



Brexit Preparations and Negotiations Debate on 23 July 2018

Summary

This Lords Library Briefing has been prepared in advance of the debate due to take place on 23 July 2018 in the House of Lords on the motion moved by Lord Callanan, Minister of State at the Department for Exiting the European Union, “that this House takes note of the preparations and negotiations connected with the United Kingdom’s departure from the European Union”. It provides an overview of the status of preparations and negotiations to date, and recent developments following the publication of a white paper on 12 July 2018 on the Government’s proposals for the UK’s future relationship with the EU.

Three Brexit-related Acts of Parliament, including the European Union (Withdrawal) Act, have been passed this year, and one more is awaiting royal assent. The Taxation (Cross-border Trade) and Trade Bills are currently before Parliament. The Government intends to introduce further bills on agriculture, fisheries, immigration, environmental principles, and implementing a withdrawal agreement (following parliamentary approval of any deal the Government reaches with the EU). Government departments are working on over 300 work streams relating to Brexit preparations, although to date there is limited information about exactly what these cover and how far they have progressed.

Large parts of the text on a draft withdrawal agreement have been agreed between the UK and the EU, but there are still significant areas outstanding, including arrangements for avoiding a hard border between Ireland and Northern Ireland. Both sides are aiming to reach agreement on the withdrawal agreement and an accompanying political declaration setting out the framework for a future relationship by October 2018 to allow time for approval by the European Parliament in time for the UK to leave the EU on 29 March 2019. Both sides have stated that ‘nothing is agreed until everything is agreed’. A legally binding agreement on the future relationship cannot be signed until the UK has left the EU. There is a lack of consensus on when negotiations for this might be concluded.

The Government published a white paper on 12 July 2018 setting out its proposal for the future relationship, including an economic partnership based on a free trade area for goods with a ‘common rulebook’ with the EU for goods and the phased introduction of a Facilitated Customs Arrangement. These proposals prompted the resignation of the Secretaries of State for Exiting the European Union and Foreign and Commonwealth Affairs. The Prime Minister has stated that the plan would honour the referendum result and would deliver on the Government’s promise to leave the single market and the customs union, and to take back control of the UK’s borders, laws and money.

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18 July 2018

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I. Preparations

I.1 Legislation

2017 Queen's Speech

In the 2017 Queen's Speech, the Government announced eight pieces of primary legislation related to the UK's withdrawal from the EU.¹

Three of these bills have since passed their parliamentary stages and received royal assent:

- Repeal Bill; introduced as the European Union (Withdrawal) Bill and received royal assent on 23 May 2018.
- Nuclear Safeguards Bill; introduced as the Nuclear Safeguards Bill and received royal assent on 26 June 2018.
- International Sanctions Bill; introduced as the Sanctions and Anti-Money Laundering Bill and received royal assent on 23 May 2018.

Two have been introduced and completed their Commons stages:

- Customs Bill; introduced as the Taxation (Cross-border Trade) Bill and passed its third reading in the House of Commons on 16 July 2018.
- Trade Bill; introduced as the Trade Bill and passed its third reading in the House of Commons on 17 July 2018.

Three are yet to be introduced:

- Immigration Bill
- Fisheries Bill
- Agriculture Bill

Other Legislation

A commitment to implement the withdrawal agreement in domestic legislation was contained in the December Joint Report from the EU and UK negotiators. This states that the UK Government would bring forward a 'Withdrawal Agreement and Implementation Bill' specifically to implement

¹ Cabinet Office, Prime Minister's Office and 10 Downing Street, [The Queen's Speech and Associated Background Briefing, on the Occasion of the Opening of Parliament on Wednesday 21 June 2017](#), 21 June 2017.

the agreement in UK domestic legislation.² This is discussed further later in this section.

The Haulage Permits and Trailer Registration Bill was introduced in the House of Lords on 7 February 2018 and is currently awaiting royal assent. An outline of the purpose of the Bill is included later in this section.

The Government is currently consulting on the establishment of a new independent statutory body tasked with holding the government to account for upholding environmental standards in England.³ Amongst its provisions, section 16 of the European Union (Withdrawal) Act 2018 requires the publication of draft legislation which sets out a list of environmental principles. A short discussion of this is included later in this section.

Bills Which Have Received Royal Assent

European Union (Withdrawal) Act 2018

The European Union (Withdrawal) Act 2018 was introduced into the House of Commons on 13 July 2017 and received royal assent on 26 June 2018. In his foreword in the Government's March 2017 white paper, prior to the introduction of the Bill, the then Secretary of State for Exiting the European Union, David Davis, explained that the purpose of the legislation was to provide a functioning statute book when the UK withdraws from the EU. In doing so it would:

[C]onvert EU law as it applies in the UK into domestic law on the day we leave—so that wherever practical and sensible, the same laws and rules will apply immediately before and immediately after our departure.⁴

The Act's provisions include the following:

- The repeal of the European Communities Act 1972.
- The conversion of elements of existing EU law at the moment of exit into UK domestic law. In so doing it creates a new category of law within the UK called 'retained EU law'.
- The creation of regulation making powers for both the UK

² HM Government and European Commission, [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, pp 5–6.

³ Department for Environment, Food and Rural Affairs, '[Environmental Principles and Governance after EU Exit](#)', accessed 18 July 2018.

⁴ Department for Exiting the European Union, [Legislating for the United Kingdom's Withdrawal from the European Union](#), March 2017, Cm 9446, p 7.

government and devolved administrations, to make ‘corrections’ to retained EU law to ensure that it functions correctly upon the UK’s withdrawal from the EU. The Act contains various requirements for explanatory statements to accompany such regulations. It also establishes new scrutiny procedures in both Houses through the establishment of ‘sifting committees’.

- The removal of existing restrictions on devolved competence in relation to acting incompatibly with EU law so that decision making powers in areas currently governed by EU law will pass to the devolved institutions, except where specified in secondary legislation under the Act.
- Provisions that would allow for the implementation of the withdrawal agreement reached between the UK and the EU under the provisions of Article 50 of the Treaty on European Union. However, these provisions would only function following the enactment of legislation by the UK Parliament approving the final terms of withdrawal.

The explanatory notes to the Act explain that it is not the Government’s intention that the legislation should provide for policy changes or new legal frameworks, and that such changes would feature in separate primary legislation:

The Act does not aim to make major changes to policy or establish new legal frameworks in the UK beyond those which are appropriate to ensure the law continues to function properly from exit day. The Government will introduce separate primary legislation to make such policy changes which will establish new legal frameworks.⁵

The Act’s provisions on devolution have proved controversial. Both the Scottish and Welsh Governments expressed opposition to the Bill’s provisions on devolution as originally drafted, and had recommended that their respective legislatures withhold legislative consent for the Bill. The First Minister of Wales, Carwyn Jones, and the First Minister of Scotland, Nicola Sturgeon, released a joint statement after the publication of the Bill on 13 July 2017, describing it as a “naked power grab, an attack on the founding principles of devolution [that] could destabilise our economies”.⁶ The Scottish Parliament and the National Assembly for Wales both passed ‘continuity bills’ which seek to incorporate elements of EU law that operate in devolved areas into Scottish and Welsh domestic law.⁷

⁵ [Explanatory Notes to the European Union \(Withdrawal\) Act 2018](#), p 5.

⁶ Welsh Government, [‘Joint Statement from First Ministers of Wales and Scotland in Reaction to the EU \(Withdrawal\) Bill’](#), 13 July 2017.

⁷ Further details on legislative consent, the Joint Ministerial Committee on EU Negotiations and the Scottish and Welsh continuity bills can be found in: House of Commons Library, [Legislative Consent and the European Union \(Withdrawal\) Bill \(2017–19\)](#), 24 May 2018; and [Brexit: Devolution and Legislative Consent](#), 29 March 2018.

The UK Government referred the continuity bills to the Supreme Court as it argued that the bills were not within the devolved competence of their respective legislatures.⁸ Jeremy Wright, the then Attorney General, described this as a “protective measure”:

This legislation risks creating serious legal uncertainty for individuals and businesses as we leave the EU. This reference is a protective measure which we are taking in the public interest. The Government very much hopes this issue will be resolved without the need to continue with this litigation.⁹

Following continued discussions between the UK and devolved governments, on 24 April 2018 the UK and Welsh Governments reached agreement on amendments to the Act’s devolution provisions and on an intergovernmental agreement with a related memorandum (which included additional commitments on the functioning of the arrangements).¹⁰ The Scottish Government had stated that it was unable to support the amendments.¹¹ As part of the agreement the UK Government withdrew its reference of the Welsh continuity bill to the Supreme Court.¹² The UK’s reference of the Scottish continuity bill is due to be heard by the Supreme Court on 24 and 25 July 2018.¹³

Nuclear Safeguards Act 2018

The Nuclear Safeguards Act 2018 was introduced in the House of Commons on 11 October 2017 and received royal assent on 26 June 2018.

The explanatory notes to the Nuclear Safeguards Act 2018 describe its purpose as to establish a new legal framework following the withdrawal of the UK from the European Atomic Energy Community (Euratom):

The Nuclear Safeguards Act creates the legal framework for a domestic nuclear safeguards regime to operate in the United Kingdom. This regime will replace the current legal framework provided principally by the United Kingdom’s membership of the Euratom Nuclear safeguards arrangements enable the United Kingdom to meet

⁸ Attorney General’s Office and Office of the Secretary of State for Scotland, ‘[Devolved Brexit Legislation Referred to the Supreme Court](#)’, 17 April 2018.

⁹ *ibid.*

¹⁰ Cabinet Office, ‘[European Union \(Withdrawal\) Bill: Agreement between the UK and Welsh Governments](#)’, 25 April 2018.

¹¹ Scottish Government, ‘[Withdrawal Bill Amendments ‘Undermine Devolution’. Says Minister](#)’, 25 April 2018.

¹² House of Commons, ‘[Written Statement: European Union \(Withdrawal\) Bill and Devolution: Update on Clause 11](#)’, 25 April 2018, HCWS646.

¹³ Supreme Court, [Judicial Sitings for Trinity Term 2018 \(Provisional List\): Version 13](#), 17 July 2018, p 8.

international nuclear safeguards standards and engage in certain international civil nuclear activities, including trade and research and development.¹⁴

On 9 July 2018, the Department for Business, Energy and Industrial Strategy (BEIS) published a consultation on “new Nuclear Safeguards Regulations to enable a domestic nuclear safeguards regime to operate in the UK”, following the UK’s withdrawal from Euratom.¹⁵ The consultation seeks views on the operability and effectiveness of these and closes on 14 September 2018. BEIS states that:

If passed into law, these proposed Regulations will allow the Office for Nuclear Regulation (ONR) to meet international obligations from day one of exit, and to build, over time, a safeguards regime equivalent in coverage and effectiveness to that currently provided by Euratom.¹⁶

Sanctions and Anti-Money Laundering Act 2018

The Sanctions and Anti-Money Laundering Act 2018 was introduced in the House of Lords on 18 October 2017 and received royal assent on 23 May 2018. This followed the publication of a white paper and consultation document on 21 March 2017.¹⁷ The Government responded to the consultation in August 2017.¹⁸

The explanatory notes to the Bill as introduced from the House of Lords to the House of Commons stated that the Bill had two purposes. These were to:

- Enable the UK to continue to implement United Nations (UN) sanctions regimes and to use sanctions to meet national security and foreign policy objectives; and
- Enable anti-money laundering and counter-terrorist financing measures to be kept up to date, helping to protect the security and prosperity of the UK and continue to align the UK with international standards.¹⁹

¹⁴ [Explanatory Notes to the Nuclear Safeguards Act 2018](#), p 3.

¹⁵ Department for Business, Energy and Industrial Strategy, ‘[Open Consultation: Nuclear Safeguards Regulations](#)’, 9 July 2018.

¹⁶ *ibid.*

¹⁷ Foreign and Commonwealth Office, HM Treasury, and Department for International Trade, [Public Consultation on the United Kingdom’s Future Legal Framework for Imposing and Implementing Sanctions](#), April 2017, Cm 9408.

¹⁸ Foreign and Commonwealth Office, HM Treasury, and Department for International Trade, [Public Consultation on the United Kingdom’s Future Legal Framework for Imposing and Implementing Sanctions: Government Response](#), August 2017, Cm 9490.

¹⁹ [Explanatory Notes to the Sanctions and Anti-Money Laundering Bill \[HL\]](#), Bill 157 of session 2017–19, p 3.

It also explained that the legislation was required because these issues are “largely dealt with through the European Communities Act 1972, which will be repealed when the UK withdraws from the European Union (EU)”.²⁰

Bills Which Have Been Introduced

Taxation (Cross-border Trade) Bill

The [Taxation \(Cross-border Trade\) Bill](#), commonly referred to as the Customs Bill, was introduced in the House of Commons on 20 November 2017 and completed its third reading in the House of Commons on 16 July 2018. Its introduction follows the publication of a white paper on 9 October 2017.²¹ Its stages in the House of Lords are scheduled to take place on 4 September 2018.

Amongst its provisions, the Bill would provide for the establishment of an independent customs regime once the UK has withdrawn from the EU. It would also amend existing VAT and excise legislation to abolish the EU concept of acquisition VAT. It also would introduce a range of delegated powers including the “imposition, administration, collection and enforcement of customs duty”.²²

The explanatory notes to the Bill state that the Bill:

[D]oes not presuppose any particular outcome from the UK’s negotiations with the EU. In addition to legislating for a contingency scenario where the UK leaves the EU without a negotiated outcome, the Bill also provides for a range of negotiated outcomes, including an implementation period.²³

The Taxation (Cross-border Trade) Bill and the Trade Bill are linked by the establishment of a new Trade Remedies Authority (TRA), which would be provided for in the Trade Bill. However, the explanatory notes to the Trade Bill explain that the implementation of trade remedy measures (which would be enforced by the TRA) would be provided for in the Taxation (Cross-border Trade) Bill.²⁴

²⁰ [Explanatory Notes to the Sanctions and Anti-Money Laundering Bill \[HL\]](#), Bill 157 of session 2017–19, p 3.

²¹ HM Treasury, [Customs Bill: Legislating for the UK’s Future Customs, VAT and Excise Regimes](#), October 2017, Cm 9502.

²² [Explanatory Notes to the Taxation \(Cross-border Trade\) Bill](#), p 8.

²³ *ibid*, p 6.

²⁴ [Explanatory Notes to the Trade Bill](#), p 4.

Further background information and a summary of the Bill are available in the House of Commons Library briefing, [The Taxation \(Cross-border Trade\) Bill](#) (6 July 2018).

Trade Bill

The [Trade Bill](#) was introduced in the House of Commons on 7 November 2017 and completed its third reading in the House of Commons on 17 July 2018. Its second reading is scheduled to take place in the House of Lords on 11 September 2018. The Bill followed the publication of a white paper in October 2017.²⁵ The white paper sought feedback on the Government's policies, with the Government publishing a response to this feedback in January 2018.²⁶

Amongst its provisions, the Bill would:

- Allow the UK to implement procurement obligations arising from the UK becoming a member of the Agreement on Government Procurement (GPA). The UK is currently a member of the GPA by virtue of its membership of the EU. The GPA mutually opens government procurement markets and seeks to address trade barriers.²⁷
- Make provision for the Government to implement any changes to domestic law that may be necessary for the UK to meet obligations flowing from trying to “replicate as closely as possible” existing trade arrangements the EU has with third countries, a process the Government terms ‘transitional adoption’.²⁸
- Establish a new ‘Trade Remedies Authority’ (TRA), which would carry out investigations and impose and enforce trade remedy measures. The implementation of trade remedy measures themselves would be provided for in the Taxation (Cross-border Trade) Bill.²⁹
- Allow Her Majesty’s Revenue and Customs to collect data on behalf of the Government to confirm exporter numbers for trade promotion purposes. Data could also be shared to allow the Government and the TRA access to information they would need to carry out functions previously carried out by the European Commission. Provisions would also allow for the

²⁵ Department for International Trade, [Preparing For Our Future UK Trade Policy](#), October 2017, Cm 9470.

²⁶ Department for International Trade, [Trade White Paper: Preparing for Our Future UK Trade Policy: Government Response](#), January 2018.

²⁷ [Explanatory Notes to the Trade Bill](#), p 3.

²⁸ *ibid*, p 4.

²⁹ *ibid*.

safeguarding, and appropriate use, of such data.³⁰

Further background information and a summary of the Bill are available in the following House of Commons Library briefing, [The Trade Bill](#) (2 July 2018).

Haulage Permits and Trailer Registration Bill

The Haulage Permits and Trailer Registration Bill was introduced in the House of Lords on 7 February 2018 and is currently awaiting royal assent. The Department for Transport ran a consultation on the legislation which ran between 16 May 2018 and 25 June 2018.³¹ At the time of writing the Department was analysing the feedback.

Speaking at the Bill's third reading in the House of Commons on 26 June 2018, Chris Grayling, Secretary of State for Transport, explained that the Bill was in two parts, the first of which would allow the Government to introduce a road haulage permit scheme upon leaving the EU:

The first part of this Bill will allow us to introduce a road haulage permit scheme covering existing agreements outside the European Union, while also making sure that we have the tools available for any permit-based deal with the European Union, if that is required. As you know, Madam Deputy Speaker, the Bill puts in place a legal framework for the Government to establish a system for issuing permits, without placing undue regulation or financial requirements on the industry.³²

Mr Grayling said the second part of the Bill would give the Government powers to establish a trailer registration scheme to meet the standards of the 1968 Vienna Convention on Road Traffic. He stated that this would ensure that UK operators “could register trailers before entering countries that require such legislation”.³³ The explanatory notes to the Bill as introduced to the House of Commons, from the House of Lords, state that:

The UK's ratification of the 1968 Vienna Convention on Road Traffic (“the 1968 Convention”) will ensure that, after exit day, UK drivers will continue to be able to drive in all EU countries. A consequence of ratification is that unregistered trailers could be turned away at the borders of other countries who have ratified the 1968 Convention.

³⁰ [Explanatory Notes to the Trade Bill](#), pp 4–5.

³¹ Department for Transport, ‘[Closed Consultation: Haulage Permits and Trailer Registration](#)’, 16 May 2018.

³² [HC Hansard, 26 June 2018, col 855](#).

³³ *ibid.*

Therefore, for operational reasons, a trailer registration scheme needs to be implemented. The Bill, therefore, enables the Secretary of State to introduce a trailer registration scheme.³⁴

Bills to Be Introduced

Immigration Bill

In the Government's background briefing on the 2017 Queen's Speech, the Government explained that the Immigration Bill would:

- Allow for the repeal of EU law on immigration, primarily free movement, that will otherwise be saved and converted into UK law by the Repeal Bill [European Union (Withdrawal) Act].
- Make the migration of EU nationals and their family members subject to relevant UK law once the UK has left the EU.³⁵

On 3 May 2018, Andrea Leadsom (Leader of the House of Commons) said that the Government was "considering a range of options" for the UK's immigration system once it leaves the EU and that it would be introducing a white paper "in the coming months".³⁶ A bill would then follow the publication of the white paper. Mrs Leadsom stated that:

That new system will be based on evidence, including from the Migration Advisory Committee, and on engagement with a range of stakeholders, including businesses, universities, the devolved Administrations and NHS leaders. It is clear that people in the UK want this Westminster Government to be in charge of our borders, but to have a sympathetic and fair-to-all immigration system, and that is what we intend to have.³⁷

On 9 July 2018, the Prime Minister, Theresa May, made a statement in the House of Commons following the Cabinet's agreement on proposals for the UK's withdrawal from the EU.³⁸ During a repeat of this statement in the House of Lords, Baroness Evans of Bowes Park (Lord Privy Seal and Leader of the House of Lords) said that the Immigration Bill would be seen "next year".³⁹

³⁴ [Explanatory Notes to the Haulage Permits and Trailer Registration Bill \[HL\]](#), Bill 199 of session 2017–19, p 8.

³⁵ Cabinet Office, Prime Minister's Office and 10 Downing Street, [The Queen's Speech and Associated Background Briefing, on the Occasion of the Opening of Parliament on Wednesday 21 June 2017](#), 21 June 2017, p 12.

³⁶ [HC Hansard, 3 May 2018, col 474](#).

³⁷ *ibid.*

³⁸ [HC Hansard, 9 July 2018, cols 707–41](#).

³⁹ *ibid*, cols 805–20.

Fisheries Bill

In the Government's background briefing on the 2017 Queen's Speech, the Government explained that the Fisheries Bill would "enable the UK to exercise responsibility for access to fisheries and management of its waters".⁴⁰

On 4 July 2018, the Department for Environment, Food and Rural Affairs (DEFRA) published a white paper on the UK's future fisheries policy.⁴¹ Alongside the white paper, DEFRA also published a consultation which is scheduled to close on 12 September 2018.⁴²

The white paper stated that:

As we leave the EU, [the Government] are committed to working closely with our partners to manage shared stocks in a sustainable way and share fishing opportunities on a fair and scientific basis. We have instigated a comprehensive programme of research to inform this process and provide the evidence to secure a fairer share of fishing opportunities for UK fishers.⁴³

DEFRA also wrote that the white paper represented continuing discussions with the devolved administrations, which have responsibility for domestic fisheries management within their regions.

Once the UK withdraws from the EU it will become an independent coastal state under the UN Convention on the Law of the Sea (UNCLOS).⁴⁴ The Government has said that the UK will therefore be able to control and manage access to fish within UK waters out to 200 nautical miles, or the median line. The white paper has stated that in line with UNCLOS the Government will continue to work with the EU and other coastal states on the sustainable management of stocks which cross borders. UK fisheries policy would be informed by any implementation period agreed with the EU:

In the short term, UK fisheries policy will align with the agreement reached with the EU on 19 March 2018 on an implementation period. This period will serve as a stepping stone to our future relationship

⁴⁰ Cabinet Office, Prime Minister's Office and 10 Downing Street, [The Queen's Speech and Associated Background Briefing, on the Occasion of the Opening of Parliament on Wednesday 21 June 2017](#), 21 June 2017, p 12.

⁴¹ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), 4 July 2018, Cm 9660.

⁴² Department for Environment, Food and Rural Affairs, [Consultation: Sustainable Fisheries for Future Generations](#), 4 July 2018.

⁴³ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), 4 July 2018, Cm 9660, p 6.

⁴⁴ *ibid*, p 8.

with the EU. However, from 2020, we will be negotiating access and fishing opportunities for 2021 as an independent coastal state.⁴⁵

On the issue of legislation, the white paper stated that the Fisheries Bill had been designed to accommodate a range of options depending upon the outcome of negotiations with the EU:

We do not yet know the outcome of the UK's negotiations to withdraw from the EU or on a future economic partnership. The powers proposed in the Fisheries Bill have therefore been developed to make sure that we can respond flexibly and quickly to a dynamic environment as we approach exit, but also manage fisheries more effectively, for example by responding to scientific advice in the years to come. In doing so, the Fisheries Bill will mean that Parliament has a greater level of scrutiny over future secondary legislation on fisheries than it currently enjoys over comparable EU legislation.⁴⁶

The Fisheries Bill would include provisions to:

- Enable the UK to determine which countries' vessels could access its fishing waters.
- Preserve equal access for UK vessels throughout UK waters.
- Set quotas or days at sea for the UK.
- Require the creation of a policy statement (with the devolved administrations) on the application of sustainability principles and objectives in fisheries management.
- Allow the UK to respond to scientific advice, protect the marine environment and meet our international commitments by taking a power to amend retained EU law (and to make changes to existing UK law) relating to fisheries.
- Extend powers in the Marine and Coastal Access Act to allow for the regulation of fishing activity for the purpose of protecting the marine environment both in the inshore and offshore zones outside Marine Protected Areas.
- Improve the Marine Management Organisations cost recovery.
- Allow a scheme to be set up to tender or auction English quota linked, for instance, to a proportion of the quota gained as a result of negotiations with the EU and coastal states and to introduce a scheme to enable fishers to avoid the problem of choke species while deterring discards.
- Modernise grant-making powers in England.

⁴⁵ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), 4 July 2018, Cm 9660, p 8.

⁴⁶ *ibid*, p 17.

Further details of these provisions are discussed in the white paper.⁴⁷

Agriculture Bill

In the Government's background briefing on the 2017 Queen's Speech, the Government explained that the Agriculture Bill would:

- Provide stability to farmers as we leave the EU.
- Protect our precious natural environment for future generations.
- Deliver on the manifesto commitment to provide stability for farmers as we exit the EU.⁴⁸

On 27 February 2018, DEFRA published a white paper on the UK's 'future for food, farming and the environment'.⁴⁹ Alongside the white paper, DEFRA also published a consultation which ran between 27 February 2018 and 8 May 2018.⁵⁰

In order to meet the policy aims outlined in the white paper, DEFRA said that the Agriculture Bill "could provide legislative powers including":

- to continue making payments to farmers and land managers, with power to amend eligibility criteria for payments
- measures to strip out unnecessary bureaucracy and strengthen the delivery landscape
- to create new schemes for one or more of the following purposes:
 - promoting and increasing agricultural productivity and resilience
 - preserving, protecting and enhancing the environment
 - providing support to rural communities
 - animal and plant health and animal welfare
 - public access
- to establish a new basic compliance or inspection regime
- to take emergency measures to provide aid in extreme events
- to retain UK-wide frameworks where we need commonality

⁴⁷ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), 4 July 2018, Cm 9660, pp 16–17.

⁴⁸ Cabinet Office, Prime Minister's Office and 10 Downing Street, [The Queen's Speech and Associated Background Briefing, on the Occasion of the Opening of Parliament on Wednesday 21 June 2017](#), 21 June 2017, p 12.

⁴⁹ Department for Environment, Food and Rural Affairs, [Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit](#), 27 February 2018, Cm 9577.

⁵⁰ Department for Environment, Food and Rural Affairs, [The Future of Food, Farming and the Environment](#), 27 February 2018.

- to provide for continuity during the ‘agricultural transition’ period for some elements of the current CAP.⁵¹

Speaking on 21 June 2018, Andrea Leadsom, Leader of the House of Commons, said that the Agriculture Bill would be introduced “later in the session”.⁵²

Environmental Principles and Governance

On 12 November 2017, Michael Gove, the Secretary of State for the Environment, announced that the Government would consult on the establishment of a new independent statutory body tasked with holding the government to account for upholding environmental standards in England.⁵³

Since the consultation opened on 10 May 2018, the European Union (Withdrawal) Act 2018 received royal assent. Section 16 of the European Union (Withdrawal) Act 2018 relates to arrangements for environmental principles and governance following the UK’s withdrawal from the EU. Section 16 of the Act requires the publication of draft legislation on the issue of environmental principles:

[S]ix months after Royal Assent of this Act, the Secretary of State must publish draft legislation which sets out a list of environmental principles (which are listed in subsection (2)). The draft legislation must place a duty on the Secretary of State to publish a policy statement in relation to the application and interpretation of those principles which, when circumstances to be set out under the legislation apply, ministers of the Crown must have regard to in making and developing policy.

The draft legislation must also define environmental law and make provision for the establishment of a public authority with functions for taking proportionate enforcement action (including legal proceedings if necessary) where the authority considers that a minister of the Crown is not complying with that environmental law. The duty on the Secretary of State to publish a draft Bill applies in relation to England, and to reserved matters across the rest of the UK.⁵⁴

⁵¹ Department for Environment, Food and Rural Affairs, [Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit](#), 27 February 2018, Cm 9577, p 64.

⁵² [HC Hansard, 21 June 2018, col 484](#).

⁵³ Department for Environment, Food and Rural Affairs, [‘New Environmental Protections to Deliver a Green Brexit’](#), 12 November 2017.

⁵⁴ Department for Environment, Food and Rural Affairs, [‘Environmental Principles and Governance after EU Exit’](#), accessed 18 July 2018.

The Department for Environment, Food and Rural Affairs has said that respondents may wish to take this into consideration when responding to the consultation questions. The consultation closes on 2 August 2018.⁵⁵

Withdrawal Agreement and Implementation Bill

A commitment to implement the withdrawal agreement in domestic legislation was contained in the December Joint Report from the EU and UK negotiators. This states that the UK Government would bring forward a ‘Withdrawal Agreement and Implementation Bill’ specifically to implement the agreement in UK domestic legislation:

Both parties agree that the withdrawal agreement should provide for the legal effects of the citizens’ rights Part both in the UK and in the Union. UK domestic legislation should also be enacted to this effect.

The provision in the Agreement should enable citizens to rely directly on their rights as set out in the citizens’ rights Part of the Agreement and should specify that inconsistent and incompatible rules and provisions will be disapplied.

The UK Government will bring forward a Bill, the Withdrawal Agreement and Implementation Bill, specifically to implement the Agreement. This Bill will make express reference to the Agreement and will fully incorporate the citizens’ rights Part into UK law. Once this Bill has been adopted, the provisions of the citizens’ rights Part will have effect in primary legislation and will prevail over inconsistent or incompatible legislation, unless Parliament expressly repeals this Act in future. The withdrawal agreement will be binding on the institutions of the Union and on its Member States from its entry into force pursuant to Article 216(2) TFEU.⁵⁶

Section 9 of the European Union (Withdrawal) Act 2018, as passed, grants Ministers of the Crown the power to make regulations to implement a withdrawal agreement reached under Article 50 of the Treaty on European Union. This requires the prior enactment of a statute by the UK Parliament approving the final terms of withdrawal of the UK from the EU.

⁵⁵ Department for Environment, Food and Rural Affairs, ‘[Environmental Principles and Governance after EU Exit](#)’, accessed 18 July 2018.

⁵⁶ HM Government and European Commission, [Joint Report from the Negotiators of the European Union and the United Kingdom Government on Progress During Phase I of Negotiations Under Article 50 TEU on the United Kingdom’s Orderly Withdrawal from the European Union](#), 8 December 2017, pp 5–6, paras 34–36.

Section 13 of the Act, amongst its other provisions, requires that a number of conditions are met before the withdrawal agreement can be ratified, including that an Act of Parliament has been passed which contains provision for the implementation of the withdrawal agreement:

- (1) The withdrawal agreement may be ratified only if—
 - (a) a Minister of the Crown has laid before each House of Parliament—
 - (i) a statement that political agreement has been reached,
 - (ii) a copy of the negotiated withdrawal agreement, and
 - (iii) a copy of the framework for the future relationship,
 - (b) the negotiated withdrawal agreement and the framework for the future relationship have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown,
 - (c) a motion for the House of Lords to take note of the negotiated withdrawal agreement and the framework for the future relationship has been tabled in the House of Lords by a Minister of the Crown and—
 - (i) the House of Lords has debated the motion, or
 - (ii) the House of Lords has not concluded a debate on the motion before the end of the period of five Lords sitting days beginning with the first Lords sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (b), and
 - (d) an Act of Parliament has been passed which contains provision for the implementation of the withdrawal agreement.⁵⁷

The explanatory notes to the European Union (Withdrawal) Act 2018 explain that due to the UK's constitutional arrangements legislation is required before the rights and obligations in a treaty can have domestic effect:

The UK is a 'dualist' state, meaning that a treaty ratified by the Government does not alter the laws of the state unless and until it is incorporated into domestic law by legislation. This means that the UK Parliament has to pass legislation before the rights and obligations in the treaty can have effect domestically (in some cases, it may be that domestic legislation is already sufficient to ensure compliance with the international agreement or that compliance can be delivered without legislation).⁵⁸

⁵⁷ [European Union \(Withdrawal\) Act 2018](#), section 13(1).

⁵⁸ [Explanatory Notes to the European Union \(Withdrawal\) Act 2018](#), p 6.

The Government has stated its intention to publish a white paper on the Withdrawal Agreement and Implementation Bill “shortly”.⁵⁹

1.2 Government Departments

Funding, Work Streams and Staffing

The Government stated in the Autumn Budget 2017 that nearly £700 million of additional funding had been provided to government departments to date to support planning for “a range of outcomes” relating to leaving the EU.⁶⁰ The Budget announced a further £3 billion of funding (half in 2018/19 and half in 2019/20) “to ensure that the Government can continue to prepare effectively for EU exit”. The Government has not given details of what proportion of this money is being spent on preparing for a ‘no deal’ outcome and what proportion on preparations to implement a deal.⁶¹

The Department for Exiting the European Union (DExEU) has identified 313 ‘work streams’ that need to be taken forward to support the Brexit process.⁶² The Government has not released precise details of what is covered by these work streams, or how much progress has been made in each area, but progress is reportedly being tracked in a cross-departmental database.⁶³ Following correspondence with the House of Commons Public Accounts Committee, DExEU released summary details in April 2018, showing how many work streams sit in different government departments, along with broad outlines of the areas covered and some specific examples.⁶⁴ Philip Rycroft, the Permanent Secretary at the Department for Exiting the European Union, said that this was the level of detail it was possible to provide “without unduly affecting sensitive negotiating positions”.⁶⁵

⁵⁹ [HC Hansard, 12 July 2018, col 1158](#). This is a separate white paper from the one published on 12 July 2018 on the Government’s proposals for the UK’s future relationship with the EU.

⁶⁰ HM Treasury, [Autumn Budget 2017](#), November 2017, HC 587 of session 2017–19, p 22. A breakdown of the funding by department is given in: House of Commons, [‘Written Statement: Spring Statement’](#), 13 March 2018, HCWS540.

⁶¹ See for example: House of Commons, [‘Written Question: Brexit’](#), 27 November 2017, 115204; and [‘Written Question: Brexit’](#), 13 June 2018, 150590.

⁶² House of Commons Public Accounts Committee, [Exiting the European Union](#), 7 February 2018, HC 467 of session 2017–19, p 8.

⁶³ Oliver Wright, [‘Secret Database Tracks Groundwork for Hard Brexit’](#), *Times* (£), 5 February 2018.

⁶⁴ House of Commons Public Accounts Committee, [Correspondence from Department for Exiting the European Union Relating to EU Exit Workstreams](#), dated 9 May 2018, published 16 May 2018.

⁶⁵ *ibid.*

In answer to parliamentary questions about the number of civil servants working on Brexit and how this effort is divided across different departments or disciplines, the Government has generally provided broad-brush responses, rather than specific figures, for example:

The whole of Government is preparing for the UK to make an orderly and successful exit from the European Union, and we are equipping ourselves with the right people and the right skills across Government to make this happen. Whilst workforce planning is primarily the responsibility of each department to determine based on their individual operational and policy requirements, the Civil Service constantly reviews its capabilities in order to deliver the Government's commitment to leave the EU and get the very best deal for the UK. Civil Service HR is working closely with the Department for Exiting the European Union to support departments, functions and professions in continuing to develop plans to address their emerging capacity and capability requirements.⁶⁶

It was reported in October 2017 that the civil service had taken on an additional 3,000 employees to boost work towards leaving the European Union, and expected to employ up to 5,000 more in 2018.⁶⁷ The Institute for Government (IFG) think tank estimates that around 10,000 new Brexit roles have been created in the civil service since the referendum in 2016.⁶⁸

Reviews of Departments' Progress

The House of Commons Public Accounts Committee reported in February 2018 on the work being done across government departments to implement Brexit.⁶⁹ It concluded that DExEU had “not been quick enough to move departments beyond planning for Brexit and on to getting things done”.⁷⁰ The Committee expressed concerns that departments' plans for the hundreds of work streams might “not be sufficiently developed to enable implementation to start quickly”. It also believed that departments had “not faced up to the need to re-prioritise existing activity to make space for Brexit”, which the Committee found “worrying”. In the Committee's view, DExEU and the Cabinet Office did “not have a credible plan in place to secure quickly the people and skills needed to support Brexit”. The Committee noted that the Government's plans to build up resources over the following twelve months would result in timings that would run “very

⁶⁶ House of Commons, ‘[Written Question: Department for Exiting the European Union: Staff](#)’, 14 November 2017, 111108. See also these written questions: [105335](#) and [105337](#) of 14 September 2017 and [HL2855](#) of 2 November 2017.

⁶⁷ Joe Watts, ‘[Brexit: Government Employing up to 8,000 Extra Civil Servants to Cope with EU Departure](#)’, *Independent*, 31 October 2017.

⁶⁸ Institute for Government, [Preparing Brexit: How Ready is Whitehall?](#), June 2018, p 5.

⁶⁹ House of Commons Public Accounts Committee, [Exiting the European Union](#), 7 February 2018, HC 467 of session 2017–19.

⁷⁰ *ibid*, p 5.

close to when the UK exits the EU”.

The Committee noted that work on Brexit was split between DExEU, a unit in the Cabinet Office, individual departments’ own work streams, and numerous cross-government boards and working groups, creating “a potentially unwieldy and overly-complicated bureaucracy”.⁷¹ In the Committee’s view, “unclear accountabilities risk undermining the speedy decision-making, resolution of problems and swift progress required to support Brexit”.

The Committee also argued that “the paucity of information in the public domain about what departments are doing to support Brexit is undermining scrutiny of progress”.⁷² It noted that DExEU had designated around half of the work streams as “top priority”, of which 20 needed “to move more quickly”, but Parliament had been given no information on what these 20 projects were, how DExEU was monitoring the risks or when the projects were expected to be implemented by. While the Cabinet Office expected the Government would be in a “satisfactory” position by March 2019, the Committee observed that the Cabinet Office had not set out what this meant or how progress would be communicated. The Committee accepted there would be some sensitivities about what information could be put in the public domain while negotiations with the EU were ongoing, but it argued that “this must not be used as an excuse for keeping Parliament and the public in the dark”.

In response, the Government disagreed with a number of the Committee’s findings.⁷³ It said that its EU Exit Capacity and Capability Programme was bringing together departments, functions and professions to inform the strategic response and ensure that the civil service had in place the people and skills needed for Brexit.⁷⁴ The Government said that this programme had “successfully met demand for resources” in 2017/18 and further work was ongoing on forecasting what capacity and capability would be needed over the next twelve months to ensure that the necessary skills could be recruited. The Government stated that departments had “actively prioritised activity” as part of their internal business planning processes to ensure that departmental commitments could be “delivered with the available resource and capacity”, and this would be reflected in the next editions of their single departmental plans. The Government reported that the Cabinet Secretary had undertaken “a series of stock-takes to examine readiness for EU Exit, to identify barriers to progress, including available capacity and capability, and actions needed to address them”.

⁷¹ House of Commons Public Accounts Committee, [Exiting the European Union](#), 7 February 2018, HC 467 of session 2017–19, p 6.

⁷² *ibid.*

⁷³ HM Treasury, [Treasury Minutes: Government Response to the Committee of Public Accounts on the Twelfth to Nineteenth Reports from Session 2017–19](#), March 2018, Cm 9596, pp 33–7.

⁷⁴ *ibid.*, p 34.

With regard to structures for decision-making and accountability, the Government said that the scale of the task of leaving the European Union meant that work required coordination across multiple departments and functions.⁷⁵ However, the Government maintained that accountability for individual issues was clear: “the negotiation positions are the responsibility of the cross-Government Senior Responsible Owner (SRO), reporting to the Exiting the European Union sub-committees and delivery is the responsibility of the named SRO and the Permanent Secretary, reporting to their Secretaries of State”. The Government said that collective responsibility for the progress of Brexit remained with the Cabinet; the role of the Europe Unit within the Cabinet Office was to advise the Prime Minister on leading the Government’s Brexit approach, and DExEU was responsible for supporting its Secretary of State and for leading cross-government work.⁷⁶

The Government gave a commitment to the Committee that it would provide a formal update by 1 June 2018 on progress made with implementing exit plans and recruiting the necessary skills into the civil service.⁷⁷ Senior officials from DExEU provided this update to the Committee during a private session on 3 July 2018.⁷⁸

The Institute for Government (IFG) published a report in June 2018 looking at Whitehall’s readiness for delivering Brexit.⁷⁹ It noted that the Government had to prepare for three broad scenarios—leaving with no deal in March 2019; agreeing a withdrawal agreement by March 2019, but not agreeing a final overarching agreement on trade or security cooperation by the end of the transition period; and reaching a ‘negotiated outcome’ on a future relationship, the desired outcome of both the UK and the EU.⁸⁰ The IFG explained that this meant that government departments were having to work on multiple plans across most of the work streams identified:

Every work stream has multiple plans, covering the different scenarios, which have been submitted to DExEU, while funding has been allocated by the Chancellor on the basis of their costed ‘no deal’ plans. Departments are sending funding updates to the Treasury and are submitting regular progress reports to DExEU, who compile the information and share it with ministers.

Some areas are not dependent on future negotiations, such as the settlement scheme to provide status to EU nationals after Brexit, meaning officials do not have to cope with multiple scenarios. But

⁷⁵ HM Treasury, *Treasury Minutes: Government Response to the Committee of Public Accounts on the Twelfth to Nineteenth Reports from Session 2017–19*, March 2018, Cm 9596, p 35.

⁷⁶ *ibid*, pp 35–6.

⁷⁷ *ibid*, p 34.

⁷⁸ Author’s correspondence with the Public Accounts Committee, 18 July 2018.

⁷⁹ Institute for Government, *Preparing Brexit: How Ready is Whitehall?*, June 2018.

⁸⁰ *ibid*, p 12.

these are the exception. For others the uncertainty means that departments have to work on multiple plans in parallel. HM Revenue and Customs (HMRC), for example, needs to be ready for post-Brexit customs if there's no deal in March 2019 or if talks end in failure come December 2020, as well as having plans for the Government's two options for a future relationship ['low alignment' and 'high alignment'—this paper was written before the Government set out more detail on its customs plans in the white paper published on 12 July 2018]. Each of the four plans, with their own different constraints and requirements, would be, at best, extremely ambitious if they were the only scenario the department was working to.⁸¹

It found that until the withdrawal agreement was signed and ratified, work would have to continue on contingency plans.⁸² With a withdrawal agreement in force, the transition period would “buy important time for preparations”, but would not remove uncertainty. The IFG argued that departments would “still be managing significant uncertainty during the transition”, as detailed negotiations would still be taking place and “the end-state far from agreed”. The IFG also made the point that delivering Brexit would depend not just on government departments, but also on regulators, frontline services, the devolved administrations, and businesses which operate across borders or employ EU nationals. It argued that “many of them are reliant on progress—or direction—from the UK Government”. In the IFG's view, “all the big implementation challenges lie ahead”, as most work to date had been on scenario-planning, with limited examples of large sums of money being spent to turn plans into reality, although there was some evidence of departments beginning to purchase new IT systems and put the groundwork down for establishing new regulatory bodies. While the IFG acknowledged that “a huge amount of work has taken place over the last two years”, it concluded that “no clear end-state, poor information flow and competing ministerial preferences” made it “extremely difficult to deliver Brexit”.⁸³

The National Audit Office (NAO) has published a series of reports assessing the preparations for Brexit across a number of policy areas and government departments.⁸⁴ Some of its reports describe how key departments—DExEU, the Department for Business, Energy and Industrial Strategy (BEIS), the Department for Environment, Food and Rural Affairs (DEFRA), the Department for International Trade (DIT), and the Foreign and Commonwealth Office (FCO)—have organised themselves to deliver their

⁸¹ Institute for Government, [Preparing Brexit: How Ready is Whitehall?](#), June 2018, p 13.

⁸² *ibid*, p 14.

⁸³ *ibid*, pp 3–4.

⁸⁴ The full range of reports can be found on the National Audit Office's [‘Exiting the EU’](#) web page.

respective work streams.⁸⁵ Recent reports have highlighted, for example, that the FCO and DIT work streams are “challenging” or “complex” and may require “significant time and expertise” to implement the new structures and capabilities necessary to take over work currently administered by the EU, for example on international sanctions and on international trade.⁸⁶ NAO reports on some specific policy areas (as opposed to the organisation of individual government departments) have likewise highlighted that the timescales for implementation are tight, for example in areas such as ensuring legal frameworks are ready for consumer protection, competition and state aid, or for having appropriate customs declarations arrangements in place in the event of a ‘no deal’.⁸⁷

There have been a number of parliamentary committee reports examining preparedness for Brexit, the timescales required to implement new arrangements and the possible implications of ‘no deal’ across a range of policy areas and economic sectors. The appendix to this Briefing lists relevant select committee reports published this session (and the Government’s response where available).

Preparations for a ‘No Deal’

It remains the Government’s aim to negotiate a future partnership with the EU, but the Government has also recently stated its intention to intensify preparations in case of no deal being reached with the EU. The final paragraph of the Chequers statement agreed by the Cabinet on 6 July 2018 stated:

It remains our firm view that it is in the interests of both sides to reach agreement on a good and sustainable future relationship. But we also concluded that it was responsible to continue preparations for a range of potential outcomes, including the possibility of ‘no deal’. Given the short period remaining before the necessary conclusion of

⁸⁵ National Audit Office, [Implementing the UK’s Exit from the European Union: The Department for Exiting the European Union and the Centre of Government](#), 17 November 2017, HC 593 of session 2017–19; [Implementing the UK’s Exit from the European Union: The Department for Business, Energy and Industrial Strategy](#), 30 November 2017, HC 608 of session 2017–19; [Implementing the UK’s Exit from the European Union: The Department for Environment, Food and Rural Affairs](#), 20 December 2017, HC 647 of session 2017–19; [Implementing the UK’s Exit from the European Union: The Department for International Trade](#), 25 January 2018, HC 713 of session 2017–19; [Implementing the UK’s Exit from the European Union: The Foreign and Commonwealth Office](#), 25 April 2018, HC 899 of session 2017–19.

⁸⁶ National Audit Office, [Implementing the UK’s Exit from the European Union: The Department for International Trade](#), 25 January 2018, HC 713 of session 2017–19, p 12; and [Implementing the UK’s Exit from the European Union: The Foreign and Commonwealth Office](#), 25 April 2018, HC 899 of session 2017–19, p 11.

⁸⁷ National Audit Office, [‘Exiting the EU: Consumer Protection, Competition and State Aid’](#), 6 July 2018; and [‘The Customs Declaration Service: A Progress Update’](#), 28 June 2018.

negotiations this autumn, we agreed preparations should be stepped up.⁸⁸

Dominic Raab, the new Secretary of State for Exiting the European Union, said on 12 July 2018, introducing the Government's white paper, that the Government would "step up [its] planning for the no deal scenario so that the UK is ready for Brexit no matter what the outcome of these negotiations is".⁸⁹ He argued it was "the responsible thing for a Government to do".

2. Negotiations

2.1 Timetable

Under the terms of Article 50 of the Treaty on European Union, the EU shall negotiate and conclude an agreement with a member state that has notified its decision to leave the Union. Article 50 specifies that this agreement shall set out the arrangements for the withdrawal of the departing member state, "taking account of the framework for its future relationship with the EU".

The Government expects there to be at least two agreements resulting from the negotiations: a withdrawal agreement setting out the departure terms, and one or more agreements covering different aspects of the future relationship.⁹⁰ In the white paper published in July 2018, the Government proposes that the future relationship is likely to consist of a number of separate agreements, covering different elements of economic, security and cross-cutting cooperation, some of which would be legally binding agreements (eg a free trade agreement covering components of the future economic relationship, a treaty covering internal security), while other aspects would be based on political commitments (eg components of external security cooperation).⁹¹

Under the EU Treaties, legal agreements covering the future relationship can only be concluded with the UK once it is a third country (a non-EU member state). They therefore cannot be signed until the UK has left the EU, which, under the terms of Article 50 will be on 29 March 2019 unless the withdrawal agreement enters into force on a different date, or unless there is unanimous agreement between the UK and the remaining 27 member states to extend the negotiating period. However, the framework for the future relationship will be outlined in a political declaration accompanying

⁸⁸ HM Government, [Statement from HM Government](#), 6 July 2018.

⁸⁹ [HC Hansard, 12 July 2018, col 1158](#).

⁹⁰ House of Commons, '[Written Statement: Procedures for the Approval and Implementation of EU Exit Agreements](#)', 13 December 2017, HCWS342.

⁹¹ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, p 84.

and referred to in the withdrawal agreement.⁹²

In order to allow sufficient time for the European Parliament to approve a withdrawal agreement before 29 March 2019, it is envisaged that the latest time by which the EU's chief negotiator Michel Barnier could put a proposed withdrawal deal to the European Council is autumn 2018.⁹³ The timescale that both sides have been working towards is the European Council meeting scheduled for 18 October 2018.

There has been speculation that final agreement on the withdrawal agreement will not be reached by the October European Council. For example, the *Financial Times* reported the week before the June European Council that officials involved in the talks believed the negotiations were “unlikely to reach any kind of conclusion until the end of the year because of continuing deadlock between the UK and the EU over the Irish border and mounting political disarray at Westminster”.⁹⁴ Leo Varadkar, the Irish Taoiseach, has raised the prospect of scheduling an extra European Council meeting in the autumn if sufficient progress had not been made to sign off an agreement at the October summit.⁹⁵ However, the Prime Minister, Theresa May, said on 9 July 2018 that the Government wanted “to ensure that we meet the October deadline for coming to an agreement”.⁹⁶

There is a lack of consensus over when negotiations on a legally binding agreement(s) on the future relationship might be concluded. In the timetable put forward by the European Commission, discussions on the future relationship taking place from March 2018 onwards are “scoping” talks, leading to a political declaration in October 2018, but formal negotiations would not begin until after March 2019, once the UK has become a third country.⁹⁷ Michel Barnier, the EU's chief negotiator, has said that the reason why the EU agreed to a transition period lasting until the end of December 2020 was to ensure that there was “much more time” to conclude the negotiations on the future relationship.⁹⁸ However, David Davis, the then Secretary of State for Exiting the European Union, did not agree that formal negotiations on the future relationship would not start until after March 2019.⁹⁹ He acknowledged that a legal agreement on the future relationship could not be signed until after 29 March 2019, but his aim

⁹² European Council, [European Council \(Art 50\) \(23 March 2018\) Guidelines](#), 23 March 2018.

⁹³ European Commission, [Article 50 of the Treaty on European Union—Q&A](#), 29 March 2017.

⁹⁴ James Blitz and George Parker, [Brexit Deal Unlikely Until Year-End as Officials Revise Expectations](#), *Financial Times* (£), 18 June 2018.

⁹⁵ Press Association, [Varadkar Moots Brexit Delay to Give More Time to Negotiate UK Exit](#), *Daily Mail*, 11 June 2018.

⁹⁶ [HC Hansard, 9 July 2018, col 739](#).

⁹⁷ House of Lords European Union Committee, [Slide 1 from the European Commission—Brexit Next Steps](#), 1 March 2018.

⁹⁸ Council on Foreign Relations, [Brexit: A Conversation with Michel Barnier](#), 10 July 2018.

⁹⁹ House of Lords European Union Committee, [Uncorrected Oral Evidence: Scrutiny of the Brexit Negotiations](#), 1 May 2018, Q3.

was to conclude negotiations by that date so that the EU could sign and begin the ratification process in the 27 member states.

The House of Commons Exiting the European Union Committee said in late May 2018 that it was “not convinced” the Government would be able to negotiate a full trade and market access agreement, along with a range of other agreements, including on foreign affairs and defence cooperation, by 29 March 2019 “not least because such negotiations have not apparently even begun”.¹⁰⁰ It warned in late June 2018 that the House of Commons would expect “a high level of detail” in the political declaration accompanying the withdrawal agreement if it was to be able to give its approval to both texts.¹⁰¹ Under the terms of the European Union (Withdrawal) Act 2018, the withdrawal agreement can be ratified only if (among other requirements) the House of Commons has approved both the withdrawal agreement and the framework for the future relationship.¹⁰²

The House of Lords European Union Committee warned in early June 2018 that the negotiating clock was ticking “ever louder”, and that “the key factor which will determine whether or not the Government can deliver a successful Brexit is time”.¹⁰³ It observed that the time remaining for the two sides to reach agreement on the framework for a future partnership measured “just weeks, rather than months”. The Committee said it was “concerned at the delay and uncertainty that has surrounded the Government’s development of detailed, workable proposals”.¹⁰⁴ Like the Commons Exiting the European Union Committee, the Lords European Union Committee emphasised the importance of getting the political declaration right:

While the ‘political declaration’ may not be legally binding, we accept that at least at a political level it may bind future European Councils, and thus limit the options available to the UK in future negotiations. This makes it all the more important that the Government bring forward these proposals in timely fashion, so as to influence the drafting of the declaration.¹⁰⁵

¹⁰⁰ House of Commons Exiting the European Union Committee, [The Progress of the UK’s Negotiations on EU Withdrawal \(March to May 2018\)](#), 24 May 2018, HC 1060 of session 2017–19, p 25.

¹⁰¹ House of Commons Exiting the European Union Committee, [Parliamentary Scrutiny and Approval of the Withdrawal Agreement and Negotiations on a Future Relationship](#), 28 June 2018, HC 1240 of session 2017–19, p 25.

¹⁰² European Union (Withdrawal) Act 2018, section 13.

¹⁰³ House of Lords European Union Committee, [UK-EU Relations After Brexit](#), 8 June 2018, HL Paper 149 of session 2017–19, p 39.

¹⁰⁴ *ibid*, p 42.

¹⁰⁵ *ibid*.

The Lords European Union Committee also urged the European Union to change its approach when it came to responding to the proposals in the Government’s white paper—the Committee said that thus far, the EU had adopted “a reductive approach, without fully acknowledging the importance to the EU’s long-term security and prosperity of a close and lasting partnership with the UK”, but that this “must change”.¹⁰⁶

2.2 Milestones in the Negotiating Process

This Briefing sets out key milestones in the negotiating progress since talks began in June 2017. The House of Commons Library has produced a series of briefings following the progress of the negotiations in detail and analysing at each stage what has been agreed and where the two sides’ positions diverge from each other.¹⁰⁷

Phase one of the negotiations, between June and December 2017, focused on citizens’ rights, the financial settlement, Ireland/Northern Ireland and ‘other separation issues’.¹⁰⁸ On 8 December 2017, the two sides published a Joint Report setting out what progress had been made.¹⁰⁹ The following week, the European Council agreed that there had been ‘sufficient progress’ to move to phase two, which, in addition to the phase one topics, would also include discussions about the UK’s proposals for a transition period (or implementation period as the UK Government calls it) following the UK’s departure.¹¹⁰

¹⁰⁶ House of Lords European Union Committee, [UK-EU Relations After Brexit](#), 8 June 2018, HL Paper 149 of session 2017–19, p 42.

¹⁰⁷ House of Commons Library [Brexit: Red Lines and Starting Principles](#), 21 June 2017; [Brexit: The Talks Begin](#), 12 July 2017; [Brexit: The July Negotiations](#), 2 August 2017; [Brexit: The August Negotiations](#), 6 September 2017; [Brexit: The September Negotiations](#), 6 October 2017; [Brexit: The October Negotiations](#), 27 October 2017; [Brexit: The November Negotiations](#), 24 November 2017; [Brexit: ‘Sufficient Progress’ to Move to Phase 2](#), 19 December 2017; [Brexit: Who Has Said What About Transition](#), 23 February 2018; [Brexit: Council Directives for Negotiations on Transition](#), 9 March 2018; [Brexit: The Draft Withdrawal Agreement](#), 26 March 2018; [Brexit: New Guidelines on the Framework for Future EU-UK Relations](#), 19 April 2018; and [Brexit: Negotiations Update \(March–June 2018\)](#), 20 June 2018.

¹⁰⁸ HM Government and European Commission, [Terms of Reference for the Article 50 TEU Negotiations](#), 19 June 2017.

¹⁰⁹ HM Government and European Commission, [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.

¹¹⁰ European Council, [European Council \(Art 50\) Meeting \(15 December 2017\)](#), 15 December 2017.

On 28 February 2018, the European Commission published a draft withdrawal agreement which it said translated the December Joint Report into legal text.¹¹¹ It consisted of six parts, covering: introductory provisions; citizens' rights; other separation issues (eg goods placed on the market before the withdrawal date); financial settlement; transitional arrangements; and institutional provisions. It also contained protocols covering Ireland/Northern Ireland and the Sovereign Base Area in Cyprus. Michel Barnier stressed that the document was a draft, still to be discussed with the EU27 and European Parliament, and negotiated with the UK, but that it was necessary to have a legal text down on paper to negotiate.¹¹² A revised draft was published on 15 March 2018. A third revision was jointly published by the UK and EU on 19 March 2018, this time colour-coded to show which sections were agreed between the two sides (green—subject only to technical legal revisions); which sections reflected agreed policy objectives where drafting changes or clarifications were still required (yellow); and which sections were text proposed by the EU on which no agreement had yet been reached (white).¹¹³

David Davis and Michel Barnier both hailed the draft withdrawal agreement as “a decisive step”.¹¹⁴ A detailed analysis of what was agreed can be found in the House of Commons Library briefing on [Brexit: The Draft Withdrawal Agreement](#) (26 March 2018) but key areas included:

- A transition (or implementation) period lasting from the UK's exit until 31 December 2020 at the latest, during which the UK would not participate in EU decision-making but would respect EU rules as though it were a member state.
- Citizens' rights: EU citizenship rights would continue to apply to EU nationals and their family members as defined by EU law during the transition period. EU nationals resident in the UK and UK nationals resident in other EU member states would acquire 'permanent residence' rights after accumulating five years' continuous lawful residence before or after the end of the transition period.

¹¹¹ European Commission, [European Commission Draft Withdrawal Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 28 February 2018; and [Brexit: European Commission Publishes Draft Article 50 Withdrawal Agreement](#), 28 February 2018.

¹¹² European Commission, [Press Statement by Michel Barnier Following the Publication of the Draft Withdrawal Agreement between the EU and the UK](#), 28 February 2018.

¹¹³ HM Government and European Commission, [Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 19 March 2018.

¹¹⁴ Department for Exiting the European Union, [David Davis' Statement: EU-UK Article 50 Negotiations Brussels, Monday 19 March 2018](#), 19 March 2018; and European Commission, [Press Statement by Michel Barnier Following the Latest Round of Article 50 Negotiations](#), 19 March 2018.

- A methodology for calculating the financial settlement. The Government calculates that the settlement will cost the UK between £35 billion and £39 billion.¹¹⁵

David Davis said that the withdrawal agreement was 75 percent agreed, but the remaining 25 percent still left to be negotiated was the hardest.¹¹⁶ Significant areas of divergence remained on governance of the withdrawal agreement (eg the role of the Court of Justice of the European Union in settling disputes) and on Ireland/Northern Ireland.¹¹⁷ Michel Barnier said that negotiations would continue on other ‘separation’ topics, which he described as “not negligible”, in particular: geographical indications, the protection of data, and the automatic recognition of judgments.¹¹⁸

At the European Council meeting on 23 March 2018, leaders of the EU27 welcomed the progress on the draft withdrawal agreement and adopted new negotiating guidelines “with a view to the opening of negotiations on the overall understanding of the framework for a future relationship” to be set out in the political declaration.¹¹⁹

The UK and the EU issued a joint statement on the progress of negotiations on 19 June 2018.¹²⁰ It announced that both parties had reached agreement on several more areas of the draft withdrawal agreement, so that text could now be turned green. New versions of the mutually agreed legal text for the relevant articles and annexes were appended to the statement. The statement noted that both parties had engaged on outstanding issues concerning:

- protection of data processed before the end of the transition/implementation period;
- geographical indications;
- ongoing police and judicial cooperation in criminal matters;

¹¹⁵ [HC Hansard, 11 December 2017, col 30](#). For more information, see the House of Commons Library briefing, [Brexit: The Exit Bill](#) (3 July 2018).

¹¹⁶ House of Lords European Union Committee, [Uncorrected Oral Evidence: Scrutiny of the Brexit Negotiations](#), 1 May 2018, Q1.

¹¹⁷ European Commission, [Press Statement by Michel Barnier Following the Latest Round of Article 50 Negotiations](#), 19 March 2018.

¹¹⁸ *ibid.*

¹¹⁹ European Council, [European Council \(Art 50\)\(23 March 2018\)—Guidelines](#), 23 March 2018. A detailed analysis of the guidelines, including a comparison of similarities to and differences from the vision set out by Theresa May in her Mansion House speech, is set out in the House of Commons Library briefing, [Brexit: New Guidelines on the Framework for Future EU-UK Relations](#) (19 April 2018).

¹²⁰ Department for Exiting the European Union, [Joint Statement from the Negotiators of the European Union and the United Kingdom Government on Progress of Orderly Negotiations under Article 50 TEU on the United Kingdom’s Orderly Withdrawal from the European Union](#), 19 June 2018.

- finalisation of ongoing Union judicial and administrative procedures at the end of the period and possible new procedures concerning facts arising before the end of the period;
- consistent application and interpretation of the Agreement by both the Union and the UK; and
- dispute settlement.¹²¹

On Ireland/Northern Ireland, the 19 June 2018 statement said that both sides were “committed to accelerating work on the outstanding areas”.¹²² Speaking on 10 July 2018, Michel Barnier said that approximately 80 percent of the withdrawal agreement had now been agreed, but that an operative solution must be found for Northern Ireland.¹²³

Theresa May met EU leaders at the European Council in Brussels on 28 June 2018. The leaders of the other 27 adopted conclusions on 29 June 2018 on the state of play of the negotiations.¹²⁴ Key points from the conclusions were:

- The European Council welcomed the further progress made on parts of the legal text of the withdrawal agreement, but noted that “other important aspects still need to be agreed, including the territorial application of the withdrawal agreement, notably as regards Gibraltar”.
- The European Council “express[ed] its concern that no substantial progress has yet been achieved on agreeing a backstop for Ireland/Northern Ireland”.
- The European Council said that work on preparing a political declaration on the framework for the future relationship must be “accelerated”, which would require “further clarity as well as realistic and workable proposals from the UK”. The EU would be “prepared to reconsider its offer” if the UK positions “were to evolve”.
- The European Council called on member states, EU institutions and all stakeholders to “step up their work on preparedness at all levels and for all outcomes”.

¹²¹ Analysis of the issues involved in these is set out in the House of Commons Library briefing, [Brexit: Negotiations Update \(March–June 2018\)](#) (20 June 2018).

¹²² Department for Exiting the European Union, [Joint Statement from the Negotiators of the European Union and the United Kingdom Government on Progress of Orderly Negotiations under Article 50 TEU on the United Kingdom’s Orderly Withdrawal from the European Union](#), 19 June 2018.

¹²³ Council on Foreign Relations, [‘Brexit: A Conversation with Michel Barnier’](#), 10 July 2018.

¹²⁴ European Council, [European Council \(Art 50\) Meeting \(29 June 2018\)—Conclusions](#), 29 June 2018.

Michel Barnier told journalists that “huge and serious divergence” remained between the UK and the EU, in particular on Ireland/Northern Ireland.¹²⁵ Donald Tusk, President of the European Council, said that there was “a great deal of work still ahead” with “the most difficult tasks [...] still unresolved”. He said that “quick progress” was needed if a deal was to be reached by October 2018, and he said this was “the last call to lay the cards on the table”.¹²⁶

Theresa May said that both sides were “keen to continue that work at a faster pace than we have done up till now”.¹²⁷ Mrs May promised that the UK Government would publish a white paper shortly setting out its vision for the future partnership in more detail. Updating the House of Commons about the outcome of the June European Council, Mrs May said that the Government “now [had] agreement or are close to doing so” on the draft withdrawal agreement, with the exception of the protocol relating to Northern Ireland.¹²⁸

2.3 Northern Ireland

Issues relating to the border between Ireland and Northern Ireland have been one of the main areas of difficulty in the negotiations so far. The UK-EU Joint Report of December 2017 stated both parties’ commitment to protecting the Good Friday Agreement and restated the UK’s commitment to the avoidance of a hard border, including any physical infrastructure or related checks and controls.¹²⁹ Key paragraphs in the Joint Report relating to how this is to be achieved state:

The United Kingdom remains committed to protecting North-South cooperation and to its guarantee of avoiding a hard border. Any future arrangements must be compatible with these overarching requirements. The United Kingdom’s intention is to achieve these objectives through the overall EU-UK relationship. Should this not be possible, the United Kingdom will propose specific solutions to address the unique circumstances of the island of Ireland. In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the customs union which, now or in the future, support North-South cooperation, the all-island economy and the

¹²⁵ Andrew Sparrow, [‘EU Chief Donald Tusk says ‘Most Difficult’ Brexit Issues Remain Unresolved—Politics Live’](#), *Guardian*, 29 June 2018 (see entry at 09:58).

¹²⁶ European Council, [‘Remarks by President Donald Tusk on the European Council Meetings of 28–29 June 2018’](#), 29 June 2018.

¹²⁷ BBC News, [‘Brexit: ‘Last Call’ for Deal, Donald Tusk Warns UK’](#), 29 June 2018.

¹²⁸ [HC Hansard, 2 July 2018, col 48.](#)

¹²⁹ HM Government and European Commission, [Joint Report From the Negotiators of the European Union and the United Kingdom Government on Progress During Phase I of Negotiations under Article 50 TEU on the United Kingdom’s Orderly Withdrawal from the European Union](#), 8 December 2017.

protection of the 1998 Agreement.

In the absence of agreed solutions, as set out in the previous paragraph, the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland. In all circumstances the United Kingdom will continue to ensure the same unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market.¹³⁰

Section 10 of the European Union (Withdrawal) Act 2018 requires ministers to have regard to the Joint Report when exercising powers under the Act. It would prevent powers under the Act (eg to 'correct' retained EU law or to implement the withdrawal agreement) from being used to diminish North-South cooperation as provided for in the 1998 Agreement, or to introduce new physical infrastructure or checks and controls on the Northern Ireland-Ireland border unless they were in accordance with an agreement between the UK and the EU.

In the draft withdrawal agreement text produced by the European Commission, Chapter III of the protocol on Ireland/Northern Ireland would establish a 'common regulatory area' between the EU and the UK in respect of Northern Ireland, covering free movement of goods, agriculture and fisheries, the single electricity market, the environment, other areas of North-South cooperation, and state aid. In response to objections that establishing such a common regulatory area took off the table the first two options outlined in paragraph 49 (achieving a solution through the overall UK-EU agreement, or agreeing "specific solutions" for Northern Ireland in the future relationship), the European Commission explained its approach as follows:

All three options remain on the table.

[...] Paragraph 49 of the Joint Report indeed sets out three options for avoiding a hard border on the island of Ireland and to support North-South cooperation, the all-island economy and the protection of the Good Friday Agreement.

Given that two of the three options can only be made operational in the context of discussions on the future relationship, a Protocol has

¹³⁰ HM Government and European Commission, [Joint Report From the Negotiators of the European Union and the United Kingdom Government on Progress During Phase I of Negotiations under Article 50 TEU on the United Kingdom's Orderly Withdrawal from the European Union](#), 8 December 2017, paras 49–50.

been included setting out, in legal terms, how the third option may be operationalised. This option means that the United Kingdom maintains full alignment with those rules of the Internal Market and the customs union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.

[...] As discussions on the overall future relationship have not yet begun, today's text clarifies the way in which the option of regulatory alignment would work.¹³¹

The UK Government has rejected this approach. When the European Commission first published its draft legal text, Theresa May said that if the Protocol on Ireland/Northern Ireland was implemented, it would “undermine the UK common market and threaten the constitutional integrity of the UK by creating a customs and regulatory border down the Irish sea”.¹³² She declared that “no UK Prime Minister could ever agree to it”. She said that the UK continued to “stand behind all the commitments that we made in December”. Mrs May told Donald Tusk, President of the European Council, the next day that the EU draft text was “unacceptable to the UK”, and that her priority was to resolve the border question through the overall relationship between the UK and the EU.¹³³

In the colour-coded version of the draft withdrawal agreement, the chapter in the Protocol on Ireland/Northern Ireland that deals with a common regulatory area is largely in white, meaning that the two sides do not agree. However, the covering note to the draft withdrawal agreement states that: “the negotiators agree that a legally operative version of the ‘backstop’ solution for the border between Northern and Ireland, in line with paragraph 49 of the Joint Report, should be agreed as part of the legal text of the withdrawal agreement, to apply unless and until another solution is found”.¹³⁴

Ahead of the June European Council meeting, the Government published a technical note on a temporary customs arrangement on 7 June 2018, setting out the UK's proposal for a backstop customs arrangement between the UK and the EU that would avoid a hard border between Ireland and Northern Ireland.¹³⁵ The note stressed that the arrangement would not be needed during the implementation (transition) period (set to run until the end of December 2020) as access to each other's markets would continue on current terms.

¹³¹ European Commission, [‘Questions and Answers: Publication of the Draft Withdrawal Agreement between the European Union and the United Kingdom’](#), 28 February 2018.

¹³² [HC Hansard, 28 February 2018, col 823.](#)

¹³³ Prime Minister's Office, [‘PM Meeting with Donald Tusk’](#), 1 March 2018.

¹³⁴ HM Government and European Commission, [‘Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community’](#), 19 March 2018, p 1.

¹³⁵ HM Government, [‘Technical Note: Temporary Customs Arrangement’](#), 7 June 2018.

The terms of the UK's proposal were:

- The elimination of tariffs, quotas, rules of origin and customs processes including declarations on all UK-EU trade;
- The UK outside the scope of the Common Commercial Policy (CCP), except where it is required to enable the temporary customs arrangement to function. This will mean applying the EU's common external tariff (CET) at the UK's external border, alongside the Union Customs Code (UCC) and such other parts of the Common Commercial Policy that are required to enable the temporary customs arrangement to function; and
- The UK able to negotiate, sign and ratify free trade agreements (FTAs) with rest of world partners and implement those elements that do not affect the functioning of the temporary customs arrangement.¹³⁶

The proposal explicitly did not address regulatory arrangements on either side of the border, although it acknowledged that this would need to be addressed.

The UK envisaged that this temporary arrangement would be replaced by “a permanent end state settlement”. This was not described in the technical note, but it did state that it would need to be set out in the future partnership framework, in order for the withdrawal agreement to be able to make legal provision for a temporary backstop. The note stated that the UK “is clear that the temporary customs arrangement, should it be needed, should be time limited, and that it will only be in place until the future customs arrangement can be introduced”. It explained that the UK “expects the future arrangement to be in place by the end of December 2021 at the latest”. However, doubts have been raised about the speed with which future customs arrangements could be made operational. Cabinet ministers were reportedly told in May 2018 that from the point a decision about a new scheme was made, the technology for the models then under consideration (‘maximum facilitation’ and a ‘customs partnership’) could take from three to five years to be ready.¹³⁷

In response to the UK's proposal, Michel Barnier said that it could not qualify as a ‘backstop’ since the issue of full regulatory alignment was not addressed, without which a hard border could not be avoided. He questioned how a proposal for a temporary arrangement fitted with the need to avoid a hard border in all circumstances, and whether it would mean that businesses would need to adapt to new customs arrangements more than once.¹³⁸ He said the EU's backstop provided answers to all these

¹³⁶ HM Government, [Technical Note: Temporary Customs Arrangement](#), 7 June 2018, para 5.

¹³⁷ Sam Coates, ‘[The Week Theresa May Picked a Side on Brexit](#)’, *Times* (£), 18 May 2018.

¹³⁸ European Commission, ‘[Press Statement by Michel Barnier Following this Week's Round of Negotiations](#)’, 8 June 2018.

questions because “it provides specific solutions to the unique situation of Northern Ireland”, whereas the UK seemed to be looking for a UK-wide solution. The European Commission published a set of slides analysing the UK’s proposal, concluding that it left “key questions unanswered”.¹³⁹

The joint statement issued by the UK and the EU negotiators on 19 June 2018 set out the status of the negotiations on Ireland/Northern Ireland as follows:

[...] scoping work has continued on the full range of provisions in the Protocol, in the context of both parties’ commitment to the Belfast or Good Friday Agreement in all its parts. Both Parties recognise that the backstop on Ireland/Northern Ireland requires provisions in relation to customs and regulatory alignment in line with paragraph 49 of the Joint Report of December 2017. Discussions were held on the UK proposal of 7 June which aims at addressing the customs aspects of the backstop. The finalised results of the North-South mapping exercise on cross border cooperation will be published shortly. The Parties are committed to accelerating work on the outstanding areas, noting that both Parties agree the scope of the draft Protocol reflects the issues that require legally operative agreed text in the withdrawal agreement.¹⁴⁰

The UK committed in the Joint Report of December 2017 to “protecting North-South cooperation”.¹⁴¹ The Joint Report stated that the UK and the EU had carried out a joint mapping exercise which showed that “North-South cooperation relies to a significant extent on a common European Union legal and policy framework”.¹⁴² The mapping exercise has reportedly identified 142 areas of cooperation.¹⁴³

Following the June European Council meeting, Theresa May said that “real differences” remained between the UK and the European Commission on Northern Ireland. She said that the UK would produce further proposals so that if a “temporary backstop” was needed, there would be no hard border. She said the UK was “absolutely committed to the avoidance of such a

¹³⁹ European Commission, [Slides on UK Technical Note on Temporary Customs Arrangements](#), 11 June 2018.

¹⁴⁰ Department for Exiting the European Union, [Joint Statement from the Negotiators of the European Union and the United Kingdom Government on Progress of Orderly Negotiations under Article 50 TEU on the United Kingdom’s Orderly Withdrawal from the European Union](#), 19 June 2018.

¹⁴¹ HM Government and European Commission, [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, para 49.

¹⁴² *ibid*, para 47.

¹⁴³ House of Commons Exiting the European Union Committee, [Letter to the Secretary of State from the Chair regarding the Joint Mapping Exercise](#), dated 17 April 2018, published 22 May 2018.

border” and “equally committed to the avoidance of a hard border between Northern Ireland and the rest of the United Kingdom”.¹⁴⁴

2.4 Uncertainties Over Agreed Areas

Citizens’ Rights

It has been pointed out that there are remaining uncertainties within areas of the draft withdrawal agreement that have been largely agreed between the two sides. For example, on citizens’ rights, the House of Commons Exiting the European Union Committee noted in May 2018 that areas of uncertainty included: ongoing free movement rights for UK citizens who live in the EU; no language in the agreed draft text about the UK’s offer to waive the requirement for EU nationals in the UK to have comprehensive sickness insurance cover; whether certain categories of people would be covered by the Commission’s draft; and reciprocal voting rights for UK citizens in the EU and EU citizens in the UK.¹⁴⁵ The Committee cautioned that: “Both sets of negotiators have failed to explain clearly whether [such] outstanding issues will form part of the negotiations on the future partnership”.¹⁴⁶

Financial Settlement

On the financial settlement, the House of Commons Exiting the European Union Committee pointed out that David Davis, as Secretary of State for Exiting the European Union, had suggested that the UK’s payment of the financial settlement would be “conditional” on the future partnership being agreed.¹⁴⁷ The Committee noted that the Government had “left open the possibility that provisions could be included in the draft withdrawal agreement to link payment of the financial settlement to agreement of the future partnership” but no such conditionality was reflected in the draft text.¹⁴⁸ The Committee warned again in June 2018 that if the Government wished to make payment of the financial settlement—which would be set out in the legally binding withdrawal agreement due to be signed before March 2019—conditional on the signing of an agreement on the future relationship—which cannot be signed until after March 2019—“it would need to secure the agreement of the EU27 to inserting text to this effect in

¹⁴⁴ [HC Hansard, 2 July 2018, col 48.](#)

¹⁴⁵ House of Commons Exiting the European Union Committee, [The Progress of the UK’s Negotiations on EU Withdrawal \(March to May 2018\)](#), 24 May 2018, HC 1060 of session 2017–19, pp 9–10.

¹⁴⁶ *ibid*, p 12.

¹⁴⁷ *ibid*, pp 13–14.

¹⁴⁸ House of Commons Exiting the European Union Committee, [The Progress of the UK’s Negotiations on EU Withdrawal \(March to May 2018\)](#), 24 May 2018, HC 1060 of session 2017–19, pp 13–14.

the withdrawal agreement”.¹⁴⁹ It called on the Government to confirm whether doing so was one of its negotiating objectives.

On his first Commons appearance in his new role of Secretary of State for Exiting the European Union, Dominic Raab alluded to the Government’s view that payment of the financial settlement was linked to agreement being reached on the future relationship. He declared the Government would “not sign away our negotiating leverage, or spend taxpayers’ money in return for nothing”.¹⁵⁰ Recalling that the financial settlement “was agreed on the basis that it would sit alongside a deep and mutually beneficial future partnership”, and that both sides “have been clear that nothing is agreed until everything is agreed”, he said there should be a firm commitment in the withdrawal agreement requiring the framework for the future relationship to be translated into legal text as soon as possible. He indicated that “if one party fails to honour its side of the overall bargain, there would be consequences for the whole deal”, clarifying that “yes, that would include the money”.¹⁵¹

3. Latest Government Proposals

3.1 Chequers Statement

The Cabinet met at Chequers on 6 July 2018 to agree its vision for the UK’s future relationship with the EU. The Government issued a statement that evening outlining a “more developed and comprehensive proposal for the economic partnership” based on a free trade area for goods.¹⁵² It outlined four main elements to the plan: a common rulebook with the EU for all goods including agri-food (but with different arrangements for services); reciprocal commitments related to fair and open trade; a joint institutional framework to provide for consistent interpretation and application of UK-EU agreements by both parties; and the phased introduction of a new Facilitated Customs Arrangement (FCA).

Under this proposal, Parliament could choose not to incorporate any new EU rules on goods into the UK legal order, but on the recognition that “this would have consequences”.¹⁵³ The UK would “pay due regard” to EU caselaw and there would be a joint reference procedure to the Court of Justice of the European Union “as the interpreter of EU rules”, but the governance framework would be “founded on the principle that the court of one party cannot resolve disputes between the two”. The FCA would, the Government stated, “remove the need for customs checks and controls

¹⁴⁹ House of Commons Exiting the European Union Committee, [Parliamentary Scrutiny and Approval of the Withdrawal Agreement and Negotiations on a Future Relationship](#), 28 June 2018, HC 1240 of 2017–19, p 26.

¹⁵⁰ [HC Hansard, 12 July 2018, cols 1157–8.](#)

¹⁵¹ *ibid*, cols 1158 and 1176.

¹⁵² HM Government, [Statement from HM Government](#), 6 July 2018.

¹⁵³ *ibid*.

between the UK and the EU as if a combined customs territory”. The UK would apply its own tariffs and trade policy for goods intended for the UK and EU tariffs and trade policy for goods intended for the EU. Free movement of people would end, to be replaced by a ‘mobility framework’, “similar to what the UK may offer other close trading partners in future”.

Although the Cabinet collectively signed up to this on 6 July 2018, on 8 July 2018, David Davis, the Secretary of State for Exiting the European Union, announced his resignation. In his resignation letter, he said that “the current trend of policy and tactics is making [it] look less and less likely” that the UK would leave the customs union and the single market.¹⁵⁴ He said the “general direction of policy will leave us in at best a weak negotiating position, and possibly an inescapable one”. In his view, “the inevitable consequence of the proposed policies will be to make the supposed control by Parliament illusory rather than real”. He believed that the common rulebook policy would hand “control of large swathes of our economy to the EU” and was “certainly not taking back control of our laws in any real sense”. He also expressed concerns that this negotiating position would lead to the EU demanding further concessions from the UK.

The following day, Boris Johnson resigned his post as Secretary of State for Foreign and Commonwealth Affairs, also citing his objections to the policy agreed at Chequers. In his resignation letter, Mr Johnson argued that the UK appeared to be “heading for a semi-Brexit, with large parts of the economy still locked in the EU system, but with no UK control over that system”.¹⁵⁵ He explained his opinion that the proposal would “make it much more difficult to do free trade deals”, and would involve “having to argue for an impractical and undeliverable customs arrangement unlike any other in existence”, and possibly having to “make further concessions on immigration” or “end up effectively paying for access to the single market”.

In her responses to both resignation letters, Theresa May set out her belief that the Chequers statement was consistent with the referendum result and the commitments the Government had made to the electorate on Brexit before the last general election. For example, she wrote to Mr Johnson that:

It is a proposal which will honour the result of the referendum and the commitments we made in our general election manifesto to leave the single market and the customs union. It will mean that we take back control of our borders, our laws, and our money—ending the freedom of movement, ending the jurisdiction of the European Court of Justice in the United Kingdom, and ending the days of sending vast sums of taxpayers’ money to the European Union.

¹⁵⁴ Sky News, [‘David Davis Resignation Letter and Theresa May’s Response’](#), 9 July 2018.

¹⁵⁵ BBC News, [‘Boris Johnson’s Resignation Letter and May’s Reply in Full’](#), 9 July 2018.

Steve Baker, Parliamentary Under Secretary of State for Exiting the European Union, also resigned on 9 July 2018, stating that he could not support the policy outlined in the Chequers statement “with the sincerity and resolve which will be necessary”.¹⁵⁶

3.2 White Paper

On 12 July 2018, the Government published its white paper on the future relationship between the UK and the EU, elaborating on the outline that had been set out in the Chequers statement.¹⁵⁷ The white paper was structured around four main components: an economic partnership, a security partnership, cross-cutting and other cooperation, and institutional arrangements.

Economic Partnership

The Government said its vision for a future economic partnership included:

- a common rulebook for goods including agri-food, covering only those rules necessary to provide for frictionless trade at the border—meaning that the UK would make an upfront choice to commit by treaty to ongoing harmonisation with the relevant EU rules, with all those rules legislated for by Parliament or the devolved legislatures;
- participation by the UK in those EU agencies that provide authorisations for goods in highly-regulated sectors—namely the European Chemicals Agency, the European Aviation Safety Agency, and the European Medicines Agency—accepting the rules of these agencies and contributing to their costs, under new arrangements that recognise the UK will not be a member state;
- the phased introduction of a new Facilitated Customs Arrangement [FCA] that would remove the need for customs checks and controls between the UK and the EU as if they were a combined customs territory, which would enable the UK to control its own tariffs for trade with the rest of the world and ensure businesses paid the right or no tariff, becoming operational in stages as both sides complete the necessary preparations;
- in combination with no tariffs on any goods, these arrangements would avoid any new friction at the border, and protect the integrated supply chains that span the UK and the EU,

¹⁵⁶ Conservative Home, [‘The Full Text of the Resignation Correspondence Between Baker and May’](#), 9 July 2018.

¹⁵⁷ HM Government, [‘The Future Relationship Between the United Kingdom and the European Union’](#), 12 July 2018, Cm 9593.

- safeguarding the jobs and livelihoods they support;
- new arrangements on services and digital, providing regulatory freedom where it matters most for the UK's services based economy, and so ensuring the UK is best placed to capitalise on the industries of the future in line with the Modern Industrial Strategy, while recognising that the UK and the EU will not have current levels of access to each other's markets;
 - new economic and regulatory arrangements for financial services, preserving the mutual benefits of integrated markets and protecting financial stability while respecting the right of the UK and the EU to control access to their own markets—noting that these arrangements will not replicate the EU's passporting regimes;
 - continued cooperation on energy and transport—preserving the Single Electricity Market in Northern Ireland and Ireland, seeking broad cooperation on energy, developing an air transport agreement, and exploring reciprocal arrangements for road hauliers and passenger transport operators;
 - a new framework that respects the UK's control of its borders and enables UK and EU citizens to continue to travel to each other's countries, and businesses and professionals to provide services—in line with the arrangements that the UK might want to offer to other close trading partners in the future; and
 - in light of the depth of this partnership, binding provisions that guarantee and open and fair trading environment—committing to apply a common rulebook for state aid, establishing cooperative agreements between regulators on competition, and agreeing to maintain high standards through non-regression provisions in areas including the environment and employment rules, in keeping with the UK's strong domestic commitments.¹⁵⁸

The white paper argued that “taken together”, all these elements of the partnership “would see the UK and EU meet their commitments to Northern Ireland and Ireland through the overall future relationship”.¹⁵⁹ It said this would ensure that “the operational legal text the UK will agree with the EU on the ‘backstop’ solution as part of the withdrawal agreement will not have to be used”.

The white paper gave further details on the design of the FCA:

Upon its withdrawal from the EU, the UK will leave the customs union. The UK has been clear that it is seeking a new customs arrangement that provides the most frictionless trade possible in

¹⁵⁸ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, pp 8–9.

¹⁵⁹ *ibid.*

goods between the UK and the EU, while allowing the UK to forge new trade relationships with partners around the world. The arrangement must also allow the EU to protect the integrity of the single market and the customs union.

Mirroring the EU's customs approach at its external border would ensure that goods entering the EU via the UK have complied with EU customs processes and the correct EU duties have been paid. This would remove the need for customs processes between the UK and the EU [...]

This would mean:

- a) where a good reaches the UK border, and the destination can be robustly demonstrated by a trusted trader, it will pay the UK tariff if it is destined for the UK and the EU tariff if it is destined for the EU. This is most likely to be relevant to finished goods; and
- b) where a good reaches the UK border and the destination cannot be robustly demonstrated at the point of import, it will pay the higher of the UK or EU tariff. Where the good's destination is later identified to be a lower tariff jurisdiction, it would be eligible for a repayment from the UK Government equal to the difference between the two tariffs. This is most likely to be relevant to intermediate goods. Under the UK's proposals it is estimated up to 96 percent of UK goods trade would be most likely to be able to pay the correct or no tariff upfront, with the remainder most likely to use the repayment mechanism.¹⁶⁰

Security Partnership

The white paper said the future security partnership with the EU should include:

- maintaining existing operational capabilities [...] including the ability for law enforcement agencies to share critical data and information and practical cooperation to investigate serious criminality and terrorism—cooperating on the basis of existing tools and measures, amending legislation and operational practices as required and as agreed to ensure operational consistency between the UK and the EU;
- participation by the UK in key agencies, including Europol and Eurojust [...] accepting the rules of these agencies and

¹⁶⁰ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, pp 16–17.

contributing to their costs under new arrangements that recognise the UK will not be a member state;

- arrangements for coordination on foreign policy, defence and development issues [...] continuing to deploy the UK's significant assets, expertise, intelligence and capabilities to protect and promote European values;
- joint capability development, supporting the operational effectiveness and interoperability of the UK's and EU's militaries, and bolstering the competitiveness of the European defence industry, delivering the means to tackle current and future threats; and
- wider cooperation, taking a 'whole route' approach to tackle the causes of illegal migration, establishing a strategic dialogue on cyber security, putting in place a framework to support cooperation on counter-terrorism, offering support and expertise on civil protection and working together on health security.¹⁶¹

Cross-Cutting Cooperation

The white paper gave examples of areas of cross-cutting cooperation, including:

- the protection of personal data, ensuring the future relationship facilitates the continued free flow of data to support business activity and security collaboration [...]
- establishing cooperative accords for science and innovation, culture and education, development and international action, defence research and development, and space, so that the UK and the EU can continue to work together in these areas, including through EU programmes, with the UK making an appropriate financial contribution; and
- fishing, putting in place new arrangements for annual negotiations on access to waters and the sharing of fishing opportunities based on fairer and more scientific methods—with the UK an independent coastal state.¹⁶²

¹⁶¹ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, p 10. Further background about issues relating to the future security relationship can be found in House of Lords Library, [Proposed UK-EU Security Treaty](#) (23 May 2018) and House of Lords European Union Committee, [Brexit: The Proposed UK-EU Security Treaty](#) (11 July 2018, HL Paper 164 of session 2017–19).

¹⁶² HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, p 10. For more information about issues relating to data, see: House of Commons Exiting the European Union Committee, [The Progress of the UK's Negotiations on EU Withdrawal: Data](#), 3 July 2018, HC 1317 of session 2017–19.

Institutional Arrangements

With regard to institutional arrangements, the white paper said that “precedent suggests that the UK’s proposal would take the form of an Association Agreement between the UK and the EU”.¹⁶³ Under Article 217 of the Treaty on the Functioning of the European Union (TFEU), the EU can conclude agreements with non-member states “establishing an association involving reciprocal rights and obligations, common action and special procedure”. The white paper proposed that the majority of separate agreements making up the future relationship (covering the economic partnership, the security partnership and cross-cutting cooperation) would sit beneath an overarching institutional framework which would establish a:¹⁶⁴

- **Governing Body:** a political body made up of leaders and ministers to set the direction for the future relationship, determine how and when changes to the relationship were necessary and provide transparency and accountability.
- **Joint Committee:** a body made up of UK and EU officials to manage and monitor implementation of the future relationship, resolve disputes and provide administrative functions.

The Government said that where it had chosen to harmonise with EU rules (the ‘common rulebook’) and changes were proposed to those rules, it would expect that the UK “should be consulted on the same basis as member states in line with the existing arrangements the EU has with third countries”.¹⁶⁵ The white paper outlined what Parliament’s role would be when changes to the common rulebook were made:

- a) **Notification:** if the EU proposed a change to the rules related to the agreements, the UK would be notified through the Joint Committee and the UK Government would inform the UK Parliament.
- b) **Scope:** in determining whether the rule change was in scope of the agreement in the Joint Committee, the UK Parliament would have the opportunity to provide the Government with its opinion.
- c) **Consultation and adaptation:** there would be a decision in the Joint Committee about whether to add a rule change to the relevant agreement, and whether technical adaptation were required for the UK context. There would be a process for the UK Parliament to be consulted.

¹⁶³ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, p 84.

¹⁶⁴ *ibid*, pp 84–8.

¹⁶⁵ *ibid*, p 89.

- d) Legislation: following consultation and adaptation, if the Joint Committee had agreed to adopt a rule change into the relevant annex of the agreement, the UK Parliament would be notified with an explanatory memorandum ahead of any domestic legislative proposals coming forward. The UK Parliament would then scrutinise any legislation to bring the proposals into UK law. As would be its right the UK Parliament could ultimately decide not to pass the legislation, but it would be in the knowledge that there would be consequences from breaking the UK's international obligations, as there would be for any international treaty, potentially for market access, border frictions or security cooperation.¹⁶⁶

The white paper stated that the Court of Justice of the European Union (CJEU) would “no longer have the power to make laws for the UK and the principles of direct effect and the supremacy of EU law would no longer apply in the UK”.¹⁶⁷ The white paper set out what the UK's future relationship with the CJEU would be:

- The Joint Committee should “keep under review” the case law of the UK's senior courts and the CJEU where “relevant to the interpretation” of the agreements governing the future relationship.¹⁶⁸
- Where the UK had agreed to retain a common rulebook with the EU, the UK would commit by treaty that its courts would pay due regard to CJEU case law, insofar as this was relevant to the matter before them.¹⁶⁹ UK courts would not, however, be able to make preliminary references to the CJEU [...] This would not affect consistent interpretation of a common rulebook, which would be delivered through the commitment to pay due regard to case law.
- If a dispute arose as to whether rules in the common rulebook had been interpreted correctly, there “should be the option for a referral to the CJEU for an interpretation”, either by mutual consent from the Joint Committee, or from the independent arbitration panel the white paper recommended should be established for dispute resolution.¹⁷⁰ The UK “recognises that only the CJEU can bind the EU on the interpretation of EU law”. The white paper states that the CJEU would only have a role in relation to the interpretation of those EU rules to which the UK had agreed to adhere as a matter of international law. The Joint

¹⁶⁶ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, p 95.

¹⁶⁷ *ibid*, p 84.

¹⁶⁸ *ibid*, p 91.

¹⁶⁹ *ibid*, p 92.

¹⁷⁰ *ibid*, p 93.

Committee or arbitration panel would then have to resolve the dispute in a way that was consistent with the CJEU interpretation of EU law. The white paper argues that this would “respect the principle that the court of one party cannot resolve disputes between the two”.

Commending the white paper to the House of Commons, Dominic Raab, Secretary of State for Exiting the European Union, said:

This white paper sets out the right Brexit deal, delivering on the result of the referendum; taking back control over our money, laws and borders; supporting the economy by maintaining a strong trading relationship after we have left; ending free movement while avoiding a hard border between Northern Ireland and Ireland, or indeed between Northern Ireland and Great Britain; restoring sovereignty to Parliament and the authority of the UK Supreme Court; seizing the opportunity to forge new trade deals around the world; and maintaining co-operation with the EU in the many other areas that we prize, including security cooperation to keep our people safe. This is our vision for a bold, ambitious and innovative new partnership with the EU. Principled and practical, faithful to the referendum, it delivers a deal that is good for the UK and good for our EU friends.¹⁷¹

3.3 Response to the White Paper

Sir Keir Starmer, Shadow Secretary of State for Exiting the European Union, argued that the Government’s proposals lacked support and would not resolve the issue of the Northern Ireland border:

Across the business community, among trade unions and, I genuinely believe, across the House, there is growing unity that the UK should remain economically close to the EU. That means negotiating a comprehensive customs union with the EU27 and a single market deal with the right balance of rights and obligations, tailored to the UK. That combination is also the only way of delivering on the solemn promise of no hard border in Northern Ireland. The white paper falls a long way short of that.¹⁷²

He dismissed the proposed FCA as “a bureaucratic nightmare, unworkable, and costly for business”, and reliant on “technology that does not currently exist”. He also criticised the white paper for containing “almost nothing” on services. He declared that the Chequers statement had “unravelling in two days” and suggested that “there are very few reasons to believe [the white paper] will not suffer the same fate”.

¹⁷¹ [HC Hansard, 12 July 2018, col 1159.](#)

¹⁷² *ibid*, col 1160.

Speaking on the BBC's Sunday Politics programme on 15 July 2018, Jeffrey Donaldson, the DUP's Chief Whip and Shadow Spokesperson for Business in the House of Commons, said that the Prime Minister's negotiating plan had left her with "no room to manoeuvre".¹⁷³ However, he said that the DUP was prepared to give the Prime Minister "some leeway to try and negotiate the best deal".¹⁷⁴ The BBC reported that, having considered the white paper over the weekend, the DUP would be meeting the Government to put forward any concerns. Jeffrey Donaldson described the white paper as "a negotiating position—not the final outcome. It's important for us that our red lines have clarity".¹⁷⁵ The BBC said that Mr Donaldson added that no deal was better than a bad deal. The BBC reported that Arlene Foster, Leader of the DUP, believed that the white paper reflected the party's red line on borders in Northern Ireland:

As far as we are concerned, there has always been the one red line in relation to borders between ourselves and the United Kingdom and we are content that that has been reflected at the Chequers summit and also by the white paper.¹⁷⁶

Fiona Hyslop, Cabinet Secretary for Culture, Tourism and External Affairs in the Scottish Government, argued that the white paper's policies "fall short and will harm our economy".¹⁷⁷ She restated the Scottish Government's position that the best way of protecting Scotland's interests and future growth was for the UK to remain in the EU's customs union and single market.¹⁷⁸ Ms Hyslop stated that there were too many unknowns in areas of the white paper and expressed concern that commitments on environmental protections and employment rights were only for the status quo:

While the paper provides an indication that the UK wants to participate in pan-EU programmes in areas such as science and research, there continue to be too many unknowns on issues such as whether the UK's proposals can deliver continued use of the European Arrest Warrant and what they mean for the future migration of people. The UK Government has fallen short on employment rights and environmental protections and, instead of committing to matching EU standards, they are only promising not to fall behind the current position.¹⁷⁹

¹⁷³ BBC News, ['Donaldson: Theresa May 'No Room to Manoeuvre' in Brexit Plan'](#), 15 July 2018.

¹⁷⁴ *ibid.*

¹⁷⁵ *ibid.*

¹⁷⁶ *ibid.*

¹⁷⁷ Scottish Government, ['Brexit White Paper'](#), 12 July 2018.

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

She argued that there was still an opportunity to encourage the UK Government to adopt a position of pursuing continued membership of the EU's customs union and single market, and that the Scottish Government would continue to press for this.¹⁸⁰

Speaking ahead of a meeting with Michel Barnier, Carwyn Jones, First Minister of Wales, reiterated the Welsh Government's support for remaining in the EU's customs union and single market.¹⁸¹ On the UK Government's white paper, the First Minister argued there were many flaws with the proposals but that he believed it formed the basis upon which to start negotiations:

The [...] white paper advocates partial participation in the single market and continued participation in a customs union by any other name. There are many flaws in the proposals and far too many questions remain unanswered. However, I believe it is a basis on which more serious negotiations can now start.¹⁸²

In a blog in the *Spectator* on 12 July 2018, Jacob Rees-Mogg (Conservative MP for North East Somerset), chair of the European Research Group, a group of backbench Conservative MPs, described the white paper as “the greatest vassalage since King John paid homage to Philip II at Le Goulet in 1200”.¹⁸³ He argued that the white paper would leave the UK subject to EU laws whilst having no say in their creation:

The Common Rule Book will not be Common, it will be EU law, interpreted by the EU Court with the UK subjected to EU fines for non-compliance. The UK has accepted it cannot diverge from ‘ongoing harmonisation’ without activating repercussions for Northern Ireland. In effect, Parliament will have no say over future EU laws implemented in the UK.¹⁸⁴

He described the UK Government's proposal that it could collect customs duties on goods entering the UK, bound for the EU, on the EU's behalf as an “unwarranted intrusion into the control of our border”.¹⁸⁵ Mr Rees-Mogg also said there was an absence of reciprocity and asserted that the cost of the arrangement was unknown. He said that the white paper was not something that he would vote for.¹⁸⁶

¹⁸⁰ Scottish Government, ‘[Brexit White Paper](#)’, 12 July 2018.

¹⁸¹ Welsh Government, ‘[First Minister Calls for Flexibility from EU27 to Avoid ‘Catastrophic no Deal’](#)’, 16 July 2018.

¹⁸² *ibid.*

¹⁸³ Jacob Rees-Mogg, ‘[The Brexit White Paper is a Bad Deal for Britain](#)’, *Spectator* Blog, 12 July 2018.

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*

¹⁸⁶ *ibid.*

In an article for the *Evening Standard*, Dominic Grieve (Conservative MP for Beaconsfield) said that the position in the Government's white paper was adopted in consequence of concerns "being expressed by those in industry and business who have been emphasising the disastrous consequences of losing frictionless trade with the EU".¹⁸⁷ He argued that the extent of that "disaster" would also threaten the place of Northern Ireland in the UK.

Mr Grieve said that the Government's proposal of a common rulebook between the UK and the EU, on manufactured goods and agricultural produce, would mean that the UK would remain subject to the Court of Justice of the European Union:

As the final arbiter of the regulations of the EU is the European Court of Justice, it must follow that although we will no longer be directly bound by its decisions, we are in practice going to be subject to them in these areas.¹⁸⁸

However, he believed that it would prevent the creation of a hard border in Northern Ireland. He also argued that a close continuing relationship with the EU on areas such as law enforcement, sanctions, agencies dealing with science, medicines and education would require a mechanism to resolve disputes:

Rather glossed over is the reality that where the EU provides a rules framework for those activities, and this includes many of them, it will again be the European Court of Justice that will set the jurisprudence.¹⁸⁹

Mr Grieve argued that it was this aspect as a "rule-taker" that had raised his objections from some of his Conservative Party colleagues. He said he had sympathy with some of this criticism and the route chosen by the Prime Minister was not ideal. However, he believed that Theresa May's approach was "not invalid":

She is doing her best to minimise the damage that flows from the decision to leave the European Union. Every option is unfortunately worse than staying in the EU. But the current government policy is a lot better than the alternative being promoted.¹⁹⁰

Michel Barnier, the EU's Chief Negotiator, said that the European Commission would now analyse the white paper with EU member states and

¹⁸⁷ Dominic Grieve, '[If We Can't Work Together on a Deal We Must Rethink the Whole Idea of Brexit: Dominic Grieve](#)', *Evening Standard*, 16 July 2017.

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid.*

¹⁹⁰ *ibid.*

the European Parliament, in light of the negotiating guidelines issued by the European Council.¹⁹¹ He repeated that the EU's offer was an “ambitious” free trade agreement plus “effective cooperation on a wide range of issues, including a strong security partnership”. He said he was looking forward to negotiations with the UK the following week. Discussions on the future relationship, Ireland/Northern Ireland and the remaining issues in the withdrawal agreement were scheduled to take place in Brussels between 16 and 19 July 2018.¹⁹² Ministers from the EU27 countries are due to discuss the white paper at a General Affairs Council meeting on 20 July 2018.¹⁹³

In an interview the day after the white paper was published, US President Donald Trump suggested that such a deal would jeopardise the UK's prospects for concluding a trade deal with the United States after it left the EU. He said: “If they do a deal like that, we would be dealing with the European Union instead of dealing with the UK, so it will probably kill the deal”.¹⁹⁴ In a later interview, President Trump said he had “no doubt” that there would be a “great trade deal” if the UK got Brexit right. He said he had advised Theresa May to ensure she had “a carve out [...] where no matter what happens [the UK has] the right to make a deal with the United States”.¹⁹⁵

Carolyn Fairbairn, Director General of the Confederation of British Industry (CBI), described the “direction” of white paper as welcome.¹⁹⁶ Welcoming the policy of a shared trade rule book with the EU, she argued that businesses “on both sides” had been asking for frictionless trade between the UK and the EU. Ms Fairbairn also said such business in the UK services industry would be pleased by the white paper's aims of mutual recognition of qualifications and mobility for skills workers. However, she stated that in her view there were gaps, citing a need for more detail on EU VAT.

Mike Cherry, National Chairman of the Federation of Small Businesses (FSB), said that he hoped the EU “welcomes this negotiating position and does not dismiss it out of hand”.¹⁹⁷ Mr Cherry also argued that the Government should speak with small business to ascertain how the white paper's proposals would “actually affect the day to day running” of these businesses. If there were to be any negative impacts, Mr Cherry said the Government

¹⁹¹ Michel Barnier, [Personal Twitter Account](#), 12 July 2018.

¹⁹² Department for Exiting the European Union, [‘Programme: EU-UK Article 50 Negotiations Brussels, 16–19 July 2018’](#), 16 July 2018.

¹⁹³ Council of the European Union, [‘General Affairs Council \(Art 50\) 20/07/18’](#), accessed 17 July 2018.

¹⁹⁴ Tom Newton Dunn, [‘Trump's Brexit Blast’](#), *Sun*, 13 July 2018.

¹⁹⁵ Piers Morgan, [‘Up Close and Very Personal with The Donald on Air Force One’](#), *Mail on Sunday*, 14 July 2018.

¹⁹⁶ Confederation of British Industry, [‘Protecting Jobs and Investment Should be the Guiding Star’](#), 12 July 2018.

¹⁹⁷ Federation of Small Businesses, [‘Finally a Brexit Blueprint But Much More Work to Do’](#), 12 July 2018.

should “come up with solutions to soften these and ensure that small businesses are not damaged”.¹⁹⁸ The FSB’s press release responding to the white paper also stated that according to research from the FSB two-thirds of current small businesses who know the next destination of their imported good said that they would find it difficult to operate dual systems and tracking arrangements depending on whether an imported good was exported to the EU or remained in the UK. Referring to this research, Mr Cherry argued that there were “very real concerns” about the impact of new customs arrangements on small businesses, and that “it is clear that any additional customs costs, or complex tracking requirements, could act as a brake on smaller firms trading with the EU”.¹⁹⁹ Mr Cherry also said that as the UK approaches its withdrawal from the EU, it was welcome “to see that the Government has stepped up preparations for a ‘no-deal’ scenario”.²⁰⁰

Catherine McGuinness, Policy Chairman of the City of London Corporation, described the white paper as “a real blow for the UK’s financial and related professional services sector”.²⁰¹ She said that looser trade ties to Europe would mean that the UK’s financial services sector would be less able to create jobs. Ms McGuinness argued that this supported growth across the wider economy. She asserted that “equivalence in its current form” was not fit for purpose, so “any ‘enhancements’ to this regime would have to be substantial”.²⁰² She also argued for the importance of trade in services as well as in goods with the EU and called upon both the Government and the EU to work towards a relationship covering both:

As the EU’s gateway to capital, the UK is a significant trading partner for the bloc. It’s in the interests of households and businesses on both sides of the Channel that an ambitious future trading relationship, covering services as well as goods, is secured. Failing to secure such a deal would put up unnecessary trade barriers and runs the risk of fragmentation of financial markets, increasing costs and reducing choice for consumers. Time is running out so it is essential that the pace of negotiations accelerates to ensure an orderly Brexit. Both sides should engage constructively to deliver a deep and comprehensive relationship covering services, not just goods, for the benefit of consumers and citizens across Europe.²⁰³

¹⁹⁸ Federation of Small Businesses, [‘Finally a Brexit Blueprint But Much More Work to Do’](#), 12 July 2018.

¹⁹⁹ *ibid.*

²⁰⁰ *ibid.*

²⁰¹ City of London, [‘Commenting Following the Publication of the Brexit White Paper Today \(12 July\)’](#), 12 July 2018.

²⁰² *ibid.*

²⁰³ *ibid.*

4. White Paper and Amendments to Taxation (Cross-border Trade) and Trade Bills

4.1 Taxation (Cross-border Trade) Bill

At the report stage of the Taxation (Cross-border Trade) Bill in the Commons on 16 July 2018, the Government accepted four Conservative backbench amendments relating to matters covered in the white paper. Sir Bernard Jenkin (Conservative MP for Harwich and North Essex) explained the background to these amendments:

It was the intention of the European Research Group, a group of Conservative Back Benchers, to table four amendments—one or two of them in the light of the Chequers agreement and the white paper—to test our understanding of the intention of Government policy. Every single one of our amendments, we believe, reflects Government policy. I do not imagine that the Government would have accepted any of them as calmly as they have if they did not reflect Government policy.²⁰⁴

All four amendments were subsequently added to the Bill, two of them without division, and two in divisions that the Government won with a majority of three. Some MPs expressed doubts about whether all the amendments were compatible with the white paper proposals. This section of the Briefing outlines the effect of these amendments and the Government's reasons for accepting them in light of the white paper.

New Clause 36

New clause 36 would provide that:

- (1) Subject to subsection (2), it shall be unlawful for HM Revenue and Customs (HMRC) to account for any duty of customs or VAT or excise duty collected by HMRC to the Government of a country or territory outside the United Kingdom.
- (2) Subsection (1) shall not apply if the Treasury declare by Order that arrangements have been entered into by Her Majesty's Government and that government under which that government will account to HMRC for those duties and taxes collected in that country on a reciprocal basis.²⁰⁵

Speaking to new clause 36, tabled in her name and others, Priti Patel (Conservative MP for Witham), said that it would “cement into legislation

²⁰⁴ [HC Hansard, 16 July 2018, col 121.](#)

²⁰⁵ *ibid.*

the principle of reciprocity”. Quoting from the white paper, she argued that it did not deliver an “equal partnership”:

It delivers one that does not put us on a level playing field. Because it states that:

“the EU would need to be confident that goods cannot enter its customs territory without the correct tariff and trade policy being applied”,

we would effectively adopt much of that policy and collect tariffs on behalf of the EU.

However, the white paper then states that:

“the UK is not proposing that the EU applies the UK’s tariffs and trade policy at its border for goods intended for the UK”.²⁰⁶

Priti Patel said that she was disappointed, that in her view, the “principle of reciprocity was not in the white paper”.²⁰⁷ She argued that by the Government supporting new clause 36:

The EU would [...] know that it cannot attempt to steamroller the Government on this issue in the negotiations and that if it wants to benefit from the UK collecting its tariffs, it needs to adopt a similar reciprocal arrangement.²⁰⁸

Jacob Rees-Mogg (Conservative MP for North East Somerset), chair of the European Research Group (ERG), who had also signed new clause 36, argued that “it would actually allow the Government to run their trade policy”.²⁰⁹ He also said he believed the point of reciprocity to be fair:

If we are to say to the European Union, “We will collect your taxes and remit them to you,” that is potentially a large amount of money to be sending to the European Union, giving up all the duties that would fall to us as a result of goods entering the 27 remaining MP states. Should we really be affording to do that? What is happening to that revenue, in terms of our independent trade policy, not if we want anti-dumping measures, but if we want to lower prices?²¹⁰

²⁰⁶ [HC Hansard, 16 July 2018, col 104.](#)

²⁰⁷ *ibid.*

²⁰⁸ *ibid.*

²⁰⁹ *ibid.*, col 128.

²¹⁰ *ibid.*, cols 127–8.

Marcus Fysh (Conservative MP for Yeovil), another signatory to new clause 36, argued it was necessary if the UK was to “operate proper trade defences”.²¹¹

Several MPs expressed the view that new clause 36 was also not compatible with the white paper. For example, Dominic Grieve (Conservative MP for Beaconsfield) argued that new clause 36 was designed to undermine the white paper. He also argued that the amendments did not “do the job, because they are inadequately drafted”.²¹² He stated that it was not his role as an MP to “put on the statute book clauses that are inadequate, incomprehensible and, on top of that, seek to undermine the Government”.²¹³ Kirsty Blackman, SNP Spokesperson on the Economy and Deputy Westminster Leader, argued that new clause 36 directly contradicted the white paper.²¹⁴ Chris Leslie (Labour/Co-op MP for Nottingham East) described new clause 36 as a wrecking amendment to the facilitated customs arrangement in the Chequers agreement.²¹⁵ Speaking for the Labour Party, Peter Dowd, Shadow Chief Secretary to the Treasury, stated that “we will not countenance [...] new clause 36”.²¹⁶

Responding for the Government, Mel Stride, Financial Secretary to the Treasury, asserted that new clause 36 was consistent with the policies contained within the white paper. Quoting from the white paper, he argued that the Government was clear that under the proposed FCA:

[T]he UK and the EU would agree a mechanism for the remittance of relevant tariff revenue. The UK proposes a reciprocal tariff revenue formula taking account of goods destined for the UK entering via the EU and of goods destined for the EU entering via the UK. The white paper itself states:

“The UK and the EU should agree a mechanism for the remittance of relevant tariff revenue. On the basis that this is likely to be the most robust approach, the UK proposes a tariff revenue formula, taking account of goods destined for the UK entering via the EU and goods destined for the EU entering via the UK”.²¹⁷

Amber Rudd (Conservative MP for Hastings and Rye) said that “there is some concern on this side of the House regarding new clause 36”.²¹⁸ She

²¹¹ [HC Hansard, 16 July 2018, col 97.](#)

²¹² *ibid*, col 123.

²¹³ *ibid*.

²¹⁴ *ibid*, col 134.

²¹⁵ *ibid*, col 87.

²¹⁶ *ibid*, col 136.

²¹⁷ *ibid*, col 138.

²¹⁸ *ibid*.

asked Mr Stride to confirm that new clause 36 would not impact the negotiating strategy of the UK Government. He responded saying that the “negotiating strategy of the UK Government is to seek reciprocity in this respect, and that is set out very clearly in the white paper”.²¹⁹

New clause 36 was agreed on division by 305 votes to 302.²²⁰

New Clause 37

New clause 37 would provide that:

- (1) It shall be unlawful for Her Majesty’s Government to enter into arrangements under which Northern Ireland forms part of a separate customs territory to Great Britain.
- (2) For the purposes of this section “customs territory” shall have the same meaning as in the General Agreement on Tariffs and Trade, 1947, as amended.²²¹

Speaking to new clause 37, tabled in his name and others, Laurence Robertson (Conservative MP for Tewkesbury) said the amendment’s purpose was to “secure the future of the United Kingdom”.²²²

This new clause would provide a guarantee that shows we value the Union and recognise the importance of strengthening it, but also acknowledge the importance and the value of our most important trading arrangement, the UK internal market. Above all, it would contribute to upholding the constitutional integrity of the United Kingdom and safeguard the Union for the future.²²³

Mr Robertson said that he could not accept an agreement which would allow Northern Ireland to be considered a separate customs territory from Great Britain. He said: “I recognise that this is the view the Prime Minister has put at the forefront of our negotiations”.²²⁴ Mr Robertson argued that the new clause 37 did not look to tie the Prime Minister’s hands, rather it would galvanise the Government’s position:²²⁵

The Prime Minister has repeatedly said that the backstop proposals for Northern Ireland are something no Prime Minister of the United

²¹⁹ [HC Hansard, 16 July 2018, col 138.](#)

²²⁰ *ibid*, cols 156–9.

²²¹ *ibid*, col 70.

²²² *ibid*, col 108.

²²³ *ibid*.

²²⁴ *ibid*.

²²⁵ *ibid*, col 109.

Kingdom could ever agree to, and this new clause will enshrine that policy in law.²²⁶

Dominic Grieve argued that new clause 37 correctly identified that the Government had been obfuscating about Northern Ireland and that “we and the European Commission are talking different languages when it comes to the backstop”.²²⁷ He said he had no difficulty emphasising the fact that, as he argued, “no Parliament of the United Kingdom is ever going to support a backstop that goes simply for Northern Ireland alone”.²²⁸ Tom Brake (Liberal Democrat MP for Carshalton and Wallington) also argued that there were no political parties in the UK that wished to see a border in the Irish Sea. However, he expressed concern that “the purpose of new clause 37 seems to be to destroy the space in which discussions on the backstop arrangements can take place”.²²⁹

Responding for the Government, Mel Stride described new clause 37 as a “straightforward statement of government policy”.²³⁰ Mr Stride also argued that:

It ensures that the Government will not act in a manner incompatible with the commitments made in the joint report of December last year, when we committed to protecting the constitutional integrity of the United Kingdom, as well as to turning the joint report commitments into legally binding form. The Government also accept this new clause.²³¹

The white paper argued that the Government’s proposed economic partnership would prevent the need to use any agreed ‘backstop’ solution for Northern Ireland:

[S]uch a partnership would see the UK and the EU meet their commitments to Northern Ireland and Ireland through the overall future relationship: preserving the constitutional and economic integrity of the UK; honouring the letter and the spirit of the Belfast (‘Good Friday’) Agreement; and ensuring that the operational legal text the UK will agree with the EU on the ‘backstop’ solution as part of the withdrawal agreement will not have to be used.²³²

²²⁶ [HC Hansard, 16 July 2018, col 109.](#)

²²⁷ [ibid](#), col 123.

²²⁸ [ibid](#).

²²⁹ [ibid](#), col 104.

²³⁰ [ibid](#), col 139.

²³¹ [ibid](#).

²³² HM Government, [The Future Relationship Between the United Kingdom and the European Union, July 2018](#), Cm 9593, p 9.

New clause 37 was added to the Bill without division.²³³

Amendment 72

Amendment 72 would amend clause 31 of the Bill to insert a new subclause (4A). The explanatory notes to the Bill explain that clause 31:

[W]ould enable the UK to give effect to a customs union arrangement with another territory or territories. A customs union is defined in subsection (2) as one in which there is no customs duty on goods moving between the two territories in question and where each territory applies substantially the same rules for charging import duty when goods are imported from outside either territory.²³⁴

Clause 31(4) states that:

If Her Majesty by Order in Council declares that it is expedient that the arrangements should have effect for the purposes of import duty, the arrangements have effect for those purposes despite any enactment.

Amendment 72 would make this subject to a new subclause (4A):

(4A) In the case of a customs union between the United Kingdom and the European Union, Her Majesty may not make a declaration by Order in Council under subsection (4) unless the arrangements have been approved by an Act of Parliament.²³⁵

Sir Bernard Jenkin argued that the purpose amendment 72 was to remove from the Bill “an extraordinarily powerful Henry VIII provision that we should be signed up to a customs union with the European Union simply by order”.²³⁶

Responding for the Government, Mel Stride, stated that the Government had no objection to the amendment’s “enhanced level of parliamentary security” because the Government argued that leaving the EU meant leaving the EU’s customs union.²³⁷

²³³ [HC Hansard, 16 July 2018, col 160.](#)

²³⁴ [Explanatory Notes to the Taxation \(Cross-Border Trade\) Bill](#), Bill 128 of session 2017–19, p 24.

²³⁵ [HC Hansard, 16 July 2018, col 71.](#)

²³⁶ *ibid*, col 121.

²³⁷ *ibid*, col 138.

The white paper stated that the Government was:

[D]etermined to build a new relationship that works for both the UK and the EU. One which sees the UK leave the single market and the customs union [...].²³⁸

Amendment 72 was agreed without division.²³⁹

Amendment 73

Amendment 73 would remove paragraph 14 of schedule 8. The explanatory notes to the Bill, explain that:

Paragraph 14 inserts new section 16A into the VAT Act, which provides a power to make regulations to govern the VAT treatment of goods entering the UK from another territory that is in a customs union with the UK.²⁴⁰

Speaking to amendment 73, tabled in his name and others, Craig Mackinlay (Conservative MP for South Thanet) stated that “it now has to be a settled will that in future we are not going to be in the, or a, customs union with the European Union”.²⁴¹ He argued that this was clear following debates on the European Union (Withdrawal) Bill and statements made by the Prime Minister:

That became clear during the hours of debate on the European Union (Withdrawal) Bill in this place and the other place, and that Bill became an Act. It is clear in the Chequers deal and the white paper on the future relationship. The statement “We will not be in the customs union” has passed through the Prime Minister’s Lancaster House and Mansion House speeches, and through her statements on the Floor of the House on occasions far too numerous to mention.²⁴²

He also asked why the UK would want to maintain the EU’s current arrangements for the administration of VAT, arguing that it “encourages buying from the EU in preference to buying from domestic markets”.²⁴³ Jacob Rees-Mogg argued that amendment 73 was consistent with Government policy to “not be part of the EU VAT regime”.²⁴⁴ Chris Leslie

²³⁸ HM Government, [The Future Relationship Between the United Kingdom and the European Union, July 2018](#), Cm 9593, p 7.

²³⁹ [HC Hansard, 16 July 2018, col 166](#).

²⁴⁰ [Explanatory Notes to the Taxation \(Cross-Border Trade\) Bill](#), Bill 128 of session 2017–19, p 60.

²⁴¹ [HC Hansard, 16 July 2018, col 115](#).

²⁴² *ibid.*

²⁴³ *ibid.*

²⁴⁴ *ibid*, col 127.

questioned whether it could be compatible with the Government's policy:

[G]iven that the Chequers white paper, which was published only last Thursday, states:

“To ensure that new declarations and border checks between the UK and the EU do not need to be introduced for VAT and Excise purposes, the UK proposes the application of common cross-border processes and procedures for VAT and Excise”.²⁴⁵

Mr Rees-Mogg stated that if the Government said it was policy, “it was good enough” for him, and “not having a clause that is contradictory to Government policy simply flows from that”.²⁴⁶

Chris Leslie also argued whilst he had his issues with the white paper he believed that amendment 73 “goes way beyond the Chequers arrangement and it would restrict VAT acquisition arrangements in any future customs unions:

It would provide that if Britain ever entered into any future customs union with whatever territories, we could not have our current smooth VAT acquisition arrangements, whereby we avoid firms having to pay VAT upfront at the border and have frictionless trade, of which VAT is such an important part.²⁴⁷

As with new clause 36, Dominic Grieve argued that amendment 73 was designed to undermine the white paper.²⁴⁸ Anna Soubry (Conservative MP for Broxtowe) said it was “her firm view” that new clause 36 and amendment 73 “clearly seek to undermine, if not wreck, the great advances made in the white paper”.²⁴⁹ She asserted that the white paper faced what she viewed as the reality regarding trade:

The reality, which is faced in the white paper, is that if we do not deliver frictionless trade in the way in which companies such as Toyota need and demand, they will simply not be able to operate.²⁵⁰

Responding for the Government, Mel Stride stated that amendment 73 would:

[R]emove a specific power that will enable HMRC to make regulations

²⁴⁵ [HC Hansard, 16 July 2018, col 127.](#)

²⁴⁶ *ibid.*

²⁴⁷ *ibid*, col 87.

²⁴⁸ *ibid*, col 123.

²⁴⁹ *ibid*, col 80.

²⁵⁰ *ibid*, col 82.

covering the application of VAT to goods in circumstances where we reach a customs union agreement with other customs unions or territories under clause 31.²⁵¹

However, he said that as the Chequers agreement did not propose such an arrangement with the EU in the future, the Government accepted the amendment.²⁵²

Amendment 73 was agreed on division by 303 votes to 300.²⁵³

4.2 Trade Bill

The following day, at the Commons report stage of the Trade Bill, backbench Conservative MPs moved an amendment (new clause 18) which would have made it an objective for the Government to seek to participate in a customs union with the EU if the Government had not managed to reach agreement with the EU by 21 January 2019 on establishing a frictionless free trade area for goods. Moving the amendment, Stephen Hammond (Conservative MP for Wimbledon) said that this was “absolutely in line with the white paper”.²⁵⁴ Referring to the ERG amendments on the Taxation (Cross-border Trade) Bill made the previous day, he said “we were told [they] did not undermine the Bill, and this does not undermine the Bill either”. Nicky Morgan (Conservative MP for Loughborough), another signatory to new clause 18, suggested that the previous day, “some Government members chose to try to scupper” the white paper proposals.²⁵⁵ She argued that new clause 18 was “eminently sensible” and would give the Prime Minister “space for the negotiations”.

Judith Cummins, Shadow Minister for International Trade, said Labour supported new clause 18, although the Party believed that the Government “should not waste time on the facilitated customs arrangement”, which Labour thought was “unnegotiable, undeliverable and unworkable”.²⁵⁶

George Hollingbery, Minister of State for Trade Policy, said the Government could not accept the amendment as it was the Government’s policy not to remain part of a customs union.²⁵⁷ New clause 18 was defeated by 307 votes to 301, a majority of six.²⁵⁸ According to press reports, Conservative whips had suggested that if the Government had lost this vote, it could have

²⁵¹ [HC Hansard, 16 July 2018, col 139.](#)

²⁵² *ibid.*

²⁵³ *ibid.*, cols 174–7.

²⁵⁴ [HC Hansard, 17 July 2018, col 334.](#)

²⁵⁵ *ibid.*, col 340.

²⁵⁶ *ibid.*, col 332.

²⁵⁷ *ibid.*, col 335.

²⁵⁸ *ibid.*, col 351.

triggered a confidence vote in the Government.²⁵⁹

The Government was defeated on another amendment (new clause 17) which would make an objective for the UK to seek to implement an international trade agreement that would allow it to fully participate after exit day in the European medicines regulatory network partnership between the EU, the European Economic Area and the European Medicines Agency. The amendment was moved by Philip Lee (Conservative MP for Bracknell), former Parliamentary Under Secretary at the Ministry of Justice who resigned on 12 June 2018 as a result of “the Brexit process and the Government’s wish to limit Parliament’s role in contributing to the final outcome”.²⁶⁰ Speaking to his amendment Dr Lee argued that it supported the Government’s intentions as set out in the white paper, but that it was important to “go further and enshrine them in law”.²⁶¹ The House voted by 305 votes to 301 in favour of the new clause.²⁶²

²⁵⁹ Steven Swinford, [‘The Arm-Twisting, ‘Dirty Tricks’ and Gambles That Helped Theresa May Avert Brexit Defeat’](#), *Telegraph* (£), 18 July 2018.

²⁶⁰ Philip Lee, [‘Ministerial Resignation Statement’](#), 12 June 2018.

²⁶¹ [HC Hansard, 17 July 2018, col 337.](#)

²⁶² *ibid*, col 346.

Appendix: Committee Reports on Brexit Preparations and Negotiations

This appendix lists Committee reports examining the status of Brexit preparations and negotiations across a wide range of policy areas and economic sectors, published since the start of the current parliamentary session. It also includes details of the Government's response, where available.

House of Lords Committees

House of Lords European Union Committee, [Brexit: The EU Data Protection Package](#), 18 July 2017, HL Paper 7 of session 2017–19; and [Government Response: Brexit: The EU Data Protection Package](#), 26 October 2017

House of Lords European Union Committee, [Brexit: Devolution](#), 19 July 2017, HL Paper 9 of session 2017–19; and [Government Response to Brexit: Devolution](#), 20 September 2017

House of Lords Economic Affairs Committee, [Brexit and the Labour Market](#), 21 July 2017, HL Paper 11 of session 2017–19; and [Government Response: Brexit and the Labour Market](#), 7 November 2017

House of Lords European Union Committee, [Brexit: Farm Animal Welfare](#), 25 July 2017, HL Paper 15 of session 2017–19; [Government Response to the EU Energy and Environment Sub-Committee Report Brexit: Farm Animal Welfare](#), 11 October 2017; and [Letter from Lord Gardiner: EU Energy and Environment Sub-Committee reports on Brexit: Agriculture and Brexit: Farm Animal Welfare](#), 15 November 2017

House of Lords European Union Committee, [Brexit: Judicial Oversight of the European Arrest Warrant](#), 27 July 2017, HL Paper 16 of session 2017–19; and [Government Response: Brexit: Judicial Oversight of the European Arrest Warrant](#), 7 December 2017

House of Lords European Union Committee, [Brexit: Deal or No Deal](#), 7 December 2017, HL Paper 46 of session 2017–19; and [Government Response to Brexit: Deal or No Deal](#), 1 March 2018

House of Lords European Union Committee, [Brexit: Sanctions Policy](#), 17 December 2017, HL Paper 50 of session 2017–19; and [Government Response: Brexit: Sanctions Policy](#), 26 February 2018

House of Lords European Union Committee, [Brexit: Will Consumers Be Protected?](#), 19 December 2017, HL Paper 51 of session 2017–19; and [Government Response: Brexit: Will Consumers Be Protected?](#), 12 March 2018

House of Lords European Union Committee, [Brexit: The Future of Financial Regulation and Supervision](#), 27 January 2018, HL Paper 66 of session 2017–19; [Government Response: Brexit: The Future of Financial Regulation and Supervision](#), 29 March 2018; and [Updated Government Response to Brexit: The Future of Financial Regulation and Supervision](#), 9 May 2018

House of Lords European Union Committee, [Brexit: Energy Security](#), 29 January 2018, HL Paper 63 of session 2017–19; and [Government Response to Brexit: Energy Security](#), 19 April 2018

House of Lords European Union Committee, [Brexit: Competition and State Aid](#), 2 February 2018, HL Paper 67 of session 2017–19; and [Government Response to Brexit: Competition and State Aid](#), 19 April 2018

House of Lords European Union Committee, [Brexit: Reciprocal Healthcare](#), 28 March 2018, HL Paper 107 of session 2017–19; and [Government Response: Brexit: Reciprocal Healthcare](#), 13 June 2018

House of Lords European Union Committee, [Dispute Resolution and Enforcement After Brexit](#), 3 May 2018, HL Paper 130 of session 2017–19; and [Government Response: Dispute Resolution and Enforcement after Brexit](#), 11 July 2018

House of Lords European Union Committee, [Brexit: Food Prices and Availability](#), 10 May 2018, HL Paper 129 of session 2017–19

House of Lords European Union Committee, [Brexit: Common Security and Defence Policy Missions and Operations](#), 14 May 2018, HL Paper 132 of session 2017–19

House of Lords European Union Committee, [UK-EU Relations After Brexit](#), 8 June 2018, HL Paper 149 of session 2017–19

House of Lords European Union Committee, [Brexit: The Proposed UK-EU Security Treaty](#), 11 July 2018, HL Paper 164 of session 2017–19

House of Commons Committees

House of Commons Public Accounts Committee, [Brexit and the Future of Customs](#), 14 November 2017, HC 401 of session 2017–19

House of Commons Home Affairs Committee, [Home Office Delivery of Brexit: Customs Operations](#), 16 November 2017, HC 540 of session 2017–19; and [Home Office Delivery of Brexit: Customs Operations: Government Response to the Committee's First Report](#), 26 January 2018, HC 754 of session 2017–19

House of Commons Scottish Affairs Committee, [European Union \(Withdrawal\) Bill: Implications for Devolution](#), 19 November 2017, HC 375 of session 2017–19

House of Commons Exiting the European Union Committee, [The Progress of the UK's Negotiations on EU Withdrawal](#), 1 December 2017, HC 372 of session 2017–19; and [The Progress of the UK's Negotiations on EU Withdrawal: Government Response to the Committee's Second Report](#), 1 March 2018, HC 862 of session 2017–19

House of Commons Public Accounts Committee, [Brexit and the UK border](#), 8 December 2017, HC 558 of session 2017–19

House of Commons Business, Energy and Industrial Strategy Committee, [Leaving the EU: Implications for the Civil Nuclear Sector](#), 13 December 2017, HC 378 of session 2017–19; and [Leaving the EU: Implications for the Civil Nuclear Sector: Government Response to the Committee's Second Report](#), 8 March 2018, HC 881 of session 2017–19

House of Commons Treasury Committee, [Transitional Arrangements for Exiting the European Union](#), 14 December 2017, HC 473 of session 2017–19; and [Transitional Arrangements for Exiting the European Union: Government Response to the Committee's Second Report](#), 27 February 2018, HC 850 of session 2017–19

House of Commons European Scrutiny Committee, [Enhancing Law Enforcement Cooperation and Border Control: Strengthening the Schengen Information System](#), 15 December 2017, HC 301-vi of session 2017–19

House of Commons European Scrutiny Committee, [European Atomic Energy Community](#), 15 January 2018, HC 301-viii of session 2017–19

House of Commons Digital, Culture, Media and Sport Committee, [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#), 25 January 2018, HC 365 of session 2017–19; and [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market: Government Response to the Committee's Second Report of Session 2017–19](#), 8 June 2018, HC 1141 of session 2017–19

House of Commons Foreign Affairs Committee, [The Future of UK Diplomacy in Europe](#), 30 January 2018, HC 514 of session 2017–19; and [The Future of UK Diplomacy in Europe: Government Response to the Committee's Second Report](#), 27 March 2018, HC 918 of session 2017–19

House of Commons Public Accounts Committee, [Exiting the European Union](#), 7 February 2018, HC 467 of session 2017–19

House of Commons Home Affairs Committee, [Home Office Delivery of Brexit: Immigration](#), 14 February 2018, HC 421 of session 2017–19; and [Home Office Delivery of Brexit: Immigration: Government Response to the Committee's Third Report](#), 5 May 2018, HC 1075 of session 2017–19

House of Commons Environment, Food and Rural Affairs Committee, [Brexit: Trade in Food](#), 18 February 2018, HC 348 of session 2017–19; and [Brexit: Trade in Food: Government Response to the Committee's Third Report](#), 4 May 2018, HC 1021 of session 2017–19

House of Commons Business, Energy and Industrial Strategy Committee, [The Impact of Brexit on the Automotive Sector](#), 1 March 2018, HC 379 of session 2017–19; and [The Impact of Brexit on the Automotive Sector: Government Response to the Committee's Fifth Report](#), 15 May 2018, HC 1018 of session 2017–19

House of Commons International Trade Committee, [Continuing Application of EU Trade Agreements after Brexit](#), 7 March 2018, HC 520 of session 2017–19; and [Continuing Application of EU trade Agreements after Brexit: Government Response to the Committee's First Report](#), 15 May 2018, HC 1042 of session 2017–19

House of Commons Northern Ireland Affairs Committee, [The Land Border between Northern Ireland and Ireland](#), 16 March 2018, HC 329 of session 2017–19; and [The Land Border between Northern Ireland and Ireland: Government Response to the Committee's Second Report](#), 15 June 2018, HC 198 of session 2017–19

House of Commons Exiting the European Union Committee, [The Progress of the UK's Negotiations on EU Withdrawal: December 2017 to March 2018](#), 18 March 2018, HC 884 of session 2017–19; and [The Progress of the UK's Negotiations on EU Withdrawal \(December 2017 to March 2018\): Government Response to the Committee's Third Report](#), 23 May 2018, HC 1077 of session 2017–19

House of Commons Business, Energy and Industrial Strategy Committee, [The Impact of Brexit on the Aerospace Sector](#), 19 March 2018, HC 380 of session 2017–19; and [The Impact of Brexit on the Aerospace Sector: Government Response to the Committee's Sixth Report](#), 15 May 2018, HC 1049 of session 2017–19

House of Commons European Scrutiny Committee, [EU Withdrawal: Transitional Provisions and Dispute Resolution](#), 20 March 2018, HC 763 of session 2017–19; and [EU Withdrawal: Transitional Provisions and Dispute Resolution: Government Response to the Committee's Nineteenth Report](#), 14 June 2018, HC 1160 of session 2017–19

House of Commons Health and Social Care Committee, [Brexit: Medicines, Medical Devices and Substances of Human Origin](#), 21 March 2018, HC 392 of session 2017–19; and [Brexit: Medicines, Medical Devices and Substances of Human Origin: Government Response to the Health and Social Care Committee's Fourth Report](#), 6 July 2018, Cm 9620

House of Commons Home Affairs Committee, [UK-EU Security Cooperation after Brexit](#), 21 March 2018, HC 635 of session 2017–19

House of Commons Science and Technology Committee, [Brexit, Science and Innovation](#), 21 March 2018, HC 705 of session 2017–19; and [Brexit, Science and Innovation: Government Response to the Committee's Second Report](#), 4 May 2018, HC 1008 of session 2017–19

House of Commons European Scrutiny Committee, [Value Added Tax: EU Proposals for Reform and the Implications of Brexit](#), 3 April 2018, HC 301-xxii of session 2017–19

House of Commons Exiting the European Union Committee, [The Future UK-EU Relationship](#), 4 April 2018, HC 935 of session 2017–19; and [The Future UK-EU Relationship: Government Response to the Committee's Fourth Report](#), 7 June 2018, HC 1150 of session 2017–19

House of Commons Business, Energy and Industrial Strategy Committee, [The Impact of Brexit on the Processed Food and Drink Sector](#), 22 April 2018, HC 381 of session 2017–19

House of Commons Public Accounts Committee, [Exiting the European Union: The Department for Business, Energy and Industrial Strategy](#), 25 April 2018, HC 687 of session 2017–19

House of Commons International Trade Committee, [UK-US Trade Relations](#), 1 May 2018, HC 481 of session 2017–19

House of Commons Public Accounts Committee, [Exiting the European Union: The Department for Environment, Food and Rural Affairs and the Department for International Trade](#), 4 May 2018, HC 699 of session 2017–19

House of Commons Business, Energy and Industrial Strategy Committee, [The Impact of Brexit on the Pharmaceutical Sector](#), 17 May 2018, HC 382 of session 2017–19

House of Commons Exiting the European Union Committee, [The Progress of the UK's Negotiations on EU Withdrawal \(March to May 2018\)](#), 24 May 2018, HC 1060 of session 2017–19

House of Commons Environment, Food and Rural Affairs Committee, [*The Future for Food, Farming and the Environment*](#), 6 June 2018, HC 870 of session 2017–19

House of Commons Defence Committee, [*The Government's Proposals for a Future Security Partnership with the European Union*](#), 8 June 2018, HC 594 of session 2017–19

House of Commons Public Accounts Committee, [*Exiting the EU: the Financial Settlement*](#), 27 June 2018, HC 973 of session 2017–19

House of Commons Exiting the European Union Committee, [*Parliamentary Scrutiny and Approval of the Withdrawal Agreement and Negotiations on a Future Relationship*](#), 28 June 2018, HC 1240 of session 2017–19

House of Commons Exiting the European Union Committee, [*The Progress of the UK's Negotiations on EU Withdrawal: Data*](#), 3 July 2018, HC 1317 of session 2017–19

House of Commons Welsh Affairs Committee, [*Brexit: Priorities for Welsh Agriculture*](#), 9 July 2018, HC 402 of session 2017–19