematic, because of the rather general way it is drafted. It allows the Prime Minister discretion. She may notify her intention to withdraw. The more problematic one is actually the European Union (Withdrawal) Act 2018, which is much more detailed about us leaving the EU, in particular section 1, which is the termination of the European Communities Act. It probably needs to be done by an Act of Parliament.<sup>346</sup>

The Minister clarified on 9 January 2018 that it is not Government policy to revoke Article 50.<sup>347</sup>

**170. It is possible for the UK unilaterally to revoke the notification to leave under Article 50. However, in the Wightman judgment, the CJEU said that revocation must be unequivocal and unconditional—it is not a mechanism to buy time—and it brings the withdrawal process to an end. The CJEU also said that the decision to revoke should follow a democratic process and comply with domestic constitutional requirements. The CJEU declined to define what this requires but it is likely that either a resolution of the House of Commons or primary legislation would be sufficient.**

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346 Q3531. See also UK Constitutional Law Association, Gavin Phillipson and Alison L. Young: [Wightman: What Would Be the UK's Constitutional Requirements to Revoke Article 50?](#) 10 December 2018;

347 Qq3601–3602

## 5 Conclusions

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171. There is no majority in the House for the Prime Minister's deal in its current form. We repeat our recommendation from our January 2019 Report that "It is vital that the House of Commons is now given the opportunity to identify an option that might secure a majority".

172. There appears to be no majority in the House of Commons in favour of a no deal exit, although that remains the default outcome if the House of Commons is unable to approve the deal that has been reached or pass the legislation required to implement it in domestic law. While the EU might agree to side deals to mitigate the worst of the disruption of a no deal outcome, this cannot be guaranteed, and we are concerned by the extent to which assumptions of an ongoing cooperative relationship underpin the Government's no deal planning. Since these assumptions cannot be guaranteed, a "managed no deal" cannot constitute the policy of any responsible Government.

173. Any co-operative relationship with the EU following a no deal exit will likely require the UK to come up with a reasonable offer on settling its outstanding financial obligations, undertake some guarantee of the rights of EU citizens in the UK, and provide some indication of how a hard border in Ireland will be avoided in the event that the UK pursues an independent trade policy and a policy of regulatory divergence. Without guarantees in these three areas, which have been the EU's priorities since the beginning of the process, expectations of maintaining cooperation to minimise disruptions to trade, security co-operation and a whole range of areas of mutual interest could be misplaced.

174. However, there are options to pursue if the Government is able to identify a course of action that will be supported by the House of Commons. The UK has the right to revoke Article 50 and, if there is a majority for such a course of action, Parliament could, if necessary legislate for a referendum. This would most likely require an extension of the Article 50 process which, for this purpose, we are confident would be granted.

175. Another option is re-negotiation. There is little to suggest that a request to the EU to re-open negotiations on the legally binding provisions of the Withdrawal Agreement would be welcomed. However, a majority in the House of Commons may be able to accept the terms of the Withdrawal Agreement if it has a greater degree of confidence that the Government is on track to negotiate a future relationship that it would find acceptable after exit. None of the future relationship options that have been discussed are "off the shelf" and it may be necessary to request an extension for further negotiations on the Political Declaration to seek to define before exit a future relationship that the House of Commons can accept.



# Formal minutes

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**Wednesday 23 January 2019**

Members present:

Hilary Benn, in the Chair

Joanna Cherry	Craig Mackinlay
Sir Christopher Chope	Seema Malhotra
Jonathan Djanogly	Mr Jacob Rees-Mogg
Richard Graham	Emma Reynolds
Peter Grant	Stephen Timms
Wera Hobhouse	Mr John Whittingdale
Stephen Kinnock	Hywel Williams
Mr Pat McFadden	Sammy Wilson

Draft Report (*Response to the vote on the Withdrawal Agreement and Political Declaration: Assessing the Options*), proposed by the Chair, brought up and read.

Question put, That the Chair's draft Report be read a second time, paragraph by paragraph.

The Committee divided.

Ayes, 11	Noes, 5
Joanna Cherry	Sir Christopher Chope
Jonathan Djanogly	Craig Mackinlay
Richard Graham	Mr Jacob Rees-Mogg
Peter Grant	Mr John Whittingdale
Wera Hobhouse	Sammy Wilson
Stephen Kinnock	
Pat McFadden	
Seema Malhotra	
Emma Reynolds	
Stephen Timms	
Hywel Williams	

Question accordingly agreed to.

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

Paragraphs 1 to 175 read and agreed to.

Question put, That the Report be the Twelfth Report of the Committee to the House.

The Committee divided.

Ayes, 11

Joanna Cherry

Jonathan Djanogly

Richard Graham

Peter Grant

Wera Hobhouse

Stephen Kinnock

Pat McFadden

Seema Malhotra

Emma Reynolds

Stephen Timms

Hwyel Williams

Noes, 5

Sir Christopher Chope

Craig Mackinlay

Mr Jacob Rees-Mogg

Mr John Whittingdale

Sammy Wilson

Question accordingly agreed to.

*Ordered*, That the Report be the Twelfth 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 Wednesday 30 January at 10.00am

## Witnesses

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

### Wednesday 25 October 2017

Question number

**Rt Hon David Davis MP**, Secretary of State, Department for Exiting the European Union

[Q1–153](#)

### Wednesday 29 November 2017

**Peter Hardwick**, Head of Exports, Agriculture and Horticulture Development Board; **James Hookham**, Deputy Chief Executive, Freight Transport Association; **Sian Thomas**, Communications Manager, Fresh Produce Consortium; **Duncan Brock**, CIPS Group Director, Chartered Institute of Procurement and Supply

[Q154–188](#)

**Jon Thompson**, Chief Executive and Permanent Secretary, HM Revenue and Customs; **John Bourne**, Policy Director of Animal and Plant Health, Department for Environment, Food and Rural Affairs; **Richard Everitt**, Chairman, Port of Dover; **Richard Ballantyne**, Chief Executive, British Ports Association

[Q189–251](#)

### Wednesday 7 December 2017

**Simon York**, Director, HMRC Fraud Investigation Service; **Mike O'Grady**, Deputy Head, Organised Crime Operations North, HMRC Fraud Investigation Service; **Deputy Chief Constable Drew Harris**, PSNI; and **Assistant Chief Constable Stephen Martin**, Head of Crime Operations, PSNI

[Q252–301](#)

### Wednesday 13 December 2017

**Professor Alexander Türk**, Professor of Law, King's College London; **John Cassels**, Partner, Competition, Regulatory and Trade Law, Fieldfisher LLP; and **Dr Scott Steedman**, Director of Standards, BSI and Vice President (policy), International Standards Organisation

[Q302–324](#)

**Katherine Bennett**, Senior Vice President, Airbus UK; **Rod Ainsworth**, Director of Regulatory and Legal Strategy, Food Standards Agency; **Angela Hepworth**, Director of Corporate Policy and Regulation, EDF UK; and **Dr Ian Hudson**, Chief Executive, Medicines and Healthcare Products Regulatory Agency

[Q325–375](#)

### Wednesday 20 December 2017

**Professor Michael Dougan**, Professor of European Law and Jean Monnet Chair in EU Law, University of Liverpool; **Professor Anand Menon**, Director, UK in a Changing Europe; **Stephen Booth**, Director of Policy and Research, Open Europe

[Q376–454](#)

**Wednesday 10 January 2018**

**Professor Richard Whitman**, Head of School, Professor Politics and International Relations, University of Kent; **Fredrik Erixon**, Director, European Centre for International Political Economy; **Dr Stephen Woolcock**, Associate Professor in International Relations, London School of Economics

[Q455–545](#)**Wednesday 17 January 2018**

**Christophe Bondy**, Public International Lawyer at Cooley (UK) LLP and former senior counsel to Canada on the CETA negotiations; **Dr Lorand Bartels**, University of Cambridge and Senior Counsel, Linklaters; **William Swords**, President, UK-Canada Chamber of Commerce

[Q546–633](#)**Wednesday 18 January 2018**

**Professor Greg Hannon**, Director, Cancer Research UK Cambridge Institute; **Professor Eilís Ferran**, Pro-Vice Chancellor for Institutional International Relations, Cambridge University; **Dr Andy Williams**, Vice President Cambridge Strategy & Operations, AstraZeneca; and **Michael Lawrence**, Business Development Director, Deimos Space UK

[Q634–690](#)**Wednesday 24 January 2018**

**Rt Hon David Davis MP**, Secretary of State, Department for Exiting the European Union

[Q691–835](#)**Wednesday 31 January 2018**

**Dmytro Tupchiienko**, Data Protection Lawyer, EY, London; **Michael Emerson**, Associate Senior Research Fellow, Centre for European Policy Studies, Brussels; **Dr Tamara Kovziridze**, Co-founder, Reformatics, Tbilisi

[Q836–905](#)**Wednesday 6 February 2018**

**John Springford**, Deputy Director, Centre for European Reform; **Professor Clive Church**, Emeritus Professor of European Studies, University of Kent; and **Professor René Schwok**, University of Geneva

[Q906–964](#)**Wednesday 7 February 2018**

**Professor George Yarrow**, Chair of the Regulatory Policy Institute, Emeritus Fellow, Hertford College, Oxford, and visiting professor; **Ulf Sverdrup**, Director, Norwegian Institute of International Affairs; and **Professor Alla Pozdnakova**, Law Faculty, University of Oslo

[Q965–1022](#)

**Professor Carl Baudenbacher**, Judge of the EFTA Court

[Q1023–1048](#)

**Wednesday 21 February 2018**

**Emanuel Adam**, Director of Policy and Trade, BritishAmerican Business; **Dr Peter Holmes**, Reader in Economics, University of Sussex; **Dr Pinar Artiran**, Assistant Professor, Bilgi University, Istanbul; **Sam Lowe**, Research Fellow, Centre for European Reform

[Q1049–1100](#)**Wednesday 27 February 2018**

**Pascal Lamy**, former Director-General, World Trade Organization

[Q1101–1162](#)**Tuesday 20 March 2018**

**Dr Lars Karlsson**, President of KGH Border Services, former Director of World Customs Organisation, Deputy Director General of Swedish Customs

[Q1163–1197](#)**Wednesday 21 March 2018**

**David Campbell-Bannerman MEP**

[Q1198–1240](#)

**Jessica Gladstone**, Partner, Clifford Chance LLP; **David Henig**, UK Trade Policy Specialist

[Q1241–1284](#)**Thursday 22 March 2018**

**Iona Crawford**, Associate, Freshfields Bruckhaus Deringer LLP; **Sally Jones**, Director for International Trade Policy, Deloitte; **Mike Regnier**, Chief Executive, Yorkshire Building Society; and **Glynn Robinson**, Managing Director, BJSS

[Q1285–1310](#)**Thursday 19 April 2018**

**Andrew Bailey**, Chief Executive, Financial Conduct Authority, and **Sam Woods**, Deputy Governor Prudential Regulation, Bank of England

[Q1311–1339](#)

**Huw Evans**, Director General, Association of British Insurers, **Chris Cummings**, Chief Executive, the Investment Association, **Stephen Jones**, CEO of UK Finance, and **Nikhil Rathi**, CEO of London Stock Exchange Plc and Director of International Development

[Q1340–1377](#)**Thursday 25 April 2018**

**Rt Hon David Davis MP**, Secretary of State, Department for Exiting the European Union

[Q1378–1488](#)

**Wednesday 2 May 2018**

**Jill Barrett**, Visiting Reader, Queen Mary University Law School; **Sir Jonathan Faull**, former Director General, European Commission; **Agata Gostynska-Jakubowska**, Senior Research Fellow, Centre for European Reform; **Lord Lisvane**, former Clerk, House of Commons

[Q1489–1561](#)**Wednesday 9 May 2018**

**Giles Derrington**, Head of Policy: Brexit, International and Economics, techUK; **Elizabeth Denham**, Information Commissioner; **Stephen Hurley**, Head of Brexit Planning and Policy, British Telecom; **James Mullock**, Partner, Bird & Bird

[Q1562–1633](#)

**Dr Bleddyn Bowen**, University of Leicester; **Colin Paynter**, Managing Director, Airbus Defence and Space UK; **Patrick Norris**, Secretary of the European Affairs Group, UK Space

[Q1634–1692](#)**Wednesday 16 May 2018**

**Dr Sarah Main**, Executive Director, Campaign for Science and Engineering; **Dr Beth Thompson MBE**, Head of Policy (UK and EU), Wellcome Trust; **Professor Richard Brook OBE**, President, Association for Innovation, Research and Technology Organisations; **Professor Michael Arthur**, Chair, EU Advisory Group, Russell Group

[Q1693–1758](#)**Wednesday 23 May 2018**

**Suella Braverman MP**, Parliamentary Under-Secretary of State, Department for Exiting the European Union, and **Mr Robin Walker MP**, Parliamentary Under-Secretary of State, Department for Exiting the European Union

[Q1759–1908](#)**Wednesday 6 June 2018**

**Nicholas Hatton**, Co-Chair, the3million; **Anne-Laure Donskoy**, Co-Chair, the3million; **Barbara Drozdowicz**, Chief Executive Officer, East European Resource Centre; **Dr Mary Tilki**, Member and former Chair, Irish in Britain; **Catherine Hennessy**, Trustee, Irish in Britain

[Q1909–1954](#)

**Fiona Godfrey**, Chair, British Immigrants Living in Luxembourg, and Deputy Chair, British in Europe; **Jane Golding**, Co-Chair, British in Germany, and Chair, British in Europe; **Michael Harris**, Chair, EuroCitizens, Spain; **Kalba Meadows**, Founder, Remain in France Together

[Q1955–1996](#)**Wednesday 20 June 2018**

**Guy Verhofstadt MEP**, Brexit Co-ordinator and Chair of the Brexit Steering Group, European Parliament

[Q1997–2141](#)

**Wednesday 11 July 2018 AM**

**Allie Renison**, Head of Europe and Trade Policy, Institute of Directors; **Henry Newman**, Director, Open Europe; and **Michael Dougan**, Professor of European Law and Jean Monnet Chair in EU Law, University of Liverpool [Q2142–2200](#)

**Wednesday 11 July 2018 PM**

**Rt Hon Caroline Nokes MP**, Minister of State for Immigration; **Simon Bond**, Strategy Director, Board of Immigration and Citizen System and Europe Director; and **Mark Doran**, Deputy Director, EU Exit Immigration Strategy [Q2201–2309](#)

**Tuesday 24 July 2018 AM**

**Huw Evans**, Director General, Association of British Insurers; **Catherine McGuinness**, Chair, Policy and Resources Committee, City of London Corporation; **Adam Minns**, Executive Director, Commercial Broadcasters Association; **Giles Derrington**, Head of Policy, Exiting the European Union, techUK. [Q2310–2382](#)

**Tuesday 24 July 2018 PM**

**Rt Hon. Dominic Raab MP**, Secretary of State for Exiting the European Union, and **Oliver Robbins**, Prime Minister’s Europe Advisor, Cabinet Office. [Q2383–2536](#)

**Monday 3 September 2018**

**Michel Barnier**, Chief Negotiator, European Commission, and **Sabine Weyand**, Deputy Chief Negotiator, European Commission. [Q2537–2563](#)

**Tuesday 4 September 2018**

**Philip Rycroft**, Head of UK Governance Group and Permanent Secretary, Department for Exiting the EU. [Q2564–2685](#)

**Wednesday 10 October 2018 AM**

**Sir Amyas Morse**, Comptroller and Auditor General and Head of the National Audit Office [Q2686–2725](#)

**Jill Rutter**, Programme Director, Institute for Government; **Julian Jessop**, Chief Economist, Institute for Economic Affairs; **Sir Simon Fraser**, Deputy Chairman, Chatham House, and Adviser, Europe Programme, and former Permanent Secretary, Foreign and Commonwealth Office [Q2726–2770](#)

**Wednesday 10 October 2018 PM**

**Andrew Opie**, Director of Food and Sustainability, British Retail Consortium; **Martin McTague**, Policy and Advocacy Chair, Federation of Small Businesses; **Richard Burnett**, Chief Executive, Road Haulage Association; **Mike Thompson**, Chief Executive, Association of the British Pharmaceutical Industry

[Q2771–2847](#)**Wednesday 17 October 2018**

**Jon Thompson**, Chief Executive and Permanent Secretary, HM Revenue and Customs; **Bernadette Kelly**, Permanent Secretary, Department for Transport; Sir Chris Wormald, Permanent Secretary, Department of Health; **Sir Ian Cheshire**, Government Lead Non-Executive Director, Cabinet Office

[Q2848–2983](#)**Wednesday 24 October 2018 AM**

**Dr Katy Hayward**, Reader in Sociology, Queen's University Belfast; **Dr David Shiels**, Policy Analyst, Open Europe

[Q2984–3054](#)

**Aodhan Connolly**, Director, Northern Ireland Retail Consortium; **Seamus Leheny**, Policy Manager, Freight Transport Association; **Stephen Kelly**, Chief Executive, Manufacturing NI; **Declan Billington**, Vice-Chair, Northern Ireland Food and Drink Association

[Q3055–3088](#)**Wednesday 31 October 2018**

**David Natzler**, Clerk of the House

[Q3089–3156](#)

**Dr Jack Simson Caird**, Senior Research Fellow, Bingham Centre; **Raphael Hogarth**, Associate, Institute for Government; **Dr Sara Hagemann**, Associate Professor in European Politics, LSE; **Dr Simon Usherwood**, Reader in Politics, University of Surrey

[Q3157–3205](#)**Wednesday 14 November 2018**

**Nick Witney**, Senior Policy Fellow, European Council on Foreign Relations; **Georgina Wright**, Research Associate, Chatham House

[Q3206–3230](#)

**Camino Mortera-Martinez**, Senior Research Fellow, Centre for European Reform; **Sir Rob Wainwright**, former Executive Director, Europol

[Q3231–3263](#)**Wednesday 21 November 2018**

**Agata Gostynska-Jakubowska**, Senior Research Fellow, Centre for European Reform; **Professor Franklin Dehousse**, former Judge at the General Court of the European Union; **Dr Holger Hestermeyer**, Shell Reader in International Dispute Resolution, King's College London

[Q3264–3329](#)



### Monday 3 December 2018

**Rt Hon Stephen Barclay MP**, Secretary of State for Exiting the European Union and **Oliver Robbins**, Prime Minister's Europe Advisor

[Q3330–3476](#)

### Wednesday 19 December 2018

**Dr Kirsty Hughes**, Director of the Scottish Centre of European Relations, **Catherine Barnard**, Professor of EU Law, Cambridge University, **Sam Lowe**, Research Fellow, Centre for European Reform, **Henry Newman**, Director, Open Europe

[Q3477–3550](#)

### Wednesday 9 January 2019

**Chris Heaton-Harris MP**, Parliamentary Under Secretary of State for Exiting the EU

[Q3551–3736](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

NEG numbers are generated by the evidence processing system and so may not be complete.

- 1 Association of British Insurers ([NEG0007](#))
- 2 British in Europe ([NEG0021](#))
- 3 British Retail Consortium ([NEG0010](#))
- 4 Dickinson, Rob ([NEG0013](#))
- 5 Finance & Leasing Association ([NEG0018](#))
- 6 Freight Transport Association ([NEG0004](#))
- 7 Freshfields Bruckhaus Deringer LLP ([NEG0019](#))
- 8 Investment Association ([NEG0009](#))
- 9 Irish in Britain ([NEG0026](#))
- 10 London First ([NEG0001](#))
- 11 London Market Group ([NEG0020](#))
- 12 Michael Emerson Centre for European Policy Studies (CEPS) ([NEG0012](#))
- 13 O'Brien, Dr Charlotte ([NEG0008](#))
- 14 Port of Dover ([NEG0005](#))
- 15 Professor Carl Baudenbacher ([NEG0014](#))
- 16 Professor Graham Virgo Pro-Vice-Chancellor University of Cambridge ([NEG0017](#))
- 17 Professor Michael Dougan Liverpool Law School ([NEG0027](#))
- 18 Professor René Schwok Global Studies Institute University of Geneva ([NEG0016](#))
- 19 Rail Delivery Group ([NEG0003](#))
- 20 Stephen Woolcock LSE ([NEG0011](#))
- 21 the3million ([NEG0022](#))
- 22 the3million ([NEG0023](#))
- 23 the3million ([NEG0024](#))
- 24 the3million ([NEG0025](#))
- 25 TheCityUK ([NEG0002](#))
- 26 Titus Alexander ([NEG0028](#))

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

All publications from the Committee are available on the [publications page](#) of the Committee's website.

### Session 2017–19

First Report	European Union (Withdrawal) Bill	HC 373 (HC 771)
Second Report	The progress of the UK's negotiations on EU withdrawal	HC 372 (HC 862)
Third Report	The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018	HC 884 (HC 1077)
Fourth Report	The future UK-EU relationship	HC 935 (HC 1150)
Fifth Report	The progress of the UK's negotiations on EU withdrawal (March to May 2018)	HC 1060 (HC 1552)
Sixth Report	Parliamentary approval of the Withdrawal Agreement and the future relationship	HC 1240 (HC 1641)
Seventh Report	The progress of the UK's negotiations on EU withdrawal: Data	HC 1317 (HC 1564)
Eighth Report	The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizens	HC 1439 (HC 1872)
Ninth Report	The progress of the UK's negotiations EU withdrawal (June to September 2018)	HC 1554
Tenth Report	The progress of the UK's negotiations on EU withdrawal - The Withdrawal Agreement and Political Declaration	HC 1778
Eleventh Report	Response to the vote on the Withdrawal Agreement and Political Declaration: Options for Parliament	HC 1902
First Special Report	European Union (Withdrawal) Bill: Government Response to the Committee's First Report	HC 771
Second Special Report	The progress of the UK's negotiations on EU withdrawal: Government response to the Committee's Second Report	HC 862
Third Special Report	The progress of the UK's negotiations on EU withdrawal (December 2017 to March 2018): Government response to the Committee's Third Report	HC 1077
Fourth Special Report	The future UK-EU relationship: Government Response to the Committee's Fourth Report	HC 1150

Fifth Special Report	The progress of the UK's negotiations on EU withdrawal (March to May 2018): Government Response to the Committee's Fifth Report	HC 1552
Sixth Special Report	The progress of the UK's negotiations on EU withdrawal: Data: Government Response to the Committee's Seventh Report	HC 1564
Seventh Special Report	Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship: Government Response to the Committee's Sixth Report	HC 1641
Eighth Special Report	The progress of the UK's negotiations on EU Withdrawal: The rights of UK and EU citizens: Government Response to the Committee's Eight Report	HC 1872