



House of Commons
Exiting the European Union
Committee

**The Government's
negotiating objectives:
the White Paper**

Third Report of Session 2016–17

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

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Exiting the European Union Committee

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Conclusions

Introduction

1. This report focuses on the Government's negotiating objectives and not on the potential benefits and opportunities that arise from the United Kingdom leaving the European Union. (Paragraph 8)
2. We welcome the Government's decision to publish a White Paper in response to a recommendation in our First Report. This document has provided some further detail on the Government's negotiating objectives. However, as the Secretary of State has indicated, "this is likely to be the most complicated negotiation of modern times" and its outcome is far from certain. (Paragraph 9)

Certainty and clarity

3. We will examine the Government's plans for converting the *acquis* into domestic law by taking evidence on the "Great Repeal Bill" White Paper when it is published. This will be a complex task for both the Government and Parliament and will need appropriate resource and time to be allocated. We intend to invite Ministers from departments other than the Department for Exiting the European Union to give evidence. We note that the Secretary of State for Environment, Food and Rural Affairs has acknowledged the scale of the technical challenge ahead. The importance and complexity of ensuring legal certainty in the UK on the day after Brexit must not be underestimated. (Paragraph 17)
4. The "Great Repeal Bill" is expected to entail the delegation of very significant powers to Ministers, whether of the UK or devolved governments, to bring forward legislation to ensure that the body of EU law being transposed into domestic law both fits the UK's legal framework and keeps pace with the UK's negotiations on its exit deal and its future relationship with the EU. In our scrutiny of the Bill, while understanding the pressure facing Ministers, we will want to be confident that the delegation of powers is sufficient only for the limited job required and does not become a means of passing significant new legislation without the higher level of scrutiny that primary legislation requires. (Paragraph 22)
5. A major justification for Brexit was to enhance Parliamentary sovereignty. Leaving the European Union should not therefore result in a shift in power from Parliament to the Executive. The Committee believes it is essential that Parliament plays a full role in all Brexit-related legislation including the "Great Repeal Bill". (Paragraph 23)
6. Once the European Communities Act 1972 is repealed, UK courts will no longer be bound by decisions of the Court of Justice of the European Union (CJEU). However, the extent to which UK courts continue to take account of CJEU case law remains to be decided (Paragraph 30)
7. We welcome the Secretary of State's assurance that Parliament will have a vote on any final deal reached under Article 50 and any agreement on the UK's future relationship with the EU before the European Parliament votes on it, but we also

believe that Parliament must have a vote in the event that there is 'no deal'. Leaving the EU without a future trade deal and in doing so defaulting to World Trade Organisation (WTO) rules is no less an important decision for the UK's economic future than the terms of any future Free Trade Agreement between the UK and the EU. It is therefore essential that such a step is not taken without Parliament having a vote on the matter. (Paragraph 33)

8. Ending the jurisdiction of the CJEU over the UK is one of the Prime Minister's "red lines" in negotiations. The European Communities Act 1972, which the Government is planning to repeal, provides that rulings of the CJEU are binding on UK courts. Whilst the UK is likely to move away from the jurisdiction of the CJEU on exiting the EU, the terms of the UK's future relationship with the EU may entail continuing regulatory conformity in certain areas, such as certain product standards or data protection. Where regulatory conformity provides the basis of the continuing relationship, this may necessitate agreeing dispute resolution procedures, in trade and other areas, which require continuing account to be taken by UK courts of CJEU case law, just as in any similar agreement with another country the UK courts would take account of the other country's rulings. (Paragraph 41)

A stronger Britain

9. The Government says that it wants the deal between the UK and the EU to work for the whole of the UK, and that it will be developed with the full engagement of the devolved administrations. There are clearly significant differences in the negotiating priorities of the different parts of the UK. If the future deal is to be acceptable to the whole of the UK, then these differences will need to be discussed, negotiated and common ground agreed upon. Differing priorities reflect, in part, differences in the economies and demography of different parts of the UK. The Government must ensure that it understands these differences and takes them into account when it begins its negotiations with the EU. (Paragraph 70)
10. We recommend that the UK Government respond formally to the Welsh, Scottish and Northern Ireland legislatures regarding each of their options papers. It must do so as a matter of urgency given that negotiations to leave the EU will start imminently. (Paragraph 71)
11. The legislation required to implement the UK's exit from the EU will affect the competences of the devolved administrations and it is expected that it will require their legislative consent. We note the Supreme Court's statement that "the Sewel Convention has an important role in facilitating harmonious relationships between the UK and devolved legislatures." The devolved administrations will require adequate time to conduct the appropriate scrutiny and consultation required before consent can be given. It is likely that the devolved administrations will need to pass their own additional legislation, in turn requiring time for proper consideration in the devolved legislatures. The Government will need to take account of the timescales of the devolved legislatures in its planning. (Paragraph 72)
12. The repatriation of EU powers to the UK raises questions about how the framework for devolved policy areas will evolve. The Welsh and Scottish governments are clear that any future UK framework for devolved policies should be a matter

for consultation and intergovernmental negotiations. Notwithstanding the Government's commitment that "no decisions currently taken by the devolved administrations will be removed from them", the devolved administrations will be looking to ensure that legislative competences which are currently held by the EU which relate to matters which have been devolved are repatriated as devolved competences. (Paragraph 73)

13. The Government has established a Joint Ministerial Committee for EU Negotiations (JMC (EN)) for consulting the devolved administrations on their priorities for Brexit and it aims to use this forum to agree a UK approach to, and objectives for, negotiations, and to consider proposals put forward by the devolved administrations. The evidence we heard indicated that these meetings have not been effective from the point of view of the devolved administrations. The Government must establish a more effective process for engaging the devolved administrations in developing the UK's negotiating position. If the Government's asserted wish to fully engage the devolved administrations is to be credible, it must share more information and discuss options before decisions are reached. A successful exit from the EU will be measured not just in terms of achieving a good deal with the EU but also whether it "works for the whole of the UK". (Paragraph 74)
14. We welcome the UK Government's recognition of Gibraltar's specific concerns, expressed in the White Paper and through the establishment of the Joint Ministerial Council (Gibraltar EU Negotiations). We were encouraged by the Chief Minister's confidence that Gibraltar's views were being heard and that the UK Government would find solutions to the challenges that leaving the EU presents for Gibraltar. This will be very important to avoid any damaging consequences for Gibraltar. We encourage the UK Government to maintain a high level of dialogue and engagement with the Government of Gibraltar throughout the Article 50 negotiation process. (Paragraph 83)
15. The UK and Irish economies are deeply integrated and mutually important. Disruption to the Irish economy would not only be damaging for Ireland itself, but would have consequential effects on the economy in Northern Ireland and the rest of the UK. Were the UK to exit the EU without a deal on tariff-free trade, the impact on the agri-food industry on both sides of the border in Ireland would be extremely serious and damaging. (Paragraph 109)
16. The UK has deep and close historical, economic and cultural ties with the Republic of Ireland. The Government has a responsibility to consider how its future relationship with the EU will affect both Northern Ireland and the Republic. Politicians and businesses we met in Dublin were concerned about the UK's future trading relationship with Ireland and the impact on trade of the re-introduction of customs checks on cross-border trade. Maintaining freedom of movement throughout the island of Ireland and the wider UK is also extremely important, both for many businesses and for many UK and Irish citizens. The border between Northern Ireland and the Republic will become one of the EU's external borders when the UK leaves the EU. Ensuring that this change does not disrupt flows of trade and people will be a complex challenge. (Paragraph 110)

17. Cross-border cooperation in combating crime is highly valued by both the UK and Irish Governments. With goodwill on both sides, it should be possible to work out a way of ensuring that this cooperation can continue. However, the Irish Government does not see this as a straightforward task and some arrangement would need to be reached to ensure that cooperation can continue the day after the UK leaves the EU even if no permanent deal had yet been reached. (Paragraph 111)
18. It is important to ensure that in implementing Brexit everything is done to maintain and build upon the considerable progress made as a result of the peace process. The Good Friday Agreement was not just a single event but was a critical step in the normalisation of social and economic relations over a period of time. Many in Ireland are deeply concerned that the introduction of new and visible border check points would provide an opportunity and focal point for those who wish to disrupt the peace and feed a sense in some communities that the Good Friday Agreement was being undermined. Irish politicians welcome the Government's aspiration of maintaining a seamless border, but, at present, do not understand how this can be achieved in practice, given the obligations which Ireland will have as an EU Member State bordering a third country. With the goodwill that currently exists on both sides of the border, we hope that a mutually acceptable solution can be found. This must be at the top of the list of the Government's negotiating objectives. (Paragraph 112)

A fairer Britain

19. We agree with the Secretary of State that immigration from the EU has made an important contribution to many sectors of the economy in different parts of the country and that, while reducing net migration remains an objective of the Government, this should not be done in a way that damages the economy. The Government's objective is to secure control of EU migration and this may not entail reducing numbers. Future policy will be an important element in the forthcoming negotiations, given the linkage frequently made between 'free movement' and access to the Single Market. We look forward to scrutinising the proposals once the Immigration Bill has been published. (Paragraph 122)
20. We urge the Department for Exiting the EU to continue to make the argument in Government that the future system for EU migration needs to be flexible enough to meet the needs of the economy across the UK. This includes a broad range of different sectors, both high and low skilled, including scientists, bankers, vets, care workers, health service professionals and seasonal agriculture workers. That flexibility should include considering whether immigration should be managed on a geographic basis. We also note with concern the tendency of some employers to rely on importing skilled labour from abroad rather than training up UK employees. (Paragraph 123)
21. The status of EU nationals in the UK and UK nationals living elsewhere in the EU cannot be left unresolved until the end of the two-year period for negotiations. We reiterate the conclusion of our earlier Report that it would be unconscionable for the more than four million people in these groups to find themselves living in a state of uncertainty about their futures until negotiations are complete, and, therefore, that the Government "should now make a unilateral decision to safeguard the

rights of EU nationals living in the UK". We note that, to date, Ministers have not taken this step. The debate around whether "no deal is better than a bad deal" has focussed on the trade aspects of the future relationship. If the negotiations were to end prematurely without an agreement on the rights for the four million, this could put them in an uncertain position. (Paragraph 130)

22. We recommend that an agreement between the UK and EU27 is reached as a matter of priority once negotiations formally start. That agreement should be concluded as a stand-alone and separate deal which is otherwise not dependent on any other exit or future trade deal being agreed to between the parties. (Paragraph 131)
23. We welcome the intention of both the Secretary of State and Michel Barnier, the European Commission's Chief Negotiator for Brexit, to meet representatives from the EU nationals in the UK and the UK nationals who are resident across Europe in advance of the negotiations. This is an important development and we hope it is a positive step towards an early resolution of the uncertainty and anxiety of the four million across Europe. (Paragraph 132)
24. Notwithstanding the Government's commitment to maintain protections for workers after the UK leaves the EU, it is likely that levels of protection for workers will diverge in future. Although regulations will be aligned on the day that the UK leaves the EU, thereafter, regulatory power will return to the UK. We note the General Secretary of the TUC's concern that the UK should not become the "bargain basement" of Europe in this respect and therefore welcome the Secretary of State's commitment that the Government has no intention of looking to undermine workers' rights. (Paragraph 138)

A truly global Britain

25. In approaching the negotiations, the Government needs to recognise the strength of the view in the EU27 that, as Michel Barnier has emphasised, the 'four freedoms are indivisible'. (Paragraph 169)
26. The Government should seek a UK–EU Free Trade Agreement (FTA) which covers both goods and services and retains the mutual recognition of standards and conformity assessments. The Government should also seek to maintain the right of establishment and mutual recognition of qualifications in a UK–EU FTA. The Government should maintain the maximum possible flexibility in its negotiating approach to achieve these outcomes. (Paragraph 170)
27. Notwithstanding the Government's plans to enshrine EU law into domestic law through the "Great Repeal Bill", over time the two bodies of law may diverge as the Government seeks to change or repeal regulations. The Government should provide clarity on how it will address divergence in rules and standards and disputes that may arise as a result, outside of the jurisdiction of the CJEU. (Paragraph 171)
28. London is a pre-eminent global financial centre and the financial services industry supports a large number of jobs in London and even more across the rest of the UK. It is in both the UK's and the EU's interests to ensure there is minimal disruption to financial services when the UK leaves the EU. As part of negotiations on a UK–EU

FTA, the Government should seek to secure stable and predictable equivalence arrangements or a bespoke system comparable to the EU system of “passporting” which will ensure the stability of cross-border financial services between the UK and the EU. (Paragraph 177)

29. Financial and professional services will require time to adjust to any new trading arrangements. The Government should seek to agree a phased process of implementation for the sector early in the negotiations to provide certainty for businesses in preparing for Brexit. (Paragraph 178)
30. The digital industry is an increasingly important sector to the UK economy and relies on the stability of data flows across UK and EU borders. The Government must seek to maintain uninterrupted UK–EU data flows by securing a data adequacy agreement with the EU before the end of the Article 50 negotiations. (Paragraph 182)
31. The broadcasting industry, like many aspects of the UK creative industries, is a success story. International broadcasters base themselves in the UK to broadcast across the EU and the Audio Visual Media Services Directive enables broadcasters in one Member State to do so if they have a licence from the domestic regulator—Ofcom in the UK—and comply with the regulatory requirements in that Member State. This has helped the UK to become Europe’s leading broadcasting hub. In the event of an exit without alternative arrangements in place, international broadcasters could fall back on the Council of Europe’s Convention on Transfrontier Television (CTT), however, it is an inadequate replacement: on-demand broadcasting is not covered, six Member States are not signatories, and it cannot be effectively enforced. International broadcasters could seek to access the EU market through subsidiaries, but this would require them to relocate a significant proportion of their workforce to the EU and for most of their editorial decisions to be made there. Neither of these options are attractive to the sector. The Government must therefore ensure that a future FTA between the UK and the EU retains the ability of broadcasters based in the UK to continue to operate across the Single Market to the same extent once the UK is no longer a Member State. Securing continued access to this market is a priority. (Paragraph 186)
32. In seeking to negotiate its own preferential trade agreements with non-EU countries, the Government has said that it will not continue to observe the Common Commercial Policy (CCP) and Common External Tariff (CET) of the EU customs union. However, it will seek to negotiate a new customs arrangement with the EU to minimise the “frictions” in cross-border trade between the UK and the EU27. The Government has been vague as to the characteristics of such a customs arrangement. The Government must provide more clarity as to the features of its preferred customs arrangement with the EU and how it will differ from a customs union. (Paragraph 198)
33. There is, however, a risk that, on trade, the EU27 will decline to allow the UK to both leave the CCP and the CET and yet retain existing tariff and barrier free trade. (Paragraph 199)
34. Notwithstanding the Government’s ambition to secure a UK–EU FTA, there is a risk that the UK might reach the end of the Article 50 process without a deal and

have to fall back on trading under WTO rules. It is imperative that the Government undertake an economic assessment of the scenario whereby the UK leaves the EU without a deal. The Government must also set out what contingency planning is taking place across Whitehall and the mitigation being considered for a 'no deal' outcome. (Paragraph 210)

35. Similar to negotiating a UK–EU FTA, embarking on negotiations for FTAs with non-EU countries is entering into the unknown. It is unclear whether the UK's smaller and more focussed market will be an advantage or a disadvantage in trading negotiations. What is clear, however, is that the UK needs to urgently develop resources and expertise for trade negotiations. The Government should identify resourcing needs and prioritise countries which provide opportunities for developing expertise in trade negotiating. The Government should also prioritise those countries with which the EU has preferential trade agreements and seek early clarity on whether the UK can 'grandfather' those FTAs after Brexit. (Paragraph 218)
36. The success of the Higher Education sector in the UK owes much to its ability to attract international skills and talent. The UK Government must design a future immigration system that does not make it difficult for such talent, both students and staff, to come to the UK. It must also send a strong and consistent message that the UK is a welcoming place for people to come and study. The Government should make clear that it wishes to continue to take part in the Erasmus+ student exchange programme. (Paragraph 224)
37. The UK has benefitted from being part of Horizon 2020. The Government has made a clear commitment to underwrite research funding commitments while the UK is a Member State, even if the project continues after the UK leaves the EU. However, the Secretary of State has told us that he does not know what ongoing relationship the UK will have with Horizon 2020. The Government needs to make an explicit commitment that it wishes to continue joint research with the EU27 on the basis of the Horizon 2020 framework, and its successor. (Paragraph 227)
38. The UK needs to be clear what kind of relationship it wishes to pursue with Euratom. It is important that whatever the relationship is, it does not reduce the ability of the UK to pursue international cooperation in the civil nuclear industry and collaborative research in the future, including Horizon 2020 and its successor. (Paragraph 231)
39. The Government will be looking to conclude a bespoke arrangement for continuing involvement with Europol. The UK has been a leading force in Europol's development. If negotiations progress in a spirit of goodwill towards agreement, there should be scope for an imaginative solution to enable the UK to continue some level of involvement with Europol for the benefit of all European citizens. However, the technical obstacles that will need to be overcome for this to happen will be significant and it is unlikely that the UK will be able to retain the leading role that it currently enjoys. (Paragraph 245)
40. Across the range of Justice and Home Affairs data-sharing instruments, there is a strong operational argument, in the interest of both UK and EU27 law enforcement, for the UK retaining access to data. However, the extent to which this will be possible

is likely to be determined by commitments that the UK is able to make in relation to ensuring that its data protection provisions remain aligned with those of the EU, and the governance arrangements that can be agreed around the databases. The access agreed is likely not to be of the same level currently granted. (Paragraph 264)

41. The value of maintaining participation in the European Arrest Warrant, or at least securing an analogous agreement, has been commended to us. We note that the UK comes from the position of having extradition processes already in line with those in the EU. We also note that there are precedents for agreements with the EU analogous to the European Arrest Warrant that do not involve remaining within the jurisdiction of the CJEU. (Paragraph 271)
42. The Secretary of State has said that the Government wants “as far as is possible to replicate what we already have” in respect of Justice and Home Affairs Cooperation. It is to be hoped that the UK's relationship with the EU when outside it will be one of partnership on the basis of shared values and cooperation. Continuing deep levels of Justice and Home Affairs cooperation represents a test of whether this will be possible. The technical challenges are significant but, we believe, not insuperable and the prize of continued close cooperation is too valuable to lose. We note that, as the Prime Minister acknowledged, a “phased process of implementation” may be required if agreement is not possible within two years. (Paragraph 272)
43. We welcome the Government's commitment to continuing co-operation with the EU27 on foreign policy and defence matters. This is an area of considerable mutual interest and must be prioritised during the negotiations. We look forward to the Government setting out in more detail its proposals for how such cooperation can be made to work in practice, including the institutional and decision-making frameworks that would underpin it. (Paragraph 276)

A phased approach

44. It appears clear that negotiations will have to take place in a timeline shorter than the two years provided for in Article 50 TEU. Michel Barnier has said that, once Article 50 is triggered, the UK would have just 18 months to negotiate its exit from the EU in order to give the EU institutions enough time to ratify the agreement within the two-year period afforded by Article 50. On both occasions he has given evidence to us, the Secretary of State has agreed with this timetable. (Paragraph 282)
45. There is no precedent for the conclusion of a major, comprehensive bilateral or multilateral FTA covering goods and services within two years, although there is also no precedent for the negotiation of a major FTA between countries that are already convergent in legal and regulatory terms. It may be that starting from this position of convergence enables the terms of a future trade deal to be negotiated more quickly than comparable agreements such as CETA. It is not yet evident, however, that the two-year timetable for achieving this is realistic. (Paragraph 283)
46. Negotiations around the UK's outstanding and future financial liabilities to the EU will form a very important part of the negotiations which will need to consider liabilities, assets and, potentially, payments by the UK for continued participation

in certain EU programmes. It will be essential also to ensure that discussions about money do not get in the way of simultaneous negotiations on the UK's future relationship with the EU27. (Paragraph 289)

47. We note the Foreign Affairs Committee's recent conclusion that a 'no deal' scenario "represents a very destructive outcome leading to mutually assured damage for the EU and the UK". We share that view. It is, therefore, very important that both the UK and the EU avoid reaching the end of the two-year negotiating period without an agreement. The Government has talked about walking away from a bad deal, but has not yet explained what terms would be demonstrably worse for the UK than 'no deal'. The Government should therefore conduct a thorough assessment of the economic, legal and other implications of leaving the EU at the end of the Article 50 period with 'no deal' in place. This should be published. The public and Parliament have a right to the maximum possible information about the impact of the different future trading options being considered, including the possibility of no FTA being reached. (Paragraph 293)
48. Without an economic assessment of 'no deal' having been done and without evidence that steps are being taken to mitigate what would be the damaging effect of such an outcome, the Government's assertion that "no deal is better than a bad deal", is unsubstantiated. Parliament must be in an informed position to decide whether a proposed deal is, in fact, better or worse than 'no deal'. (Paragraph 294)
49. As the Government has suggested, the extent of disruption caused by leaving the EU is likely to vary across sectors, depending on the terms of the final withdrawal agreement. In some areas, adjustments are likely to be minimal. Where changes in trading arrangements or market access may be more substantial, however, the Government should seek to establish frameworks for implementation phases as early as possible in the negotiation process. It should communicate the terms of those agreements promptly and clearly to businesses and the public, in order to ensure adequate time for planning. (Paragraph 299)

1 Introduction

1. In her speech at Lancaster House on 17 January 2017, the Prime Minister, the Rt Hon Theresa May, MP, set out the 12 principles that would guide the Government during negotiations to secure the UK's exit from the EU.¹ Further detail was provided on these principles in the Government's White Paper on *The United Kingdom's exit from and new partnership with the European Union*, published on 2 February 2017.²

2. We agreed to report on the White Paper as the Third Report of our initial inquiry into the Government's negotiating objectives.³ Now that notification has been given by the Government under Article 50 of the Treaty on European Union of the UK's intention to leave the EU, our work enters a new phase.

3. As with our previous reports, we have drawn on the valuable work of other select committees in both the House of Lords and the House of Commons to help to inform our thinking.

4. One of our first priorities was to launch a programme of visits around the UK, encompassing visits both to Northern Ireland, Scotland and Wales and to different parts of England. Our visit schedule has taken in Sunderland, Aberdeen, Wolverhampton, Stoke-on-Trent, London, Boston, Truro and Swansea, as well as a visit to Dublin. We are grateful to all those who have hosted us and met with us in each of these locations. We have not only been made most welcome, but have learned a great deal about the priorities of businesses and a wide range of organisations and individuals, and have heard their thoughts on the risks and opportunities that Brexit throws up in different sectors. We published notes of our Sunderland and Aberdeen visits with our First Report. Notes of our visits to Wolverhampton and Stoke-on-Trent; London; Boston; Truro and Swansea are annexed to this Report. We also annex a note of our visit to Dublin last month.

5. We had hoped to be able take evidence from the relevant Ministers in each of the devolved nations. We took evidence from Mike Russell MSP, Minister for UK Negotiations on Scotland's Place in Europe, Scottish Government, in Westminster and took evidence from Mark Drakeford AM, Cabinet Secretary for Finance and Local Government, Welsh Government by video link.⁴ Although we had hoped to take evidence from the appropriate Minister in the Northern Ireland Executive, the resignation of the Deputy First Minister and elections in Northern Ireland and the subsequent delay in re-establishing the Executive prevented this from being arranged in the time available. We had also arranged to visit Derry~Londonderry before the triggering of Article 50, but, postponed our visit following the death of the former Deputy First Minister Martin McGuinness. The Committee plans to visit Northern Ireland in April 2017.

1 [The Government's negotiating objectives for exiting the EU: Prime Minister's Speech](#), Lancaster House, 17 January 2017 (The Lancaster House Speech.)

2 HM Government, *The United Kingdom's exit from and new partnership with the European Union*, [CM 9417](#), February 2017, para 2.1 (The White Paper.)

3 See also our First Report of Session 2016–17, [The process for exiting the European Union and the Government's negotiating objectives](#), HC 815; and our Second Report of Session 2016–17, [The Government's negotiating objectives: the rights of UK and EU citizens](#), HC 1071

4 Oral evidence taken on [Wednesday 8 February 2017](#) [Mr Russell MSP] and on [Tuesday 7 March 2017](#) [Mr Drakeford AM]

6. In her Lancaster House speech, the Prime Minister set out her 12 objectives for the negotiations. We examine each of these in turn in this Report. The Prime Minister also set out the principles that she said would guide the Government's approach:

as we negotiate that partnership, we will be driven by some simple principles: we will provide as much certainty and clarity as we can at every stage. And we will take this opportunity to make Britain stronger, to make Britain fairer, and to build a more Global Britain too.⁵

7. This Report sets out the Committee's conclusions under the chapter headings contained in the Government's White Paper.

8. This report focuses on the Government's negotiating objectives and not on the potential benefits and opportunities that arise from the United Kingdom leaving the European Union.

9. We welcome the Government's decision to publish a White Paper in response to a recommendation in our First Report. This document has provided some further detail on the Government's negotiating objectives. However, as the Secretary of State has indicated, "this is likely to be the most complicated negotiation of modern times" and its outcome is far from certain.

2 Certainty and clarity

Objective 1: Providing certainty and clarity

The "Great Repeal Bill"

10. The Government has announced its intention to introduce a "Great Repeal Bill" to provide legal certainty for the UK on leaving the EU. The Bill will be designed to repeal the European Communities Act 1972 and convert the *acquis* of existing EU law into domestic law. Accordingly, on the day after the UK leaves the EU, the same legislation will apply as applied before exit. The UK Parliament and, where appropriate the devolved legislatures, will then be able to determine which legislation they wish to keep, amend or repeal. The Bill is also expected to delegate powers to Ministers to amend "laws that would otherwise not function sensibly once we have left the EU" by means of secondary legislation.⁶

11. In its report on *The "Great Repeal Bill" and Delegated Powers*, the House of Lords Select Committee on the Constitution noted that the UK Government and Parliament faced a unique challenge in transposing the full body of EU law into domestic law, not least because "the body of EU law is found in a number of different places". Some EU law underpins existing UK legislation (for example EU directives which must be converted into domestic law) and some is directly applicable in the UK (for example EU regulations that apply directly in the UK under the terms of the European Communities Act 1972). The Select Committee on the Constitution noted that:

Yet further elements of the body of EU law are non-legislative in nature, consisting, for example, of judgments made by the Court of Justice of the European Union, regulatory rulings by EU agencies, or in the interpretation of our own courts.⁷

The Lords Committee added that the task was complicated by the fact that in many areas, the final shape of the law will depend on the outcome of negotiations on the UK's exit, but preparations will have to be made in time to come into force on the day that the UK leaves the EU.⁸

12. The "Great Repeal Bill" itself will not be a straightforward undertaking and will raise a number of important constitutional and legal questions, in particular:

- Whether and how the Bill will seek to remove references to EU institutions and agencies from the EU law which is to be transposed into domestic law and what institutions will be referred to in their place;
- The breadth and scope of any "Henry VIII powers" contained in the Bill which will enable Ministers to make changes to primary legislation which applies EU law through secondary legislation and, if so, how these will be limited;
- Whether the Bill will require legislative consent motions from the devolved legislatures;

6 [The White Paper, CM 9417, para 1.5](#)

7 House of Lords Committee on the Constitution, Ninth Report of Session 2016–17, [The 'Great Repeal Bill' and delegated powers](#), HL Paper 123, Summary

8 [Ibid](#)

- The impact on the constitutional settlements of Wales, Northern Ireland and Scotland; and
- Whether judgments of the Court of Justice of the European Union (CJEU) will continue to be relied on in UK courts after Brexit in order to interpret the transposed *acquis*.⁹

13. The nature of the legislative powers that will be delegated and the appropriateness of Parliamentary procedures for their consideration are the subject of an inquiry launched by the House of Commons Procedure Committee.¹⁰

14. In our First Report, we urged the Government to publish the “Great Repeal Bill” in draft to enable the “fullest scrutiny” of its provisions to take place before formal consideration took place in Parliament.¹¹ This was merited “given the significance of the repatriation of legislative competences to the UK for the constitutional makeup of the UK [and the] implications for the devolution settlement”. The Secretary of State told us that the White Paper on the Bill had been delayed by the elections in Northern Ireland (and the Government’s desire to inform the Northern Ireland Executive in advance of publication), but would be published soon.¹²

Transposition of regulations into domestic law

15. The question of how EU regulations will be transposed into domestic law may raise particular questions where those regulations specify enforcement or certification by EU regulatory bodies. In respect of product certification by a regulatory agency, on leaving the EU, the UK would need to determine whether it wished to continue to follow the decisions of an EU agency or set up its own certification processes. A UK equivalent agency may require arrangements for mutual recognition of decisions with its EU counterpart. In respect of enforcement, where EU regulations specify enforcement by the European Commission or EU regulatory agency, the UK would need to determine to whom the enforcement power was given.

16. There may be other areas where legal drafting will need to be changed to bring it into line with the body of domestic law.¹³ The Secretary of State for Environment, Food and Rural Affairs, Rt Hon Andrea Leadsom MP, has said that, in respect of her Department’s remit,

We think that in the region of about two-thirds of the legislation that we are intending to bring into UK law will be able to be rolled forward with just some technical changes, so roughly a third won’t, which means that obviously there will be work to do to ensure that we can make those measures continue to work once we leave the EU.¹⁴

9 Legislating for Brexit: the Great Repeal Bill, House of Commons Library Briefing Paper [No. 7793](#), 23 February 2017, Summary.

10 [Procedure Committee inquiry into Delegated powers in the “Great Repeal Bill” 2 February 2017](#)

11 [First Report](#) of Session 2016–17, HC 815, para 71

12 Q1500

13 Legislating for Brexit: the Great Repeal Bill, House of Commons Library Briefing Paper [No. 7793](#), 23 February 2017, Section 3.4

14 [Environmental Audit Committee, Sixth Report of 2016–17, The Future of the Natural Environment after the EU Referendum, HC 599, Q327](#)

17. We will examine the Government's plans for converting the *acquis* into domestic law by taking evidence on the "Great Repeal Bill" White Paper when it is published. This will be a complex task for both the Government and Parliament and will need appropriate resource and time to be allocated. We intend to invite Ministers from departments other than the Department for Exiting the European Union to give evidence. We note that the Secretary of State for Environment, Food and Rural Affairs has acknowledged the scale of the technical challenge ahead. The importance and complexity of ensuring legal certainty in the UK on the day after Brexit must not be underestimated.

Delegation of powers

18. The Government will not only have a significant body of legislation to incorporate into domestic law before the UK exits the EU, but will also need to make separate legislative provision in the numerous areas where the law will either need to be changed to ensure that it works in the context of domestic law or where some legislative or regulatory divergence is required. The White Paper notes that legislation to give effect to the UK's withdrawal will not be limited to the "Great Repeal Bill" but will also include separate bills, including on immigration and customs. The extent to which new primary legislation or powers to be delegated under the "Great Repeal Bill" are used to construct the post-Brexit legal framework will be a matter for Parliament to consider in its scrutiny of the Bill.

19. The "Great Repeal Bill" is also expected to include provisions for delegating powers to Ministers to make changes to legislation transposed from EU law to take account of the progress of negotiations. The Government has said that this will give them "the flexibility to take account of the negotiations with the EU as they proceed".¹⁵

20. The House of Lords Select Committee on the Constitution noted that:

The challenge facing Parliament—and on which we focus in this report—is how to grant the Government relatively wide delegated powers for the purpose of converting EU law into UK law, while ensuring that they cannot also be used simply to implement new policies desired by the Government in areas which were formerly within EU competence.¹⁶

That Committee recommended that a provision be placed on the face of the Bill to limit delegated powers to be used only

So far as necessary to adapt the body of EU law to fit the UK's domestic legal framework; and

So far as necessary to implement the result of the UK's negotiations with the EU.

21. The Secretary of State told us before Christmas that any material changes would be done through primary legislation rather than through delegated legislation.¹⁷ He reiterated in evidence this month that:

¹⁵ [Government announces end of European Communities Act, 2 October 2016](#)

¹⁶ House of Lords Committee on the Constitution, [The 'Great Repeal Bill' and delegated powers](#), HL Paper 123

¹⁷ Qq483–484

The strategy is to deal with the repeal of the European Communities Act 1972 and the translation of the *acquis communautaire* into English law in the Great Repeal Bill. [...] The second phase will be dealing with substantive matters in primary legislation, because that is my view as to how it should be done, and nonsubstantive matters or less substantive matters in secondary legislation. There will be a number of major bills.¹⁸

22. The “Great Repeal Bill” is expected to entail the delegation of very significant powers to Ministers, whether of the UK or devolved governments, to bring forward legislation to ensure that the body of EU law being transposed into domestic law both fits the UK’s legal framework and keeps pace with the UK’s negotiations on its exit deal and its future relationship with the EU. In our scrutiny of the Bill, while understanding the pressure facing Ministers, we will want to be confident that the delegation of powers is sufficient only for the limited job required and does not become a means of passing significant new legislation without the higher level of scrutiny that primary legislation requires.

23. A major justification for Brexit was to enhance Parliamentary sovereignty. Leaving the European Union should not therefore result in a shift in power from Parliament to the Executive. The Committee believes it is essential that Parliament plays a full role in all Brexit-related legislation including the “Great Repeal Bill”.

Impact on the Devolution Settlement

24. Under the Sewel Convention, the Government does not normally invite the UK Parliament to legislate on devolved matters or the scope of devolved powers without the assent of the devolved legislature concerned.¹⁹ The Sewel Convention is given a statutory basis by the Scotland Act 2016²⁰ and in the Wales Act 2017.²¹ Assent is signified by means of a legislative consent motion.

25. The Supreme Court has noted that “Over time, devolved legislatures have passed legislative consent motions not only when the UK Parliament has legislated on matters which fall within the legislative competence of a devolved legislature, but also when the UK Parliament has enacted provisions that directly alter the legislative competence of a devolved legislature or amend the executive competence of devolved administrations”.²² The way that the Sewel Convention has operated in practice establishes that legislative consent motions will probably be required in respect of the “Great Repeal Bill” were it to remove from a devolved legislature the requirement to abide by EU law (with the effect that legislative competence is changed); change EU law that currently comprises part of the devolved body of law; or take back into UK legislative competence any EU competence that relates to a devolved matter. We consider the implications of the “Great Repeal Bill” for the devolution settlements further in Chapter 3.

18 Q1501

19 House of Commons Library, The Sewel Convention, Standard Note [SN2084](#), 25 November 2005

20 Scotland Act 2016, [section 2](#)

21 Government of Wales Act 2017, [section 107](#) as inserted by the Wales Act 2016

22 R (on the application of Miller and another) v Secretary of State for Exiting the European Union [\[2017\] UKSC 5](#), para 140

Court of Justice of the European Union case law

26. In its bid to provide “legal certainty”, the “Great Repeal Bill” will be designed to incorporate the *acquis communautaire* into domestic law. The *acquis* is considered to include decisions of the Court of Justice of the European Union (CJEU).

27. After Brexit, a large quantity of UK primary and secondary legislation will still have arisen from EU law. In some areas, the UK Parliament may, in time, legislate in a manner that results in domestic law diverging decisively from EU law. In others, the UK may seek to maintain a high level of regulatory compliance in the interests either of maintaining trade or ensuring continued participation in EU programmes. In any case, where domestic law is still derived from EU law, even after Brexit, UK courts are likely to continue to refer to CJEU judgments in their interpretation of that legislation. The White Paper indicated that “in general the Government also believes that the preserved law should continue to be interpreted in the same way as it is at the moment”.

28. David Jones MP, Minister of State, Department for Exiting the European Union, responding specifically to a question about the status in the UK of case law and judgments of the CJEU after the UK had left the EU stated:

I wish to make it clear that the starting position of the Government is that EU-derived law, from whatever quarter, will be transferred into United Kingdom law in full at the point of exit.²³

29. In the light of the Government's stated intention to preserve EU law in the UK until the UK Parliament decided to change it, Professor Kenneth Armstrong, Professor of European Law at the University of Cambridge, questioned what continuing role the CJEU would play:

To what extent should UK courts follow or at least track developments in the interpretation of EU rules by EU courts to maintain consistency? Should UK judges continue to follow changes in the interpretation of EU rules unless and until ministers decide to express a view on an interpretation they do or do not wish to see reflected in UK law?²⁴

30. Once the European Communities Act 1972 is repealed, UK courts will no longer be bound by decisions of the Court of Justice of the European Union (CJEU). However, the extent to which UK courts continue to take account of CJEU case law remains to be decided.

Vote on the final deal

31. The White Paper notes that the final deal agreed between the UK and the EU will be put to a vote in both Houses of Parliament.²⁵ In our First Report, we called for Parliament to have a vote on any final deal and sought clarification that “the timetable for this vote will allow for proper consideration of any deal that is negotiated”.²⁶

23 HC Deb, 7 November 2016, [col 1363](#)

24 Professor Kenneth Armstrong, [On your marks, get set LEAVE! The technical challenge of the Great Repeal Bill](#), LSE Brexit Blog, October 2016

25 [The White Paper, CM 9417, para 1.12](#)

26 [The process for exiting the European Union and the Government's negotiating objectives](#), HC 815, para 168.

32. In its response to our Report, the Department stated that the Government would “bring forward a motion on the final agreement to be approved by both Houses of Parliament before it is concluded, and [...] intends that this will happen before the European Parliament debates and votes on the final agreement”.²⁷ The response continued that “The Government expects that this vote will cover both the withdrawal agreement and the future relationship with the EU”.

33. We welcome the Secretary of State's assurance that Parliament will have a vote on any final deal reached under Article 50 and any agreement on the UK's future relationship with the EU before the European Parliament votes on it, but we also believe that Parliament must have a vote in the event that there is 'no deal'. Leaving the EU without a future trade deal and in doing so defaulting to World Trade Organisation (WTO) rules is no less an important decision for the UK's economic future than the terms of any future Free Trade Agreement between the UK and the EU. It is therefore essential that such a step is not taken without Parliament having a vote on the matter.

Objective 2: Taking control of our own laws

34. The Prime Minister made clear that one of her “red lines” in negotiations would be to end the jurisdiction of the CJEU over the UK.²⁸ This position was underlined in the White Paper which stated that:

The sovereignty of Parliament is a fundamental principle of the UK constitution. Whilst Parliament has remained sovereign throughout our membership of the EU, it has not always felt like that.²⁹ [...]

The Court of Justice of the European Union (CJEU) is the EU's ultimate arbiter on matters of EU law. As a supranational court, it aims to provide both consistent interpretation and enforcement of EU law across all 28 Member States and a clear process for dispute resolution when disagreements arise. The CJEU is amongst the most powerful of supranational courts due to the principles and direct effect in EU law. We will bring an end to the jurisdiction of the CJEU in the UK.³⁰

35. We note in paragraph 30 above, the extent to which the UK courts may have to continue to take account of CJEU case law in certain areas. However, this does not affect the White Paper's clear objective of removing the primacy and direct effect of EU law, interpreted and enforced by the CJEU.

Dispute resolution procedures

36. Although the White Paper envisages ending the jurisdiction of the CJEU in the UK, it does acknowledge that dispute resolution mechanisms will be required in respect of any future relationship agreed between the UK and the EU. Dispute resolution procedures would be required in respect of future trading arrangements and cooperation in certain

27 [First Special Report of Session 2016–17, The process for exiting the European Union and the Government's negotiating objectives: Government Response to the Committee's First Report](#), HC 1101

28 [Speech to the Conservative Party Conference](#), 2 October 2016

29 [The White Paper, CM 9417, para 2.1](#)

30 [The White Paper, CM 9417, para 2.3](#)

EU projects, including participation in aspects of Justice and Home Affairs policies, including Europol and provisions for data-sharing. These are discussed further below. Mechanisms would:

Ensure that all parties share a single understanding of an agreement, both in terms of interpretation and application. These mechanisms can also ensure uniform and fair enforcement of agreements.³¹

37. The UK is already party to dispute resolution mechanisms in relation to a number of international agreements. The White Paper notes that “unlike decisions made by the CJEU, dispute resolution in these agreements does not have direct effect in UK law”.³² The dispute resolution mechanism or mechanisms that will apply to the UK's future relationship with the EU “must be ones that respect UK sovereignty, protect the role of our courts and maximise legal certainty, including for businesses, consumers, workers and other citizens”.³³

38. There are examples of dispute resolution mechanisms that do require acceptance of CJEU jurisdiction, such as the Deep Association Agreement with Ukraine and Denmark's Agreement to participate (as if it were a third country) in Europol. However, Professor Steve Peers, University of Essex, told us that it would be unusual for the EU to insist on a third country (ie. the UK, in an agreement on a future UK–EU relationship) accepting the jurisdiction of the CJEU. It was more common for the agreement to provide that “the two sides keep each other's case law under review [...] if there is divergence, there is a discussion about how to try to resolve it”.³⁴ He noted that this could lead to problems at a later point. Citing the example of data protection, he argued that, notwithstanding any agreement reached on regulatory equivalence between the UK and the EU, this agreement could be open to challenge in the CJEU by EU institutions, a Member State or an individual.³⁵

39. Allowing for the Prime Minister's “red line” on CJEU jurisdiction, David Anderson QC, the Government's former Independent Adviser on Terrorism Legislation, told us that:

I would have thought the genius of our diplomats and lawyers ought to be capable of negotiating something that could be swallowed, even if in practice it is likely to mean a high degree of ECJ influence over the development of our own law.³⁶

40. The Secretary of State told us that the UK may look to agree different models for arbitration or dispute resolution with the EU covering different areas, such as trade and Justice and Home Affairs cooperation. In terms of the model adopted he told us that the CJEU would not be the appropriate body:

If we did a deal with the United States, we would not have the Supreme Court of the United States be the arbitration mechanism. We will have to design the mechanism to be appropriate.³⁷ [...]

31 [The White Paper, CM 9417, para 2.5](#)

32 [The White Paper, CM 9417, para 2.8](#)

33 [The White Paper, CM 9417, para 2.10](#)

34 Q1155

35 Q1155

36 Q1154

37 Q1498

It does not really matter whether it is the ECJ or any other domestic court for a trade partner. We would not look to a system that was effectively subordinate or even the same as their own domestic court. We would look for an independent system, so independence is the key issue.³⁸

41. Ending the jurisdiction of the CJEU over the UK is one of the Prime Minister's "red lines" in negotiations. The European Communities Act 1972, which the Government is planning to repeal, provides that rulings of the CJEU are binding on UK courts. Whilst the UK is likely to move away from the jurisdiction of the CJEU on exiting the EU, the terms of the UK's future relationship with the EU may entail continuing regulatory conformity in certain areas, such as certain product standards or data protection. Where regulatory conformity provides the basis of the continuing relationship, this may necessitate agreeing dispute resolution procedures, in trade and other areas, which require continuing account to be taken by UK courts of CJEU case law, just as in any similar agreement with another country the UK courts would take account of the other country's rulings.

3 A stronger Britain

Objective 3: Strengthening the Union

The Government's objectives and priorities of the devolved administrations

42. The Government has made it clear that while it is the sole responsibility of the UK Government to trigger Article 50, the future deal with the EU will be based on consultation with all of the devolved nations and regions of the UK. It aims to negotiate a deal on the future relationship of the UK with the EU, that “secures the specific interests of Scotland, Wales and Northern Ireland as well as those of all parts of England” and “that works for the whole of the UK”. The Prime Minister stated that she would not trigger Article 50 “until I think that we have a UK approach and objectives for negotiations”.³⁹ It says that it has ensured that, since the referendum, “the devolved administrations are fully engaged in our preparations to leave the EU”.⁴⁰ Each of the three devolved administrations has published a document setting out its priorities for the negotiations, and has endorsed the Government's commitment to ensure that they are fully engaged in developing plans for the UK's future relationship with the EU.⁴¹

43. Prior to the recent elections, the then First and Deputy First Ministers of Northern Ireland noted a number of particular concerns for Northern Ireland in a letter to the Prime Minister, stating that the full involvement and representation of Northern Ireland in negotiations on the terms of the UK's future relationship with the EU will be “a fundamental prerequisite of a meaningful and inclusive negotiation process”.⁴² The White Paper published by the Welsh Government and Plaid Cymru supports the Government's objective of negotiating an outcome that works for the UK as a whole and states that “We are working with the UK Government, Northern Ireland Executive and the Scottish Government with the intention of helping shape a viable and consensual UK negotiating position”.⁴³

44. The Scottish Government has adopted a different position, saying that its priority is for Scotland to maintain its current position in the European Single Market, whether or not the rest of the UK decides to leave. The First Minister has stated that the best way of achieving this would be for Scotland to become a full member of the EU as an independent country. However, the Scottish White Paper also set out two other options for meeting its objective: either through the UK as a whole remaining in the Single Market through membership of the European Economic Area; or through a differentiated deal with the EU which enabled Scotland to maintain its current position in the Single Market. This last option would require the devolution of a significant range of additional powers for Scotland.

39 [The process for exiting the European Union and the Government's negotiating objectives](#), HC 815, para 42

40 [The White Paper, CM 9417, para 3.1](#)

41 The then First and Deputy First Ministers of Northern Ireland wrote to the Prime Minister on [10 August 2016](#), setting out the priorities for Northern Ireland. The Scottish Government published its paper, [Scotland's Place in Europe](#), on 20 December 2016. The First Minister of Wales, Carwyn Jones, and leader of Plaid Cymru, Leanne Wood, published [Securing Wales' Future](#) on 23 January 2017.

42 Letter from the then First and Deputy First Ministers of Northern Ireland to the Prime Minister. [10 August 2017](#)

43 [Securing Wales' Future, Foreword by the First Minister](#)

45. The First Minister announced on 13 March that she wishes to hold a second Scottish independence referendum “within a timeframe to allow an informed choice to be made—when the terms of Brexit are clear but before the UK leaves the European Union or shortly afterwards”,⁴⁴ citing as her reason a failure by the UK Government to respond to or engage with the Scottish Government’s proposals.⁴⁵

46. The Secretary of State, however, said that:

The Scottish Government have already had a detailed response [to its paper] in the meeting. One part of it that is still ongoing is the technical work that we are doing in conjunction with the Scottish Government, over their proposal for single market status for Scotland alone. That is not complete yet. I am not going to give any further commentary on how we are going to respond to that. We have done a great deal of response already.⁴⁶

47. Professor Nicola McEwen told us that the Scottish Government’s White Paper was “a credible proposal that merits examination.”⁴⁷ Sir Ivan Rogers told us that, although he had not gone through the Scottish Government’s proposal in detail, his instinct was that some Member States would:

be extremely worried about the precedent. You can start with Spain, but you would probably also have Belgium and Italy worried about the implications for their jurisdictions and the unity of their jurisdictions if you ever get into differentiation.⁴⁸

48. At this stage, there are clearly key differences in the priorities identified by the devolved administrations and the exit plan set out by the UK Government.

- *Barrier-free trading with the EU:* Wales and Scotland specifically ask for continued UK membership of the European Single Market. The agri-food sector, which is highly interconnected with the Republic of Ireland, is of particular importance to Northern Ireland.
- *Access to labour:* The devolved bodies have raised concerns about the potential impact on business and public sector services particularly dependent on EU migrant labour, and the difficulties in some parts of the devolved nations of recruiting people to fill a range of essential roles.
- *EU funding and other forms of EU support and networking:* Questions have been raised as to how these will be replaced so as to target the particular needs in Scotland, Wales and Northern Ireland, noting the Strand Two (North/South) basis of some of the EU funding for Northern Ireland.
- *The impact of Brexit on the devolution settlements:* It is unclear which EU powers will be repatriated directly to the devolved governments, and there is uncertainty regarding who will have policymaking authority in some areas after the enactment of the planned “Great Repeal Bill”.

44 “Referendum must be ‘made in Scotland’”, Scottish Government [press release](#), 14 March 2017

45 “Scottish referendum: Nicola Sturgeon fires starting gun on referendum”, The Guardian, 13 March 2017

46 Q1458

47 Q816

48 Q1123

49. The Secretary of State said that the Government would do everything it could to ensure that the people of Scotland, Wales and Northern Ireland got a good deal from leaving the EU. There were already some areas of agreement between the UK Government and the devolved administrations, and other areas which were still being debated and where solutions were being sought.⁴⁹

Legislative consent

50. The Supreme Court ruled on 24 January 2017 that the Sewel Convention did not give rise to a legally enforceable obligation and that the devolved legislatures did not have a veto on the UK's decision to withdraw from the EU and on the process of triggering Article 50.⁵⁰ It noted that the UK Parliament did not normally exercise its right to legislate with regard to devolved matters without the agreement of the devolved legislatures, but stated that the policing of the scope and operation of the Sewel Convention was not within the constitutional remit of the courts. However, the Supreme Court did say that the removal of the EU constraints on withdrawal from the EU Treaties will alter the competence of the devolved institutions unless new legislative constraints are introduced. In the absence of such new constraints, withdrawal from the EU will enhance the devolved competence. They also noted that they did not underestimate the importance of constitutional conventions, some of which play a fundamental role in the operation of our constitution and that the Sewel Convention was important for the "harmonious relationship" between the UK and devolved legislatures.⁵¹ It is not yet clear how the Sewel Convention will be engaged during the legal process of UK withdrawal from the UK, and at what stage the UK Government might seek the consent of the devolved administrations.

51. Both the proposed "Great Repeal Bill" and any amendments to the Devolution Acts will almost certainly either legislate in devolved areas or affect the competences of the devolved administrations and therefore engage the Sewel Convention. The "Great Repeal Bill" will remove the requirement for the UK as a whole to comply with EU law after exit, by repealing the European Communities Act 1972. It could also be the vehicle for the necessary removal of the requirement in each of the devolution settlements that devolved competence must be exercised in compatibility with EU law. It will also provide that existing EU law will continue to be given effect in the UK until fuller consideration can be given to the question of whether it should be replaced, amended or retained. Other legislation will also be required, and it is likely that at least some of this too will affect devolved competences.

52. The Institute of Government has claimed there would be a "full-blown constitutional crisis" unless all nations of the UK are involved in negotiations around leaving the EU.⁵² Dr Hannah White, Director of Research, Institute for Government told us that, whilst it was clear that it was for the UK Government to lead the Brexit process,

It would be almost unprecedented, given the history of what we have seen so far, for one of those legislatures to express concern and refuse to pass

49 Q1443

50 R (on the application of Miller and another) v Secretary of State for Exiting the European Union [2017] UKSC 5, [Press Summary](#)

51 R (on the application of Miller and another) v Secretary of State for Exiting the European Union [2017] UKSC 5, paras 130 and 151

52 "[Theresa May warned of risk of constitutional crisis over Brexit deal](#)", The Guardian, 24 October 2016, see also Institute for Government, [IfG in the news](#), 24 October 2016

a legislative consent motion, and for the UK Government to go ahead. It has happened, but the basis of the constitutional settlement we have at the moment is that the UK Government take on the concerns of the legislatures.⁵³

53. The expectation of the devolved administrations is that the UK Government will need to secure legislative consent from them for the “Great Repeal Bill” and other legislation implementing UK withdrawal. Mark Drakeford said that the Welsh Government’s view was that “We certainly believe that we will need legislative consent motions [...] and we are beginning to see signs that we will need to take very substantial amounts of secondary legislation through the National Assembly for Wales, to regularise some of the *acquis*, as it is called, and make it operable.”⁵⁴ The Welsh Government had a very early discussion of the “Great Repeal Bill” and “would wish to be more engaged in some of the detailed preparations of it.”⁵⁵

54. The Scottish Government has made clear that it expects the “Great Repeal Bill” to be subject to a legislative consent motion.⁵⁶ The Secretary of State for Scotland, Rt Hon David Mundell MP, has acknowledged that the Government was likely to seek consent from the Scottish Parliament for the “Great Repeal Bill”:

given the Great Repeal Bill will both impact on the responsibilities of this Parliament and on the responsibilities of Scottish Ministers, it’s fair to anticipate that it would be the subject of a legislative consent process.⁵⁷

The devolution settlements

55. All three devolution settlements currently set out that the devolved competence must be exercised compatibly with EU law. The effect of this is that, for a devolved policy such as agriculture, devolved administrations have the power to legislate and determine policies, but only within the framework provided by EU legislation. The Government will need to remove this requirement, assuming there are no relevant regulatory equivalence clauses in the final deal, from the Devolution Acts when the UK leaves the EU and EU powers are repatriated to the UK. However, for some policy areas there is likely to be a need to create a new UK framework, for example so as to ensure compatibility with wider UK trade policies and to ensure that there are no new barriers to living and doing business within the UK. The policy area discussed most often in evidence was agriculture, but we were told that there would also be questions raised around fisheries, the environment, and potentially also specific parts of some other policy areas.⁵⁸

56. There may also be a need to define the role and responsibilities of other regional bodies. For example, the Mayor of London suggested that London would need powers and resources to enforce environmental protection regulations, and suggested that a new Environment Act would need to be drawn up to replace what the EU currently provided.⁵⁹

53 Q40

54 Q1303

55 Q1303

56 Scottish Government, [Scotland’s Place in Europe](#), December 2016, para 176

57 [“Mundell: Holyrood to be consulted on Great Repeal Bill”](#), BBC News, 26 January 2017

58 Q1244

59 Q1358

57. The UK Government's White Paper raises the possibility that some of the EU powers for devolved policy areas could be returned to the UK Government, rather than to the devolved administrations, so that it has the ability to create a UK policy framework. It explains that:

As the powers to make these rules are repatriated to the UK from the EU, we have an opportunity to determine the level best placed to make new laws and policies on these issues, ensuring power sits closer to the people of the UK than ever before. We have already committed that no decisions currently taken by the devolved administrations will be removed from them and we will use the opportunity of bringing decision making back to the UK to ensure that more decisions are devolved.

[...] our guiding principle will be to ensure that—as we leave the EU—no new barriers to living and doing business within our own Union are created. We will maintain the necessary common standards and frameworks for our own domestic market, empowering the UK as an open, trading nation to strike the best trade deals around the world and protecting our common resources.

On the basis of these principles we will work with the devolved administrations on an approach to returning powers from the EU that works for the whole of the UK and reflects the interests of Scotland, Wales and Northern Ireland.⁶⁰

We note that the devolved settlements are based on the general principle that a subject matter falls within devolved legislative competence unless it is “reserved” to the UK government (“excepted” in the case of Northern Ireland). Matters such as agriculture and fisheries fall within devolved legislative competence.⁶¹

58. Witnesses from Scotland and Wales explained that they had a clear expectation that EU competences in devolved policy areas would be allocated to the devolved administrations. The Scottish Government's White Paper comments that leaving the EU must not result in greater concentration of powers at Westminster. Nicola McEwan, Professor of Politics, Edinburgh University, described the Government's explanation of repatriation of competences as “ambiguous” and “an obvious source of tension as the negotiations get under way”.⁶² Professor Alan Page told us that he was surprised by suggestions that there would be a need to be flexible about which powers went where in respect of agriculture, given that agriculture is a devolved competence, and that “there was general agreement that devolved powers would remain where they are”.⁶³ He suggested that a new intergovernmental decision-making process would be necessary to protect the interests of the devolved administrations, saying that:

[...] whilst there is a lot of emphasis on the powers that will go to Edinburgh, Cardiff and Belfast, the powers that will come to London are infinitely more significant. They are far more important. There is a real

60 [The White Paper, CM 9417, paras 3.4–3.7](#)

61 [Scotland Act 1998](#), section 29; [Northern Ireland Act 1998](#), section 6; and [Government of Wales Act 2006](#) (as amended by the [Wales Act 2017](#)), section 108A

62 Q851

63 Q830

issue therefore of the protection of the position of the devolved nations in relation to decisions taken in London, which will require, at the very least, a much more thoroughgoing system of intergovernmental relations, extending possibly so far as shared decision-making.⁶⁴

59. From the Welsh perspective, Roger Scully, Professor of Political Science, Cardiff University, called the UK Government's approach "a model of vagueness" and said that the wording of the White Paper could include a situation where all EU powers for agriculture were repatriated to the UK Government. This would mean that, whereas at present Wales has an opportunity to feed into the decision-making processes, in future most responsibility would be shifted from a devolved to a UK level.⁶⁵ Mark Drakeford confirmed that the Welsh Government shared this concern:

There are matters that are devolved to the Welsh Government today, as they are devolved to Scotland and Northern Ireland, but which we choose to operationalise through our membership of the European Union. When the European Union is no longer there, those competencies are where they are today: at the devolved level. They are not free-floating or capable of being grabbed by the UK Government. They are here now. They remain here after we leave the European Union, and suggestions to the contrary are very unhelpful.⁶⁶

60. Mr Drakeford agreed with Professor Page's suggestion that the participation of the devolved nations would be a necessary part of developing UK-wide policies, and that this could not be done centrally by the UK Government:

From a Welsh perspective, in agriculture, for example, we recognise freely that, without the European Union being there, we would like to come to the table in a very constructive way to shape UK-wide frameworks, so we can continue to have a UK Single Market as far as agriculture is concerned.⁶⁷

[...] However, there is a really fundamentally important point from our point of view here, which is that that has to be done by agreement. It has to be done by recognising the responsibilities that we have, and which we will want to bring to the table, to create a new set of frameworks across the United Kingdom. It cannot be done at the UK level by saying, "Actually, we are just going to take that from you, and we will tell you what the result will be".⁶⁸

He believed that primary legislation would be required to change the devolution settlement for Scotland or Wales in this way.⁶⁹

61. Another factor to be taken into account when developing a UK framework for agriculture, is the mechanism by which devolved administrations will be able to seek to influence UK trade decisions which will have an impact on their nations. Trade deals will be a reserved matter, but may include aspects that have significant impact on one or

64 Q864

65 Q1243

66 Q1286

67 Q1300

68 Q1301

69 Q1301

more of the devolved nations, even if those aspects are a lower priority for the UK as a whole. Professor Morgan explained the possible problems if the UK Government were to negotiate trade deals with new partners such as Australia, New Zealand and the United States:

I see that as a big problem area, because as we move towards free trade, we will be negotiating across different sectors, and if we want people to open up their markets to our cars, for example, we might well be—erroneously, in my view—agreeing to open up our market to their agricultural produce. That type of increased competition in the short run would be devastating for Welsh farmers.⁷⁰

Resources for the devolved administrations

62. Scotland, Wales and Northern Ireland have all received EU funding to support areas such as agriculture, fisheries and regional development. Scotland has benefitted from both pre-allocated and competitive European funds over the last four decades and has also been successful in accessing competitive funding, including Horizon 2020 research programmes.⁷¹ Wales has had access to considerable funding opportunities from the EU, in particular CAP and structural funds, but also others such as Horizon 2020.⁷² Northern Ireland benefits significantly from EU funding, including regional development and social fund programmes, and funds for the community and voluntary sectors and for peace-building and cross-community programmes. It should be noted that there is a cross-border dimension to some of the EU funding for Northern Ireland and that funding programmes are overseen by the special EU Programmes Body, one of the implementation bodies established under the Good Friday Agreement. The UK Government has given some guarantees to the devolved administrations to fund projects which were signed up to prior to leaving the EU, but it is not clear exactly what funding the UK Government will give in practice and what arrangements will be made in the longer-term.

63. Mark Drakeford pointed out that Wales would have continued being a beneficiary of EU funding well after 2020, and that attention now needed to be given to questions of what would happen beyond the guarantees that the Chancellor has provided so far.⁷³ Brian Morgan, Professor of Entrepreneurship, Cardiff Metropolitan University said that there was “a big worry in Wales that if [EU funds] are replaced through the Barnett formula, that would not be the best way to use the money” because of the risk that funds would not then be used for the highest priority needs. He suggested that the money should be ring-fenced for regional policies and delivered through some form of executive agency.⁷⁴ Professor Page noted that there were questions around how UK agriculture would be funded after the UK had left the EU.⁷⁵

64. Other witnesses commented on the resources and skills that the devolved administrations and legislatures would need to deal with the consequences of leaving the EU. Michael Clancy, Director of Law Reform, Law Society of Scotland said that “We are about to enter an unprecedented epoch of policy development and law reform, and not

70 Q1261

71 [Scotland's Place in Europe, para 92](#)

72 [Securing Wales' Future pp 19–25](#)

73 Q1294

74 Q1256

75 Q830

only the UK Parliament but the Parliament in Edinburgh and the Assemblies in Belfast and Cardiff will have to be adequately skilled for that.”⁷⁶ Professor Scully made similar points in relation to Wales:

I think the Assembly is being put in essentially an impossible position, being given a level of responsibility that it does not have remotely the capacity to properly fulfil. The Welsh Government, if we look at the executive side, I think are also going to be very hard-pressed because, as everyone in this room I think will know, Brexit inevitably will have many, often fundamental, implications for many areas of responsibility.⁷⁷

Consultation with the devolved administrations

65. The Government has established a Joint Ministerial Committee for EU Negotiations (JMC (EN)) for consulting the devolved administrations on their priorities for Brexit. The role of the Committee is “to seek to agree a UK approach to, and objectives for, negotiations, and to consider proposals put forward by the devolved administrations”.⁷⁸ The Committee met for the first time on 9 November 2016, and subsequently on 7 December, 19 January and 8 February. The planned March meeting was postponed because of the Northern Ireland elections. When we asked how the Committee would handle the conflicting aims of the devolved administrations, the Secretary of State told us that the role of the JMC (EN) would be to debate them and make a decision, saying that “we will have to resolve them as best we can in the overall national interest”.⁷⁹

66. Professor Michael Keating, Chair in Scottish Politics, University of Aberdeen, has suggested that consensus and “mutual understanding” will not easily be found in that Committee, saying that:

The Scottish Government has a list of demands, based on Scotland’s vote to remain and on staying within the Single Market. Wales voted No but Welsh Ministers are also concerned about market access and funding implications. Northern Ireland voted to remain and its Ministers are divided but there is consensus on keeping an ‘open border’. Yet it is clear that neither Scotland nor Northern Ireland can be in the Single Market, while the rest of the UK is outside, without creating new internal borders within the United Kingdom. It also seems, from what UK Ministers have been saying, that there is little scope for comprehensive and distinct Brexit packages for the nations and regions, nor for whole economic sectors.⁸⁰

67. The Scottish Government presented its paper, *Scotland’s Place in Europe*, at the January JMC (EN) meeting, and the Committee agreed to undertake bilateral official-level discussions on the proposals in that paper.⁸¹ However, Mike Russell MSP, Minister for UK Negotiations on Scotland’s Place in Europe, told us that the Scottish Government felt frustration that the devolved administrations “do not seem to be treated with either

76 Q868

77 Q1251

78 [The White Paper](#), p.17

79 Q440

80 [“What role for the devolveds in Brexit?”](#) The UK in a changing Europe, 4 November 2016

81 [The White Paper](#), p18

respect or concern".⁸² In terms of the extent to which the JMC (EN) meetings had provided an effective way of involving Scotland in the Government's planning for leaving the EU, Mr Russell told us that he had only learned that the UK planned to leave the European Single Market from listening to the Prime Minister's Lancaster House speech, 48 hours before a JMC (EN) meeting. He said "I regret the way in which it was announced" and added that the JMC (EN) "was due to consider the matter; at least perhaps we could have been told".⁸³ He also told us that the Scottish Government had had no input into the UK Government White Paper, and had only been provided with a copy of it 40 minutes before publication,⁸⁴ and that, as at 8 February 2017, there had been no discussion at JMC (EN) about the content of the Government's proposed Article 50 letter.⁸⁵ Mr Russell confirmed that the Scottish Government has received no formal reply to its position paper which has been with the UK Government since December 2016.⁸⁶ The Committee notes that no formal response has been given as of the date of this Report.

68. From the Welsh perspective, Dr Jo Hunt, Cardiff University, pointed out that statements in the Lancaster House speech about the UK coming out of the customs union and out of the Single Market conflicted with the priorities set out in the Welsh White Paper which was published only a day or two later.⁸⁷ Mark Drakeford said that "the JMC has so far been a frustrating experience, probably for all participants around that table" and that "to date, it has failed to give confidence to devolved administrations that [their] views are making a genuine impact on the thinking of the UK Government".⁸⁸ He confirmed that the Welsh Government had not had advance sight of the UK Government's White Paper or the Prime Minister's earlier 12-point plan before they were formally announced.⁸⁹ However, Mr Drakeford said that there had been "a very genuine discussion" of the ideas in the Welsh White Paper at the February JMC (EN) meeting, and that there was a continuing discussion between the UK and Welsh governments.⁹⁰ In terms of consultation about the content of the Article 50 letter, he said he would not expect it to be discussed at a JMC meeting if "it is a very short, simple, 'triggering of a process' letter", but if the letter "tries to create the parameters within which those negotiations will begin, that is a very different matter".⁹¹

69. Mr Drakeford suggested "four relatively straightforward ways in which the functioning of the JMC (EN) could be improved":⁹²

- Better administrative arrangements were needed.
- The JMC (EN) needed a clear future work programme.
- The UK Government should be more prepared to publish the evidence that lay behind some of the policy positions adopted.

82 Q892

83 Q937

84 Q891

85 Q889

86 Q1458

87 Q1238

88 Q1296

89 Q1284

90 Q1290

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92 Q1297

- In order to understand and try to influence the evolving UK position, the JMC (EN) needed better insight into the policy options that the UK Government were considering (on a confidential basis), and not just to be brought in at the end of the process.⁹³

70. The Government says that it wants the deal between the UK and the EU to work for the whole of the UK, and that it will be developed with the full engagement of the devolved administrations. There are clearly significant differences in the negotiating priorities of the different parts of the UK. If the future deal is to be acceptable to the whole of the UK, then these differences will need to be discussed, negotiated and common ground agreed upon. Differing priorities reflect, in part, differences in the economies and demography of different parts of the UK. The Government must ensure that it understands these differences and takes them into account when it begins its negotiations with the EU.

71. We recommend that the UK Government respond formally to the Welsh, Scottish and Northern Ireland legislatures regarding each of their options papers. It must do so as a matter of urgency given that negotiations to leave the EU will start imminently.⁹⁴

72. The legislation required to implement the UK's exit from the EU will affect the competences of the devolved administrations and it is expected that it will require their legislative consent. We note the Supreme Court's statement that "the Sewel Convention has an important role in facilitating harmonious relationships between the UK and devolved legislatures." The devolved administrations will require adequate time to conduct the appropriate scrutiny and consultation required before consent can be given. It is likely that the devolved administrations will need to pass their own additional legislation, in turn requiring time for proper consideration in the devolved legislatures. The Government will need to take account of the timescales of the devolved legislatures in its planning.

73. The repatriation of EU powers to the UK raises questions about how the framework for devolved policy areas will evolve. The Welsh and Scottish governments are clear that any future UK framework for devolved policies should be a matter for consultation and intergovernmental negotiations. Notwithstanding the Government's commitment that "no decisions currently taken by the devolved administrations will be removed from them", the devolved administrations will be looking to ensure that legislative competences which are currently held by the EU which relate to matters which have been devolved are repatriated as devolved competences.

74. The Government has established a Joint Ministerial Committee for EU Negotiations (JMC (EN)) for consulting the devolved administrations on their priorities for Brexit and it aims to use this forum to agree a UK approach to, and objectives for, negotiations, and to consider proposals put forward by the devolved administrations. The evidence we heard indicated that these meetings have not been effective from the point of view of the devolved administrations. The Government must establish a more effective process for engaging the devolved administrations in developing the UK's negotiating position. If the Government's asserted wish to fully engage the devolved

93 Q1282

94 The Committee also notes the response to the White Paper published by the Mayor of London, "[London's Global and European Future](#)", March 2017

administrations is to be credible, it must share more information and discuss options before decisions are reached. A successful exit from the EU will be measured not just in terms of achieving a good deal with the EU but also whether it “works for the whole of the UK”.

Gibraltar

75. Gibraltar is the only UK Overseas Territory that is also a member of the EU. It joined the then-European Economic Community along with the rest of the United Kingdom, under what is now Article 355(3) TFEU which declares that “The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible”.⁹⁵ However, Gibraltar is exempt from several aspects of the Treaties, including the customs union, the Common Commercial Policy and the Common Agricultural Policy.⁹⁶ Like the rest of the UK, Gibraltar is also exempt from the single currency and the Schengen area. In recognition of Gibraltar's unique position, the Government has established a Joint Ministerial Council (Gibraltar EU Negotiations) as a forum bringing together the UK Government and the Government of Gibraltar to discuss specific issues relating to Gibraltar.

76. In the referendum, 96 per cent of the Gibraltarian electorate voted in favour of remaining in the EU.⁹⁷ The Chief Minister of Gibraltar, the Hon. Fabian Picardo QC MP, told us that:

the people of Gibraltar did not vote on the basis of whether we liked the European Union or whether the European Union was flawless. I think we could all understand many of the issues that were being put in argument by those who were arguing to leave the European Union. Many of the frustrations that people felt with the European Union are equally felt in Gibraltar, as they might be felt in the United Kingdom and elsewhere throughout the EU. The people of Gibraltar were voting because we were very clear that the minute the result came in, if it was to leave, Spain would be putting the issue of Gibraltar's sovereignty on the table.⁹⁸

77. Despite the results of the vote in Gibraltar, the Chief Minister told us that Gibraltar would be unwilling to trade British sovereignty for continuing access to the EU. He said:

The view in Gibraltar held almost unanimously to a man, woman and child is that Brexit does not represent any change whatever in Gibraltar's attitude to continued perpetual British sovereignty over the Rock in partnership with the people of Gibraltar. I have seen it said just this week in the Spanish press that they consider the offer of joint sovereignty to Gibraltar to be a generous offer that would allow us to remain in the European Union through Spain. Well, the people of Gibraltar left the referendum on leaving or remaining in the European Union behind them on the 24 June. We are not looking to remain in the European Union and be partly Spanish.⁹⁹

95 Treaty on the Functioning of the European Union, [Article 355](#)

96 Q721

97 HM Government of Gibraltar ([OBJ0082](#)) Introduction

98 Q705

99 Q705

78. Gibraltar's Government has expressed particular concern about the prospect of Spain raising the issue of sovereignty over Gibraltar as part of the Brexit negotiations. In written evidence to this Committee, the Government of Gibraltar said:

There is a risk that Spain will raise the Gibraltar question in its preliminary internal discussions with the other Member States as they seek to agree a common position for the EU/UK negotiations. Indeed, the previous acting Spanish Foreign Minister has written to all the other EU capitals in order to put across his views on shared sovereignty over Gibraltar, as the price to pay for maintaining a relationship with the EU.

Spain cannot be allowed to use her obsession with Gibraltar as a bargaining chip in the negotiations between the UK and the EU. However, it is important to be aware that this is an unnecessary and opportunistic challenge that the negotiating process may face.¹⁰⁰

79. In addition to the sovereignty question, the Chief Minister raised particular concerns around preserving a relatively free-flowing land border. Since Gibraltar is not in Schengen or the customs union, it already has what its Chief Minister called a "hard frontier" with Spain, with customs and ID checks—but one that allows for between 10,000 and 14,000 workers to cross from Spain to their jobs in Gibraltar, and back, every day.¹⁰¹ According to the Chief Minister, when Spain co-operates, the border functions "in an absolutely fluid fashion that does not interfere with anybody's life and enables people to move across that frontier, and goods to move across that frontier, without more control than is necessary".¹⁰² He told us that those workers, and the industries that employ them:

[...] will have the challenge of wanting to ensure that those of their key workers who live in Spain are able to continue to access their workplaces every day, even if by being British they become non-EU citizens resident within the EU, coming out of the EU every day and then going back every evening.¹⁰³

80. The Chief Minister also said that Gibraltar was keen to retain as much access as possible to the EU's services market. He noted that about 90 per cent of Gibraltarian services are sold into the UK market, with the rest going to the EU27. He told us:

We still consider that access to the single market is hugely important for us. You ask anybody whether they are prepared to lop off 10 per cent of their business and obviously they will say that they don't want to do that, and of course some who are established in Gibraltar selling services into the United Kingdom are also established there to sell services into the rest of the single market. If they lose that, they may look at somewhere else that they may be able to establish themselves to sell their services into the single market.¹⁰⁴

100 HM Government of Gibraltar ([OBJ0082](#)) "Issues with Spain"

101 Qq707-710

102 Q709

103 Q738

104 Q737

81. In general, the Chief Minister was optimistic about Gibraltar's prospects, and the ability and willingness of the UK to find solutions to Gibraltar's particular concerns. He told us:

The Prime Minister has skilfully set out the 12 headings of the areas that the United Kingdom is going to be seeking to negotiate on. As I told you before, I do not think that any of those contradict the key issues for Gibraltar. I sincerely believe that you will be able to discern from what I am telling you that the only potential issue is whether Spain might like to use the opportunity to restrict somehow Gibraltar's access to those parts of the European Union that the United Kingdom might have access to in services in the future under a new deal.

Literally, this is about Spain singling out Gibraltar and seeking to exclude Gibraltar either throughout the process or at the last minute. That is the biggest concern that I have; I have no concerns that anything I have heard the Prime Minister say would have a seriously detrimental effect on Gibraltar's operating model going forward, given that there is good will on the other side of the negotiating table, and I do not identify anything that suggests that anyone is coming at this with any bad faith in respect of Gibraltar, other than the issue that I have highlighted of Spain's attitude.¹⁰⁵

82. The Chief Minister also expressed confidence that Gibraltar's concerns were being heard by the UK Government:

The United Kingdom has been clear that it stands steadfastly with the people of Gibraltar in our right of self-determination and to remain British entirely, if we wish to do so. The Foreign Secretary was, as usual, very clear in the way that he expressed the need for Britain to be seen to be in marmoreal support of the people of Gibraltar. He left no room for doubt about what the British Government's position is going to be.¹⁰⁶

Later, he added that he had faith in the Prime Minister's willingness and ability to defend Gibraltar's interests:

As long as the United Kingdom has the stomach to take Spain on and to play the aces that it has up its sleeve in the context of that negotiation, there will be no issue. Having worked with Theresa May when she was in the Home Office, and having seen her on the day that she became Prime Minister, when she gave Gibraltar an hour of her time, I can tell you that I have absolutely no concerns whatever about her having the stomach for this fight. She will stand by the people of Gibraltar.¹⁰⁷

83. We welcome the UK Government's recognition of Gibraltar's specific concerns, expressed in the White Paper and through the establishment of the Joint Ministerial Council (Gibraltar EU Negotiations). We were encouraged by the Chief Minister's confidence that Gibraltar's views were being heard and that the UK Government would find solutions to the challenges that leaving the EU presents for Gibraltar. This will

105 Q739

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be very important to avoid any damaging consequences for Gibraltar. We encourage the UK Government to maintain a high level of dialogue and engagement with the Government of Gibraltar throughout the Article 50 negotiation process.

Objective 4: Protecting our strong historic ties with Ireland and maintaining the Common Travel Area

84. The Government's White Paper includes the objective of maintaining the UK's strong links with Ireland and comments that the relationship between the two countries has never been better or more settled. The Prime Minister visited Dublin in January 2017 and both the Chancellor and the Secretary of State for Northern Ireland have visited Dublin in 2017. The Secretary of State for Exiting the EU told us that there had been many other meetings between Irish and UK Ministers and senior officials since the referendum.¹⁰⁸

Economic ties

85. The Government notes that the UK and Irish economies are deeply integrated, through trade and cross-border investments, as well as the free flow of goods, utilities, services and people. It estimates that annual trade between the UK and Ireland stands at over £43 billion, while around 60 per cent of Northern Ireland's goods exports to the EU are to Ireland. Ireland experienced rapid economic growth from the early 1990s, but went through a severe recession from late 2007. After receiving EU and IMF funding, the Irish economy is now recovering and is currently Europe's fastest growing economy. Ireland remains the UK's fourth largest export market in the EU and fifth largest in the world (after the US, Germany, Netherlands and France).¹⁰⁹

86. We discussed these strong economic ties with Irish politicians whom we met on our visit to Dublin on 23 February 2017. During that visit we had informal meetings with members of the Oireachtas Committees for Foreign Affairs, European Affairs and Implementation of the Good Friday Agreement; with Frances Fitzgerald TD, Tánaiste and Minister for Justice, Dara Murphy, Minister for Europe and Data Protection; Michael Creed, Minister for Agriculture as well as business representatives.

87. We were told on our visit of the profound regret in Ireland that Brexit was going to happen but a determination that strong business and trade links should continue and that the UK should retain a close relationship with the EU. However, we were told of concern that the Government's plan for the UK to leave the Single Market and the customs union would hit trade and jobs in Ireland, and that Brexit represented Ireland's biggest economic challenge for many years.

88. A particular area of concern in Ireland was the likely return of customs checks at the border with Northern Ireland, and their implications for the movement of goods throughout the island of Ireland once the UK has left the customs union. Much of Ireland's business, particularly its agri-food sector, was closely integrated between north and south, and operated on the basis of seamless cross border movement; several business and political leaders told us that over a million litres of milk crossed the border in both directions each day. There was a fear that any customs requirements would introduce costs and delays and disrupt this business.

108 Qq1439–1440

109 Foreign and Commonwealth Office Country Snapshot: Ireland, 22 February 2017

89. The UK Government's aspiration for a "seamless and frictionless" border was welcomed, but neither politicians nor business leaders that we met were optimistic about this being achieved in practice. Ireland will have obligations as an EU Member State to protect the EU border with a third country, and the people that we met were sceptical that a solution would be found that would not resemble the re-emergence of a hard border but would be acceptable to the EU27 as the Northern Ireland border became one of the EU's external borders.

90. Another concern for Ireland is the potential change to its trading relationship with the UK. Firstly, in the event of no UK–EU deal, the UK would revert to trading on WTO terms, which would include the imposition of tariffs. Whilst the average EU tariff under WTO terms is only 3.5 per cent, the tariffs on dairy and agricultural produce are substantially higher. The Secretary of State confirmed in evidence to us that producers of dairy and meat produce on either side of the border would be facing tariffs of 30 per cent to 40 per cent in cross-border trade.¹¹⁰ We were told that failure to reach a deal on tariffs with the EU would be "mutually assured damage and destruction".¹¹¹ Concerns about the potential for disruption of trade between the Republic of Ireland and the UK were raised during our visit to Swansea. There could also be implications for trade in goods exported from the Republic of Ireland to the rest of the EU that transit the UK.

91. Secondly, much of the ambition behind the decision of the UK to leave the EU was to secure new trade deals with other countries, and there was a concern expressed to us in Dublin that new trading partners could take the place of Ireland in some of the UK's existing import markets. For example, Irish beef products could lose out to cheaper products, subject to fewer environmental and health controls, for example from the USA or South America. A big decrease in Irish beef exports to the UK, and similar instability in other sectors, could have a serious and negative impact on the Irish economy, which Irish politicians believed they would have little scope to offset.

92. We were also told that the future of the energy market in Northern Ireland and the Republic would need careful monitoring, and that longer term planning would be necessary to ensure that any UK divergence from EU policy, or any threats to long term investment, did not put future energy supply at risk. Security of energy supply was one of the five Brexit priorities for Northern Ireland, identified by the then First Minister and Deputy First Minister of Northern Ireland in their letter to the Prime Minister. In that letter, the Ministers pointed out that energy supply is vital to the economy, but Northern Ireland is a small, isolated market, and so has inherent cost and supply challenges. In its report on Northern Ireland and the EU referendum, the Northern Ireland Affairs Committee judged that whilst Brexit need not necessarily have an immediate detrimental impact on the existing Northern Ireland electricity sector, problems could arise in the longer term if the UK did not continue to participate in electricity market integration.¹¹²

93. The House of Lords EU Committee also examined this issue in its report *Brexit: UK–Irish relations*. John Bruton, former Taoiseach, in evidence to the Committee, pointed out that the Republic of Ireland was a net importer of electricity from the UK. If the UK

110 Q1373

111 See Annex 6

112 Northern Ireland Affairs Committee, First Report of Session of 2016–17, [Northern Ireland and the EU Referendum](#), HC 48, para 98

were to leave the European internal energy market then Ireland's energy security could be put at risk, potentially forcing Ireland to invest in a direct connection to the EU grid, at substantial cost.

Movement of people

94. One of the Government's key objectives on leaving the EU is to exercise greater control over the number of EU migrants coming to work and settle in the UK. However, the UK has a particularly close relationship with Ireland, and there are specific factors relating to the movement of people across the border between Ireland and the UK. The Government notes that "for the people of Northern Ireland and Ireland, the ability to move freely across the border is an essential part of daily life".¹¹³

95. The Common Travel Area (CTA) is a special travel zone for the movement of people between the UK, Ireland, the Isle of Man and the Channel Islands. The Government notes that it was formed long before the UK and Ireland were members of the EU and that it is committed to protecting this arrangement:

Protocol 22 of the EU Treaties provides that the UK and Ireland may continue to make arrangements between themselves relating to the movement of people within the CTA. Nationals of CTA members can travel freely within the CTA to the UK without being subject to routine passport controls.

[...] We want to protect the ability to move freely between the UK and Ireland, north-south and east-west, recognising the special importance of this to people in their daily lives. We will work with the Northern Ireland Executive, the Irish Government and the Crown Dependencies to deliver a practical solution that allows for the maintenance of the CTA, while protecting the integrity of the UK's immigration system.¹¹⁴

96. In addition, UK and Irish citizens have reciprocal rights to live and work in each other's countries which are underpinned by domestic law. In addition, under the Good Friday Agreement, the people of Northern Ireland have the right to identify as British, Irish or both, and to claim citizenship accordingly. Those who claim Irish citizenship would, by extension, be able to claim EU citizenship.

97. David Anderson QC has suggested that, whilst the CTA has been in existence for some time, it has depended for its survival on significant policy coordination and practical cooperation between the UK and Ireland where non-UK and Irish nationals are concerned. He contends that, where EU nationals are concerned, the free movement rules in the Treaty have rendered such coordination largely automatic, but this will change after Brexit if the UK wishes to impose barriers to the entry of non-Irish EU citizens. He argues that the options of introducing immigration checks at either the border between the Republic of Ireland and Northern Ireland or between Northern Ireland and Great Britain are unlikely to be acceptable, in which case it would be necessary to resort to in-country immigration checks, possibly involving the cooperation of employers, landlords, medical and educational professionals.¹¹⁵

113 [The White Paper](#), para 4.4

114 [The White Paper](#), p22

115 ["Brexit and the Border"](#), Brexit Law Blog, 9 January 2017

98. The Irish politicians that we met in Dublin, told us that the current freedom of movement arrangements between Ireland and the UK were particularly important for those people living and working close to the border, and to businesses which operated on both sides of the border. They said that about 50,000 people crossed the border every day and that freedom of movement had been a key factor in promoting social, cultural and economic equality throughout the island of Ireland.

99. There was a clear desire to maintain cooperation on cross-border movement and policing and security issues but data protection restrictions on data sharing would require resolution once the UK was no longer subject to the relevant EU agreements. Transitional arrangements would also be likely to be required as we were unequivocally told that bespoke arrangements could not be put in place within the two-year Article 50 timescale.

100. The Secretary of State said that as far as he was concerned, maintaining the CTA was “non-negotiable”: it was the Government’s intention to maintain the CTA and he did not foresee this being a problem.¹¹⁶

The peace process

101. The Government’s White Paper does not specifically mention the peace process, other than to say that “no one wants to see a return to the borders of the past”, that “for the people of Northern Ireland and Ireland, the ability to move freely across the border is an essential part of daily life” and that the Government’s work on EU exit will “ensure that full account is taken of the particular circumstances of Northern Ireland”.

102. The UK and Irish Governments are co-guarantors of the Good Friday Agreement which refers to them both as “partners in the European Union”. During the process of resolving the conflict in Northern Ireland, both the Republic of Ireland and the UK were members of the EU, and the status of the two countries’ shared common membership of the EU is reflected throughout the Good Friday Agreement.

103. The issue of whether the Good Friday Agreement could be a legal obstacle to Northern Ireland’s exit from the EU was considered by the Supreme Court which ruled in January 2017 that: (a) withdrawal from the EU was a matter for the United Kingdom Government; (b) that the Northern Ireland Assembly (like the other devolved legislatures) did not have a parallel legislative competence in relation to the withdrawal from the European Union; and (c) that the Belfast Agreement gave the people of Northern Ireland the right to determine whether to remain part of the United Kingdom or to become part of a united Ireland. The Supreme Court held that the Agreement neither regulated any other change in the constitutional status of Northern Ireland nor required the consent of the majority of the people of Northern Ireland to the withdrawal of the UK from the EU. The latter point has raised the question as to whether any future exercise of the consent provisions of the Agreement in respect of a united Ireland would clearly and automatically guarantee its return to the EU in that context. We note the Taoiseach’s statement in Brussels on 23 February 2017 regarding the Irish Government’s concern to see this matter reflected in any new UK–EU agreement. The Secretary of State has said:

As is clearly set out in the Belfast Agreement, if a majority of the people of Northern Ireland were ever to vote to become part of a united Ireland,

the UK Government will honour its commitment in the Belfast Agreement to enable that to happen. In that event, Northern Ireland would be in a position of becoming part of an existing EU Member State, rather than seeking to join the EU as a new independent state.¹¹⁷

104. We were told in Dublin that since the peace agreement, life had improved in both the north and the south, but creating any new barriers at the border would represent a backward step, and could act as a “lightning rod” for dissidents and renewed violence. In the view of some we met, any border posts or physical control points could become a target, and the potential for the re-emergence of violence should not be underestimated. At present, the North–South policing arrangements were working very well; there was very successful cooperation and good relations and data sharing in an international European context, and Ireland was committed to continuing them but details would need time to work out.

105. There was a perception in Dublin that the UK Government was saying that it understood the importance of a “seamless and frictionless border” but was, meanwhile, setting out a strategy for leaving the EU which would inevitably require a border presence.

106. The Oireachtas EU Committee has met Michel Barnier and other EU representatives, and members told us that Mr Barnier “largely understood” Ireland’s concerns about the peace process. The Secretary of State for Exiting the EU also told us that Michel Barnier has “a strong emotional investment in the Northern Irish peace process”.¹¹⁸ He also reiterated the Government’s commitment to the Good Friday/Belfast Agreement and the Common Travel Area. We note that when offered the suggestion that the UK Government might indicate early in the Article 50 discussions that both the Belfast Agreement and the Common Travel Area should be named features in the “framework for future relationship” between the EU and the UK, he described this as “a good idea”.¹¹⁹ We encourage him to give further positive consideration to this suggestion.

107. Members of the Oireachtas EU Committee told us that, notwithstanding Michel Barnier’s personal sensitivity to the Northern Ireland peace process and the Belfast Agreement, a bilateral agreement between the UK and Ireland was unlikely to be acceptable to the EU Commission. We understand the sensitivities about any perception of the Irish Government negotiating separately from the EU27 in this whole process. However it would still be important to work together to identify options, given the facts of the Belfast Agreement, the Common Travel Area and the detailed issues at stake. The British–Irish Intergovernmental Conference might be considered as an established means of enabling appropriate and relevant dialogue, respecting the shared interests and responsibilities of both governments while also fully respecting the character of negotiations between the UK and the EU27.

108. The Secretary of State for Exiting the EU told us that “there is a border there now and there are excise duty differences across the border, which are collected and which are dealt with, but they are dealt with in a subtle and not highly visible way”.¹²⁰ He explained that the Government would not do anything which might jeopardise the peace process and was well aware of the significance of the border. The Government is looking in detail at how it

117 Letter from the Secretary of State to Mark Durkan MP, 20 March 2017

118 Q1433

119 Q1471

120 Q1433

could use trusted trader electronic systems and other technology to make any additional checks as swift and transparent as possible. For example, one option it was looking at was extending the authorised economic operators scheme to smaller companies, so that fewer border crossings would be subject to a physical inspection.¹²¹ The Secretary of State was confident that Ireland, the UK and the EU would resolve these issues because each had a strong commitment to do so and understood the importance of what was at stake.¹²²

109. The UK and Irish economies are deeply integrated and mutually important. Disruption to the Irish economy would not only be damaging for Ireland itself, but would have consequential effects on the economy in Northern Ireland and the rest of the UK. Were the UK to exit the EU without a deal on tariff-free trade, the impact on the agri-food industry on both sides of the border in Ireland would be extremely serious and damaging.

110. The UK has deep and close historical, economic and cultural ties with the Republic of Ireland. The Government has a responsibility to consider how its future relationship with the EU will affect both Northern Ireland and the Republic. Politicians and businesses we met in Dublin were concerned about the UK's future trading relationship with Ireland and the impact on trade of the re-introduction of customs checks on cross-border trade. Maintaining freedom of movement throughout the island of Ireland and the wider UK is also extremely important, both for many businesses and for many UK and Irish citizens. The border between Northern Ireland and the Republic will become one of the EU's external borders when the UK leaves the EU. Ensuring that this change does not disrupt flows of trade and people will be a complex challenge.

111. Cross-border cooperation in combating crime is highly valued by both the UK and Irish Governments. With goodwill on both sides, it should be possible to work out a way of ensuring that this cooperation can continue. However, the Irish Government does not see this as a straightforward task and some arrangement would need to be reached to ensure that cooperation can continue the day after the UK leaves the EU even if no permanent deal had yet been reached.

112. It is important to ensure that in implementing Brexit everything is done to maintain and build upon the considerable progress made as a result of the peace process. The Good Friday Agreement was not just a single event but was a critical step in the normalisation of social and economic relations over a period of time. Many in Ireland are deeply concerned that the introduction of new and visible border check points would provide an opportunity and focal point for those who wish to disrupt the peace and feed a sense in some communities that the Good Friday Agreement was being undermined. Irish politicians welcome the Government's aspiration of maintaining a seamless border, but, at present, do not understand how this can be achieved in practice, given the obligations which Ireland will have as an EU Member State bordering a third country. With the goodwill that currently exists on both sides of the border, we hope that a mutually acceptable solution can be found. This must be at the top of the list of the Government's negotiating objectives.

121 Q1383

122 Q1433

4 A fairer Britain

Objective 5: Controlling immigration

113. The Prime Minister noted the importance of immigration in her Lancaster House speech:

the message from the public before and during the referendum campaign was clear: Brexit must mean control of the number of people who come to Britain from Europe. And that is what we will deliver.¹²³

114. The White Paper pointed out that the last decade had seen record levels of long term net migration into the UK, creating some public concern about the impact on public services and on wages. It added:

The public must have confidence in our ability to control immigration. It is simply not possible to control immigration overall when there is unlimited free movement of people to the UK from the EU. [...] We will design our immigration system to ensure that we are able to control the numbers of people who come here from the EU. In future, therefore, the Free Movement Directive will no longer apply and the migration of EU nationals will be subject to UK law.¹²⁴

115. The Government has indicated that a separate Immigration Bill will be brought forward setting out the framework for the system to be adopted after the UK leaves the EU.

Future immigration system and work permits

116. On our visits around the country, we have heard numerous requests from businesses for flexibility in a future immigration system to ensure that sectors currently reliant on EU workers do not face a sudden shortage of labour. We also heard evidence from the devolved governments that parts of the UK are dependent on immigration in order for their economies to grow.¹²⁵ The impact of EU workers in the UK labour market has been profound, with significant employment of EU nationals in sectors as varied as seafood processing in Aberdeen, strawberry picking in Staffordshire, vets in Scottish abattoirs, digital skills in London, social care in Wales or daffodil pickers in Cornwall.¹²⁶ Many of the business people we spoke to called for a relatively simple system, avoiding the complexity currently experienced in securing visas for non-EEA workers, highlighting the need for the UK to still be able to attract talent. There was support for a 'lighter touch' immigration system for EU workers than for those from outside the EU. The Government would have to work out how it wished to introduce control of who came in and out.¹²⁷

123 [The Lancaster House Speech](#)

124 [The White Paper, paras 5.3–5.4](#)

125 Q943 [Mike Russell MSP]

126 Q563, Qq994–996, Q1266, Q1326. Several Committees have launched inquiries into aspects of the economy and EU migrants, eg. House of Lords EU Committee, Brexit: UK–EU movement of people, HL paper 121

127 Q789, Qq799–801

117. One option would be for the UK to develop a system of work permits for EU migrants, requiring employers to apply for authorisation to hire a non-UK national for a specific job. Authorisation would come with conditions attached, with the bulk of the burden of administration and enforcement falling on the employer. Most work permit systems in high-income countries typically restrict eligibility by factors such as occupation, skill level, or income. Low-skilled worker programmes are also common, although they tend to be more restrictive (often limited to specific types of work) and provide limited routes to permanent settlement or family unification. The UK used to operate a seasonal worker scheme for agricultural workers.

118. We commented in our previous Report on *The Government's negotiating objectives: the rights of UK and EU citizens* that a balance needed to be struck between increasing control over EU migration and the complexity that might entail for the Home Office and employers.¹²⁸

119. Since publishing that Report, we took evidence from Sadiq Khan, Mayor of London, and asked him about London's priorities in a new immigration system. He told us that, while immigration may have been a concern in many parts of England during the referendum, London had different concerns. He said "Not only do we need talented people and immigration, but London voted that we want it as well." The construction sector alone employed 300,000 in London, 50 per cent of whom were born outside the UK.¹²⁹ Reducing net migration to the tens of thousands would impact on the ability of the construction sector to meet its workforce needs in London alone, never mind the workforce needs of the technology, cultural, financial sectors, or social care and the NHS. He acknowledged that more should be done to skill up young people to fill these jobs but argued that the ability of London to continue to attract talent was important for both London and the UK economy.¹³⁰

120. Sadiq Khan told us he wanted to work with Government, both the Secretary of State and the Home Secretary, to ensure that the UK's future immigration system was flexible enough to meet the needs of London.¹³¹ He did not want to "carve out a special deal for London" but called for a "flexible immigration system that recognises different parts of the country have different needs."¹³²

121. We took evidence from the Secretary of State on 15 March 2017. He agreed that the new system had to be able to meet the requirements of different parts of the country, and that "Whatever we do has to be flexible enough to meet these requirements".¹³³ He told us that:

The issue on migration will be one of the principle of free movement versus control, rather than numbers.¹³⁴

128 [Second Report, The Government's negotiating objectives: the rights of UK and EU citizens, HC1071, para 133](#)

129 Q1326

130 Q1326

131 Q1363

132 Q1326

133 Q1418

134 Q1430

He also recognised the need to balance the economic arguments around migration with the social impact of migration, “housing and all the other things that go with it”. He acknowledged the need to ensure that any system reflected the needs of the economy:

I have said in terms, and again I was criticised for it, that this applies not just to scientists, bankers and so on; it also applies to seasonal workers in agriculture and so on. The aim of the Government, as the Prime Minister has made plain, and she is an exHome Secretary, is to bring down the net migration numbers, but it will not be done in a way that damages the economy.¹³⁵

122. We agree with the Secretary of State that immigration from the EU has made an important contribution to many sectors of the economy in different parts of the country and that, while reducing net migration remains an objective of the Government, this should not be done in a way that damages the economy. The Government's objective is to secure control of EU migration and this may not entail reducing numbers. Future policy will be an important element in the forthcoming negotiations, given the linkage frequently made between 'free movement' and access to the Single Market. We look forward to scrutinising the proposals once the Immigration Bill has been published.

123. We urge the Department for Exiting the EU to continue to make the argument in Government that the future system for EU migration needs to be flexible enough to meet the needs of the economy across the UK. This includes a broad range of different sectors, both high and low skilled, including scientists, bankers, vets, care workers, health service professionals and seasonal agriculture workers. That flexibility should include considering whether immigration should be managed on a geographic basis. We also note with concern the tendency of some employers to rely on importing skilled labour from abroad rather than training up UK employees.

Objective 6: Securing rights for EU nationals in the UK and UK nationals in the EU

124. The Government has said that it wants to secure an early agreement which guarantees reciprocal rights for both EU nationals in the UK and UK nationals who are resident across the EU. In our report on *The Government's negotiating objectives: the rights of UK and EU nationals*, we called on the Government to:

make a unilateral decision to safeguard the rights of EU nationals living in the UK.¹³⁶

125. We noted in our Second Report that:

Managing the permanent residence application process represents a considerable challenge for the Home Office, one that may affect its day to day work. It needs to be transparent about the necessary financial and human resources required and what it is doing to put them in place. The Government needs to be preparing now.¹³⁷

135 Q1430

136 [Second Report](#), 2016–17, HC 1071, para 45

137 [Second Report](#), 2016–17, HC 1071, para 79

We note that the Home Office is advertising for an additional 240 staff to “work on all types of casework, including European”.¹³⁸

126. Sadiq Khan told us that uncertainty over the rights of one million Londoners who are EU citizens is feeding into uncertainty in business recruitment.¹³⁹ He referred to work by the Chartered Institute of Personnel Development that reported that there are some people leaving the UK to go back to EU countries of origin.¹⁴⁰ He called for the Prime Minister to offer a guarantee to all EU citizens on the date she triggered Article 50.

127. The Secretary of State told us that:

In all except one of the meetings I have had since the White Paper with foreign ministers, it has spontaneously come up as the first issue. In that one, it was the second issue so, in all of them, it has come up in the first two issues.¹⁴¹

128. He added that:

What I will try to do, and I think I will succeed, is get an exchange of letters that makes absolutely plain what we think the outcomes will be and should be and we are determined to make, so we get both sides of the negotiation to agree that. That is what I will aim for.¹⁴²

129. There have been media reports subsequently that representatives of both the EU nationals in the UK and UK nationals across the EU, including groups that gave evidence to this Committee, will be meeting Michel Barnier, and separately meeting the Secretary of State.¹⁴³

130. The status of EU nationals in the UK and UK nationals living elsewhere in the EU cannot be left unresolved until the end of the two-year period for negotiations. We reiterate the conclusion of our earlier Report that it would be unconscionable for the more than four million people in these groups to find themselves living in a state of uncertainty about their futures until negotiations are complete, and, therefore, that the Government “should now make a unilateral decision to safeguard the rights of EU nationals living in the UK”. We note that, to date, Ministers have not taken this step. The debate around whether “no deal is better than a bad deal” has focussed on the trade aspects of the future relationship. If the negotiations were to end prematurely without an agreement on the rights for the four million, this could put them in an uncertain position.

131. We recommend that an agreement between the UK and EU27 is reached as a matter of priority once negotiations formally start. That agreement should be concluded as a stand-alone and separate deal which is otherwise not dependent on any other exit or future trade deal being agreed to between the parties.

138 [“Influx of EU residency applications spurs Home Office hiring spree”](#), Financial Times, 23 March 2017

139 Q1328

140 Q1326. The Education Committee inquiry into [The impact of exiting the European Union on higher education](#) heard similar concerns that EU academics are planning to leave Higher Education in the UK.

141 Q1431

142 Q1431

143 [“EU Brexit negotiator to meet campaigners on citizens’ rights”](#), The Guardian, 17 March 2017

132. We welcome the intention of both the Secretary of State and Michel Barnier, the European Commission's Chief Negotiator for Brexit, to meet representatives from the EU nationals in the UK and the UK nationals who are resident across Europe in advance of the negotiations. This is an important development and we hope it is a positive step towards an early resolution of the uncertainty and anxiety of the four million across Europe.

Objective 7: Protecting workers' rights

133. The White Paper makes a strong commitment to the maintenance, and enhancement, of workers' rights:

The Great Repeal Bill will maintain the protections and standards that benefit workers. Moreover, this Government has committed not only to safeguard the rights of workers set out in European legislation, but to enhance them.¹⁴⁴

134. The White Paper identifies specific rights, such as annual leave, maternity leave, parental leave and the minimum wage, but does not define "workers' rights" more generally. The previous Government's Review of the Balance of Competences between the UK and the EU identified the main areas of regulation that impact on the workplace as: equal treatment; regulation of the employment relationship; social protection; and health and safety at work. A range of other rights and pieces of legislation could be identified as falling under EU Employment Law and therefore pertaining to workers' rights, including: agency workers legislation; data protection; anti-discrimination; fixed-term workers; health and safety; insolvency; information and consultation; maternity and parental rights; part-time workers; posted workers; written statement of terms and conditions; TUPE (Transfer of Undertakings (Protection of Employment)); working time; and protection of young people at work.¹⁴⁵

135. Frances O'Grady, General Secretary of the TUC, responding to the publication of the White Paper, expressed concern that:

While it's good to see the Government maintain its commitment to protecting existing workers' rights, people need to know the government won't seek to compete in a race to the bottom that allows their rights to fall behind workers in the rest of Europe.¹⁴⁶

She told us before Christmas that "we don't want Britain to become the bargain basement capital of Europe".¹⁴⁷

136. The Secretary of State offered reassurance that:

As for employment rights, a large component of the people who voted to leave the European Union could be characterised as the British industrial working class. It is no part of my brief to undermine their rights—full stop.¹⁴⁸

144 [The White Paper](#), para 7.2

145 "Brexit: employment law", Briefing Paper [CBP 7732](#), House of Commons Library, 10 November 2016

146 "[Brexit white paper leaves questions unanswered on protection of jobs and workers' rights, says TUC](#)", TUC, 2 February 2017

147 Q240

148 HC Deb, 5 September 2016, [col 50](#)

137. However, there are a number of areas in which “workers’ rights” in the EU are currently under further development, including in proposals to revise the Posting of Workers Directive to address unfair practices and in a review of EU health and safety legislation. Rt Hon David Jones MP, Minister of State at the Department for Exiting the European Union, acknowledged that future divergence between UK and EU legislation would be an “important consideration” in the Brexit process.¹⁴⁹

138. Notwithstanding the Government’s commitment to maintain protections for workers after the UK leaves the EU, it is likely that levels of protection for workers will diverge in future. Although regulations will be aligned on the day that the UK leaves the EU, thereafter, regulatory power will return to the UK. We note the General Secretary of the TUC’s concern that the UK should not become the “bargain basement” of Europe in this respect and therefore welcome the Secretary of State’s commitment that the Government has no intention of looking to undermine workers’ rights.

5 A truly global Britain

Objective 8: Ensuring free trade with European markets

Leaving the Single Market

139. The Government states it is seeking “the freest and most frictionless trade possible in goods and services between the UK and the EU”. The White Paper states that this will not be through membership of the Single Market, but through “a new strategic partnership with the EU, including an ambitious and comprehensive Free Trade Agreement and a new customs agreement.”¹⁵⁰ The White Paper adds that:

we do not seek to adopt a model already enjoyed by other countries. The UK already has zero tariffs on goods and a common regulatory framework within the EU Single Market. This position is unprecedented in previous trade negotiations.¹⁵¹

140. The Single Market has been described as the closest thing to a pure free trade agreement.¹⁵² However, the Single Market is underpinned by the “four freedoms” that EU members must abide by—the freedom of movement for goods; services; capital; and people. As a member of the Single Market the UK is part of a free trade area that:

- eliminates tariffs (i.e. border taxes/duties) between its members;
- provides for a customs union; and
- reduces non-tariff barriers through harmonisation of national rules.

141. Other key obligations are:

- financial contributions;
- adherence to EU laws and regulations, including rulings of the CJEU; and
- adherence to EU sectoral policies such as the Common Agricultural Policy and Common Fisheries Policy.

142. Although the EU Single Market is not a legal term, the customs union and single market are constituent parts of the “internal market”, which is defined in Article 26 TFEU as “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties”. Sir Ivan Rogers told us:

Essentially, what is a single market or an internal market? It is a group of nations that agree to be bound by a single regulatory rulebook or code, which requires all its members to adhere to all four freedoms as defined

150 [The White Paper](#) p35

151 [The White Paper](#) para 8.2

152 Oral evidence taken before the International Trade Committee on 17 January 2017, HC (2016–17) 817-iv, [Q299](#) [Peter Hardwick]

in the treaties. None of these freedoms are full freedoms; all of them are qualified by all manner of qualifications in secondary legislation, and even inside the treaties.

For others, correctly—and I think the Prime Minister is correctly concluding that herself—single market membership means acceptance of supranational law and the role of the Commission. It means acceptance of supranational jurisdiction and the role of the ECJ. It means the Commission's right of initiative and its right to infract Member States when they think they are out of line and not implementing the single market *acquis* properly.¹⁵³

143. Any non-EEA country can gain access (as opposed to membership) to the EU Single Market (i.e. trade with EU countries), but the terms of that access vary greatly depending on the extent of access negotiated:

- By means of a series of bilateral Free Trade Agreements (FTAs) with the EU, Switzerland has access to the Single Market in all non-agricultural goods and some services on terms similar to those enjoyed by EU members (and is sometimes referred to as being a “member” of the Single Market). There are corresponding obligations to: abide by the four freedoms; make a relatively small financial contribution to the EU; and adapt domestic legislation to reflect some EU regulations. Switzerland is not part of the EU customs union, or bound by EU sectoral policies, or represented in EU institutions.
- Turkey's customs union with the EU allows it to trade tariff-free with the Single Market in manufactured goods and processed agricultural goods only. There is a corresponding obligation to impose a common external tariff on all manufactured goods and processed agricultural goods entering Turkey from outside the EU. Turkey is, however, not an automatic beneficiary of the trade advantages that EU members enjoy in respect of countries with which the EU has FTAs, while those countries do gain access to Turkey's markets. In addition, EU product regulations must be applied. Turkey's ability to adopt an independent trade policy towards third countries is limited by the terms of the customs union. There are no corresponding obligations on Turkey in respect of the four freedoms; financial contributions to the EU; EU laws; and EU sectoral policies. Turkey is not represented in EU institutions. A small number of European microstates are also in customs unions with the EU.
- The EU has FTAs with over 50 countries.¹⁵⁴ These agreements give varying types and degrees of access to the Single Market—but almost entirely in relation to goods rather than services. None of these (except those involving EEA and Switzerland) require acceptance of the free movement of people, making a formal budget contribution, or the jurisdiction of the CJEU.
- The rest of the world trades with the EU on the basis of WTO rules, meaning that their exports to the EU are subject to the EU's tariffs under WTO rules, as well as other trade barriers. Likewise, EU exports to those countries are subject to the tariffs that they operate under WTO rules and other barriers to trade.

153 Q1064

154 *List of EU trade agreements*, Briefing Paper [7792](#), House of Commons Library, 21 November 2016

The Government's red lines

144. The Government has been clear that it is not seeking to adopt an existing model.¹⁵⁵ It has also chosen to set out certain “red lines” which the Prime Minister told the Conservative Party Conference in October 2016 were what “the people told us” they wanted with the referendum result: “Our laws made not in Brussels but in Westminster. Our judges sitting not in Luxembourg but in courts across the land. The authority of EU law in this country ended forever.” She wanted “free trade, in goods and services”, giving “British companies the maximum freedom to trade with and operate within the Single Market—and let European businesses do the same here”. While ensuring that the UK becomes “a sovereign and independent country”, she added that “we are not leaving the European Union only to give up control of immigration all over again. And we are not leaving only to return to the jurisdiction of the European Court of Justice.”¹⁵⁶

145. Subsequently, the Prime Minister also confirmed that “the days of Britain making vast contributions to the European Union every year will end.”¹⁵⁷ In light of these conditions, the Prime Minister also stated at Lancaster House that what the Government is proposing “cannot mean membership of the Single Market”.¹⁵⁸

146. The Secretary of State has indicated that the Government is seeking access to the Single Market which will “deliver the exact same benefits as we have,”¹⁵⁹ at the same time as adhering to its “red lines”. When asked about the feasibility of such an outcome, the Secretary of State told us that he had been “expressing an ambition.”¹⁶⁰ However, the White Paper contends that this will be done through a “new comprehensive, bold and ambitious free trade agreement” which may “take in elements of current Single Market arrangements in certain areas as it makes no sense to start again from scratch”.¹⁶¹

147. Sir Ivan Rogers suggested that this would be difficult for the EU27 to accept:

For them, they say: “That is fine. You have now accepted that you are not in the single market, and a good thing too”. Then the argument will become, “But you still may want to have large elements of your cake and eat it, by saying, ‘Effectively, our access to the market in loads of areas that matter enormously to us should be unchanged regardless of us no longer accepting supranational jurisdiction and law’”. I am sure you heard it; there is quite

155 [The White Paper](#) para 8.2

156 [The good that Government can do: Prime Minister's speech](#), Conservative Party Conference 2016, 2 October 2016

157 [The Lancaster House Speech](#) In November 2016, a paper published by the UKTPO identified the following “red lines”:

- No free movement of people / labour;
- Independent trade policy;
- No compulsory budgetary contribution;
- Legal oversight by UK courts only and not by the European Court of Justice

—Michael Gasiorek, Peter Holmes, Jim Rollo, [UK–EU Trade Relations Post Brexit: Too Many Red Lines?](#) (UKTPO Briefing Paper 5, November 2016), p 2

158 [The Lancaster House Speech](#)

159 HC Deb, 24 January 2017, [col 169](#)

160 Q1422

161 [The White Paper](#) paras 8.2 and 8.3

a large divergence between Berlin views, Brussels views and what you get here. People did say to me repeatedly, over months and years, “That is not on offer”.¹⁶²

148. In his December 2016 press conference, Michel Barnier emphasised that:

being a Member of the European Union comes with rights and benefits. Third countries can never have the same rights and benefits, since they are not subject to the same obligations [...] the Single Market and its four freedoms [free movement of goods, services, capital and people] are indivisible. Cherry picking is not an option.¹⁶³

The differences between membership of and access to the Single Market

149. Sir Ivan Rogers explained how access to the Single Market differed from membership. He gave three examples of how an FTA would not provide equivalent outcomes to current membership of the Single Market:

For example, on aeroplanes, access to the Single Market means planes can land at EU airports and return from them. Membership of the Single Market means you get slot, gate and lounge allocation on the same terms as local airlines—that is, not 3.00 am slots a mile away from the terminal, and the airlines can fly within the EU, not just to and from the EU.

Access means that your banks can only lend via a local subsidiary. Membership means there is no need for your banks to be separately supervised, regulated, managed and capitalised subsidiaries in other countries. One can operate through branches, and home state rules and supervision suffice. Access means that Scotch can be sold into France or Germany; membership of the Single Market means that all taxes and duties for comparable products to Scotch must be the same as for Scotch, and if they are not, we can take them to the ECJ and say, “Why are they not?” We will not be able to take them to the ECJ.¹⁶⁴

150. UK goods and services that comply with EU standards before Brexit will still be compliant on the day the UK leaves the EU. However, as Sir Ivan Rogers explained, the UK would on day one after Brexit become a third country and, as a third country, would operate in a different legal position, unless a separate agreement has been reached:

We are saying—[...] “Come on guys. You know the day before you used to take our accreditation and inspection regimes. They were perfectly fine the day before; why the hell are they not the day after? Do not be ridiculous”. The EU is perfectly capable of saying, “It is not a matter of being ridiculous; it is a matter of the law. In the absence of any law, given that you have now left the Union and left the single market, there is nothing. You have not signed any

162 Q1064

163 [Introductory comments by Michel Barnier](#), European Commission website, 6 December 2016

164 Q1077

other agreement with us, and unless there is a legal agreement between the two of us, we no longer recognise your accreditation, conformity assessment bodies, abattoirs or slaughterhouses. We do not recognise any of it".¹⁶⁵

Of course in this situation EU exporters would face a similar situation in trading into Britain.

151. Professor Jim Rollo, UK Trade Policy Observatory, University of Sussex, told us that the UK would need to introduce some form of conformity assessment to continue to sell its products to the EU:

It seems to me that the first thing that goes, with all the EU standards that are applied here through direct effect of EU law, is that we no longer get that recognition that what we produce is automatically and by law consistent with the EU standard. There are currently no administrative barriers based on standards that apply to UK exports to the EU, or on EU exports to us. That would, in principle, change on day one of Brexit if there is no other deal done.¹⁶⁶

Since Sir Ivan gave evidence on 22nd February 2017, the WTO Trade Facilitation Agreement has come into force. This requires ratifying countries—including the EU—to take all practical measures to facilitate trade and reduce administrative obstacles.

152. Becoming a third country without any agreement, Professor Rollo added, is like moving into “a legal void” where you would not be “on the list” of countries permitted and approved to export to the EU market.¹⁶⁷

Negotiating a new Free Trade Agreement with the EU

153. In our First Report, we stated that it would be in the best interests of both the UK and the EU27 to negotiate the UK's future relationship with the EU in parallel with the Article 50 negotiation.¹⁶⁸ The Government responded that it expects the future relationship to include an FTA and it “wants to have reached an agreement about a future partnership by the time the two-year Article 50 process has concluded.”¹⁶⁹ Some have argued that the two-year period for concluding Article 50 negotiations is an ambitious timetable for agreeing a trade deal.¹⁷⁰ However, as the White Paper points out, the UK is in a unique position:

The UK already has zero tariffs on goods and a common regulatory framework with the EU Single Market. This position is unprecedented in previous trade negotiations. Unlike other trade negotiations, this is not about bringing two divergent systems together. It is about finding the best way for the benefit of the common systems and frameworks, that currently

165 Q1081

166 Q1105

167 Q1076

168 [First Report](#) of Session 2016–17, HC 815, para 58

169 [First Special Report](#) of Session 2016–17, HC 1101, para 26

170 For example, CETA negotiating mandate was adopted in 2009 with provisional ratification just beginning, but full implementation could take years due to need for ratification by 28 national and a bunch of regional parliaments. While negotiations with South Korea began in 2007 and agreement was signed 2 ½ years later in 2009. The trade agreement came into provisional application in July 2011 and is not yet fully in force.

enable UK and EU businesses to trade with and operate in each others' markets, to continue when we leave the EU through a new comprehensive, bold and ambitious free trade agreement.¹⁷¹

154. The Secretary of State explained how the trade deal negotiations would be expedited:

when two countries come together to arrange a trading arrangement between themselves, the first stage is to be able to understand each other's structures and standards, so that takes time too. None of that do we have to do. Neither do we need an entry-into-force period, which is the other issue that takes time in these things. It is not just the sign-off; it is the actual period of industry coming to meet the new standards.¹⁷²

155. He added that other Member States wanted a "constructive outcome" to maintain the strong trading links already in existence with the UK. By comparison, the CETA deal with Canada had required detailed sector by sector analysis which would not be necessary in this negotiation.¹⁷³

Trade in goods

156. As a member of the Single Market, the UK trades with the EU on a tariff-free basis. The White Paper outlines the Government's ambition that the UK's new partnership with the EU should allow for "tariff-free trade in goods that is as frictionless as possible".¹⁷⁴

157. The Committee met representatives from a number of businesses on its visits across the UK that operated with international supply chains. Concerns were expressed that those supply chains could be subject to multiple tariffs and administrative delays.¹⁷⁵ However, John Longworth told us that these concerns were inflated and that "there is a huge amount of supply chain activity in Asia for UK manufacturing and service sector businesses".¹⁷⁶ The White Paper emphasises the integration of supply chains as important for both UK and EU businesses, inferring that this mutual dependence will aid agreement for tariff-free trade. The White Paper gives the example that "the wings for the Airbus A350 XWB are produced in the UK. The wings are made from many parts, drawing from expertise and excellence across the UK and EU. Although the wings are assembled in North Wales, they are designed and produced through cooperation between specialist teams in Germany, Spain, France and Filton, near Bristol."¹⁷⁷

158. Given the political will, reaching an agreement on tariff-free trade should be straightforward. However, "frictions" the Government is seeking to minimise may come from non-tariff barriers. The UK Trade Policy Observatory highlighted examples of non-tariff barriers in written evidence to us:

The need for Rules of Origin (ROOs), and possibly tests to demonstrate compliance with EU norms. Each of these barriers could be as costly as

171 [The White Paper](#) para 8.2

172 Q1396

173 Ibid

174 [The White Paper](#) para 8.13

175 For example, see visit notes from Sunderland and Aberdeen at Annex 1 and 2 of [First Report](#) of Session 2016–17, HC 815

176 Q328

177 [The White Paper](#) para 8.9

the tariffs that are abolished. An FTA arrangement would also allow the introduction of anti-dumping, countervailing duties and safeguard actions (collectively known as Trade Defence Instruments (TDI)) into UK–EU trade. It follows from this that, despite their name, FTA variants are likely to result in higher barriers and lower trade than currently govern UK–EU trade.¹⁷⁸

159. The White Paper explains how non-tariff barriers are dealt with within the EU:

Free movement of goods within the EU is secured through a number of mechanisms, including through the principle of mutual recognition (which means that goods lawfully marketed in one Member State can be sold in all Member States), the harmonisation of product rules (where the same rules apply for a range of goods, such as for fertilisers, in all Member States) and agreement that manufacturers can use voluntary standards as a way of demonstrating compliance with certain essential characteristics set out in EU law (such as for toy safety). In a number of sectors covering typically higher risk goods (such as chemicals or medicines), the EU has also agreed more in-depth harmonised regulatory regimes, including for testing or licensing.¹⁷⁹

160. After over 40 years as a member of the EU, the UK will enter into negotiations with identical product and regulatory standards and, on the day the UK leaves the EU, these standards will have been incorporated into domestic law through the “Great Repeal Bill”.¹⁸⁰ Roderick Abbott, former Deputy Director-General, The World Trade Organisation and European Commission Directorate-General for Trade, told us that the negotiations would not be over the question of common standards:

The EU will approach this as, ‘We have got our standards; we have got our Single Market regulations. If you want to discuss whether you adopt those and have a continuity and so forth, that is up to you. On our side, we are not putting forward a negotiation about our standards’.

[...] The key is [...] how can you get a close association to the single market in terms of some deal where the EU accepts that you are able to pragmatically comply with Single Market regulations as you have in the last 30 or 40 years?¹⁸¹

161. Others have noted that following the UK’s exit, unless the UK actively decides to maintain compliance with EU standards, divergence will be inevitable. Sir Ivan Rogers explained to the Committee the perspective of his former EU counterparts.

[What my EU colleagues] said to me was: “The problem is not day one. It is day two, or day 200, or day 2,000. What have you recaptured your sovereignty and autonomy for, if you are now saying that you will line up

178 UK Trade Policy Observatory ([OBJ0149](#)) para 1.1

179 [The White Paper](#) para 8.11

180 Q1395 [Rt Hon David Davis MP]

181 Q1056

via the “Great Repeal Bill” [...] to repeat exactly what you had when you were in the European Union?”¹⁸²

[...] If you were a foreign counterpart to me, you are saying, “Hang on, you are likely over time to diverge really quite substantially from the *acquis*, because otherwise you would not have done this, and you must think that you can reap material advantage from divergence from the *acquis*. However, then you are asking us to sign up to a deal where everything is enshrined in UK law, but you are no longer subject to supranational jurisdiction. We need a governance process to know how far you are going to diverge, and on what, and then what happens when you do diverge”.¹⁸³

162. Other trade agreements involving harmonisation of standards also have to incorporate resolution mechanisms to deal with possible divergence (after they have achieved the far more difficult task of converging standards). So there should be precedents to build on.

Trade in services

163. Given the UK's strength in trade in services, which account for 42 per cent of the UK's exports to the EU, negotiating a good deal in this area will be a priority. The UK has a surplus on trade in services with both EU and non-EU countries. Although the possible impact of Brexit on the financial services industry has dominated media commentary, the UK's total exports of non-financial services to the EU, including professional services, digital, media, transport and education, stands at £62.9 billion, and is much higher than financial services exports at £26 billion.¹⁸⁴

164. Free trade in services within the EU is enabled through a complex regulatory framework. However, as the White Paper points out, the EU Single Market for services is “not complete”, as the regulation of services remains a shared competence between the EU and its Member States.¹⁸⁵ At present, UK service providers benefit from certain horizontal and sector-specific EU legislation for:

- the right of individuals or companies from one Member State to deliver services in another Member State either temporarily or permanently;
- mutual recognition of professional qualifications (the licensing of professionals by regulatory bodies is subject to the principle of mutual recognition throughout the Single Market); and
- sets of regulations for particular service sectors, including telecommunications, aviation, road-transport and media services. The Digital Single Market (covering digital marketing, e-commerce and telecommunications) aims to ensure the EU's regulatory environment keeps pace with the evolving digital economy.¹⁸⁶

182 Q1076

183 Q1100

184 House of Lords' European Union Committee, Eighteenth Report of Session 2016–17, [Brexit: trade in non-financial services](#), HL Paper 135, para 35

185 While only the EU can act in areas where it has exclusive competence (for example in setting the Common External Tariff for goods entering the customs union), in areas of shared competence either the EU or Member States can act (although Member States may be prevented from acting where the EU has already done so), giving Member States a certain amount of discretion over the application of services regulations.

186 International Trade Committee, First Report of Session 2016–17, [UK trade options beyond 2019](#), HC 817, para 72

165. The White Paper states that the Government will aim for “the freest possible trade in services” between the UK and the EU.¹⁸⁷ To reach an agreement including services liberalisation across borders would, according to Sir Ivan Rogers, be “the biggest free trade agreement ever struck”.¹⁸⁸ Dr Federico Ortino, The Dickson Poon School of Law, King’s College London, told the Committee that for services:

outside the Single Market we have not been able to liberalise trade in services, particularly when it comes to, where it is relevant, non-tariff barriers. Look at even the most ambitious FTAs, such as Canada. What that gives in terms of the commitment in financial services in CETA is very marginal [...] Overall, it is not much different from what you get from the GATS schedule of WTO members.¹⁸⁹

166. Sir Ivan Rogers stressed the importance of ensuring the UK–EU FTA covered services:

The slight danger for us is that, given the goods surplus for them is so great and the services surplus is so great, they would pocket the goods agreement and say, “Good; we have tariff-free access; we do not really need to bother about your services”. I would not buy that pig in a poke; I would want a full and comprehensive FTA that covered goods and services.¹⁹⁰

167. The importance of mutual recognition of standards and professional qualifications, and non-discrimination, has been highlighted by a number of witnesses. Gareth Horsfall, a British citizen resident in Italy told us:

I work in financial services. I use the EU passport of qualifications, as do legal professionals and accounting professionals, into another EU state. If that were taken away from me, the reality is that I may have to sit examinations—in my case, in Italian—and there would be an additional cost to me of that. My understanding of the Italian language is very good, but to actually sit examinations, it would have to be at a very advanced level. There would be a massive cost to me as a business, and it might even put me out of business for a period. Mutual recognition of qualifications is of paramount importance.¹⁹¹

168. The International Trade Committee has recommended that a UK–EU FTA should seek as far as possible to reproduce the right of establishment and mutual recognition of professional qualifications from which the UK currently benefits as a member of the EU.¹⁹²

169. In approaching the negotiations, the Government needs to recognise the strength of the view in the EU27 that, as Michel Barnier has emphasised, the ‘four freedoms are indivisible’.

170. The Government should seek a UK–EU Free Trade Agreement (FTA) which covers both goods and services and retains the mutual recognition of standards and conformity assessments. The Government should also seek to maintain the right of establishment

187 [The White Paper](#) para 8.21

188 Q1077 [Sir Ivan Rogers]

189 Q1049

190 Q1078

191 Q684

192 International Trade Committee, First Report of Session 2016–17, [UK Trade options beyond 2019](#), HC 817, para 124

and mutual recognition of qualifications in a UK–EU FTA. The Government should maintain the maximum possible flexibility in its negotiating approach to achieve these outcomes.

171. **Notwithstanding the Government's plans to enshrine EU law into domestic law through the "Great Repeal Bill", over time the two bodies of law may diverge as the Government seeks to change or repeal regulations. The Government should provide clarity on how it will address divergence in rules and standards and disputes that may arise as a result, outside of the jurisdiction of the CJEU.**

Financial services

172. A key concern for the financial sector is the potential loss of "passporting" rights when leaving the EU. Passporting currently gives UK firms the ability to sell financial services across the EU and EU firms to sell financial services in the UK without establishing a subsidiary. According to the White Paper, both UK and EU firms benefit from the UK's passporting rights, with "over 5,000 UK firms that utilise passports to provide services across the rest of the EU, but around 8,000 European firms that use passports to provide services into the UK".¹⁹³

173. The Mayor of London has said that the loss of passporting rights would be "a disaster".¹⁹⁴ He said: "I'll be pushing the Treasury to make sure passporting is top of their priority list".¹⁹⁵ He told us that some financial institutions have already decided to move staff outside the UK, while also pointing out that London has "underlying strengths" as a city, in particular in its talent and infrastructure which London will still have once the UK leaves the EU.¹⁹⁶

174. Recognition of regulatory equivalence would provide UK financial services providers in some sectors with opportunities to run operations in the EU.¹⁹⁷ In a letter to the Treasury Committee, Andrew Bailey, Chief Executive of the Financial Conduct Authority (FCA) said that, for financial services, "in the absence of passporting rights, UK firms would need either to seek access under "equivalence" frameworks where possible, to use "third country" passports where available under specific pieces of legislation, or alternatively to seek authorisation from each regulator of the jurisdiction into which they aim to do business."¹⁹⁸ The FCA subsequently wrote:

we do not have a measure of the value of financial services that may be impacted in the event that passporting arrangements were no longer applicable to UK financial firms after the UK's withdrawal from the EU. However, [...] I reiterate that global standards and trade agreements do not, at least currently, provide for the recognition of authorisations in the way that the single market directives do.¹⁹⁹

193 [The White Paper](#), para 8.23

194 ["Brexit: Business leader urges 'London visa' as Sadiq Khan tries to save City's trading status"](#), Evening Standard, 27 June 2016

195 Q1317

196 Q1318

197 ["City of London lobbying group drops demand for EU 'passport'"](#), Financial Times, 12 January 2017

198 Treasury Committee, [Correspondence from Andrew Bailey to Rt Hon Andrew Tyrie MP](#), 28 October 2017

199 Treasury Committee, [Correspondence from Andrew Bailey to Rt Hon Andrew Tyrie MP](#), 13 January 2017

175. Sir Ivan Rogers highlighted the limitations of recognition of regulatory equivalence, including that recognition could be “politicised” and withdrawn at short notice and only covered certain sectors. These limitations represented:

a very serious problem, unless we get a bespoke financial services deal with equivalence that really works for us. [...] but this would be something the EU27 have not done for any other partner. It did not do that for the States, and it has not been prepared to do it for any other partner.

We would have to say, on financial services, “We are big, and you need access to us. There is a massive interest to you in still having London as a kind of centre in our time zone, but we need a totally different type of agreement with you from any that has previously been negotiated”.²⁰⁰

176. The White Paper states that it is in the interests of the UK and the EU that the UK financial services sector should continue “in order to avoid market fragmentation and the possible disruption or withdrawal of services”, while adding that:

The fundamental strengths that underpin the UK financial services sector, such as our legal system, language and our world-class infrastructure will help to ensure that the UK remains a pre-eminent global financial centre.²⁰¹

177. London is a pre-eminent global financial centre and the financial services industry supports a large number of jobs in London and even more across the rest of the UK. It is in both the UK's and the EU's interests to ensure there is minimal disruption to financial services when the UK leaves the EU. As part of negotiations on a UK–EU FTA, the Government should seek to secure stable and predictable equivalence arrangements or a bespoke system comparable to the EU system of “passporting” which will ensure the stability of cross-border financial services between the UK and the EU.

178. Financial and professional services will require time to adjust to any new trading arrangements. The Government should seek to agree a phased process of implementation for the sector early in the negotiations to provide certainty for businesses in preparing for Brexit.

Digital services

179. The White Paper states that the Government is “committed to making the UK the best place in the world to do business” by looking to establish a stable and predictable regulatory environment, while also looking to reduce the cost of unnecessary regulation to support innovation. One aspect of this business environment is the importance of data transfer to many trade sectors. The White Paper states:

The stability of data transfer is important for many sectors—from financial services, to tech, to energy companies. EU rules support data flows amongst Member States. For example, the EU data protection framework outlines the rights of EU citizens, as well as the obligations to which companies must adhere when processing and transferring this data. [...]

200 Q1103

201 [The White Paper, p8](#)

As we leave the EU, we will seek to maintain the stability of data transfer between EU Member States and the UK.²⁰²

180. When the Committee held a roundtable with representatives of the digital and tech sector in London in January 2017, a common priority was the need to ensure that there are uninterrupted data flows between the UK and the EU once we leave, and that there is legal certainty that that would be the case on the day the UK left the EU. According to the trade association for the digital sector, techUK's report on *The UK Digital Sectors after Brexit*:

Failure to secure adequacy may force the "localisation" or redirection of data flows on EU citizens (that requires storage and/or processing outside the UK), risking fragmented communications links and data flows between the UK and European partners. In addition, many UK businesses will need to implement costly alternative legal mechanisms, many of which are subject to ongoing legal challenge and uncertainty. Continued uncertainty over EU–UK data flows could also see companies restrict the amount and type of data processed in the UK. Such an outcome could impact data infrastructure and in particular data centres in the UK, which are among the region's and the world's most active.²⁰³

181. The Secretary of State highlighted the challenge made by Austrian Max Schrems against Facebook on data protection and safe harbour status as the kind of challenge the UK could be subject to once we leave the EU. He told us that:

One of the strategies I am arguing inside Government is that we make ourselves extrarobust in that respect. That has security implications, commercial implications for other industries because data is so important there and of course enormously important implications for the digital industry and the tech industry itself.²⁰⁴

182. The digital industry is an increasingly important sector to the UK economy and relies on the stability of data flows across UK and EU borders. The Government must seek to maintain uninterrupted UK–EU data flows by securing a data adequacy agreement with the EU before the end of the Article 50 negotiations.

The Single Market for broadcasting

183. The White Paper states the following in relation to the broadcasting sector:

Content that is carried over electronic communication networks is regulated in the EU by the Audiovisual Media Services Directive. This underpins the operation of the internal market for broadcasting by ensuring the freedom to provide broadcasting services throughout the EU. The UK is currently the EU's biggest broadcasting hub, hosting a large number of international broadcasting companies. In the course of the negotiations, we will focus on ensuring the ability to trade as freely as possible with the EU and supporting the continued growth of the UK's broadcasting sector.²⁰⁵

202 [The White Paper](#), paras 8.38 and 8.40

203 techUK, "[The UK digital sectors after Brexit](#)", January 2017, p38

204 Q1464

205 [The White Paper](#), para 8.35

More than 650 different TV channels use the UK to broadcast to countries across the EU, more than double the number based in its nearest rival France.

184. The Audio Visual Media Services Directive (AVMSD) governs market access in the EU.²⁰⁶ The AVMSD employs a ‘country-of-origin’ approach, meaning that firms which satisfy regulatory requirements in the EU Member State in which their services originate can operate throughout the EU without having to apply for additional licences, so UK channels granted an Ofcom licence can broadcast freely across the Single Market. Adam Minns, the Executive Director of the Commercial Broadcasters Association (COBA) is reported as saying “The UK’s status as Europe’s leading international broadcast centre is at risk. [...] It’s black and white. Either those licences are valid or they aren’t.”²⁰⁷ We heard similar concerns at a roundtable discussion with the creative industries on our visit in London. The recent House of Lords report on *Brexit: trade in non-financial services*, also addressed concerns in the industry.²⁰⁸

185. One option would be for broadcasters based in the UK to apply for a licence in an EU Member State, which would require the broadcaster to have a “significant part” of their workforce (compared to the UK) and editorial decisions in the EU.²⁰⁹ Another would be for the UK to seek to include provisions on broadcasting in a UK–EU FTA. The recent EU–Canada FTA (CETA) excluded broadcasting. The EU–South Korea FTA granted some access for animé. There is no precedent for a third country securing Single Market-equivalent access for broadcasters.²¹⁰ When asked about the AVSM, the Secretary of State told us that “equivalence mechanisms are going to be of incredible importance, particularly in service industry areas, whether it is film, video, any of the creative arts.” He also said he had “explicit work going on” in relation to broadcasting and would write to the Committee with further detail.²¹¹

186. The broadcasting industry, like many aspects of the UK creative industries, is a success story. International broadcasters base themselves in the UK to broadcast across the EU and the Audio Visual Media Services Directive enables broadcasters in one Member State to do so if they have a licence from the domestic regulator—Ofcom in the UK—and comply with the regulatory requirements in that Member State. This has helped the UK to become Europe’s leading broadcasting hub. In the event of an exit without alternative arrangements in place, international broadcasters could fall back on the Council of Europe’s Convention on Transfrontier Television (CTT). However, it is an inadequate replacement: on-demand broadcasting is not covered, six Member States are not signatories, and it cannot be effectively enforced. International broadcasters could seek to access the EU market through subsidiaries, but this would require them to relocate a significant proportion of their workforce to the EU and for most of their editorial decisions to be made there. Neither of these options are attractive to the sector. The Government must therefore ensure that a future FTA

206 European Commission, [General principles of the Audio Visual Media Services Directive](#)

207 “Brexit fears raised over UK’s status as Europe’s broadcast centre” *Financial Times*, 18 November 2016

208 House of Lords European Union Committee, [Brexit: trade in non-financial services report](#), HL Paper 135, Paras 173–195, 201–207

209 A draft recast of the AVMSD proposes requiring a “majority” of a broadcaster’s workforce to be based in the EU in order for it to be eligible for a license, as opposed to a “significant part” of it.

210 House of Lords European Union Committee, [Brexit: trade in non-financial services report](#), HL Paper 135, Paras 178–179 and Box.10, and [TAS0044](#)

211 Q1463

between the UK and the EU retains the ability of broadcasters based in the UK to continue to operate across the Single Market to the same extent once the UK is no longer a Member State. Securing continued access to this market is a priority.

A mutually beneficial new customs arrangement

187. A customs union is an extension to a conventional free trade agreement. In addition to reducing or removing internal tariffs on goods, members of a customs union apply a common external tariff. The EU customs union has a Common Commercial Policy and Common External Tariff. Customs unions are recognised by the WTO as a form of regional trade agreement. As such, they need to meet certain conditions set out in Article XXIV of the General Agreement on Tariffs and Trade (GATT)²¹² and Article V of the General Agreement on Trade in Services (GATS).²¹³ These stipulate that customs unions or free trade agreements must liberalise “substantially all the trade” in goods or have “substantial sectoral coverage” for trade in services.

188. The Government has stated that one of its key negotiating objectives is for the UK to be able to negotiate its own trade agreements without being bound by the Common Commercial Policy and the Common External Tariff,²¹⁴ effectively ruling out the customs union option. In her Lancaster House speech, the Prime Minister said that she wanted cross-border trade to be “as frictionless as possible”, suggesting this could be done through a customs agreement with the EU:

Whether that means we must reach a completely new customs agreement, become an associate member of the Customs Union in some way, or remain a signatory to some elements of it, I hold no preconceived position. I have an open mind on how we do it. It is not the means that matter, but the ends.²¹⁵

189. What is meant by a “customs agreement” is not clear. Roderick Abbott suggested that the term had been “deliberately chosen to be vague”.²¹⁶ He told us that it could be anything that has a customs duty component of any kind. Witnesses to the Committee expressed the view that it would not be possible practically to run a free trade agreement and a partial customs union in parallel. Professor Jim Rollo told us that:

This will run into problems at the WTO, if nowhere else, because it will get on the wrong side of rules about free trade areas or customs unions meeting substantially all trade rules. That rule itself is deeply ambiguous as to what is the criterion for that, but if we put that to side for one moment, people could argue if it was quite small, with one or two sectors covered by the customs union, that probably would not be substantially all trade. If there were still not quite enough sectors left in the free trade area, that might not qualify to be substantially all trade either, so there is an issue there.²¹⁷

212 [WTO, General Agreement on Tariffs and Trade 1994](#)

213 [WTO, General Agreement on Trade in Services](#)

214 [The White Paper](#), para 8.45

215 [The Lancaster House Speech](#)

216 Q1008

217 Q1007

Rules of origin

190. The advantage of a customs union is not having to prove origin of goods. In a trade agreement between two or more countries, participants agree to the Rules of Origin principle. This requires them to be able to demonstrate that traded goods benefitting from the trade agreement originated in their country. This is designed to prevent trade deflection, whereby a third country chooses to export to that free trade area through the country with the lower external tariff. Were the UK to agree an FTA with the EU without a customs union, then rules of origin would apply and a customs border would consequently exist between the UK and the EU.

191. We heard from John Longworth that companies which export around the world, have to comply with different regulations. He told us that “standards and regulations were becoming global, not simply concerning individual nations or blocs of nations”. He explained:

In relation to the customs union, curiously [...] all the export and origin documentation issued in the UK is issued by chambers of commerce. There is a 1922 treaty whereby goods can be transported globally without containers having to be broken open and the goods examined. They carry a chambers of commerce certificate, which enables the free movement of goods, in customs terms, around the world. That is already in place.²¹⁸

192. The Secretary of State confirmed that we will “almost certainly have to have rules of origin arrangements and there will be some sort of inspection arrangement to go with that”.²¹⁹ He suggested that the “frictions” of rules of origin could be reduced with a system of trusted traders and electronic arrangements, an aspiration also expressed in the White Paper:

As we look to build our future customs relationship with the EU and the rest of the world, we start from a strong position. As a large trading nation, we possess a world-class customs system which handles imports and exports from all over the world. We already have highly efficient processes for freight arriving from the rest of the world—the vast majority of customs declarations in the UK are submitted electronically and are cleared rapidly. Only a small proportion cannot go through so rapidly, for instance where risk assessment indicates that compliance and enforcement checks are required at the border. The World Bank’s Logistics Performance Index shows that HMRC operates one of the world’s most efficient customs regimes.²²⁰

193. In response to the House of Lords’ EU Committee report on *Brexit: the options for trade*, the Government suggested that the customs arrangements between the US, Canada and Mexico and between Norway, Sweden and Finland provide examples for how high volumes of trade flow across borders without the need for a formal customs union.²²¹ The Government confirmed that it is examining examples from across the world, while the

218 Q243

219 Q1400

220 [The White Paper](#), para 8.44, and Q1400

221 House of Lords’ EU External Affairs and Internal Markets Sub-Committees, [Brexit: the options for trade: Government Response](#), 28 February 2017

Department for Exiting the EU, in conjunction with the Department for International Trade, HM Revenue and Customs, HM Treasury, the Department for Business, Energy and Industrial Strategy, and other departments, have been undertaking a wide range of studies on different aspects of the UK's trading relationship.²²² However, the UK's efforts to facilitate "frictionless" trade with the EU through customs systems can only be as effective as the corresponding efficiency of the customs systems in EU Member States and the treatment UK exporters might expect at EU borders.

Sectoral customs arrangements

194. Sectoral customs arrangements are a means to eliminate rules of origin, whereby countries co-ordinate their external trade policy. In a customs union, this is done through the external tariff. Sectoral customs arrangements require that any agreements those countries enter into with third countries would have to have the same coordination, as is the arrangement between the EU and Turkey. We heard from Dr Federico Ortino that:

If the agreement between the EU and the UK is to coordinate in terms of cars and car parts on what the tariff will be coming in, it will restrain the ability of both the UK and the EU in their third country arrangements. The UK has a clean slate and it can do that. The EU already has treaties [...] In any event, even if both countries started with a clean slate, that cooperation agreement would have to be respected in the relationship with third countries. That is not practical.²²³

195. When the car manufacturer Nissan UK announced that it would continue to invest in the UK following the referendum result, by building two new models at its Sunderland plant, some speculated that it had received assurances from Government that there would be some sort of sectoral arrangement specifically for the automotive industry. In evidence to the Committee on International Trade, the Senior Vice President of Nissan, Colin Lawther, said that what would benefit Nissan and the industry was not grant money but "free import duty for parts coming from the customs union, for example, in and out" or "an automotive-specific trade deal".²²⁴ To date, the Government has not released full details of the assurances given to Nissan UK.

196. The nature of complex EU supply chains means that even if sectoral customs arrangements were envisaged, these would need to include not just the finished product (e.g. cars) but all the components that go into that product. Since such components would typically be used in several industries (i.e. not just in the automotive industry), sectoral customs agreements, even if legal, would run into practical difficulties in determining where a sector began and ended. As the International Trade Committee noted:

It is unclear, though, whether this would be legal under WTO rules. In addition, it is hard to see how it could be reconciled with the Government's policy of pursuing an independent UK trade policy. The adoption of a CET

222 Ibid.

223 Q1008

224 Oral evidence taken before the International Trade Committee on 28 February 2017, [HC \(2016-17\) 817-iv](#), Q631 [Colin Lawther]

[Common External Tariff], albeit only a sectoral one, of necessity limits the UK's negotiating position as regards third-country FTAs, since these would have to be aligned with the EU's FTAs in respect of automotive trade.²²⁵

197. Sir Ivan Rogers told us that the EU was likely to shy away from individual sectoral deals for fear of breaking the solidarity of the EU27.²²⁶ He added:

Could you have an automotive carve out and say these arrangements do not pertain or do pertain. I do not think that is very likely. Can I envisage some sort of customs co-operation agreement formally as part of an FTA? Yes, I am sure there could. I do not think any customs co-operation agreement when you are outside the customs union can exactly replicate the benefits of the customs union.²²⁷

198. In seeking to negotiate its own preferential trade agreements with non-EU countries, the Government has said that it will not continue to observe the Common Commercial Policy (CCP) and Common External Tariff (CET) of the EU customs union. However, it will seek to negotiate a new customs arrangement with the EU to minimise the “frictions” in cross-border trade between the UK and the EU27. The Government has been vague as to the characteristics of such a customs arrangement. The Government must provide more clarity as to the features of its preferred customs arrangement with the EU and how it will differ from a customs union.

199. There is, however, a risk that, on trade, the EU27 will decline to allow the UK to both leave the CCP and the CET and yet retain existing tariff and barrier free trade.

Trading on WTO terms

200. The WTO's 164 members are all bound to observe the “most favoured nation” (MFN) principle. This means that they must offer each other the same trading terms as those they have granted to their most favoured trading partner.

201. Deviation from this principle is only permitted where an FTA or customs union has been negotiated with one or more trading partners, or where unilateral or non-reciprocal trade preferences are granted by a developed country to developing countries in order to support the latter's development. WTO members must also make specific commitments, listed in schedules, which reflect specific tariff concessions and other commitments offered in the context of trade negotiations. The White Paper states:

Our WTO membership will form the bedrock on which we build our future trade relationships [...]

As part of leaving the EU, the UK will need to establish our own schedules covering trade in goods and services at the WTO, providing clarity for UK businesses about their access to overseas markets around the world and also providing a clear basis for negotiating new trade agreements, not just with the EU, but with old friends and allies from outside Europe too [...]

225 International Trade Committee, First Report of Session 2016–17, [UK trade options beyond 2019](#), HC 817, para 117

226 Q1079

227 Q1134

Our aim is to establish our schedules in a way that replicates as far as possible our current position as an EU member state, thus creating a mutually beneficial, simple and inclusive outcome, so that the interests of the UK and other WTO members are protected.²²⁸

202. The Government has repeatedly stated that it is confident that it will negotiate a positive future relationship with the EU, including an FTA, as that would be in the interests of both the UK and the EU.²²⁹ However, the Government has also been clear that “no deal for the UK is better than a bad deal for the UK”,²³⁰ under which eventuality ‘no deal’ would mean having to trade with the EU under WTO rules alone.

203. Sir Ivan Rogers made the point that countries like the US or Australia, that do not yet have FTAs with the EU, have nonetheless negotiated equivalence and mutual recognition agreements in a range of sectors.²³¹ The UK, if it were to exit the EU without any kind of deal applicable from the first day after exit, would be in an inferior position compared to other third countries in trading with the EU. According to Roderick Abbott:

on the day after you exit, businesses will face the common external tariff on their trade to the EU, unless, of course, you have made some kind of a trade deal by then. [...] If you assume there is ‘no deal’, then the common external tariff would be applied on the next day, because you are a nonEU country and that is what the EU does.

The second consequence would be that, unless you are very quick to introduce a UK customs tariff, businesses would have no protection against imports. You would have to have a tariff, so presumably that would be perhaps based on the common external tariff or on something else. You cannot just go back to 1972 and bring a tariff down from the shelf. That would be a second consequence.

Whether all of this would be destructive to business is an open question, as you said. My belief is that if you are out, under those conditions, and you are trading under WTO, it is perfectly feasible. Trade is not going to stop. There will be areas where you will face barriers that you did not face before. You perhaps will make less profit, but trade will flow.²³²

204. While trade in goods would continue to flow under tariff regimes, Dr Federico Ortino told us that services were much less predictable because there are fewer liberalising obligations under the WTO when it comes to services. He also noted that there are no national treatment obligations in many sectors, whereby any supplier of services is treated the same as any domestic supplier. In those sectors the EU could simply prohibit the UK from providing services in the EU.²³³

228 [The White Paper](#), para 9.16–9.18

229 [The White Paper](#), para 8.1; [The Lancaster House Speech](#)

230 [The White Paper](#), para 12.3

231 Q1082

232 Q1004

233 Q1021

205. We heard from the Secretary of State that, should the UK leave the EU without a deal, the UK would face a number of consequences including the imposition of tariffs (of up to 30–40 per cent on some agricultural products) and customs checks (including between Northern Ireland and the Republic of Ireland), an end to UK participation in the US–EU Open Skies Agreement, “probably” an end to participation in the EHIC health treatment card scheme, an end to passporting rights for the UK financial services sector and uncertainty around data transfer rights for the the digital sector.²³⁴ He also confirmed that there had been no assessment of the implications of ‘no deal’ since before the referendum.²³⁵

Contingency planning

206. While confident that it is unlikely the UK will leave the EU without a deal, the Government has said that it is right that it should prepare for every eventuality.²³⁶ The Secretary of State told us that every department of state was looking at how to mitigate the effects of leaving the EU without a deal. As the White Paper states:

In any eventuality we will ensure that our economic and other functions can continue, including by passing legislation as necessary to mitigate the effects of failing to reach a deal.²³⁷

207. We heard from the Secretary of State that any economic assessment of ‘no deal’ would depend on the mitigation undertaken and that “until we have worked out all the mitigation procedures, we could not quantify the outcome.”²³⁸ He reassured us that he would be able to quantify it in detail in about a year’s time.

208. The Government has conducted impact assessments into ongoing trade deals previously, for example into the Transatlantic Trade and Investment Partnership between the EU and the US,²³⁹ while the EU also undertook analysis of the Comprehensive Economic Partnership agreement with Canada.²⁴⁰

209. In its report on the implications of ‘no deal’, the Foreign Affairs Committee concluded that the Government was not giving that scenario the consideration it deserved, finding no evidence of any serious contingency planning for ‘no deal’. The Committee contended that this would constitute a “serious dereliction of duty” on the part of the Government.²⁴¹

210. Notwithstanding the Government’s ambition to secure a UK–EU FTA, there is a risk that the UK might reach the end of the Article 50 process without a deal and have to fall back on trading under WTO rules. It is imperative that the Government undertake

234 Qq1372–9

235 Q1383

236 [HM Government Plan for Britain: Information about leaving the EU](#)

237 [The White Paper para 12.3](#)

238 Q1385

239 Department for Business, Innovation and Skills, [Estimating the economic impact on the UK of a Transatlantic Trade and Investment Partnership \(TTIP\) Agreement between the EU and the US](#), March 2013

240 European Commission, [A Trade SIA Relating to the Negotiation of a Comprehensive Economic and Trade Agreement \(CETA\) Between the EU and Canada](#), June 2011

241 Foreign Affairs Committee, Ninth Report of Session 2016–17, [Article 50 negotiations: Implications of ‘no deal’](#), HC 1077, para 60

an economic assessment of the scenario whereby the UK leaves the EU without a deal. The Government must also set out what contingency planning is taking place across Whitehall and the mitigation being considered for a 'no deal' outcome.

Objective 9: Securing new trade agreements with other countries

211. In the machinery of Government changes which took place following the EU referendum, the Prime Minister established the Department for International Trade (DIT) with overall responsibility for promoting UK trade across the world, and developing, coordinating and delivering a new trade policy for the UK. The International Trade Committee scrutinises the work of DIT and published its first report on *UK trade options beyond 2019* on 7 March 2017.²⁴² The Government has identified the ability to secure new trade agreements with non-EU countries as a key opportunity arising from the UK leaving the EU. While the Government's work in negotiating trade relationships with the rest of the world falls within the remit of DIT and the International Trade Committee, that work will be dependent on the nature of the UK's exit from the EU and the future UK–EU relationship on which we heard evidence. There was agreement amongst witnesses to our inquiry that the UK had to prioritise negotiations on a FTA with the EU before it begins negotiations with other countries.²⁴³ Roderick Abbott told us that there will be countries who will not want to decide what their trading relationship with the UK will be until they know how the UK will be trading with the EU:

It is the idea of a close association with the single market that we started with. That could be a factor that holds other countries back until they know whether the UK will continue to be a place you can go through with your global value chain, or your investment into the EU. That is the key point.²⁴⁴

212. Sir Ivan Rogers suggested that, outside the EU, the UK may have the advantage of being “easier to deal with” and more “nimble and agile” than the larger EU market, while also noting that its smaller market could affect its attractiveness. However, the UK's strength in negotiating FTAs would not be clear until we begin those negotiations:

You can argue that, as part of a composite and as part of the EU28 we have more weight in opening up markets where there has been deliberate protectionism against our products. Or you can argue that as the UK only, we will invest more effort and a higher quantum, a higher proportion of our effort, in doing stuff for Scotch whisky exports than the EU28, where by definition it is one of multiple different negotiation objectives for different countries. What I am saying is the proof of the pudding will be the eating. In some areas we will do better from being the UK alone and saying, “We can now focus on the few things that really matter to us in that market”. You can argue it either way.²⁴⁵

242 International Trade Committee, First Report of Session 2016–17, [UK trade options beyond 2019](#), HC 817

243 Q1025

244 Q1029

245 Q1116

213. As the UK embarks on negotiating its own preferential trade agreements, witnesses were clear that the Government would need to build up significant resources, particularly in terms of trade negotiators and experience.²⁴⁶ Professor Jim Rollo told us that trade negotiating was a craft which had to be learned. He suggested that the UK should begin negotiations with New Zealand and Australia as useful partners to learn from.²⁴⁷

'Grandfathering' EU FTAs

214. The UK is a party to over 50 Free Trade Agreements through the EU.²⁴⁸ Ensuring the UK can continue to trade through those agreements, known as 'grandfathering', is another priority for the UK's future trading relationships. The White Paper states that:

We are also seeking to achieve continuity in our trade and investment relationships with third countries, including those covered by existing EU free trade agreements or EU preferential arrangements. We are exploring with our trading partners ways to achieve this.²⁴⁹

215. Roderick Abbott told us that he did not think it would be possible to transition seamlessly to trade deals with current EU partners:

The dynamics of trade between the UK and a partner are not the same as they were between the EU and their partner. It is not seamless in that sense. There is a question or an approach that says, "Why do we not cut and paste from an EU agreement with, let us say, Mexico, which already exists?" You cut and paste; you simply put in all the same clauses. Maybe you change some things, but you basically have the same agreement, and you go to Mexico and say, "How about this?" The question is what answer you are going to get, because this is where dynamics enter into it.

(...) From a Mexican point of view, they may have been willing to do something for the EU that they are not willing to do just for the UK, because it is a much smaller market. The key here is that the UK on its own, outside the EU, is a much smaller market, in terms of population and consumers, and therefore in a mercantile trade sense it is less interesting.²⁵⁰

216. Professor Jim Rollo explained that the UK was circa 15 per cent of the EU28 market. Trade partners may not be willing to offer the same terms to the UK as they did for the EU.²⁵¹ He added that it is not in the UK's gift to run these agreements through.²⁵²

217. The option of 'grandfathering' existing FTAs is therefore far from guaranteed. The House of Lords' EU Committee concluded in its report on trade in goods that maintaining access to the EU's trade agreements was "unlikely", but recommended that the Government

246 Q1023

247 Q1025

248 Q1023 [Prof Rollo]

249 [The White Paper para 9.11](#)

250 Q1026 [Roderick Abbott]

251 Q1113

252 Q1023

focus its efforts on agreements with those countries as “the cessation of these preferential trade conditions is likely to result in significant tariff costs after Brexit, until such a time as the UK is able to conclude new FTAs.”²⁵³

218. Similar to negotiating a UK–EU FTA, embarking on negotiations for FTAs with non-EU countries is entering into the unknown. It is unclear whether the UK’s smaller and more focussed market will be an advantage or a disadvantage in trading negotiations. What is clear, however, is that the UK needs to urgently develop resources and expertise for trade negotiations. The Government should identify resourcing needs and prioritise countries which provide opportunities for developing expertise in trade negotiating. The Government should also prioritise those countries with which the EU has preferential trade agreements and seek early clarity on whether the UK can ‘grandfather’ those FTAs after Brexit.

Objective 10: Ensuring the United Kingdom remains the best place for science and innovation

219. The Government’s priorities for the negotiations include trying to maintain the UK’s position as a leader in science and a leading participant in Europe-wide measures in research and innovation. The White Paper states:

From space exploration to clean energy, from medical technologies to agri-tech, the UK will remain at the forefront of collective endeavours to better understand, and make better, the world in which we live. We will seek agreement to continue to collaborate with our European partners on major science, research, and technology initiatives.

It also notes the strength of the UK university base, with the UK having three of the world’s top ten—and twelve of the top 100—universities, and the Government’s investment in research and innovation—£2 billion announced in the Autumn Statement and through the Government’s Industrial Strategy to help turn research into commercial products. These factors, the UK’s track record in collaboration, and its involvement in EU space programmes and research into nuclear fusion make the UK an attractive place to carry out research and innovation.²⁵⁴

220. The Government has responded to concerns from the higher education sector by saying it will underwrite research funding through Horizon 2020 while the UK is still a Member State, even if the project continues after the date the UK leaves the EU. It is not clear if the funding guarantee is new money or the EU’s legal commitments.²⁵⁵ The Government has said that existing EU students, and those starting courses up to 2017–18, “will continue to be eligible for student loans and home fee status for the duration of their

253 House of Lords European Union Committee, Sixteenth Report of Session 2016–17, [Brexit: trade in goods](#), HL Paper 129, p5

254 [The White Paper, Chapter 10: Ensuring the United Kingdom remains the best place for science and innovation](#)

255 Science and Technology Committee, Seventh Report of Session 20216_17, [Leaving the EU: implications and opportunities for science and research](#), HC 502

courses”, with similar support for postgraduate students.²⁵⁶ There are over 125,000 EU students at UK universities and 16 per cent of academic staff at UK universities are from EU countries.²⁵⁷

The international and collaborative nature of research

221. The success of the UK university sector is in part due to its ability to attract international talent and produce world class research.²⁵⁸ Professor Davies, Professor of Law and Senior Pro-Vice-Chancellor, of Swansea University told us:

A key point, of course, relates to the skills of the EU staff in question. For us, the importance of ensuring access to those skills, and the reputation of higher education and universities in Wales from the research outputs that come through collaboration, are mission-critical to the way in which science operates. It operates in a borderless world. For us, part of that process would be not simply ensuring continuing recognition of the ability of EU staff to remain, but being open to the world for the best, highly skilled international researchers and staff. [...] Part of our process would be to ensure that we could create a vision for Wales that is one where we are open to international staff and student collaboration. Without that, the essential USP of universities as global industries fails.²⁵⁹

This applies also to the student base. Erasmus, Europe's programme to facilitate educational exchange, enables students to undertake part of their studies abroad. Research has shown that Erasmus increases participants' employability through soft skills and the ability to speak foreign languages.²⁶⁰

222. The Secretary of State acknowledged that part of the success of UK science was due to the collaborative nature of research in the UK.²⁶¹ He told us that he had devoted a lot of energy to meeting people from the higher education sector, and sciencedriven companies like GSK, to send out a consistent message that Brexit “is not a doorslamming exercise on immigration”.²⁶² When asked whether a future immigration system would be flexible enough to include scientists and researchers who may not meet the criteria if their role was subject to an income threshold, the Secretary of State told us that good work permit systems had some sort of mechanism to “recognise another measure of value” and that he would be making “quite serious representations” when we get closer to the Immigration Bill so that “We have to have a technical skills requirement.”²⁶³

223. The value of international collaboration for innovation is not limited to academia. Sadiq Khan told us that fintech had taken off in London because of the proximity of financial services, “tech” expertise and venture capital, and that London would look to

256 Business, Energy and Industrial Strategy, [EU nationals remain eligible for postgraduate support from UK's research Councils](#), press release, 2 December 2016

257 [Universities UK, Response to Theresa May speech on Brexit, 17 January 2017](#). There are currently nearly half a million international students at UK universities, with over 125,000 of them from EU countries

258 [Universities UK responded today to Theresa May's speech on Brexit](#), 17 January 2017

259 Q1263, Q1265.

260 [UCL \(OBJ0101\); On the merits of the UK staying in Erasmus post-Brexit – and why the programme must look beyond university students](#), LSE European Institute, 13 March 2017

261 Q1415

262 Q1415

263 Q1416

maximise the opportunities of leaving the EU by being able to continue to create the environment for talent and innovation in London.²⁶⁴ The CBI have stressed the need for an “open, flexible, simple immigration system [...] particularly for high-skilled immigration that boosts innovation and productivity.”²⁶⁵

224. The success of the Higher Education sector in the UK owes much to its ability to attract international skills and talent. The UK Government must design a future immigration system that does not make it difficult for such talent, both students and staff, to come to the UK. It must also send a strong and consistent message that the UK is a welcoming place for people to come and study. The Government should make clear that it wishes to continue to take part in the Erasmus+ student exchange programme.

Flows of funding: Horizon 2020

225. Horizon 2020 is an EU scheme to leverage research, development and innovation funding, to help meet research and development targets, including the target of 3 per cent of GDP for research and development across the EU by 2020. The UK has a strong track record in securing funds from Horizon 2020 and its predecessors. Around 15 per cent of funds allocated from Horizon 2020 have come to the UK, with UK universities in the top four higher education recipients to date (Cambridge, UCL, Imperial College London and Oxford). As of 23 February 2016, these four universities alone had been assigned over £363 million in Horizon 2020 funding. There have been a total of 3,937 participations in the programme from UK organisations, including 1,052 private, for-profit entities, 341 research organisations, 150 public bodies, 2,253 higher or secondary education places, and 141 others.²⁶⁶ Horizon 2020 also links education institutes with the private sector, and supports the broader UK's science and research base, from food and drink to life sciences to the creative industries.²⁶⁷

226. When asked about the Government's commitment to Horizon 2020, the Secretary of State said the Treasury had moved very quickly to underwrite research funding so universities felt confident to continue making research applications, and to offer guarantees for EU students here. He said:

I am not kidding; to get the Treasury to move in two weeks in August is a measure of quite how seriously the issue is taken. [...]

I do not know what ongoing relationship we may have with projects or operations like Horizon 2020, like Erasmus and like all the various elements. I will say to you what I have said to every university and every research operation that I have talked to, which is this: we are a science superpower.²⁶⁸

227. The UK has benefitted from being part of Horizon 2020. The Government has made a clear commitment to underwrite research funding commitments while the UK is a Member State, even if the project continues after the UK leaves the EU. However, the Secretary of State has told us that he does not know what ongoing relationship the UK

264 Q1323

265 [CBI, Making a success of Brexit, A whole economy view of the UK-EU negotiations, December 2016](#)

266 [House of Commons Library Briefing Paper 7847, UK Funding from the EU, 29 December 2016](#)

267 [CBI, Making a success of Brexit, A whole economy view of the UK-EU negotiations, December 2016](#)

268 Q1415

will have with Horizon 2020. The Government needs to make an explicit commitment that it wishes to continue joint research with the EU27 on the basis of the Horizon 2020 framework, and its successor.

Euratom

228. Euratom provides a legal framework for civil nuclear power generation and radioactive waste management across Europe, including arrangements for nuclear safeguards, the movement and trade of nuclear materials between Euratom members, and also between Euratom Members and third countries such as the US. Euratom covers the management of nuclear material at various sites in the UK, including Sellafield in Cumbria—the UK stores stocks of plutonium belonging to other Euratom members at Sellafield. Hinkley Point C was approved under regulation under the Euratom Treaty.²⁶⁹ Euratom is responsible for the nuclear aspects of Horizon 2020 research funding. In addition to being a source of funding, it provides access to programmes linked with other research centres. Nuclear fusion research at Culham gains £48 million a year from the Euratom research fund.²⁷⁰

229. Switzerland has an associate status with Euratom which enables it to access nuclear research through Horizon 2020. The Swiss example may not necessarily replicate all that the UK wants from nuclear cooperation. A recent report on Brexit from the Tweede Kamer, one of the Chambers of the Dutch Parliament, noted the risk that, whatever the outcome, arrangements for cooperation in this crucial area might not be in place on the day the UK left the EU.²⁷¹ The report recommended keeping the Euratom process separate from the Article 50 process so that “the negotiations on this can be conducted with care, rather than under time pressure.”²⁷²

230. The UK Government has said that future cooperation on nuclear energy matters will be a matter for the negotiations, and that:

it is an important priority for us—the nuclear industry remains of key strategic importance to the UK and leaving Euratom does not affect our clear aim of seeking to maintain close and effective arrangements for civil nuclear cooperation, safeguards, safety and trade with Europe and our international partners.²⁷³

231. The UK needs to be clear what kind of relationship it wishes to pursue with Euratom. It is important that whatever the relationship is, it does not reduce the ability of the UK to pursue international cooperation in the civil nuclear industry and collaborative research in the future, including Horizon 2020 and its successor.

269 [University of Manchester policy blog](#)

270 A 283 million euro operation contract signed between the European Commission and CCFE in July 2014 secures JET operation until 2018.

271 [Oral evidence before the Business Energy and Industrial Strategy Committee, 28 February 2017, Q133, Q136, Q144](#)

272 [Tweede Kamer Der Staten-Generaal, The United Kingdom's exit from the European Union, Brexit Report, Report by the Rapporteurs on Brexit, Adopted on 21 March 2017](#)

273 [The White Paper para 8.31](#)

Objective 11: Cooperation in the fight against crime and terrorism

232. The Secretary of State has told the House that the Government aims to “keep our justice and security arrangements at least as strong as they are” and wants “as far as possible, to replicate what we already have”.²⁷⁴ The White Paper notes that the UK has been “at the forefront” of developing tools for cooperation with the EU in combating crime and terrorism and:

As we exit, we will therefore look to negotiate the best deal we can with the EU to cooperate in the fight against crime and terrorism. We will seek a strong and close future relationship with the EU, with a focus on operational and practical cross-border cooperation.

233. The Secretary of State believes that the UK will negotiate from a position of strength:

Britain is the intelligence superpower in Europe; we are critical to the defence of Europe from terrorist threat, and we are critical to the military support of Europe and to dealing with migration, with our Navy at work. Those things will continue.²⁷⁵

234. In considering the model for future UK–EU interaction in security, criminal justice and law enforcement, Brandon Lewis MP, Minister of State for Policing and the Fire Service, Home Office, said:

We are looking at existing arrangements for third country cooperation with the EU, which can inform discussions, but it is important to be clear that we are not looking to replicate any other nation's model.²⁷⁶

235. The Government's objectives must be reconciled with the Government's broader goals for the exit negotiations—set out in the Prime Minister's Lancaster House speech—including “taking back control of our laws and bringing an end to the jurisdiction of the European Court of Justice”. Cooperation on criminal justice is one of the areas in which the Prime Minister envisages that “a phased process of implementation” may be needed.²⁷⁷

Europol

236. Europol is at the forefront of the EU's response to international crime. Founded as an intergovernmental organisation in 1995 and operational since 1999, Europol became an EU Agency in 2010. It provides analytical and operational support to national law enforcement authorities in all 28 EU Member States, enhancing their capacity to tackle security threats which have a cross-border dimension. Since 2009 Europol has been led by Rob Wainwright, the former head of the international division of the UK's Serious and Organised Crime Agency (now the National Crime Agency). David Armond, the Deputy Director General at the National Crime Agency, told us that “In terms of the access we have obtained through Europol and the influence we exert through having a

274 HC Deb, 10 October 2016, [col 55](#) and 1 December 2016, [col 1650](#)

275 HC Deb, 17 January 2017, [col 801](#)

276 HC Deb, 18 January 2017, [col 959](#)

277 [The Lancaster House Speech](#)

British director, who has implemented since 2008 a whole load of what are really British intelligence management systems, we would have a quite steep hill to climb if we were to lose access to all of them.”²⁷⁸

237. Europol's staff work alongside liaison officers seconded to its headquarters in The Hague by EU Member States and other partner countries or organisations in order to facilitate the rapid exchange of criminal intelligence, strategic and operational information. David Armond told us that it was “eminently possible” for the UK to have a liaison bureau but added that the size of the UK team might have to be “culled” because of available office space and that “we would have to make all our inquiries through a liaison structure rather than by direct access to the systems”.²⁷⁹

238. The UK participates fully in Europol. The Government has opted into a new Regulation updating Europol's governance structure, objectives and tasks which will take effect on 1 May 2017. According to Brandon Lewis MP, Minister for Policing and the Fire Service:

Opting in will maintain operational continuity for UK law enforcement ahead of the EU exiting the EU, ensuring our Liaison Bureau at Europol is maintained, and that law enforcement agencies can continue to access Europol systems and intelligence. This decision is without prejudice to discussions on the UK's future relationship with Europol when outside the EU.²⁸⁰

239. Denmark currently participates fully in Europol but has an opt out of all post-Lisbon EU justice and home affairs measures, meaning that it is unable to participate in the new Europol Regulation. An agreement has been reached to designate Denmark as a third country with respect to Europol, thereby making it possible for Europol and Denmark to conclude a cooperation agreement. A Joint Declaration issued in December by the Presidents of the European Council (Donald Tusk) and the European Commission (Jean-Claude Juncker) and the Danish Prime Minister (Lars Lokke Rasmussen) states:

Such arrangements must be Denmark-specific, and not in any way equal full membership of Europol, i.e. provide access to Europol's data repositories, or for full participation in Europol's operational work and database, or give decision-making rights in the governing bodies of Europol. However, it should ensure a sufficient level of operational cooperation including exchange of relevant data, subject to adequate safeguards.

This arrangement would be conditioned on Denmark's continued membership of the European Union and of the Schengen area, on Denmark's obligation to fully implement in Danish law Directive (EU) 2016/680/EU on data protection in police matters by 1 May 2017 and on Denmark's agreement to the application of the jurisdiction of the Court of Justice of the EU and the competence of the European Data Protection Supervisor.²⁸¹

278 Q1136

279 Q1141

280 [Letter from Brandon Lewis MP, to the chair of the European Scrutiny Committee, 14 November 2016](#)

281 [“Declaration to minimise the negative effects of the Danish departure from Europol, following the referendum in Denmark on 3 December 2015”, European Commission, 15 December 2016](#)

240. Commenting on these arrangements, David Anderson QC said:

One could say that is cutting off the nose to spite the face. One could say we are probably a much bigger contributor to Europol than Denmark is. Nonetheless, it is an indicator of how some people at least within the institutions think about these matters, and the distinction that they draw between being a Member State or, at the very least, being a member of the Schengen arrangements and being a third country, even one which in the past has fully participated.²⁸²

241. The cooperation agreement with Denmark would be based on the existing rules governing Europol's relations with third countries. These envisage two types of third country agreements:

- strategic agreements are limited to the exchange of general intelligence as well as strategic and technical information;²⁸³ and
- operational agreements which allow the exchange of information, including personal data, provided that the third country is able to ensure an adequate level of data protection.²⁸⁴

242. David Anderson QC told us that some operational agreements had taken between five to twelve years to negotiate.²⁸⁵ The dispute settlement provisions vary. Most envisage “consultations and negotiations” between the parties or an arbitration panel if the parties are unable to reach an amicable settlement. The agreements with Canada and the US envisage a process of mutual consultation.

243. No third country agreements with Europol allow direct access to Europol's databases or its secure messaging system (SIENA). Nor do they allow any role in Europol's governance structures which influence Europol's strategic direction. Third countries with operational agreements are able to post liaison officers to Europol's HQ in The Hague. Any new relationship with Europol once the UK leaves the EU will be governed by the new Europol Regulation. The Regulation authorises the transfer of personal data to third countries in the following circumstances:

- the Commission has adopted an “adequacy decision” establishing that the third country ensures an adequate level of data protection; or
- the EU has concluded an international agreement with the third country based on Article 218 TFEU—the likely legal base for any future relations agreement between the EU and the UK—“adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals”.

282 Q1152

283 Europol has concluded strategic agreements with Bosnia and Herzegovina, Russia, Turkey and Ukraine. Any disputes as to the interpretation or application of these agreements are to be settled through “consultations and negotiations” between the parties.

284 Europol has concluded operational agreements with Albania, Australia, Canada, Colombia, the former Yugoslav Republic of Macedonia (FYROM), Iceland, Liechtenstein, Moldova, Monaco, Montenegro, Norway, Serbia, Switzerland and the USA.

285 Q1138

The White Paper notes the UK's important contribution to Europol:

- the UK is one of the biggest contributors to Europol systems, supporting police forces across the UK and Europe in the fight against cross-border crime; and
- the UK currently participates in all 13 of Europol's current operational priority projects and the UK is "driving, or co-driving, almost half of Europol projects against serious organised crime".²⁸⁶

244. The Government intends to seek a "unique and bespoke" relationship with Europol:

There are associate members of Europol that are not members of the EU, such as the United States. I also point out that Europol existed as a non-EU institution before the EU was involved with it. Therefore, it is important to recognise that we will look to develop a unique and bespoke position for the country.²⁸⁷

I understand that the EU Treaties do not allow for non-EU members to join Europol as full members, but, as indicated already, we are seeking bespoke arrangements with the EU in this regard, and certainly we would wish to pursue access to Europol on as enhanced a basis as possible.²⁸⁸

245. The Government will be looking to conclude a bespoke arrangement for continuing involvement with Europol. The UK has been a leading force in Europol's development. If negotiations progress in a spirit of goodwill towards agreement, there should be scope for an imaginative solution to enable the UK to continue some level of involvement with Europol for the benefit of all European citizens. However, the technical obstacles that will need to be overcome for this to happen will be significant and it is unlikely that the UK will be able to retain the leading role that it currently enjoys.

Information-sharing

246. The White Paper highlights the law enforcement benefits of the Schengen Information System—the latest version is abbreviated as SIS II—as well as the EU Passenger Name Records (PNR) Directive and the European Criminal Records Information System (ECRIS). The UK participates in all of these measures and last year opted back into the so-called Prüm measures on cross-border law enforcement cooperation.

247. There is limited third country participation in EU law enforcement information sharing systems: the four Schengen associate countries (Iceland, Norway, Switzerland and Liechtenstein) participate in SIS II. The EU has negotiated three international agreements on the sharing of PNR data with Australia and the US (both in force since 2012) and with Canada (not in force, awaiting a ruling from the CJEU). No third country participates in ECRIS. The EU has concluded an agreement with Iceland and Norway on participation in Prüm which is not yet in force, and has a mandate to open negotiations with Switzerland and Liechtenstein.

286 [The White Paper](#), para 11.2

287 HC Deb, 18 January 2017, [col 960](#)

288 HC Deb, 18 January 2017, [col 1021](#)

248. The Government has not set out its position on future UK participation in EU information sharing systems but has made clear that “the question of how the UK shares data with the EU from the point of exit will be an issue for discussion during the negotiations”.²⁸⁹

249. The Home Secretary told the House in December:

I am having extensive discussions with European counterparts and with European bodies that help to keep us safe, so that when we do leave the European Union, we will, as far as possible, be able to have access to that information. When people voted to leave the European Union, they did not vote to be less safe.²⁹⁰

250. Closing gaps in existing EU information sharing systems is a priority for the Commission, following a spate of terrorist attacks across Europe. It has established a High Level Expert Group to explore the interoperability of EU border management and security information systems which will produce a final report in April 2017.²⁹¹ It is considering various work stands to enhance the interconnectivity of the databases including single search interfaces.

251. It is unclear whether this work will make it easier or harder for the UK to negotiate some form of access to EU information sharing systems post-Brexit. The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) has suggested that technical arrangements would need to be put in place to ensure that the UK only has access to the information systems on which an agreement on participation/access has been reached, not to other inter-linked systems.

SIS II

252. As the UK does not participate in the Schengen free movement area and is not bound by EU rules on external border controls, it is not entitled to access alerts concerning third country (non-EEA) nationals who are to be refused entry or stay in the Schengen area. The UK does participate in those elements of the Schengen rule book that deal with broader law enforcement issues and can access all other alerts held in SIS II, covering matters such as the arrest of individuals wanted for extradition. SIS II became operational in April 2013; the UK connected to it in April 2015.

253. Four non-EU countries associated with Schengen (Iceland, Norway, Switzerland and Liechtenstein) apply the full Schengen rule book and participate in all aspects of SIS II covering both border control and law enforcement. Apart from these countries, there is currently no provision for wider third country access to SIS II data.

Sharing of Passenger Name Record Data (PNR)

254. The UK has consistently pressed for the introduction of an EU-wide framework for the collection, processing and use of Passenger Name Record (PNR) data—the term used

289 [Letter from Robert Goodwill MP, Immigration Minister, to the Chair of the European Scrutiny Committee, 26 January 2017](#)

290 HC Deb, 5 December 2016, [col 10](#)

291 [High-level expert group on information systems and interoperability, set up by the European Commission, December 2016](#)

to describe information held in air carriers' reservation and departure control systems which provides a record of each passenger's flight details and itinerary. An increasing number of countries view PNR data as an important means of combating serious crime and terrorism and require air carriers operating flights to, from or across their territory to provide their law enforcement authorities with electronic access to the passenger data they collect. These data can be used to help identify passengers who may present a security risk or are wanted for a criminal or terrorist offence.

255. The EU has concluded PNR agreements with Australia, Canada and the United States to regulate the transmission and use of PNR data. The UK participates in all three agreements. The Government believes that such agreements are necessary to remove legal uncertainty for air carriers flying to these countries and to ensure adequate data protection safeguards. The European Parliament has asked the Court of Justice to consider whether the agreement is compatible with the data protection provisions in the EU Treaties and the EU Charter of Fundamental Rights.

256. Last September, the Court's Advocate General issued a preliminary opinion (which is likely to be persuasive, but is not binding on the Court) stating that some provisions of the agreement are incompatible with the EU Charter.²⁹² For example, the agreement would allow the processing of sensitive data (information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or information about a person's health or sex life) under certain conditions. The agreement would also allow PNR data to be processed for purposes which the Advocate General does not consider are strictly necessary to prevent and detect terrorist offences and other serious transnational crimes. The Court is expected to issue its opinion in the early part of 2017.

257. The Court's ruling will potentially have important implications for any future agreement between the EU and the UK to share PNR data once the UK leaves the EU. In proposing a negotiating mandate for an agreement with the UK, the Commission will be bound to ensure that it complies with EU Treaty and EU Charter requirements on data protection, as interpreted by the CJEU. David Anderson QC told us;

Just look at what is happening at the moment with the EU–Canada PNR agreement, which similarly was forged for completely pragmatic reasons, but which appears to be running into quite serious problems in the European Court. Put that together with the Davis–Watson case, which is very hostile to this whole idea of the blanket collection and retention of data, and you find quite a neuralgic issue that could arise between the UK and Europe.²⁹³

Prüm

258. Prüm is one of the areas in which the Government is keen to seek a bespoke solution for the UK. In his letter of 22 November 2016 to the Chair of the European Scrutiny Committee, Brandon Lewis MP, the Minister for Policing and Fire Services, made clear that the UK “is in a unique starting position” and in stating that the UK “will not be replicating another nation's model”, said:

292 [“Opinion 1/15 of General Mongozzi 8 September 2016 \(1\)”](#), Case Law of the Court of Justice, 8 September 2016

293 Q1140

We have a strong history of working closely with Member States as partners and allies on security cooperation. We have significant technical expertise in relation to fingerprints and DNA. Our law enforcement agencies use biometric information more effectively than many others in Europe and maintain a significant database of the fingerprints and DNA of convicted persons.²⁹⁴

259. The Secretary of State told the House earlier this month that, although the UK would no longer be part of the Prüm framework when it leaves the EU, “that is not to say that we will not be making new arrangements”:

The Prüm framework covers data exchange, DNA and so on, and it is very clear in our minds that we will be making new arrangements to keep terrorism, crime and so on under control.”²⁹⁵

European Criminal Records Information System

260. There is no provision for third countries to participate in ECRIS, either in the existing instruments governing its use or in the latest changes proposed by the Commission. Brandon Lewis MP, the Minister for Policing and the Fire Service, has confirmed that “the ECRIS legislation does not explicitly provide for the possibility of third country agreements”, adding:

The EU could conclude an agreement with a third country to exchange criminal records. At present, however, there are no countries other than EU Member States participating in ECRIS.²⁹⁶

261. He also indicated that the Justice and Home Affairs Council has called for work to “consider solutions (other than the ECRIS system) to allow the proactive sharing of convictions data, in particular relating to terrorism”.

262. The White Paper underlines the utility of ECRIS for law enforcement, noting:

The UK is the fourth largest user of European Criminal Records Information System (ECRIS). In 2015/16 the majority of the over 155,000 requests for overseas criminal convictions information were made to EU countries through ECRIS. EU Member States also benefit from notification messages we provide about their nationals who have been convicted in the UK, with the vast majority of the over 46,000 notifications made through ECRIS.²⁹⁷

263. There are alternatives to ECRIS—the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters or informal Interpol channels—but the Government’s view is that these are “more time consuming, complex and expensive than the ECRIS procedure”.²⁹⁸

294 [Letter from Brandon Lewis MP, Minister for Policing and Fire Services, to the Chair of the European Scrutiny Committee, 22 November 2016](#)

295 HC Deb, 2 February 2017, [col 1226](#) [Commons Chamber]

296 [Letter from Brandon Lewis MP, Minister for Policing and Fire Services, to the Chair of the European Scrutiny Committee, 21 November 2016](#)

297 [The White Paper](#), para 11.2

298 For example, See [HM Government Background Note on the UK’s cooperation with the EU on justice and home affairs, and on foreign policy and security issues](#), published in May 2016.

264. Across the range of Justice and Home Affairs data-sharing instruments, there is a strong operational argument, in the interest of both UK and EU27 law enforcement, for the UK retaining access to data. However, the extent to which this will be possible is likely to be determined by commitments that the UK is able to make in relation to ensuring that its data protection provisions remain aligned with those of the EU, and the governance arrangements that can be agreed around the databases. The access agreed is likely not to be of the same level currently granted.

The European Arrest Warrant and mutual recognition instruments

265. The principle of mutual recognition involves decisions by the judicial authority in one Member State being recognised and given effect by the competent authorities of another with minimum formality and minimum grounds for refusal. The most notable and most controversial mutual recognition instrument is the European Arrest Warrant (EAW). The UK opted back in to this instrument in December 2014.

266. Prior to the EAW, extradition between Member States was underpinned by the 1957 Council of Europe Convention on Extradition, which has been ratified by a wide number of states which are members of the Council of Europe and three which are not (Israel, South Korea and South Africa). Whilst the Convention is still in force it has been superseded by the EAW for extradition between EU Member States. Extradition under the 1957 Council of Europe Convention is less streamlined than the EAW in some notable respects:

- Requests are considered by the receiving state before a decision is taken on whether to issue the arrest warrant;
- The 1957 Convention gives a state the option of refusing to extradite its own nationals and there are limits on extradition for political, or revenue offences;
- The 1957 Convention has more stringent “dual criminality” provisions barring extradition if the act in question is not an offence in the requested state.

267. Some Member States have adjusted their extradition arrangements with other Member States to rely solely on the EAW and would have to legislate to revert to extradition under the 1957 Convention.²⁹⁹ David Armond told us “In the event that we lose that, which is likely, we would need to go through a process of re-engaging with all the Member States to negotiate treaties on extradition, because many countries have repealed the legislation.”³⁰⁰

268. The House of Lords EU Committee summarises evidence from law-enforcement agencies on the EAW in its December 2016 report, *Brexit: future UK–EU security and police cooperation*:

The Crown Prosecution Service still regarded the EAW as ‘absolutely vital’. The National Crime Agency also listed the EAW among their top three priorities for the forthcoming negotiations on UK withdrawal from the EU. Helen Ball, the Metropolitan Police Service’s Senior National Coordinator

299 For example Denmark, (p55 of [CM 8897](#), the Government’s Impact Assessments for the purpose of the UK opt-out of JHA measures) and Ireland (House of Lords, European Union Committee, Sixth Report of Session 2016–17, [Brexit: UK–Irish Relations](#) HL Paper 76, para 147)

300 Q1136

for Counter-Terrorism Policing, told us that on a scale of 1 to 10, she would currently rate the EAW 'about an 8' in terms of its importance to CT policing: 'it is an extremely valuable power to have'.³⁰¹

269. The Framework Decision establishing the EAW makes no provision for third countries to participate. However, the EU has entered into an EAW style extradition treaty with Norway and Iceland. Barristers Chambers 6KBW College Hill in July 2016 identified a number of factors which might affect the willingness and/or ability of the UK to adopt this course of action but concluded:

an EAW-style agreement remains a significant option. It is important to note that (unlike Norway and Iceland) the UK will be negotiating as a current member of the EAW system whose extradition processes are already in harmony with those of the EU. A potentially important factor may be that the Norway/Iceland agreement does not provide for the CJEU to have jurisdiction over disputes, and instead provides for a harmonisation of approach through the 'constant review' of case-law (Article 37 of the Agreement) which may make this a more attractive option for the UK Government.³⁰²

270. However, David Anderson QC observed that there could be "great resistance to us trying to carve out a special relationship for ourselves" in relation to EAW cooperation citing the examples of Norway and Iceland. However, he added "We can certainly try. We are leaving now so one takes that as the baseline. There is going to be a trade-off between getting an early deal on extradition and getting a bespoke deal on extradition. I would be very surprised if we can manage both".³⁰³

271. The value of maintaining participation in the European Arrest Warrant, or at least securing an analogous agreement, has been commended to us. We note that the UK comes from the position of having extradition processes already in line with those in the EU. We also note that there are precedents for agreements with the EU analogous to the European Arrest Warrant that do not involve remaining within the jurisdiction of the CJEU.

272. The Secretary of State has said that the Government wants "as far as is possible to replicate what we already have" in respect of Justice and Home Affairs Cooperation. It is to be hoped that the UK's relationship with the EU when outside it will be one of partnership on the basis of shared values and cooperation. Continuing deep levels of Justice and Home Affairs cooperation represents a test of whether this will be possible. The technical challenges are significant but, we believe, not insuperable and the prize of continued close cooperation is too valuable to lose. We note that, as the Prime Minister acknowledged, a "phased process of implementation" may be required if agreement is not possible within two years.

301 House of Lords EU Committee, [Brexit: future UK–EU security and police cooperation](#), HL Paper 77

302 6KBW College Hill

303 Q1143

Common Foreign and Security Policy Cooperation

273. The UK is a major global actor. It is one of the EU's two nuclear-armed states with a permanent seat on the United Nations Security Council. It is also a prominent member of NATO, the G7 and G20. In addition to the bilateral agreements it has with certain states—such as the Lancaster House Agreements with France—the UK cooperates with other EU states on foreign and defence policy matters through the intergovernmental Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP). This includes participation in both military and civilian CSDP operations overseas, the adoption of common positions on major global issues, and the imposition and maintenance of sanctions against third countries such as Russia.

274. In our previous Report, we said it would be “essential” for the Government to maintain co-operation with the EU27 on defence and foreign policy matters, and that it would be “clearly in the UK's and EU27's mutual interests” to ensure that this happens.³⁰⁴

275. The White Paper makes clear the Government's intention to continue this cooperation, although it does not go into detail on how this might be achieved in the light of the UK's departure from the institutional decision-making structures of CSDP and CFSP. The White Paper says:

We want to use our tools and privileged position in international affairs to continue to work with the EU on foreign policy security and defence. Whether it is implementing sanctions against Russia following its actions in Ukraine, working for peace and stability in the Balkans, or securing Europe's external border, we will continue to play a leading role alongside EU partners in buttressing and promoting European security and influence around the world. We aim to enhance our strong bilateral relationships with our European partners and beyond, projecting a truly global UK across the world.³⁰⁵

On defence matters specifically, the White Paper adds:

We participate in Common Security and Defence Policy (CSDP) missions and operations across the globe. Our objective is to ensure that the EU's role on defence and security is complementary to, and respects the central role of, NATO. After we leave the EU, we will remain committed to European security and add value to EU foreign and security policy.³⁰⁶

276. We welcome the Government's commitment to continuing co-operation with the EU27 on foreign policy and defence matters. This is an area of considerable mutual interest and must be prioritised during the negotiations. We look forward to the Government setting out in more detail its proposals for how such cooperation can be made to work in practice, including the institutional and decision-making frameworks that would underpin it.

304 Exiting the EU Committee, First Report of Session 2016–17, [The process for exiting the European Union and the Government's negotiating objectives](#), HC 815, para 99

305 [The White Paper para 11.9](#)

306 [The White Paper para 11.11](#)

6 A phased approach

Objective 12: A phased approach

277. In her Lancaster House speech, the Prime Minister made clear that the Government would like to negotiate the Article 50 exit agreement and the terms of the future UK–EU relationship in parallel.³⁰⁷ The White Paper repeated this proposal, suggesting that it would help to avoid a “cliff-edge”:

It is [...] in no one's interests for there to be a cliff-edge for business or a threat to stability, as we change from our existing relationship to a new partnership with the EU. Instead, we want to have reached an agreement about our future partnership by the time the two-year Article 50 process has concluded.³⁰⁸

278. The EU27 and the EU institutions, however, have said that they will not be willing to begin talks on the future relationship between the UK and EU until after the terms of the exit deal are finalised.³⁰⁹ In evidence to this Committee, the Secretary of State said:

The range of views, just to remind you, range from the views taken by some members of the Commission that we will do the “divorce”, the departure deal, and then after that have a transitional arrangement while we are still paying money and there is still the free movement of people. There are all of these things going on and we will do the longterm deal in slow motion. That is plainly not what we are after.³¹⁰

He also confirmed that, as at 15 March, neither the EU27 nor the Commission had agreed that negotiations on the exit deal and the future relationship could take place in parallel.³¹¹

279. Sir Ivan Rogers, however, also pointed out that “Nobody knows” exactly how the negotiations will be sequenced in practice.³¹² He said:

I would expect us probably to take until at least the summer before there is an agreement about negotiating structures and modalities, and the coverage of what we are going to negotiate. I hope that is not too complex. None of us knows. I would have thought there will be a bit of a stand-off at the outset. They will say, “We think of this as primarily around divorce terms”. [...] I am sure we will say, “That is not an acceptable ambit for the negotiation, and we want to cover the future relationship. Unless you are looking at the future relationship at the same time, how on earth can you decide the divorce terms?”³¹³

280. Even if the EU will agree to the UK's proposal to negotiate a future agreement alongside the exit deal, Sir Ivan noted that this may not be possible within the two-year

307 [The Lancaster House Speech](#)

308 [The White Paper para 12.2](#)

309 Financial Times, [“Brussels focuses on UK's €60bn exit bill before trade talks”](#), 19 February 2017

310 Q1392

311 Q1393

312 Q1059

313 Q1059

timeframe. Negotiating the EU–Canada CETA agreement, for example, took over seven years from the launch of talks to ratification. Asked how long a UK–EU FTA might take to conclude, he told us:

It obviously depends on the ambit of the FTA, and how wide you go, and how difficult it is—it will be much more difficult on financial services, because it is unprecedented, than it is on aviation, where the answer is fairly obvious and ought to be in everyone's interest but it might be quite difficult to do it by a date, certainly, in October 2018. Then in some areas, what happens on energy or agriculture and phytosanitary, or competition law etc., is very hard to judge. You would have to open, as I say, like an accession process, chapters. [...] If your question is, could you in principle agree with them that by date certain there would have to be an agreement, and that is a definitive cut-off, you probably could. The question is, as ever for negotiators like me, what is the reality of that, or would you just reach that cut-off point and find you were not quite there and have to have another cut-off point? How do you avoid that situation? How do you make it a definitive cut-off point that everybody does sign in blood? It is very hard to judge.

I think [...] we should not accept and do not have to accept that there is this stately round of FTA negotiations, and with the Americans we reached round 15 of TTIP—I assume it has now bitten the dust—and they were happening at a regular rhythm of about four or five a year. We would presumably be saying, “We do not have to do four or five a year. We could do two a month, and we get all our negotiators across all the sectors”. You have to be realistic; a lot of work emerges during a negotiation that you had never thought of before the negotiation, and then people have to go away and do their homework, and they have to consult their Ministers and their Commissioners, and they have to consult the 27, and it all takes longer than you think possible.³¹⁴

281. Sir Ivan also noted, however, that the EU27 may be open to moving more quickly than would typically be the case in negotiating an FTA with a third country. He said:

They are, in principle, persuadable that an FTA with the UK is a good thing. They might regret that it was not a closer relationship than an FTA, but they would be up for negotiating an FTA. As to whether they are then persuadable that that can be done on your continuity and convergence argument and can all be done and dusted by October 2018, we can only see when it starts. That is not the doctrine in Brussels or in the key capitals I dealt with, but if you say, “Look, we are up for a really quick process. We start convergent; we are able to give you a very good account of where we shall remain convergent. We want a governance process for what happens when we cease to be convergent. We recognise your sovereignty such that in those areas where you argue we are not convergent enough there will be market-access consequences for us. You will have to accept that if that

is what you choose to do to us, there will be market access consequences for you in return". Your proposition, if you are the Prime Minister, will undoubtedly be, "We could all do this much more rapidly than you all say".³¹⁵

282. It appears clear that negotiations will have to take place in a timeline shorter than the two years provided for in Article 50 TEU. Michel Barnier has said that, once Article 50 is triggered, the UK would have just 18 months to negotiate its exit from the EU in order to give the EU institutions enough time to ratify the agreement within the two-year period afforded by Article 50. On both occasions he has given evidence to us, the Secretary of State has agreed with this timetable.

283. There is no precedent for the conclusion of a major, comprehensive bilateral or multilateral FTA covering goods and services within two years, although there is also no precedent for the negotiation of a major FTA between countries that are already convergent in legal and regulatory terms. It may be that starting from this position of convergence enables the terms of a future trade deal to be negotiated more quickly than comparable agreements such as CETA. It is not yet evident, however, that the two-year timetable for achieving this is realistic.

A potential exit payment

284. The White Paper did not mention the possibility that the UK will pay an exit "fee" to the EU to cover what the EU sees as the UK's outstanding financial liabilities under the current Multi-Annual Financial Framework. As the Foreign Affairs Committee recently noted, however, this is likely to be among the first issues on the table during the negotiations.³¹⁶ It has been reported in the press that the Commission has indicated it will not begin negotiations on the future relationship until agreement is reached on the so-called exit "fee", which it apparently calculates at €50–60 billion.³¹⁷

285. The Secretary of State told us:

The first thing to say is that this bill has not been presented. I have not seen any rationale behind it. I have seen the *Financial Times*' surmised rationale, but we have not seen anything. The other thing I would just remind people of is that we are at the beginning of a negotiation. Positions will be taken in all of this. Our stance is pretty straightforward. We are a lawabiding nation. We believe in international systems of rules. We obey them, and we have rights and obligations. We will insist on one and meet the other. That is the first thing to say.³¹⁸

286. The House of Lords European Union Committee recently concluded that "Article 50 allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget and related financial instruments, unless a withdrawal agreement is concluded which resolves this issue". The Committee said that it was "questionable"

315 Q1108

316 Foreign Affairs Committee, Ninth Report of Session 2016–17, [Article 50 negotiations: Implications of 'no deal'](#), HC 1077, para 21

317 Politico, "[What happens after Theresa May triggers Article 50](#)", 14 March 2017

318 Q1411

whether any international court could have jurisdiction in this case.³¹⁹ However, the Secretary of State indicated to us that the Government has not yet reached a view on the extent, if any, of the UK's legal obligations or on the formula it will use to calculate those obligations. He said that:

the House of Lords report on this was interesting, because it laid out the competing arguments quite well. From the Committee's point of view, it is a very good starter in this exercise, but we do not recognise the numbers that you are talking about. [...] There is ongoing work on all of the legal aspects. The reason that I point you to the House of Lords report is that it makes clear that there is an interaction between these two things. At the end of the day, anybody who has been a Minister in the Council of Ministers knows that the European Union is about getting answers to solve the problems. It will be a problem solving/negotiated/legalbased outcome, and that is a woolly answer, but I suspect it will be a woolly exercise, at least in part.³²⁰

287. Sir Ivan Rogers told us that the question of UK liabilities would be a point of contention in the negotiations because of its implications for the EU budget. He said:

[The EU27] are all looking ahead to the next two years, thinking, "We have a hell of a budgetary negotiation coming up in 2019". Now, as far as they are concerned, we have lobbed a grenade into the budgetary mess, because they now have to start examining whether their funds go around for the period up until 2020 now, rather than waiting until 2019. We all have a problem.³²¹

288. He later added that:

it could get pretty bitter and twisted on money. Nothing gets more bitter and twisted than EU negotiations on money, and I have lived a few of them. Sometimes it can be over beans rather than large sums, and these are very large sums, if you were to believe the rhetoric from the other side.³²²

289. Negotiations around the UK's outstanding and future financial liabilities to the EU will form a very important part of the negotiations which will need to consider liabilities, assets and, potentially, payments by the UK for continued participation in certain EU programmes. It will be essential also to ensure that discussions about money do not get in the way of simultaneous negotiations on the UK's future relationship with the EU27.

A 'no deal' scenario

290. The White Paper stated:

We are confident that the UK and the EU can reach a positive deal on our future partnership, as this would be to the mutual benefit of both the UK and the EU, and we will approach the negotiations in this spirit. However,

319 European Union Committee, 15th Report of Session 2016–17, *Brexit and the EU budget*, HL Paper 125, paras 135–136

320 Qq1411–1412

321 Q1060

322 Q1081

the Government is clear that no deal for the UK is better than a bad deal for the UK. In any eventuality we will ensure that our economic and other functions can continue, including by passing legislation as necessary to mitigate the effects of failing to reach a deal.³²³

291. In evidence to this Committee, the Secretary of State said that the Government has not yet undertaken a study of the economic impact of leaving the EU without a deal in place. He told us that:

The Prime Minister said, in terms, that no deal is better than a bad deal. Why did she say that? She said that because, in the emotional aftermath of the referendum, there were lots of threats of punishment deals and all the rest of it. Let me be clear that we could manage this in such a way as to be better than a bad deal, and that is true. I cannot quantify it for you in detail yet. I may well be able to do so in about a year's time, but it is certainly the case. Frankly, Mr Chairman, it is not as frightening as some people think, but it is not as simple as some people think. [...] It is not as good an outcome as a freetrade frictionfree open agreement, which is why we are trying for it.³²⁴

292. The Secretary of State also indicated, however, that some contingency planning for the possibility of leaving the EU without a deal in place was underway. He said:

In the event that we do not get that or that there is no conclusion, we will have a fairly extensive contingency plan, which is already under way, as I said to you. Whatever happens, we will have sharply improved access to the rest of the world, off the back of a large number of free trade agreements, which will be coming into effect shortly after we leave—or some of them will be. You do not have to have a piece of paper with a number on it to have an economic assessment. I spent most of my working life before I came into politics dealing in business; you often knew what was a good deal, even though you did not have the numbers.³²⁵

293. We note the Foreign Affairs Committee's recent conclusion that a 'no deal' scenario "represents a very destructive outcome leading to mutually assured damage for the EU and the UK". We share that view. It is, therefore, very important that both the UK and the EU avoid reaching the end of the two-year negotiating period without an agreement. The Government has talked about walking away from a bad deal, but has not yet explained what terms would be demonstrably worse for the UK than 'no deal'. The Government should therefore conduct a thorough assessment of the economic, legal and other implications of leaving the EU at the end of the Article 50 period with 'no deal' in place. This should be published. The public and Parliament have a right to the maximum possible information about the impact of the different future trading options being considered, including the possibility of no FTA being reached.

323 [The White Paper para 12.3](#)

324 Qq1385–1386

325 Q1421

294. Without an economic assessment of ‘no deal’ having been done and without evidence that steps are being taken to mitigate what would be the damaging effect of such an outcome, the Government’s assertion that “no deal is better than a bad deal”, is unsubstantiated. Parliament must be in an informed position to decide whether a proposed deal is, in fact, better or worse than ‘no deal’.

Implementation phase

295. In our previous Report on the process for exiting the EU and the Government’s negotiating objectives, we concluded that “The Government must make clear from the outset that a period of adjustment to any change in trading arrangements or access to EU markets for UK service industries will be sought as part of the negotiations.”³²⁶ This reflected the views of several of our witnesses, who expressed concerns about the need to minimise disruption to trading relationships and complex supply chains in particular sectors.

296. Since then, the Government has indicated that it aims to put in place “a phased process of implementation, in which the UK, the EU institutions and Member States prepare for the new arrangements that will exist between us, will be in our mutual interest”.³²⁷ According to the White Paper:

This will give businesses enough time to plan and prepare for those new arrangements. This might be about our immigration controls, customs systems or the way in which we cooperate on criminal and civil justice matters. Or it might be about the future legal and regulatory framework for business. For each issue, the time we need to phase in the new arrangements may differ; some might be introduced very quickly, some might take longer. And the interim arrangements we rely upon are likely to be a matter of negotiation. The UK will not, however, seek some form of unlimited transitional status. That would not be good for the UK and nor would it be good for the EU.³²⁸

297. Asked to explain the difference between “transitional arrangements” and the Government’s proposal for an “implementation period”, the Secretary of State told us:

What we do have around Europe among Member States is an understanding that we are going to need some time to put into effect whatever it is that we agree afterwards. Last time [I appeared before the Committee], I resisted being drawn on what that—I do not like “transition arrangements”—implementation phase would be for a very simple reason. What the implementation phase needs to be is dependent on what the final outcome is—what the end structure is. If it is very similar to now, and arguably a comprehensive free trade agreement would be quite similar to the effect in terms of accessing the single market, then less transition is required. If it is a big difference, more transition is required.³²⁹

326 Exiting the EU Committee, First Report of Session 2016–17, [The process for exiting the European Union and the Government’s negotiating objectives](#), HC 815, para 163

327 [The White Paper para 12.2](#)

328 [The White Paper para 12.2](#)

329 Q1392

298. Later, the Secretary of State elaborated further:

We have been talking to people about what they would want out of these things and it does vary. Every single person wants something different. That is part of the issue. This is why I say that what we need to do is first work out what the end state will be and then work out whether there is a need, whether there is a disruptive effect of some sort in the change, and whether there is a need to allow people to accommodate to that. That is one part of it. When I talk about the implementation stage or implementation phase, it is the Government implementation. It may also be corporate implementation as well. We may need to think this through. Bear in mind again, as I keep reiterating to the Committee—the Committee quite reasonably asked me for hard answers—that starting a negotiation is sometimes hard to do. It will be on both sides' interest to make sure that there is a smooth and orderly transition to the new state, and we will try to do that on an industry-by-industry basis, if need be.³³⁰

299. As the Government has suggested, the extent of disruption caused by leaving the EU is likely to vary across sectors, depending on the terms of the final withdrawal agreement. In some areas, adjustments are likely to be minimal. Where changes in trading arrangements or market access may be more substantial, however, the Government should seek to establish frameworks for implementation phases as early as possible in the negotiation process. It should communicate the terms of those agreements promptly and clearly to businesses and the public, in order to ensure adequate time for planning.

Annex 1: Note of meetings in Wolverhampton, 19 January 2017

Introductory meeting with local councillors and LEP

Prof Ian Oakes	Deputy Vice-Chancellor
Prof Andy Westwood	Director of University Observatory
Cllr John Reynolds	Cabinet Member for City Economy, Wolverhampton City Council
Stewart Towe	Chair of the Black Country LEP
John Wood	Chair of Economic Growth Board
Dr Keren Jones	Service Director City Economy, Wolverhampton City Council
Tim Johnson	Strategic Director, Wolverhampton City Council

The LEP presented the area's 30-year economic growth plan, which began in 2003. Roughly half way through the plan and the city is on track to meet its growth targets, particularly in infrastructure. One of the biggest challenges Wolverhampton faces is the skill levels in the city. Wolverhampton has double the national average of people with no qualifications. It also has the fourth highest proportion of young people in all LEP areas. As such the LEP is investing in bringing young people into the workforce. There is a mismatch between the investment in the city and the low levels of skills and employment. EU funding has increasingly been targeting socio-economic factors and worklessness.

The key issues for Wolverhampton from Brexit were set out as:

- loss of significant EU resources to help deliver economic priorities and stimulate other investment
- Impact on foreign direct investment
- Implications for future international trade and business
- Impact of any future labour controls on key economic factors.
- The main asks for Wolverhampton for the Brexit negotiations were identified as:
- ensuring government has the capacity and expertise not just to deal with Brexit but other key agendas
- Ensuring a replacement regional assistance programme reflecting the specific scale of the challenge and opportunity in the city and across the Black Country
- Ensuring tangible support for local businesses—especially SMEs—to navigate and thrive in a post-Brexit trading environment
- More investment in activity to explore the trade and investment potential of other non-EU markets
- Ensure priority of the order of trade negotiations reflects critical sectors and markets
- Recognition of criticality of foreign owned businesses (EU and non-EU) to operate flexibly across the EU

It was noted that Brexit had already impacted foreign direct investment in the city. The example was given of a manufacturing company which had decided to invest in Holland rather than Wolverhampton in the wake of the referendum result. In spite of this, it was suggested that the business community welcomed the challenge of Brexit, that it was their responsibility to react to changes in circumstances and make it work.

In responding to questions, it was noted that EU funding had targeted worklessness and low skills in the city which required longer-term investment. There were concerns that UK Government funding tended to work on shorter time-frames. It was also suggested that Brexit was an opportunity to free up funding and make it more flexible, so it would not be as prescriptive as European funding has been, for example in terms of the size of companies. Rather UK funding could be channelled through LEPs who understand local needs and opportunities.

It was argued that through greater devolution, decisions on funding could be made locally on key priorities such as transport, energy, employability and an education system to reflect local economic needs. EU funding was described as limited in compartmentalising funding into either business or education for example, while Wolverhampton would like to link these two sectors.

A good outcome from the negotiations was identified as a level-playing field, with a free trade agreement and no tariffs. The significance of non-tariff barriers depended on the business, for example, they are very important for the automotive sector. Less regulation was also listed as a positive. Currency fluctuations were described as key for manufacturers, while being out of the customs union would be a bad outcome. Control over immigration was needed while still allowing the UK to access skills. Time to adjust to the deal the UK reaches with the EU would be vital, the example was given of 12 months.

Roundtable with university staff and students

Prof Ian Oakes	Deputy Vice-Chancellor
Prof Nazira Karodia	Dean of the Faculty of Science and Engineering
Prof Andy Westwood	Director of University Observatory
Prof John Darling	Dean of Research
Derek Walton	Head of the International Centre
Ray Flynn	Policy Adviser to the Vice-Chancellor
Simon Brandwood	Head of Careers and Employment Services
Habiba Amjad	Students' Union President
Sohaib Farooqui	Home student
Joshua Sutliff	Home student
Aaron Green	Home Student
Iman Hussain	EU student
Mark Anderson	EU student
Wai Lok Ng	International student
Lianne Brooks	Regional Officer, Unison
Tatiana Panteli	European Business and Research Development Manager (Brussels via telephone)

Prof Oakes provided an introduction to the University, drawing the meeting's attention to the fact that 75% of home students came from a 25 mile radius, while the university was also global, attracting students from over 100 countries with around 1,000 EU students. EU funding had contributed to the development of the Science Park, which housed 80 businesses, and the Innovation Centre, home to 40 businesses. Within 12 years, the University expected to have in excess of 150 businesses located on campus. The University had seen a growth in research, including world-leading research.

When asked about research income, the University confirmed that disruption had so far been minimal but that was likely to change following the triggering of Article 50. Wolverhampton had focused on research into local factors, such as deprived communities, and cuts in this research could create difficulties in addressing such local problems. There were concerns about the focus of future research funding if allocated by Research Councils. It was also suggested that the loss of EU research funding would also impact on the attractiveness of the UK for talent, particularly staff. It was recommended that the Government seek to maintain research funding and access to research networks across Europe.

The Erasmus programme was considered vital for providing students with opportunities. It was noted that last summer, the University sent 200 students to Europe with Erasmus and that 98–99% of students with international experience found employment within 6 months of graduating.

Students were particularly concerned about the loss of Erasmus. The Committee heard that European experience made students more employable in the UK and students with international placements tended to get a better class of degree. There were worries about employment opportunities for graduates once the UK left the EU and any obstacles that would create for finding work and living in the EU. It was suggested that Brexit had created a “cloud of uncertainty” around opportunities and experiences, as well as fees. However, like every UK university, Wolverhampton took in far more students under Erasmus than it sent out – the appetite for English taught degrees in the rest of Europe was immense and was likely to continue.

In terms of applications for places at the University, applications from EU students had fallen a little but the University had acted quickly to guarantee fee levels for those starting in September 2017. The University would not be able to make such guarantees for students beginning in September 2018. It was noted that students were thinking twice about pursuing Masters or PhDs in Wolverhampton since the referendum. Students also found the prospect of visa applications daunting. Some were concerned about employment opportunities owing to headlines that employers were poised to cut graduate training schemes. There were questions around the future of internships and knowledge exchanges with Institutions in the EU.

It was explained that lower numbers of students at the University could have knock-on effects for the wider area with lower numbers of staff. Often universities are the biggest employer in their area, not just of teaching staff but also administration, cleaning staff etc. A drop in University students and staff would impact local businesses such as shops and bars. It was noted that unemployment is already a concern in the West Midlands. The importance of maintaining European employment law, such as flexible working and equalities legislation, were also highlighted.

At least 89 out of 230 staff at the University are EU Nationals. They are sitting tight at the moment but would welcome “more knowns than unknowns”. The University had set up an EU Futures Group to provide advice and support to staff. In terms of a future immigration system, the University would like continuing access for international postgraduates, research staff and highly-skilled grades. It was suggested that the Government should adopt a fairly light-touch approach. At present, the bureaucratic difficulties of bringing in non-EU talent were considered very burdensome for the University and for individuals. It was argued that such difficulties could make people go elsewhere where they could get a similar service for less effort.

In Brussels, the University had noticed an initial tension with partners after the referendum result but that had returned to positive communication. It was suggested that European partners were looking to the UK for solutions and were sympathetic to the situation. The University is fortunate in having a small presence in Brussels and can meet partners face-to-face and participate actively at an EU level. However, many were concerned about the uncertainty once Article 50 is triggered. For example, when Switzerland limited movement of people, the country lost access to Horizon 2020. Even if the UK were able to provide funding for research nationally, it would not have the same level of international recognition or peer review. The University had benefitted from Horizon 2020 funding, and also structural funding in developing facilities and engaging with businesses. This is a key part of the institution's strategic plan so they need some certainty on where the funding will come from once the UK leaves the EU. The University asked for the same level of funding but with more flexibility than is usually the case with government funding.

Roundtable with local businesses

Prof Ian Oakes	Deputy Vice-Chancellor
David Danger	MD of UTC Aerospace Systems and Chair of Employment and Skills Board
Jeremy Vanes	Chair of the Royal Wolverhampton NHS Trust
Peter Comforth	Director of Retail, Benson and Elliot
Sam Hudman	Senior Project Manager, Carillion
John Wood	Chair of Economic Growth Board
Corin Crane	CEO, Black Country Chamber of Commerce
Phil Barnett	Chair of Governors, Wolverhampton Grand Theatre
Sham Sharman	Owner, Zuri Coffee and Chair of Wolverhampton Business Forum
Ninder Johal	President, Black Country Chamber of Commerce
Keith Harrison	Editor, Express and Star
Cllr John Reynolds	Cabinet Member for City Economy, City of Wolverhampton Council
Marc Fleetham	Director of Business Solutions, University of Wolverhampton
Stephanie Peacock	GMB Union
Rachel Eade MBE	Director, RED Ltd.
James Martin	Partner at CCW Recovery Solutions / Crowe Clark Whitehill LLP
Paul Cadman	Business Consultant to Manufacturing Sector, Stone Tile
Ian Timmings	MD, JH Lavender Ltd
Darren Peach	Commercial Director, JH Lavender Ltd

The main theme to arise from this discussion was the need for clarity. There were questions about whether there would be a sectoral approach, what would happen to businesses which rely on EU nationals, what would replace European Regional Development Funding, would there be tariffs and the impact on parts crossing borders, what regulatory frameworks would there be, and would the UK be able to influence the regulations which affect businesses here.

The Committee heard that businesses would be able to adapt to any changes arising out of Brexit, but that they needed time to prepare and adjust, for example, in terms of administration, resources, skills and getting their products here. There were calls for a transitional period during which support could be provided to businesses for working with changed systems, new paperwork, and to improve capacity. It was agreed that 6 – 12 months would be long enough for businesses to adjust.

The biggest gap in information was identified as tariffs and customs. They said it was difficult to get good quality data on what tariffs will look like and that the flow of information from Government agencies to businesses needs to improve. It was described as a need for the “education of businesses” for a different way of working. For big businesses who are already well-versed in the paperwork that comes with tariffs and customs, the most pressing concern is delays at the border. This could be addressed with a more streamlined process such as an approval mark if companies meet certain criteria.

It was recognised that there was a need in Wolverhampton and the West Midlands for highly-skilled staff and that any new immigration system needed to be flexible to respond to changing needs in future. It was noted that where the UK can't grow its own talent, then businesses become hostages to agencies. This is particularly evident in the NHS, for which it would take years to train up a local workforce. It was suggested that, while the Government can't control currencies, it can control talent and skills and should secure access to the right people.

Businesses called for small, flexible funding programmes through which skills gaps could be identified and workers retrained, for example, for haulage drivers. It was noted that Wolverhampton had a low level of skills but not a low level of vacancies. There was no evidence that EU workers were taking British jobs. It was suggested that those who are out of the jobs market were now further from it than ever. This was not a Brexit issue, but Brexit has highlighted it. Wolverhampton would have to improve skills in the town and local area. The suggestion was made that funding be allocated through LEPs who understand local issues and needs.

Annex 2: Note of meeting in Stoke-on-Trent, 19 January 2017

Roundtable with local businesses

Stephen Dixon	Managing Director of Johnson Tiles and British Ceramics Confederation (BCC) President
Paul Farmer	Managing Director of Wade Ceramics Ltd., President of Staffordshire Chambers of Commerce and BCC member
Karl Woodcock	Managing Director of Unifrax Ltd (UK) and Saffil Ltd and BCC Board Member
Jon Cameron	Group Finance Director for Steelite International Ltd and BCC Member
Philip Ray	Group Company Secretary for Steelite International Ltd and BCC Member
Andrew McDermott	BCC Technical Director
Tom Reynolds	BCC Policy Manager
Sara Williams	Deputy Chief Executive, Staffordshire Chambers of Commerce
Thomas Busby	Fruit farmer
Mike Cole	Head of Public Affairs, Michelin
Sarah Robinson	Principal, Stoke College

Members heard how the farming industry had changed the Seasonal Agricultural Worker (SAW) system had been in place. Polytunnels have helped local farms extend the soft fruit production up to nine months. Consequently, the number of months a year they needed labour had grown. Fruit farmer paid over £7 an hour, which could be improved depending on the productivity, but they found it difficult to recruit local workers. The businesses would not be viable without access to EU workers.

Other employers said factories in Stoke offered £8–£9 an hour and could not recruit local labour. Immigrants, some over qualified, had shown a willingness to take the jobs. They now were looking for better jobs.

Participants discussed how the Common Energy Market and EU Emissions Trading Scheme (EU ETS) could be improved. It was suggested that Brexit was an opportunity for the manner in which climate change targets can be met. Members heard that incentives for hitting targets must change. There need to be more positive incentives to invest in energy efficient and low carbon technologies, for example through the tax code. As an energy-intensive sector, it was noted that the ceramics sector was already becoming more energy efficient in order to reduce bills. They complained that they were being penalised for this under the EU ETS scheme, while Climate Change Agreements were more effective at delivering climate ambition, whilst preserving competitiveness.

Ceramics industry is a high energy user. They wanted secure and affordable access to electricity and gas from the continent, and to know if the UK would still be involved in the single energy market. They did have the ear of Government on energy through the Department for Business, Energy and Industrial Strategy.

It was noted that 14% of business in Stoke-on-Trent export, compared to a national average of 11%. Members of the Staffordshire Chambers of Commerce are buoyant and positive about Brexit as few are exporters.

However, for the ceramics sector a large proportion of stock is exported, with 50% of exports sold in the EU. Therefore a UK–EU FTA is vital for those businesses. The ceramics sector's second largest export market is the US, where manufacturing in ceramics is very small and therefore an FTA with the US would be welcomed. Members heard that the article 50 discussions would need to secure transition arrangements for certain EU measures, such as anti-dumping, to maintain a level-playing field with China.

Businesses wanted clarity over if the UK would remain in the customs union as soon as possible, so they could plan for the possible tariff rates and the extra administration. Uncertainty about possibility of delays at the border, especially for time sensitive products, and asked if UK ports had the capacity to process more items needing checks. Big businesses would have IT systems to help them manage, SMEs would need more help. The bigger the changes from the status quo, the more need for a transition period.

Johnsons Tiles told the Committee that the single biggest change since the referendum had been the fall in the value of the pound, which had led to rises in domestic costs. It was noted that they had had to delay purchasing new equipment as a result. SMEs had raised concerns about currency fluctuations and the difficulty of managing unstable prices. Many SMEs did not see themselves as exporters but they inputted to a supply chain that led to an exporter.

Michelin facility exported millions of tyres a year, 90% to non UK market, including 80% to Europe. Also imported several million tyres for sale in UK market. Barriers either way which increased costs or delays would be difficult. Further, while they had three sites in the UK, they had 30 sites across Europe so they had options where to produce tyres and investment tended to go to competitive sites.

The Chambers of Commerce said they were exploring how EU structural funding had been used in the region, so they could make the case for what replaces it.

Annex 3: Note of meetings in London, 26 January 2017

Tech/Digital sector Roundtable at Google Campus

The Committee was given a short tour of the Google facility in Shoreditch, which provides space for tech entrepreneurs to meet, use co-working or event space, meet mentors, and learn about how to access finance and commercialise ventures.

The Committee then held a roundtable discussion around the opportunities and risks from Brexit with a range of businesses, including multi-nationals and start-ups, organised with TechUK.

Risks and opportunities

The Single Digital Market was a work in progress and progress had been slow. Tariff barriers were considered of a lower priority as tariffs on IT goods were already low. Concerns were raised about non-tariff barriers developing in the event of the UK leaving the single market, and consequent regulatory divergence. Trading on WTO terms would be considered less of an issue. Clearly a dominant strength of London was the eco-system that brought people from Fintech and Venture Capital networks together. A portion of the venture capital that fed into London's tech economy had come via the European Investment Fund.

The main two concerns raised were access to talent and data flows.

Access to talent

There was an acceptance that free movement as it currently operates would end. The replacement system needed to be open to talent, but there was a fear this would be incompatible with an immigration system designed to meet a numerical target. One company recounted a four month experience of trying to secure a visa for employing non-EEA nationals. An estimated 25% of the tech workforce are EU nationals, and similarly an estimated 25% of the tech workforce in Europe are UK nationals. Deterring international talent would affect the attractiveness of the sector. Much of the growth in employment in the tech sector had been driven by non-UK born workers.

The tech/digital sector was expanding and it needed to be able to source talented people. The domestic skills pipeline needs to grow, but there is a time lag and tech talent pipeline needs to be maintained. This was not just the technical specialists, one large company pointed out they employed lots of EU nationals in whole range of roles within the operation.

Start-ups do not have HR departments. They are less able to manage complicated immigration processes. Other barriers, such as delays in shipping goods, are much more difficult for small operations to absorb.

Legal basis for data flows

This was described as a red line for the sector. Current data protection measures in the UK are considered 'adequate'. The EU Commission have the power to decide if such systems are adequate once the UK leaves the EU. Business wanted confirmation of the Government's approach in advance of leaving the EU to maintain business certainty.

An adequacy decision allows personal data to flow from the EU (and EEA countries) to a third country without further safeguards. This is important to enable the import and export of data. It is possible for third countries to receive an adequacy decision, and Israel was given as an example.

There would be implications if the UK did not have a data adequacy decision. There are risks that businesses in all sectors of the UK economy would not be able to rely upon international data flows between the UK and the EU. The UK's competitiveness would diminish and may affect the attractiveness of the UK as a destination for investment. While some large, international firms may be able to adapt—there are alternatives but they involve considerable burdens on business—but it is less likely to be unworkable to SMEs, and this would have repercussions in areas such as Fintech.

A free trade agreement between the UK and the EU should secure ability to move data across borders. The UK has strength in services and, generally, services are not covered well by FTAs. There is a risk that data protection authorities in Member States may not consider the economic aspects of the UK not getting a data adequacy agreement. There would also be a risk of a legal challenge from privacy advocates who do not like UK legislation on privacy. US and EU have different approaches to privacy, and managing this can create complexity.

Bilateral relationships outside the EU require more work in advance to ensure privacy regulators in both jurisdictions are content. The Digital Single Market aims to reduce the need for lots of bilateral negotiations. However, development of the DSM has been ponderous.

Creative Industries roundtable at the Museum of London

The Committee had a roundtable discussion with a range of public and private sector organisations and businesses involved in the creative industries, hosted by the Creative Industries Federation.

Many creative sectors in the UK seen as a success story. Film industry record level of exports and globally competitive. Cultural exports seen as valuable soft power to be used in negotiations with any third country. There are lots of areas where the UK drives creative partnerships in Europe so positive feeling the EU will want the UK to be involved in the future. Question was raised how we would manage if regulation diverged from EU. There should not be a presumption of the status quo, change could be an improvement and there were opportunities, e.g. to own UK consumer regulation.

Access to talent and freedom of movement

It was acknowledged that the UK has skills gaps and needs to improve training of domestic talent. It takes time to train and gain experience, so in a post free movement UK, sector wants a flexible immigration system to enable access to talent with creative and STEM skills. Some sectors, such as computer games, have up to 30% non-UK workers. In some sectors, diversity and different perspectives seen as an asset, e.g. having international staff helps access international markets. Some parts of the industry are global and compete in a global pool for talent. It is difficult to get a replacement opera singer at short notice. One aspect of free movement that came up in several contexts was the ability of UK staff to move around the EU, such as for UK orchestras to tour, UK staff to escort valuable museum artefacts abroad, and for situations where a UK based international film crew can easily go to different locations across Europe. (One comment was that it was unusual to choose to film in the US because the visas and red tape made it too difficult.) It also enabled staff to come to the UK to work on short high profile events, such as London Fashion Week. A new immigration system needed to be able to facilitate that fluidity of movement, or competing European cities—such as Paris and Berlin—will benefit. There is a lack of coordination between Government departments—Home Office appear to stop some high profile arts or sports people used to demonstrate the immigration system is serious.

IP and copyright

Important to be able to protect IP in the UK and in Europe. Projects without IP protection tend to have low margins, while projects which retain the IP have higher margins. Copyright and IP protection was mentioned in reference to several different sectors, from broadcasting to design, and IP protection needed to be included in any trade deal with emerging markets. The creative industries rely upon data flows between the UK and EU, and require a decision on the UK's data adequacy from the EU. Data protection rules in the UK may have to be kept in line with the EU to access the single market.

Access to single market

AVMS Directive. Audio Visual sector the licence to broadcast in other countries from the UK is attractive. License holders want to be able to broadcast into the EU from the UK. Fearful if UK outside single market, then international broadcasters may not choose UK as a base, or will not choose it in the future. Many high standard drama productions for television are too expensive for a single broadcaster. Many are co-productions and London is a centre of skills and facilities. Free movement has helped London grow as a centre, and to enable international staff to move around locations. Single market has enabled UK publishing to be the bridge between the US and the EU. UK publishing understood the EU market better, and shared a common language with the US. Leaving the EU could help if it enabled the UK to reduce VAT on books.

Tourism and culture

Many visitors come to the UK for cultural experience—e.g. music festivals, theatre, sporting events. A multilingual workforce is important in hospitality sectors. ERDF had helped some regions to develop cultural industries. Eg artist traditions in St Ives and the Tate.

Education

There was considerable discontent with the education curriculum, the lack of understanding and support for creative education. International students are important, bringing different ideas and skills, and also money. There was a fear that if Government did not understand the creative sector very well then it would be ill equipped to argue its corner in the negotiations. There was support for the UK's continued involvement in transnational funding and academic cooperation, such as Horizon 2020.

Annex 4: Note of meetings in Boston, Lincolnshire, 2 February 2017

Introductory meeting

Phil Drury	Chief Executive, Boston Borough Council (BBC)
Cllr Peter Bedford	Leader, Boston Borough Council
Cllr Paul Gleeson	Labour Group Leader, Boston Borough Council
Cllr James Edwards	UKIP Group Leader, Boston Borough Council
Cllr Alison Austin	Chair of Planning Committee, Boston Borough Council
Ruth Carver	Lincolnshire LEP Manager
Rebecca Clark	External Funding Manager, Boston College
Superintendent Paul Timmins	Lincolnshire Police
Justin Brown	Enterprise Commissioner, Lincolnshire County Council
Darryl Dixon	Director of Strategy, Gangmasters Licensing Authority

The Committee heard that Boston had changed dramatically since 1998, when Portuguese migrants came as seasonal agricultural workers. The Committee heard that the concentration of young migrants in a small town meant that changes were felt more acutely.

The most striking impact of immigration in Boston has been the growth of homes of multiple occupiers (HMO), a unique aspect of which was “hot bedding”. Hot bedding had led to the local phenomenon of large groups of migrants drinking in the streets while they waited for their turn to have a bed. It was noted that the majority of EU migrants were 18–30 year olds living and working abroad for the first time and acting as 18–30 year olds do when away from home, but in quiet residential streets. The Committee was told that the local authority needed government funding to tackle the HMO and hot bedding phenomenon.

The rise in migration into Boston had been so rapid (a 400% increase in EU migrants between 2004 and 2014) that demand for accommodation significantly outstripped supply. HMOs expanded overnight, turning two-bed terraced houses into accommodation for 10 people. The rent that landlords made on HMOs put those houses out of reach of local people. There is no law to register HMOs so the authorities were unclear about the exact number of such accommodation in the town and also found it difficult to manage landlords. The example was given that when the town was flooded in 2013, it took nearly six months to find all the landlords, one of whom was registered in the Virgin Islands. The local authority had explored the option of a licensing scheme for landlords, similar to Newham, but they did not have enough evidence to meet the legal test.

The Committee heard that migrants represented cheap labour and that gangmasters were able to lower what workers receive without breaching the minimum wage by arranging transport to the fields which workers must take and pay for, even without the guarantee of work once they arrive. It was noted that the authorities do have the power to revoke

licences if gangmasters do not meet standards, but had difficulties in getting evidence as workers are afraid of losing their jobs. There is a very low rate of unionisation amongst migrant workers.

The meeting then discussed the importance of migrant workers to the local economy. The Committee heard that there is an insufficient number of local workers able to meet demand in some parts of the local economy. Agriculture and food production and processing sectors use a lot, sometimes over 50 per cent, of migrant labour. Technology and robotics were highlighted as a means to increase productivity, but it would take time for such developments to have an impact. There was a need to improve skills training locally. It was noted that at present France and Germany use four times as much technology and robotics in manufacturing and food processing than the UK. This would require significant investment. The skills shortages locally had also led Lincolnshire County Council to recruit social workers from abroad, including from outside the EU.

The Committee were told that many of the challenges the town had faced as a result of the rapid increase in EU migrants to the town was due to the shortage of local resources to cope with the population increase. The police in particular had had to deal with increased pressures. The key issues for the police had been with migrants unable to go to their accommodation until a certain time which had led to street drinking, young people with nowhere to go, large groups hanging around and talking in foreign languages, which some parts of the community had found intimidating. Alcohol was a big issue, with a correlation between alcohol and other offences such as assaults and drink driving. Police had had to adapt their approach to policing the night-time economy from employing interpreting services to dealing with increased demand on custody services with reducing resources. For example, the police were spending £440,000 a year extra on interpreting services. As an indication of the difficulties in understanding the number of EU migrants in the town, the meeting noted that the number of Central and Eastern European (CEE) migrants passing through custody was higher than the estimated CEE population. Government funding is linked to population data which the local authority cannot reliably provide. The police, as with other public services, were lacking the tools and resources to deal with extra pressures, for example Public Protection Orders were limited to designated areas and difficult to enforce.

The Committee also heard about pressures on the health service, particularly on A&E as migrants were often not registered with a GP.

Discussion then moved to the shortages of skilled local labour in Boston. The Committee heard that low wages coupled with high rents discouraged British workers. While young people would go to university and not return.

The meeting concluded noting that attacking the drivers of problems in the town would mean attacking the exploitation of migrants in housing and employment which had caused low wages, high rents, and groups of young people with nowhere to go in the streets and street drinking.

Roundtable with local businesses

Clive Gibbon	Economic Development Manager, Boston Borough Council
Mark Tinsley	Chair of Greater Lincolnshire LEP Food Board
Keith Gott	Regional Chair, Federation of Small Businesses
Simon Beardsley	Chief Executive, Lincolnshire Chamber of Commerce
Gordon Corner	Regional Director NFU East Midlands
Mark Newton	MD, Freshtime Ltd.
John Richmond	Owner, Freshtime Ltd.
Phil Ball	UK Operations Director, MetsaWood (UK) Ltd.
Phil Parker	Product Development Manager, Pilgrim Foodservice Ltd
Rachel Gedney	HR Manager, T H Clements
David Earnshaw	MD, Parkinson Harness Technology
Darryl Dixon	Director of Strategy, Gangmasters Licensing Authority
Ian Turvey	Turners Distribution
Andy Woods	Turners Distribution

The most pressing concern for businesses represented at the roundtable was the availability of labour. It was noted that EU migrants were not just transient workers, but some had been there for over 10 years. They make up over 50% of workers at all levels in the food industry and on the transport side as HGV drivers. For one business for which two thirds of the workforce are foreign workers, 90% of those who stay are from Central and Eastern Europe. The participants challenged the perception that EU migrants were taking British jobs, as businesses were recruiting using agencies in Lincolnshire.

Concerns were raised about the difficulties in finding labour locally and what would happen to migrant workers at the cut-off date. For agriculture, there was the suggestion of a SAW scheme, but workers were now needed 11 months of the year. They also mentioned the need to invest in automation in agriculture, an area which both the LEP and Lincolnshire University were looking at. It was suggested that the ready supply of labour had meant effort had not been made in automation.

The Committee heard from some participants about the importance of agency labour and from others about “rogue agencies”— a problem which they believed was greater than the GLA were aware of. Businesses complained about paying more tax as “rogue agencies” were cheating the system. They said that they were able to recruit 45% of their workforce locally and as such suggested that the local workforce is there. However, too many “rogue agencies” were bringing in cheap labour.

The Committee were told about efforts to improve skills locally and establish links with schools. Again participants talked about local young people going to University and not returning to Boston. It was also noted that Boston is isolated geographically with poor infrastructure, and as such it was not a town workers could commute to. Participants were concerned about a culture in the UK, and particularly in schools, which meant that children did not think farming and manufacturing were important industries, and that they had to aspire to greater things. It was difficult to attract young people to these industries, and it was difficult to attract people to Boston.

Participants suggested there was a disconnect between the local Brexit vote and the needs of local businesses. The Committee was told that immigration was actually driving the economy, but this was not a popular message with the local population.

Another sector which was identified as facing challenges if access to EU migrants was restricted was the health sector. It was noted that there was an aging population in the area and 1 in 5 care workers currently come from outside the UK.

Manufacturers also expressed concerns with leaving the Single Market and Customs Union and would have to adapt their supply chain and incur the costs of delays at customs.

Outreach event in local community

Table Notes

Why did Boston vote to leave the European Union by such a large margin?

Attendees felt there were a variety of reasons to explain Boston's vote to leave the EU. Some felt that that the decision was a protest vote against Westminster and central government. Many suggested that Lincolnshire had been forgotten by Westminster. One attendee raised the view that the population was in fact bigger than the census suggested, as there was a contrast between the census numbers and those registering with local GPs.

The general consensus amongst the group was there was not enough funding in the local area which then translated, in real terms, to an enormous pressure on local services, for example doctors' appointments and local school places. Additionally, across Lincolnshire transport infrastructure has not been improved, with no dual carriageways and poor rail links to London. Attendees felt that Lincolnshire had "dropped off the end of the world".

One attendee expressed the view that there was a feeling within the local area that if Boston voted to leave the EU workers would leave. The increase in workers from Europe has resulted in changes to the local area – such as shops and languages being spoken. Some attendees suggested that these cultural differences were found to be quite shocking by local people. One attendee did highlight that unemployment in the local area is fairly minimal but that the job market offered a high proportion of low income jobs. Some attendees suggested that public perception played a key role in explaining why Boston voted in such large numbers to leave the EU. For instance, many people hold the view that EU citizens who move to the area get benefits that they are not able to get which is not based in fact. Other attendees expressed the view that a common sentiment in the local area was that EU workers get some form of special treatment. Some attendees believed that Europe and EU workers were the easiest to blame for problems within the local area but this was not in fact the full picture.

How should migration be controlled once we leave the EU?

Some attendees were quite keen to suggest that the emphasis should be on understanding migration into the UK, rather than controlling it directly with limits based on numbers, for instance. At the moment, there is little to no data on public health and housing users which could help to inform policy. One attendee asked whether it is actually possible to put

controls on immigration when there is a demand for employment – could immigration be self-controlling? In recent months, the local area has seen a decrease in people interested in moving into the area for work as the demand for labour has decreased.

One attendee highlighted that many of the people working in manual, unskilled jobs in the area from the EU are highly educated. Currently, one flaw with the system that all attendees agreed on was the reluctance in the UK to read across qualifications. There was also the feeling that for many EU workers to the UK, English posed a barrier to changing employment. Attendees suggested that English lessons be offered. Therefore, attendees felt that there needed to be a way of harnessing the expertise and knowledge already available.

The current structure of obtaining work is transient with very little guarantee of work on a daily basis. Attendees raised concerns that it would be very difficult to encourage people to do this work if visas were required. Some kind of “seasonal workers scheme” was suggested to manage numbers and ensure that there were enough people to do the work required (as informed by employers).

What are the risks and opportunities of Brexit for Boston?

Opportunities:

In 2015, Boston was accepted into the Hanseatic League which provides opportunities for local business to develop, increase tourism and trade connections with fifteen countries and 187 cities across Europe. Currently, the port of Boston is used for importing steel and wood. Attendees suggested that historically Boston has a strong connection with trade (“the Stump was built on wool”) and that, with improvements to infrastructure, Boston could increase its trading capacity.

A further opportunity for Boston is to clarify where Boston residents sit with regards to their legal rights and benefits with fact rather than based on hearsay and perceptions. Additionally, EU citizens living in Boston require greater certainty regarding their legal position in the UK.

Attendees felt that understanding cultural differences were extremely important, particularly in schools as this would be a great way of encouraging community growth. Currently, Lincolnshire County Council run an “understanding your community” programme in schools but this has a small reach. Attendees suggested that this could be given additional funding and extended so that more school children have the opportunity to discuss their community, who lives there and engage with each other. The general consensus across the table was that Brexit posed a good opportunity to disseminate information to assist all members of the local community, particularly at the local level.

Risks:

Attendees felt that Brexit reinforces the feeling of “us and them” within the local community. For some, they also suggested that the vote and the aftermath of the vote created a feeling of alienation within community groups. Attendees also suggested that there were significant value differences between parents and children from EU countries who had settled in Boston which had also created pressures within the local area and which could be heightened by Brexit.

A very tangible risk was felt to be the decrease in workforce. Attendees were worried that there might not be help to re-establish trading blocs in local areas. Additionally, attendees were also worried that changes would be made at central government level and would have very little practical effect on their daily lives.

Attendees also said that there might be discrepancies with reported hate crimes versus what was actually taking place. Many in the group who had interacted with people from European countries had found that they had a negative impression of the police (stemming from their experiences with the police in other countries) which then meant they were reluctant to report any incidents to the police in Boston.

Group Feedback Discussions

Top Issues & Recommendations

- Too many people too quickly
- Swamped
- Local services let us down
- Public drinking
- Housing
- Schools and languages
- British identity
- People feel threatened
- Need imported labour
- “East coast” effect – need skills
- Business risk to the area
- Ignored by Westminster
- Lack of money to deal with issues
- Level of English and jobs to come to
- Criminal record checks and accommodation
- Opportunity: more jobs for local people
- Tackle homelessness by migrants coming to fixed-hour jobs
- Why? Protest
- Supply and demand will do its own job
- Opportunities – look at schools and children

- Risks – people who voted to leave want to see change
- People felt ‘unnerved’ by people speaking foreign languages
- Risk – problem with attracting skilled workers here
- If can't fund NHS when we're in the EU, how can we after we left?
- Opportunity – America for trade
- Disconnect between Boston, Westminster and Brussels
- Wrong to shutdown debate about immigration
- Remain campaign ignored Boston
- Migration is very important
- Concerns about labour market e.g. job ads in Polish
- Illegal migration – concern
- Boston should be celebrated – opportunity to bring community together
- Risk – losing workforce, young people don't see Boston as a place to build careers
- Need to invest in infrastructure
- Lincoln is the problem
- Vote – failure of all levels of government to listen to basic needs of local population, on everything from housing to gang masters and adequate school places.

Annex 5: Note of meetings in Truro, Cornwall, 9 February 2017

Introductory meeting with local council and LEP

Councillor John Pollard	Leader of Cornwall Council
Kate Kennally	Chief Executive of Cornwall Council and Chair of the CIOS Futures Group,
Mark Duddridge	Chair of the Cornwall and Isles of Scilly (CIOS) LEP

The Committee were presented with background on Cornwall and its economy, noting in particular that Cornwall was still recovering from historical declines in its industrial base, most significantly in extractives and china clay. As a result, the population was suffering from intergenerational disadvantage, particularly in terms of fuel poverty and a high economically inactive population. The local authority also faced the additional costs of maintaining the coastline. Members were told that Cornwall's story was about "building foundations from a low starting point."

The Committee heard that Cornwall's key strength lies in minerals and energy. Although only 0.002% of the world's land mass, over 90% of the world's minerals by type are found in Cornwall. The Committee were told about recent discoveries of lithium in Cornwall, the biggest source in Europe. Cornwall had also begun work in geothermal and two applications have been received for EU funding for test sites for geothermal. At present, 40% of energy needs in Cornwall are met through renewable sources and there is the potential for Cornwall to become 100% self-sufficient. The most pressing obstacle to this is infrastructure as Cornwall can't presently get all the energy it produces into the National Grid. So far, investments in energy have been through EU funding.

The Committee also heard that Cornwall is investing in aspiration through Falmouth University, and improvements in social care and schools. Cornwall's population is skewed towards those of retirement age, as many leave the area at 18 and don't return until 40. However, through investment in homes, better paid jobs and the university they are hoping to keep more people in Cornwall and balance the population profile of the area.

By virtue of Cornwall's dispersed population, Members were told that businesses tended to be small (84.2% of which are micro enterprises). Employment levels are rising but Cornwall continues to be a low wage economy (earnings 77% of national average at £17,873) and productivity is the lowest of all LEP areas. EU funding had significantly improved the digital connectivity of Cornwall, with superfast broadband aiding the development of the second fastest software development hub in the UK.

Members were told that Cornwall's competitive advantage lay in digital, agri-technology, marine technology, low carbon and renewable energy and space and aerospace. It was noted that the fishing industry were a small but vocal part of the local economy.

In the wake of the referendum, the Council began work to look at Brexit. On 15 July, they held a Brexit summit to understand what was on residents' minds. The Bishop of Truro attended the summit to consider societal issues, particularly as there had been a spike in hate crime following the Brexit vote. The Futures Group was established at the

summit to look at the risks and opportunities of Brexit. A key area of work has been on EU funding, with £633m of funding at risk from leaving the EU. It was suggested that the results of EU funding had not been publicised enough. It was also noted that Cornwall was determined to move away from dependence on structural funding and that Brexit could be an opportunity to influence future economic policy for the regions.

The Committee also heard about Cornwall's devolution deal and efforts to maintain the momentum of devolution following the referendum.

Roundtable with local businesses

Mike Carr	MD, Pendennis Shipyard Limited
Ross Williams	CEO, Creative Kernow
Julian Cowans	Superfast Cornwall
Paul Trebilcock	Chief Executive, Cornish Fish Producers Organisation
Ruth Huxley	Managing Director, Cornwall Food and Drink
David Walrond	College Principal, Truro and Penwith College
Prof Geoff Smith	Senior Deputy Vice-Chancellor, Falmouth University
Helen Childs	Interim Chief Operating Officer, NHS Kernow
Paul Massey	Director, Bluefruit Software
Ben Gowers	Director, BG Renewables
Helen Coley	Regional Organiser (Cornwall), GMB Union

The main concern raised by participants was recruitment if the UK limits freedom of movement of EU workers. Recruiting non-EU staff was described as “too burdensome”. One participant told Members about hiring a worker from India who had had to return during the project while a mistake in his paperwork—stating his job title was a developer rather than a programmer—was corrected.

Businesses did talk about “growing their own” pipeline of staff and working with educational institutions on building skills, but that this would require significant investment and would take time. Some with highly-skilled workforces had invested in training and apprenticeships but still needed EU workers to fill gaps. For lower-skilled jobs, businesses said they needed EU workers to do the jobs which the local workforce were not prepared to do. It was noted that Cornwall could suffer in terms of productivity and skills without access to EU workers. Members also heard that Cornwall relied heavily on EU funding for skills.

Educational institutions were concerned about their EU staff and students and asked for a simplified visa scheme. They said that “talent” should be taken out of net migration debate.

The fishing industry said that Brexit was an opportunity for home-grown talent and would create a more “economically buoyant” industry. It was suggested that fishing was part of the “social fabric of Cornwall” and needed a better deal than they had had as a member of the EU. It was noted that 77% of fish caught in UK EEZ is caught by non-UK fleets and the reestablishment of a 12 mile limit would be achievable and would give UK fishermen a “fairer share” of fishing opportunities.

Members heard that investment in superfast broadband and in Falmouth University had led to more people staying in Cornwall. It was noted that superfast broadband had benefitted from EU structural funding and that the digital agenda for Europe was more ambitious than UK plans, raising concerns about further funding once the UK leaves the EU. However, it was mentioned that outside of the EU, the UK would no longer be bound by state aid rules.

Renewables was described as an emerging sector in Cornwall which has benefitted from EU funding. That industry now needed certainty in terms of energy policy in order to secure investment. Low carbon energy was identified as important to Cornwall but developments in that area had stalled due to a lack of grid capacity. If they could secure investment, Cornwall could be a leader in energy storage.

Brexit was considered an opportunity for the region to tackle its weaknesses such as low pay and skills.

Uncertainty, particularly around what a free trade agreement with the EU would look like and how long it would take to agree, was affecting business and investment decisions. It was suggested that “uncertainty is almost as bad as what the outcome may be”. There were concerns that the UK had become non-inclusive, which had created a certain amount of unease. While others said that prejudices were colouring how realistic people were about opportunities and that uncertainty was being used as an excuse to avoid dealing with different questions around Brexit.

Opportunities to address procurement law and tendering were raised by a number of sectors, for example in the health service and in energy. Members were told that the UK imported too much energy from Europe, especially off-shore wind. It was noted that some countries had subsidised their energy sector and were benefitting from that. It was suggested that Cornwall could be a “beacon” for the UK by becoming self-sufficient on a mix of low-carbon and energy storage. The Committee also heard that there would be opportunities for small and micro businesses, as the UK would need to address its unintended bias towards big business. The nature of investment could also be looked at, as Members were told, at present investment focussed on capital expenditure, while the area would benefit from revenue.

Annex 6: Note of meetings in Dublin, Republic of Ireland, 23 February 2017

We held four informal meetings on our visit to Dublin: with members of the Oireachtas Committees for Foreign Affairs, European Affairs and Implementation of the Good Friday Agreement; business representatives; Frances Fitzgerald, Tánaiste and Minister for Justice and Equalities, and Dara Murphy, Minister of State for European Affairs and Data Protection and officials; and with Michael Creed, Minister for Agriculture, Food and the Marine and officials.

During these meetings we heard views about the potential impact on Ireland of the UK exiting the EU, and about the importance of maintaining the close connections between Ireland and Northern Ireland and the rest of the UK. The main concerns we heard related to possible consequences for trade, possible impacts on the peace process in Northern Ireland and the importance of maintaining the Common Travel Area (CTA).

Ireland is a committed member of the EU, but it has a close relationship with the UK and has particular concerns, such as membership of the CTA and the Northern Ireland peace process, which require engagement with the UK and which it wishes to protect. Brexit is seen by many in Ireland as the biggest economic challenge for a long time. We were told that Ireland has good communications with the UK Government and with the European Commission, and that Michel Barnier understands Irish concerns about Brexit.

Some of the comments made by people we met were:

The Good Friday Agreement (GFA) is something to be proud of, but it is still a process and not a finished product. It followed 30 years of traumatic events and the peace must not be disrupted.

The EU has a good understanding of the implications of Brexit for the peace process. The UK and Ireland must work together to identify possible solutions, although a bilateral agreement between the UK and Ireland is unlikely to be acceptable to the EU Commission.

Ireland is committed to the EU, but wants to keep strong business and trading links with the UK as far as possible, and wants the UK to have a good relationship with EU.

Ireland and Northern Ireland both benefit from the lack of a border but there are conflicting messages coming from the UK Government. Ireland believes that the EU will require customs checks at the border and there may also need to be checks on the movement of people. But border posts could act as a lightning rod for dissidents: if there are border posts and physical controls, they will become targets.

A hard Brexit will risk trade and jobs in Ireland. It will need serious political will between the UK and Ireland to ensure productive bilateral discussions. Even customs checks on the border could have serious effects. Ireland is not optimistic about the future need for customs checks given that it will have EU obligations to protect the border with a third country. Even the least

intrusive measures using technology look politically unacceptable and like the re-emergence of a hard border. There is no obvious technical solution which is politically acceptable.

A strong economy and prosperity for people living in Ireland is an important factor for continued stability. The ability to cross the border freely has helped to increase employment levels. Some business sectors such as agriculture are vital to the economy but are dependent on quick and easy movement of goods across the border. For example, the milk and farm economies in the island of Ireland are so intertwined they cannot be unravelled.

Agriculture is an all-Ireland sector of the economy which relies on a seamless cross border operation. Any impediments will put jobs at risk. If the UK were to revert to WTO terms both the UK and Irish markets would suffer. It would be a problem especially for the agri-food sector which would have a major concentration of high tariffs and also a range of non-tariff controls. UK consumers are used to existing agriculture product standards and this could be undermined if the UK started trading with countries with less rigorous standards. It would be very helpful for Ireland to be an indication as to whether the UK might choose to maintain its existing environmental and carbon footprint standards.

Ireland and the UK currently have good opportunities for regular contact at EU meetings and this forum will need to be replaced to maintain strong links between the Irish and Westminster Parliaments.

There is great interest in Brexit in Ireland, and a lot of work is already being done in Cabinet Committees and in each government department examining potential implications for Ireland. All areas are being examined, but the broad priorities for the Irish government are the economy, trade and agriculture (because of the amount of cross border trade); implications for the GFA, given that its status is protected by international treaty; and the CTA.

North-south policing arrangements have never been better; there is currently strong cooperation and very good relations and data sharing in an international European context, and that must continue.

The CTA is very important to Ireland. Citizen entitlements and reciprocal rights are very important, and Ireland would be very concerned if any changes were made. It would be in Ireland's interests to see progress on maintaining the CTA early on in the negotiation process.

Interim arrangements will be required to continue cooperation on justice issues such as tackling terrorism and organised crime. When the UK leaves the jurisdiction of the CJEU, it will have a huge impact on a range of issues. Putting in place a new relationship between the UK and EU will be a long and complicated process and it needs to be orderly. It will take many years to replace all the necessary instruments. Having a cliff edge is the other option, in which case both Ireland and the UK might be glad of interim arrangements.

Annex 7: Note of meeting in Swansea, 2 March 2017

Cara Aitchison	Cardiff Metropolitan University
Steven Altmann-Richer	CBI
Dr Jane Davidson	Pro-Vice Chancellor University of Wales, Trinity St David
David Davies	Axiom
Stephen James	NFU Wales
Andy Jones	Milford Haven Port Authority
Tony Kelly	CBI Communications
Tiernan Kenny	CBI
Liz Maher	Centurion Vat
John Mercer	NFU Wales
Tracy North	Outwrite PR
Mike Plaut	Northmace and CBI Wales Chair
Ian Price	Director, CBI Wales
Kieron Singleton	SPTS
Philip Wallace	TWI

The meeting opened with attendees each highlighting a key issue or priority for their business when the UK leaves the EU. Some issues were raised by more than one business, and included the following:

The need for continued unfettered tariff and barrier free access to EU markets;

The ability to continue to recruit EU migrant labour for those businesses which need to do so. Also important is the free movement of labour throughout the EU to enable businesses to make the best use of skills in different offices throughout the EU;

When EU funding is no longer available, universities will need help to bridge the funding gap in the short term and to target other funding sources;

Opportunities to re-shape regulations might help make the UK more competitive in terms of inward investment;

If there are to be any technical changes to VAT, then there must be sufficient time for businesses to plan for them;

Wales will be particularly affected by the loss of EU funding. It will need either continued participation in European programmes or UK funding to replace EU structural funds. Any replacement for EU funding should not come through Barnett formula funding, but must be focused on areas of need;

Customers are worried about potential future difficulties around customs clearance, rather than tariffs;

There will be opportunities for new trade agreements with Europe and Asia and these will need to be accompanied by an ability to deploy staff around the world;

Businesses want to be able to reassure those EU migrant workers already in the UK that they can stay;

Businesses would like more information from Government about the UK's negotiating objectives, and the Government's industrial strategy;

Businesses are concerned about the risk of no deal being reached with the EU and a risk of cliff edges for different sectors if there is no UK–EU deal.

The group then had a discussion about a number of issues including whether transitional arrangements might be required; the opportunities and risks that might arise from new trade deals and new markets; the potential implications for businesses of a new UK immigration policy; and the impact of a hard border with the Republic of Ireland. Key points made in the discussion included:

Concerns about whether there really was scope to develop new trade agreements with other countries, and what help would be available to help businesses identify new markets;

The potential to develop new UK agriculture policies which are fit for UK farming and support the whole farm economy. However, threats to Welsh agriculture include very high tariffs which could decimate the Welsh sheep industry, as could imports of New Zealand lamb or South American beef;

Universities in Wales have a high level of connectivity with industry, including the food and drink industry and rely on funding from the EU to a greater extent than in England and Scotland.

The free movement of workers around Europe for training and career development is important. Also many high quality research staff are from overseas. It is very difficult to attract UK researchers and it would be very serious to lose EU staff. There are many examples of Welsh businesses which rely on EU workers.

Many vessels cross the Irish Sea with freight, and there is also regular ferry traffic. If there were to be a hard border with Ireland there is no infrastructure or capacity in small Welsh towns to deal with the inevitable delays of freight traffic.

Roughly half of Wales' trade is with the EU. If the UK were to trade with the EU on WTO terms there would be a return of tariffs which are high in some sectors like cars and agriculture. Non-tariff barriers would be even more of a problem. Margins are so tight, even small tariffs are a problem.

The ERASMUS programme has been very successful—about 500 students a year from Wales have participated. There is a good correlation between participation in the scheme and future career success which in turn boosts the Welsh economy.

Business is where the help and energy is needed to help generate wealth in Wales. There are many SMEs in Wales and they need a replacement for EU funding to support them to grow and increase capacity.

Formal Minutes

Wednesday 29 March 2017

Members present:

Hilary Benn, in the Chair

Alistair Burt	Karl McCartney
Mr Alistair Carmichael	Mr Pat McFadden
Maria Caulfield	Craig Mackinlay
Joanna Cherry	Seema Malhotra
Mark Durkan	Dominic Raab
Jonathan Edwards	Stephen Timms
Peter Grant	Mr John Whittingdale
Jeremy Lefroy	Sammy Wilson

Draft Report (*The Government's negotiating objectives: the White Paper*), proposed by the Chair, brought up and read.

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

The Committee divided:

Ayes, 9	Noes, 5
Alistair Burt	Maria Caulfield
Mr Alistair Carmichael	Karl McCartney
Joanna Cherry	Craig Mackinlay
Mark Durkan	Dominic Raab
Jonathan Edwards	Sammy Wilson
Peter Grant	
Jeremy Lefroy	
Mr Pat McFadden	
Stephen Timms	

Question accordingly agreed to.

Paragraphs 1 to 32 read and agreed to.

Paragraph 33 read.

Amendment proposed, at end, to insert

“Due to the impact on devolved areas of competence, the endorsement of the National Assembly of Wales, Scottish Parliament and Northern Ireland Assembly should be sought.”—(*Jonathan Edwards*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 4

Joanna Cherry

Mark Durkan

Jonathan Edwards

Peter Grant

Noes, 11

Alistair Burt

Mr Alistair Carmichael

Maria Caulfield

Jeremy Lefroy

Karl McCartney

Mr Pat McFadden

Craig Mackinlay

Seema Malhotra

Dominic Raab

Stephen Timms

Sammy Wilson

Question accordingly negatived.

Paragraph agreed to.

Paragraphs 34 to 69 read and agreed to.

Paragraph 70 read.

Amendment proposed, at end, to insert

“The Committee is disappointed that the Prime Minister has failed to uphold her promise only to proceed following UK-wide agreement.”—(*Jonathan Edwards*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 4

Joanna Cherry

Mark Durkan

Jonathan Edwards

Peter Grant

Noes, 11

Alistair Burt

Maria Caulfield

Jeremy Lefroy

Karl McCartney

Mr Pat McFadden

Craig Mackinlay

Seema Malhotra

Dominic Raab

Stephen Timms

Sammy Wilson

Mr John Whittingdale

Question accordingly negatived.

Paragraph agreed to.

Paragraphs 71 to 292 read and agreed to.

Paragraph 293 read.

Motion made, and Question put, That the paragraph stand part of the Report.

The Committee divided:

Ayes, 10

Alistair Burt

Mr Alistair Carmichael

Joanna Cherry

Mark Durkan

Jonathan Edwards

Peter Grant

Jeremy Lefroy

Mr Pat McFadden

Seema Malhotra

Stephen Timms

Noes, 6

Maria Caulfield

Karl McCartney

Craig Mackinlay

Dominic Raab

Mr John Whittingdale

Sammy Wilson

Paragraph accordingly agreed to.

Paragraph 294 read.

Motion made, and Question put, That the paragraph stand part of the Report.

The Committee divided:

Ayes, 10

Alistair Burt
Mr Alistair Carmichael
Joanna Cherry
Mark Durkan
Jonathan Edwards
Peter Grant
Jeremy Lefroy
Mr Pat McFadden
Seema Malhotra
Stephen Timms

Noes, 6

Maria Caulfield
Karl McCartney
Craig Mackinlay
Dominic Raab
Mr John Whittingdale
Sammy Wilson

Paragraph accordingly agreed to.

Paragraphs 295 to 299 read and agreed to.

Annexes agreed to.

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

The Committee divided:

Ayes, 10

Alistair Burt
Mr Alistair Carmichael
Joanna Cherry
Mark Durkan
Jonathan Edwards
Peter Grant
Jeremy Lefroy
Mr Pat McFadden
Seema Malhotra
Stephen Timms

Noes, 6

Maria Caulfield
Karl McCartney
Craig Mackinlay
Dominic Raab
Mr John Whittingdale
Sammy Wilson

Question accordingly agreed to.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (*Standing Order No. 134*).

[Adjourned till Wednesday 19 April at 9.00 am

Witnesses

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

Wednesday 16 November 2016

Question number

Professor Catherine Barnard, Professor of European Union Law, University of Cambridge, **Sir Simon Fraser**, former Permanent Secretary, Foreign and Commonwealth Office, and **Dr Hannah White**, Director of Research, Institute for Government

[Q1–64](#)

Wednesday 23 November 2016

Dr Robin Niblett, Director, Chatham House, **Stephen Booth**, Acting Director, Open Europe, **Shanker Singham**, Director of Economic Policy and Prosperity Studies, Legatum Institute

[Q65–123](#)

Wednesday 30 November 2016

Dr Virginia Acha, Executive Director for Research, Medical & Innovation Association of the British Pharmaceutical Industry (ABPI), **Gary Campkin**, Director for Policy and Strategy, TheCityUK, and **Fergus McReynolds**, Director of EU Affairs, EEF, The Manufacturers' Organisation

[Q124–236](#)

Wednesday 7 December 2016

Carolyn Fairbairn, Director General, Confederation of British Industry; **Frances O'Grady**, General Secretary, Trades Union Congress; and **John Longworth**, Co-Chair, Leave Means Leave, and former Director General, British Chambers of Commerce

[Q237–345](#)

Thursday 8 December 2016

Richard Baker, Head of Policy and Strategy, North East Local Enterprise Partnership, **John Elliott, MBE, DL**, Executive Chairman of Ebac and representative of Business for Britain in the north east, **Ross Smith**, Director of Policy at North East England Chamber of Commerce, and **Councillor Paul Watson**, Leader of Sunderland City Council

[Q346–402](#)

Wednesday 14 December 2016

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

[Q403–526](#)

Wednesday 19 December 2016

Professor Michael Keating, Chair in Scottish Politics, University of Aberdeen, **Andrew Walker**, Managing Partner, Johnston Carmichael, **Deirdre Michie**, Chief Executive, Oil and Gas UK, and **Suzanne Burr**, Business Manager, Thorpe Molloy Recruitment

[Q527–554](#)

Michael Bates, Development Officer, Scottish Seafood Association, **Bertie Armstrong**, Chief Executive Officer, Scottish Fishermen's Federation, and **Andrew Scott**, Chief Executive Officer, Scotrenewables

[Q555–598](#)**Wednesday 18 January 2017**

Anne-Laure Donskoy, Co-Chair, the3million, **Barbara Drozdowicz**, Chief Executive Officer, East European Resource Centre, **Nicolas Hatton**, Co-Chair, the3million, and **Florina Tudose**, Information and Outreach Co-ordinator, East European Resource Centre

[Q599–642](#)

Christopher Chantrey, resident of France, **Gareth Horsfall**, resident of Italy, **Debbie Williams**, resident of Belgium, and **Sue Wilson**, resident of Spain

[Q643–703](#)**Wednesday 25 January 2017**

The Hon. Dr Joseph Garcia MP, Deputy Chief Minister of Gibraltar; **Michael Llamas QC**, Attorney General of Gibraltar; and the **Hon. Fabian Picardo QC MP**, Chief Minister of Gibraltar

[Q704–754](#)**Wednesday 1 February 2017**

David Goodhart, Head of the Demography, Immigration, and Integration Unit, Policy Exchange, **Sunder Katwala**, Director, British Future, and **Jonathan Portes**, Professor of Economics and Public Policy, King's College London

[Q755–815](#)**Wednesday 8 February 2017**

Michael Clancy, Director Law Reform, Law Society of Scotland, **Professor Nicola McEwen**, Professor of Politics, University of Edinburgh, and **Professor Alan Page**, Professor of Public Law, University of Dundee

[Q816–870](#)

Michael Russell MSP, Minister for UK Negotiations on Scotland's Place in Europe, Scottish Government, **Ian Mitchell**, Deputy Director External Affairs, Scottish Government, and **George Burgess**, Deputy Director EU and International Trade and Investment Policy, Scottish Government

[Q871–963](#)

Thursday 9 February 2017

Councillor John Pollard, Leader, Cornwall Council, **Kate Kennally**, Chief Executive, Cornwall Council, and Chair, Cornwall and Isles of Scilly Futures Group, **Mark Duddridge**, Cornwall and Isles of Scilly Local Enterprise Partnership, and **Kim Conchie**, Chief Executive, Cornwall Chamber of Commerce

[Q964–976](#)

David Rodda MBE, Rural Delivery Manager, Cornwall Development Company, **Patrick Aubrey-Fletcher**, County Adviser for Cornwall, National Farmers Union, **Dr Laurence Couldrick**, Board Member, Cornwall and Isles of Scilly Local Nature Partnership, and **Nicola Lloyd**, Head of Inward Investment, Invest in Cornwall

[Q977–1002](#)

Tuesday 21 February 2017

Roderick Abbott, Senior Adviser on Trade Policy, European Centre for International Political Economy, **Dr Federico Ortino**, The Dickson Poon School of Law, King's College London, and **Professor Jim Rollo**, UK Trade Policy Observatory, University of Sussex

[Q1003–1058](#)

Wednesday 22 February 2017

Sir Ivan Rogers, Former UK Permanent Representative to the EU

[Q1059–1135](#)

Tuesday 28 February 2017

David Anderson QC, Independent Reviewer of Terrorism Legislation, **David Armond**, Deputy Director General, National Crime Agency, and **Professor Steve Peers**, University of Essex

[Q1136–1232](#)

Thursday 2 March 2017

Professor Roger Scully, Professor of Political Science, Wales Governance Centre, Cardiff University, **Dr Jo Hunt**, Reader in Law, Wales Governance Centre, Cardiff University, and **Dr Rachel Minto**, Research Associate, Wales Governance Centre, Cardiff University

[Q1233–1253](#)

Professor Brian Morgan, Professor of Entrepreneurship, Cardiff Metropolitan University, **Professor Iwan Davies**, Professor of Law and Senior Pro-Vice-Chancellor, Swansea University, and **Steve Thomas CBE**, Chief Executive, Welsh Local Government Association

[Q1254–1273](#)

Tuesday 7 March 2017

Mark Drakeford AM, Cabinet Secretary for Finance and Local Government, Welsh Government, **Piers Bisson**, Deputy Director, European Transition, Welsh Government, and **Andrew Slade**, Director, Agriculture, Food and Marine Group, Welsh Government

[Q1274–1314](#)

Tuesday 14 March 2017

Rt Hon Sadiq Khan, Mayor of London

[Q1315–1370](#)

Wednesday 15 March 2017

Rt Hon David Davis, Secretary of State for the Department for Exiting the European Union, and **Olly Robbins**, Permanent Secretary, Department for Exiting the EU

[Q1371–1503](#)

Published written evidence

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

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

- 1 ADS Group ([OBJ0093](#))
- 2 Age Platform Europe UK ([OBJ0150](#))
- 3 Agriculture & Horticulture Development Board ([OBJ0002](#))
- 4 Aila Baron ([OBJ0131](#))
- 5 Airlines UK ([OBJ0161](#))
- 6 Airport Operators Association ([OBJ0105](#))
- 7 Alan Gillman ([OBJ0153](#))
- 8 Alan Hill ([OBJ0018](#))
- 9 Alice Chapman-Hatchett ([OBJ0067](#))
- 10 Alison Gibbs ([OBJ0043](#))
- 11 All-Party Parliamentary Manufacturing Group ([OBJ0138](#))
- 12 Anonymous ([OBJ0014](#))
- 13 Anonymous ([OBJ0030](#))
- 14 Anonymous ([OBJ0044](#))
- 15 Anonymous ([OBJ0045](#))
- 16 Anonymous ([OBJ0050](#))
- 17 Anonymous ([OBJ0053](#))
- 18 Anonymous ([OBJ0146](#))
- 19 Association of British Insurers ([OBJ0094](#))
- 20 Brexit Infrastructure Group ([OBJ0079](#))
- 21 Brightwake Ltd ([OBJ0065](#))
- 22 British Ceramic Confederation ([OBJ0164](#))
- 23 British Heart Foundation ([OBJ0120](#))
- 24 British Hospitality Association ([OBJ0152](#))
- 25 British Medical Association ([OBJ0103](#))
- 26 British Screen Advisory Council ([OBJ0074](#))
- 27 British Summer Fruits Ltd ([OBJ0159](#))
- 28 BritishAmerican Business ([OBJ0162](#))
- 29 Brits in Europe ([OBJ0089](#))
- 30 Brits in Europe ([OBJ0136](#))
- 31 Campaign for the Real Referendum ([OBJ0004](#))
- 32 CBI ([OBJ0129](#))
- 33 CITB ([OBJ0168](#))

- 34 Clare Quarman ([OBJ0027](#))
- 35 Clive Loughlin ([OBJ0007](#))
- 36 Commercial Broadcasters Association ([OBJ0154](#))
- 37 Confederation of British Industry ([OBJ0172](#))
- 38 CPMR North Sea Commission ([OBJ0113](#))
- 39 David Doyle ([OBJ0003](#))
- 40 DBA – The Barge Association ([OBJ0151](#))
- 41 DKT Consultants Ltd ([OBJ0026](#))
- 42 Dr David W Lawlor ([OBJ0157](#))
- 43 Dr Gary Skinner ([OBJ0009](#))
- 44 Dr James Briscoe ([OBJ0083](#))
- 45 Dr Monica Threlfall ([OBJ0122](#))
- 46 Dr Philippa Allen ([OBJ0024](#))
- 47 Dr Sophie Acton ([OBJ0063](#))
- 48 Dr Sylvia de Mars ([OBJ0119](#))
- 49 Dr Theodore Gorton ([OBJ0012](#))
- 50 Eamonn Phillipson ([OBJ0158](#))
- 51 Endocrine Society ([OBJ0163](#))
- 52 Expat Citizen Rights in EU (ECREU) ([OBJ0091](#))
- 53 Fair Deal for Expats ([OBJ0141](#))
- 54 Federation of Entertainment Unions ([OBJ0115](#))
- 55 Free Movement Policy Team ([OBJ0137](#))
- 56 Frontline Business Consulting Ltd ([OBJ0060](#))
- 57 Government of Anguilla ([OBJ0173](#))
- 58 Greater London Authority ([OBJ0090](#))
- 59 Greener UK ([OBJ0095](#))
- 60 Hanzo Archives Limited ([OBJ0080](#))
- 61 HM Government of Gibraltar ([OBJ0082](#))
- 62 Institute for Particle Physics Phenomenology ([OBJ0070](#))
- 63 Institute of Export & International Trade ([OBJ0087](#))
- 64 International Consortium of British Pensioners ([OBJ0126](#))
- 65 John Frake ([OBJ0021](#))
- 66 John Lee Daniel Thompson ([OBJ0025](#))
- 67 Joint Council for the Welfare of Immigrants ([OBJ0167](#))
- 68 Kenneth Bardsley ([OBJ0028](#))
- 69 Larkfleet Homes ([OBJ0108](#))
- 70 Later Life Ambitions ([OBJ0128](#))
- 71 Law Society of Scotland ([OBJ0143](#))

- 72 Martin Cahn ([OBJ0008](#))
- 73 Matthew Traves ([OBJ0046](#))
- 74 MillionPlus ([OBJ0005](#))
- 75 Monique Hawkins ([OBJ0144](#))
- 76 Mr Anthony Tuffin ([OBJ0042](#))
- 77 Mr Barry White ([OBJ0047](#))
- 78 Mr Edward Avis ([OBJ0073](#))
- 79 Mr Fawzi Ibrahim ([OBJ0106](#))
- 80 Mr Gary Rimmer ([OBJ0032](#))
- 81 Mr Jason Hunter ([OBJ0058](#))
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- 83 Mr Lawrence Gould ([OBJ0057](#))
- 84 Mr Lorenzo Colo ([OBJ0071](#))
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- 86 Mr Michael James Clifton ([OBJ0078](#))
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- 88 Mr Nick Valentine ([OBJ0068](#))
- 89 Mr Oliver Rowland ([OBJ0160](#))
- 90 Mr Paul Bailey ([OBJ0037](#))
- 91 Mr Paul Narraway ([OBJ0155](#))
- 92 Mr Peter Sturdgess ([OBJ0010](#))
- 93 Mr Rabie Abdel Samad ([OBJ0127](#))
- 94 Mr Richard Szmidt ([OBJ0055](#))
- 95 Mr Ryan Curtis ([OBJ0029](#))
- 96 Mr SHR Redburn ([OBJ0056](#))
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- 100 Mr Thomas Cole ([OBJ0077](#))
- 101 Mr Titus Alexander ([OBJ0104](#))
- 102 Mrs Ann Rattle ([OBJ0121](#))
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- 104 Mrs Jenefer Ford-Knubley ([OBJ0049](#))
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- 106 Mrs Valerie Chaplin ([OBJ0019](#))
- 107 Ms Alison Giraud-Saunders ([OBJ0064](#))
- 108 Ms Angela Steatham ([OBJ0011](#))
- 109 Ms Anne Wesemann ([OBJ0123](#))

- 110 Ms Elizabeth Smith ([OBJ0054](#))
- 111 Ms Emma Telford ([OBJ0041](#))
- 112 Ms Keziah Mee ([OBJ0059](#))
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- 117 Professor and FRS Michael Lockwood ([OBJ0022](#))
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- 121 Research Councils UK ([OBJ0092](#))
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- 123 RIFT – Remain in France Together ([OBJ0124](#))
- 124 Roger Fuller ([OBJ0066](#))
- 125 Royal College of Nursing ([OBJ0112](#))
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- 128 Sabine Klapdohr ([OBJ0132](#))
- 129 Sara Challoner ([OBJ0023](#))
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- 131 Society of Motor Manufacturers and Traders (SMMT) ([OBJ0098](#))
- 132 Stehen McCann ([OBJ0016](#))
- 133 Stephanie Cunningham ([OBJ0072](#))
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- 136 Tate & Lyle Sugars Ltd ([OBJ0088](#))
- 137 The Academy of Medical Sciences ([OBJ0139](#))
- 138 The British Academy ([OBJ0111](#))
- 139 The Investment Association ([OBJ0110](#))
- 140 The Law Society ([OBJ0100](#))
- 141 the3million ([OBJ0148](#))
- 142 the3million ([OBJ0135](#))
- 143 TheCityUK ([OBJ0171](#))
- 144 Tyndall Centre (University of East Anglia) ([OBJ0085](#))
- 145 UCL ([OBJ0101](#))
- 146 UK CEE Mediation Consultancy ([OBJ0140](#))
- 147 UK Independence Party ([OBJ0102](#))

148 UK Interactive Entertainment (Ukie) ([OBJ0109](#))

149 UK Trade Policy Observatory ([OBJ0149](#))

150 UKHCA ([OBJ0130](#))

151 Unite the Union ([OBJ0099](#))

152 Valpak Limited ([OBJ0170](#))

153 Which? ([OBJ0114](#))

154 William Carpenter ([OBJ0075](#))

List of Reports from the Committee during the current Parliament

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

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2016–17

First Report	The process for exiting the European Union and the Government's negotiating objectives	HC 815 (HC 1101)
Second Report	The Government's negotiating objectives: the rights of UK and EU citizens	HC 1071
First Special Report	The process for exiting the European Union and the Government's negotiating objectives: Government Response to the Committee's First Report	HC 1101