



## BRIEFING PAPER

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# Exiting the EU: sectoral impact assessments

By Lucinda Maer

## 1. Summary

On 1 November 2017 the House of Commons resolved that the so-called “Brexit Impact Assessments” should be provided to the Committee on Exiting the EU. The motion was passed without division. The Votes and Proceedings record the decision of the House as follows:

That an humble Address be presented to Her Majesty as follows,

Most Gracious Sovereign,

We, Your Majesty’s most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Northern Ireland in Parliament assembled, humbly pray Your Majesty will be graciously pleased to give directions that the list of sectors analysed under the instruction of Her Majesty’s Ministers, and referred to in the Answer of 26 June 2017 to Question 239, be laid before this House and that the impact assessments arising from those analyses be provided to the Committee on Exiting the European Union.

Address to be presented to Her Majesty by Members of this House who are Privy Counsellors or Members of Her Majesty’s Household.

Previous requests made for the documents under the *Freedom of Information Act 2000* had been denied using exemptions under that Act, including the prejudice to the interests of the UK overseas and to the UK’s economic interests.

The [Government response](#) to the EU External Affairs Sub-Committee report on *Brexit: trade in goods* lists the 58 sectors covered by the Government’s analysis. A Commons Library Blog Post, [Brexit impact: 58 sectors assessed](#), notes these sectors’ current contribution to the UK economy and the number of people they employ.

The motion was tabled as a “motion for a return”. This device has not been commonly used in modern times. Such motions are usually considered binding.

On 7 November 2017 the Secretary of State for Exiting the EU made a Written Statement noting that “it is not the case that 58 sectoral impact assessments exist”. He explained that there is a “wide mix of qualitative and quantitative analysis contained in a range of documents developed at different times since the referendum”. It would therefore take time to collate the information. He also stated that there might be confidential and commercially sensitive information in the analysis, and that advice to ministers must remain private. An Urgent Question on the assessments has been granted for 7 November 2017.

## 2. The impact assessments

### 2.1 Background

On 14 December 2016, in an oral evidence session to the Select Committee for Exiting the European Union, the Secretary of State for Exiting the EU, David Davis, [said](#):

We are in the midst of carrying out about 57 sets of analyses, each of which has implications for individual parts of 85% of the economy. Some of those are still to be concluded. We have work still to be done on justice and home affairs, so there is a fair number of things still to do. It will be as soon as we are ready.

Then DExEU Minister David Jones [replied](#) on 23 May 2017 to a [letter](#) of 11 April 2017 from Green Party MEP for the South West, Molly Scott Cato, about the Government studies. Mr Jones said that since the EU referendum:

... the whole Government has undertaken a work programme to make sure that it is ready to begin negotiations from a position of strength. DExEU has conducted analysis of over 50 sectors of the economy. We have also travelled up and down the country to listen to the hopes and concerns of businesses, civil society and of course the general public.

The [Government response](#) to the EU External Affairs Sub-Committee report on *Brexit: trade in goods* lists the 58 sectors covered by the Government's analysis.

A Commons Library Blog Post, [Brexit impact: 58 sectors assessed](#), lists the 58 sectors covered by the assessments, their current contribution to the UK economy and the number of people they employ.

### 2.2 Why haven't they been published by the Government?

The Government's argument for not publishing the studies to date has generally been that it does not want to reveal information which might harm its negotiating position in withdrawal and/or future relations negotiations. As David Davis [told](#) the Brexit Committee in December 2016, "We have got to be very careful about what we publish. I want to be as open as we can be, but we must be sure that we are not undermining our own position".

A [Parliamentary Question](#) answered on 24 October 2017 asked the Minister at DExEU, "when he plans to publish the impact assessments of the UK leaving the EU". The response, from Robin Walker, was that:

The Department for Exiting the European Union, working with officials across Government, are in the process of carrying out a programme of rigorous and extensive analytical work that will contribute to our exit negotiations with the EU, to define our future partnership with the EU, and to inform our understanding of how EU exit will affect the UK's domestic policies and frameworks.

The Department will continue to balance our commitment to transparency with the need to protect information which could undermine the UK's ability to negotiate the best deal for the UK. Parliament has voted and agrees with this, as referenced in the vote of 7 December 2016.

On 7 December 2016 the House passed a motion that the House:

...confirms that there should be no disclosure of material that could be reasonably judged to damage the UK in any negotiations to depart from the European Union after Article 50 has been triggered.<sup>1</sup>

The publication of the impact assessments was raised during a [debate held in the House of Lords](#) on the EU exit transition deal on 19 October 2017 and received a similar response from the Government. Baroness Goldie stated that:

We are carrying out a programme of rigorous and extensive analytical work to contribute to our exit negotiations, define our future partnership and inform our understanding of how exit will affect our domestic policies and frameworks. It is not standard practice to provide an ongoing commentary on internal analytical work being carried out, but I assure the noble Baroness that it is being carried out.<sup>2</sup>

## 2.3 Freedom of Information requests

As well as the Parliamentary questions, debates, and interests from Committees, there have been other attempts to have the assessments published. For example, on 11 October David Lammy and Seema Malhotra sent a [letter](#) to David Davis calling on him to publish the studies (attached, with list of 120 MPs who signed it).

In response to another [request](#) to release the information, the Government has relied on several of the exemptions in the [Freedom of Information Act 2000](#) – for example the interests of the UK abroad, the economic interests of the UK and the formulation of public policy. These exemptions are subject to the public interest test (more information about the Act is available in the [Library briefing](#)).

# 3. Motion for a return

## 3.1 Power to call for papers

The motion tabled for debate by the Opposition on 1 November stated that:

That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the list of sectors analysed under the instruction of Her Majesty's Ministers, and referred to in the Answer of 26 June 2017 to Question 239, be laid before this House and that the impact assessments arising from those analyses be provided to the Committee on Exiting the European Union.

Each House has the power to call for the production of papers by means of a motion for a return. Erskine May, the authoritative guide to the practices and procedures of the House, explains that:

Each House has the power to call for the production of papers by means of a motion for a return. A return from the Privy Council or from Departments headed by a Secretary of State is called for by means of an humble Address to the Sovereign.<sup>3</sup>

Calling for a paper which is then produced as a return confers on the paper parliamentary privilege.

Erskine May notes that this power to call for papers was frequently exercised until the middle of the nineteenth century but has rarely been used in more recent times. The Government now more routinely publishes the sorts of papers previously sought through returns as command papers.

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<sup>1</sup> [HC Deb 7 December 2016](#)

<sup>2</sup> [HL Deb 19 October 2017 c713](#)

<sup>3</sup> Erskine May, *Parliamentary Practice*, 24<sup>th</sup> Edition, p133

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Where motions for a return are tabled, they are generally now unopposed. For example, such motions have been used to provide parliamentary privilege for public inquiry reports. Where the House authorities have been assured that the Government intends to provide the paper sought, the motion is given precedence on the Order Paper: an example appeared on the Order Paper for 1 November in the name of the Home Secretary.

The power is of continuing importance since it is regularly delegated to select committees, enabling them to call for persons, papers and records.

A [blog post](#) by Andrew Defty of the University of Lincoln for the Political Studies Association has explained why the motion refers to Her Majesty the Queen:

The reason why a motion for a return refers to the monarch arises from the fact that government departments are created by royal prerogative, and are, in effect, branches of the Privy Council. Hence, Secretaries of State become Privy Counsellors and departments are designated with the prefix 'Her Majesty's...', although HM Treasury appears to be the only department for which this is now widely used. As a result, as the Speaker made clear, Labour's request will be communicated to the Queen, 'in the usual way', although the response, of course, will come from the government.

### 3.2 The debate

On 1 November 2017 the House resolved without division:

That an humble Address be presented to Her Majesty as follows,

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Northern Ireland in Parliament assembled, humbly pray Your Majesty will be graciously pleased to give directions that the list of sectors analysed under the instruction of Her Majesty's Ministers, and referred to in the Answer of 26 June 2017 to Question 239, be laid before this House and that the impact assessments arising from those analyses be provided to the Committee on Exiting the European Union.

Address to be presented to Her Majesty by Members of this House who are Privy Counsellors or Members of Her Majesty's Household.

The House has not divided on any Opposition Day motion since the June 2017 General Election.<sup>4</sup>

The Minister, Robin Walker, told the House that:

Ministers have a clear obligation not to disclose information when to do so would not be in the public interest. In this case, the public interest is also the national interest. The key national interest here is to ensure the best possible outcome from our negotiations with the European Union... Furthermore, we must consider the importance of Ministers receiving unvarnished advice without the risks of it being published... If the motion were to pass, we would need to reflect on these various constraints and conflicting responsibilities when it comes to passing information to the Exiting the European Union Committee.<sup>5</sup>

He also noted that "there has been some misunderstanding about what this sectoral analysis actually is. It is not a series of 38 [sic] economic impact assessments".

The motion required the analysis to be provided to the Committee on Exiting the European Union. During the debate, the Chair of that committee, Hilary Benn, stated that

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<sup>4</sup> See Commons Library, [Government Policy on Proceedings of the House of Commons](#), prepared for the emergency debate on 10 October 2017

<sup>5</sup> HC Deb 1 November 2017 c887

if the Government complied with the motion he was sure that the Committee “would be very happy to discuss with Ministers how the material should be handled”.<sup>6</sup>

Bernard Jenkin noted that the Select Committee had not itself requested the documents “No writ or summons have been issued for these documents”. Jacob Rees Mogg gave his view that the motion was “in all senses” binding: “It is exercising one of our most ancient rights, to demand papers”.<sup>7</sup>

Tom Brake has also submitted a Freedom of Information request for the documents. He told the House during the debate on 1 November 2017 that he is appealing against the Government’s decision not to release them:

These are the grounds on which I am appealing: the release of these reports would meet all the key public interest tests, demonstrating transparent and accountable Government decision-making processes; promote public understanding of the implications of Brexit; safeguard democratic processes, which would be severely damaged if the Government pursued a path that they knew was very damaging to the UK’s interests; and secure the best use of public resources.

There are clearly great public and parliamentary interest in examining these documents, as Brexit will have a greater impact on people economically and socially, and on the UK diplomatically, than any other decision taken in the past 50 years. The Government have failed to take that into account, and I shall submit a freedom of information request to ask them to set out how they took into account the public interest test versus concerns around damaging the UK’s interests.<sup>8</sup>

### 3.3 What happens next?

After the debate, Keir Starmer, the Shadow Secretary of State for Exiting the UK, raised a point of order asking whether the motion was effective or binding and whether that means a failure of the Government to comply would be a contempt of the House. The Speaker responded:

...motions of this kind have traditionally been regarded as binding or effective. Consistent with that established pattern, I would expect the Vice-Chamberlain of the Household to present the Humble Address in the usual way.

I say what I do, as colleagues on both sides of the House and on both sides of the argument will recognise, on the strength of an understanding of advice received in relation to precedent grounded in “Erskine May”. When I am asked, as I think I was by the right hon. and learned gentleman, about contempt or breach of privilege, what I would say is that, if anybody wishes to make an accusation of a breach of privilege or a contempt of the House, it must be done in writing to the Speaker. If I receive such a representation in writing, I will consider it and apply my best endeavours, and take advice, in reaching a view and reporting it to the House.<sup>9</sup>

When asked by Sarah Wollaston what he would feel a “reasonable timeframe” would be for the Government to respond, Mr Speaker stated that “one should reflect in a sober and considered fashion”, “but if the hon. Lady is asking me whether I envisage this being something that needs to be deliberated on over a period of several days, the answer is no”.<sup>10</sup> The Speaker later stated that the Government’s announcement that they would respond to motions passed on Opposition Days within 12 weeks was “in the specific context of earlier Opposition day debates, the motions for which were not binding”.<sup>11</sup>

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<sup>6</sup> *Ibid*, c904

<sup>7</sup> *Ibid*, c922

<sup>8</sup> HC Deb 1 November 2017 c923

<sup>9</sup> *Ibid*, c931

<sup>10</sup> *Ibid*, c932

<sup>11</sup> *Ibid*, c934

## 6 Exiting the EU: sectoral impact assessments

In Business Questions on 2 November Andrea Leadsom told the House of Commons that the requirements of the motion would be met but that “it is a case of balancing the public interest with the binding nature of the vote”.<sup>12</sup>

David Davis [wrote](#) to Hilary Benn on 3 November 2017 to state that he was “putting in place arrangements to respond to and adhere with the motion”. He explained, however, that “it is not the case that 58 sectoral impact assessments exist”:

Let me clarify exactly what this sectoral analysis is. It is a wide mix of qualitative and quantitative analysis, contained in a range of documents developed at different times since the referendum. It examines the nature of activity in sectors, how trade is conducted with the EU currently in these sectors and, in many cases, considers the alternatives after we leave as well as looking at existing precedents. This analysis ranges from the very high level overarching analysis to sometimes much more granular level analysis of certain product lines in specific sectors. Our analysis in this area is constantly evolving and being updated based on our regular discussions with industry and our negotiations with the EU. But it is not, nor has it ever been, a series of discrete impact assessments examining the quantitative impact of Brexit on these sectors. It is important that this is understood from the start.

He went on to state that it would take “time to collate and bring together this information in a way that is accessible and informative for the Committee”. He also stated that it would be important for him to meet with Mr Benn to discuss how “consideration of the public interest” might be handled by the Committee. He offered the date of 13 November to meet Mr Benn, noting that they were both away from Parliament in the week of 6 November.

In response to a Point of Order raised by Matthew Pennycock on 6 November, the Speaker noted that the impact assessments should be provided to the Committee “very promptly indeed”. He went on, “Failing that, I expect Ministers to explain to the House before we rise tomorrow evening why they have not provided them and when they propose to do so”.<sup>13</sup>

On 7 November 2017 a Written Statement was made by David Davis which repeated the points made in the letter to Hilary Benn that “it is not the case that 58 sectoral impact assessments exist” and noting that he would be meeting Mr Benn on 13 November.

An Urgent Question has been granted on the impact assessments on 7 November 2017.

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<sup>12</sup> HC Deb 2 November 2017 c979

<sup>13</sup> [HC Deb 6 November 2017 c1210](#)

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