



BRIEFING PAPER

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What if there's no Brexit deal?

By Library subject specialists

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Summary

How no deal might happen

Article 50 of the Treaty on European Union provides for an EU Member State to leave the EU with or without a withdrawal agreement or 'deal'.

The UK White Paper on future UK-EU relations sets out a model for future relations in which the UK follows a 'common rulebook' and maintains selected access rights to EU policies, bodies and programmes. The EU insists it will not allow the UK to 'cherry-pick' in order to be in a better position outside the EU than in it. These two positions, if they are resistant to compromise and flexibility, could result in no agreement being in place by 29 March 2019 and no agreement to carry on negotiating.

The EU and UK aim to reach agreement by October 2018 on the UK's terms of withdrawal and on the framework for future relations, although this deadline is now likely to slip to November. A way of avoiding a hard border between Ireland and Northern Ireland is proving particularly difficult for the negotiators.

If there is no withdrawal agreement, and no UK request or no EU agreement to extend the negotiations, or if either the UK Parliament or the European Parliament or the other 27 EU Member States do not endorse a withdrawal agreement, there will be no deal and the EU Treaties will no longer apply to the UK from 29 March 2019.

Another point at which 'no deal' could occur is at the end of the proposed 21-month transition (implementation) period if there is no detailed agreement on the future EU-UK relationship or if such an agreement is not in force.

Both sides in the negotiations agree that 'no deal' is not what they want, but some Brexit supporters would prefer it to a 'soft' Brexit which does not end free movement, payments to the EU, membership of the Single Market and customs union, continued adherence to EU rules and the jurisdiction of the Court of Justice of the EU.

EU preparations for no deal

In the absence of what the European Commission describes as "functional solutions" to the Irish border issue, the EU has stepped up preparations for a no-deal scenario in March 2019. The Commission has been drafting amendments to EU legislation to take account of the UK's exit in areas such as shipping, tariff obligations, energy, customs, aviation, health and safety, transport and citizenship. The Commission is identifying the legal acts that will have to be adapted in the context of Brexit by "preparedness acts" that will fill legislative gaps and "contingency measures to remedy negative impacts in the cliff-edge situation", which would take effect in the event of a no-deal scenario.

UK preparations for no deal

Chequers statement

The UK Government insists that preparations for no deal are part of its overall Brexit preparation strategy. The Prime Minister's [Statement](#) on the Cabinet away day at Chequers in July included a pledge to step up preparedness for all possible outcomes to the negotiations, including no deal, and the Prime Minister has assured Parliament that it is preparing for 'no deal' as well as other scenarios.

European Union (Withdrawal) Act

Secondary legislation is being laid under the [European Union \(Withdrawal\) Act 2018](#) that will preserve EU law in domestic law or convert it into UK law on exit day. If the UK leaves the EU without a deal, most EU law will still apply in the UK but as domestic law ('retained EU law' or EU-based UK law). But there will be no reciprocity with EU Member States.

Government guidance on preparing for no deal

The Government believes a no-deal scenario could be managed in an "orderly" fashion (although this view is not necessarily shared by other stakeholders). On 23 August the Department for Exiting the EU published 25 'technical notices', the first of three sets of '[guidance](#) on how to prepare for Brexit if there's no deal'.

Some contributions to this paper were written before the publication of the Government's no-deal planning guidance. Sections in which the technical notices have not been taken into account will be updated in due course.

No deal in practice

What would no deal look like in practice? No deal on a withdrawal agreement would mean no transition (implementation) period and no framework for future relations – let alone a full future relations agreement. The impact is still unknown overall, but in some areas it is easier to estimate the practical consequences and costs than in others.

The economy

It is difficult to pinpoint the economic impact of 'no deal' with certainty. Many economists expect the pound to fall in value in the event of 'no deal'. This would mean the price of imports would rise, pushing up inflation. However, UK exports would become cheaper internationally, potentially mitigating some of the disruptive effects on trading with the EU. There might also be an opportunity for improved UK growth prospects from trade deals with other non-EU countries.

But most economic modelling in this area shows that the potential benefits of leaving the EU with no deal over the longer term do not make up for the higher trade barriers with the EU, given its importance to the UK.

Trade and customs

With no withdrawal agreement or framework for future relations, trade between the two economies would be conducted under the terms of the World Trade Organisation. Tariffs on UK exports to the EU and vice versa are expected (assuming the UK would not change its Most Favoured Nation tariffs under WTO rules). [Tariffs would be low, averaging around 3%, but for some goods they would be higher](#). Potentially more disruptive would be non-tariff barriers, where additional paperwork, customs checks, technical requirements and regulatory standards could slow things down.

At the moment of leaving the EU customs union without a deal, the border between the UK and the EU would become a customs border. This is likely to mean more customs controls and probably increased costs and delays for business. It is estimated, for example, that delays caused by customs checks of trucks from the EU could cause a 17-mile queue at the port of Dover.

A hard border between Ireland and Northern Ireland

The EU and the UK Government share a commitment to avoiding a hard border between Ireland and Northern Ireland, but they have yet to reach an agreement on how best to avoid checks and infrastructure at the border. Technology, a degree of ongoing regulatory alignment and some sort of customs agreement have all been suggested as possible solutions, but it is unlikely that any of these would be in place in a no-deal scenario.

One proposed solution to avoid disruption at the border is for the UK to waive checks and tariffs on EU goods as they enter NI. However, many trade experts believe this would trigger the Most Favoured Nation principle that applies to all WTO agreements, which would require the UK to waive its tariffs and checks on goods coming in from all other countries. The EU has said they would impose checks on goods entering Ireland regardless. This would cause delays and probably reduce trade, particularly in agri-foods, which make up a large proportion of cross-border trade.

There are concerns, shared by the UK government, that if there is infrastructure on the border to enable checks on goods, it would become a target for dissident republicans. However, some commentators believe that border checks would not inspire a new wave of dissident activity, and that any infrastructure and checks can be done away from the border, which would lessen their impact. The majority of people in Northern Ireland are opposed to any form of North-South border checks.

Free movement

Free movement of people rights, whereby any EU national can work in, live in or provide services in any EU Member State providing they meet certain conditions, is a key citizens' right that will be affected by a no-deal Brexit.

The Government wants to implement a 'settled status' regime for EU nationals in the UK, whether there is a withdrawal agreement or not. Those with settled status should have full access to UK social security benefits. The position of those who on exit day have not yet been resident in the UK for five years – those with 'pre-settled status' – is less clear. For UK nationals in the EU it is unclear whether they could continue to access UK social security benefits in the EU27 Member State they reside in at the time. The existing reciprocal healthcare arrangements for UK citizens in the EU and EU citizens in the UK would probably end.

Food supply

Half of the UK's food and drink supply comes from within the UK, with 30% from the EU and 20% from the rest of the world. Potential disruption to food supplies immediately after a no-deal Brexit has been given regular media coverage. Exiting the EU Secretary Dominic Raab told the Exiting the EU Committee that the Government would "look at this issue in the round and make sure that there is adequate food supply...". The retail sector is concerned about the practicalities of stockpiling food.

Agriculture and fisheries

Trading arrangements - tariffs and standards – would be the main issue. With no alternative arrangement, the UK as a third country would be subject to tariffs, checks, registrations, certifications etc for commodities, food and feed, plant and animal-based products. Agriculture could also be impacted by the 'no deal' effects of other policies such as immigration (for seasonal, agri-food workers and vets).

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Brexit means the UK will become an independent coastal state with responsibility for managing fisheries in the UK's Exclusive Economic Zone of 200 miles. It will not be bound by the Common Fisheries Policy and could deny access to EU Member States' vessels (and vice versa). But under international law States are required to minimise economic dislocation to other States whose nationals have habitually fished in a zone.

Energy

The UK and EU energy sectors are integrated through trade, legislation and inter-connection of energy supply, although EU Member States are ultimately responsible for their domestic energy supply to citizens. Aspects of the UK energy sector, such as Euratom and the Internal Energy Market (IEM), will probably be affected similarly by a deal or no-deal Brexit. The UK will leave Euratom along with the EU; the Government is open to leaving the IEM and has begun preparations for leaving, but the future relations White Paper suggests a preference for future energy integration. 'No deal' could mean a less integrated relationship than the UK would like and not enough time to prepare for alternatives.

Internal security

The UK currently participates in around 40 EU measures that support and enhance internal security and police and judicial cooperation in criminal matters. According to police organisations, leaving the EU without a deal could result in a loss of operational capacity and strategic influence and an increased demand on resources because of the need to compensate for these losses. They say this could have a significant impact on public safety. Both the UK and the EU have emphasised the importance of maintaining cooperation in the field of security, law enforcement and criminal justice, but the Home Secretary has [said](#) security should not be linked to the other aspects of the negotiations, and that the UK's proposals are unconditional.

Transport

For the International Air Transport Association (IATA), [the aviation deadline is earlier](#) than the Brexit deadline of 29 March 2019. But would planes actually stop flying between the UK and the EU27 in the event of no deal? The Government [believes](#) it might be possible to agree a 'bare bones' aviation agreement in the event of a no-deal scenario.

Research and higher education

The UK currently does disproportionately well in securing EU research funding and UK Universities are the top performers in receiving EU funds based on scientific excellence. The higher education sector and research bodies are concerned about the impact of a no-deal Brexit on access to EU research funding and collaboration in EU projects, recruitment and retention of EU staff, access to the Erasmus+ programme and the possible consequences for EU students coming to study in the UK.

1. How could no deal happen?

Article 50 of the [Treaty on European Union](#) (TEU) provides for an EU Member State to leave the EU with or without a withdrawal agreement - or 'deal' - within a two-year timeframe starting from the formal notification of withdrawal by the leaving State.

1.1 Timing is crucial

The UK Government delivered a letter notifying the European Council of its intention to leave the EU on 29 March 2017, which started the clock ticking under the Article 50 process. The EU and the UK aim to complete negotiations on the UK's 'orderly' withdrawal from the EU by October 2018. Theresa May [told](#) the Liaison Committee on 18 July that the aim was still to have "sufficient detail of this agreed by October".

Dominic Raab [told](#) the Lords EU Committee on 29 August he was "confident" a deal was "within our sights", that he was still aiming for the October deadline but there was a measure of leeway. He confirmed that the 20% of matters not agreed included data transfers, police and judicial cooperation and collaboration and governance issues; the contours and principles were agreed but not the technical details. A solution to the Irish border was the main outstanding issue.

If October proves impossible, as many believe it will be, November or even December is more likely.¹ This would allow only just enough time for the UK and European Parliaments (the EP has said it needs three months) to consider and vote on a withdrawal agreement, and for the 27 other EU Member States to 'ratify' it in the Council of the European Union in time for exit day on 29 March 2019 (11 pm UK time).

The UK and EU have agreed to "continuous" negotiations on Brexit "to energise the final phase of the diplomacy and to reach a deal that is in both sides' interests".²

1.2 Scenarios for a no-deal Brexit

Leaving the EU without a withdrawal agreement – no deal - cannot be ruled out. Terms used to describe a 'no deal' outcome to the negotiations include 'cliff edge' Brexit,³ 'hard Brexit'⁴ and the UK 'crashing out' of the EU.

No deal could be the result of various scenarios:

- The EU and UK do not agree on the terms of a withdrawal agreement and/or a framework for future relations because of

"I'm determined we're going to find an agreement for an orderly withdrawal which is much better than the opposite and Dominic and I think it's possible to reach that agreement in October".

[Michel Barnier](#), 31 August 2018

¹ Bloomberg, [U.K. and EU Drop October Deadline for Brexit Deal](#), 29 August 2018

² Dominic Raab, [speech](#) 23 August 2018

³ Described in the Lords EU Committee report [Brexit: deal or no deal](#), 7 December 2017, "as overnight between 29 and 30 March 2019 they would have to adjust to radically different terms of trade, while citizens would face profound uncertainty over issues such as residence, property and other rights, child custody decisions, or health insurance".

⁴ Although 'hard Brexit' now seems to mean something short of no deal.

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lack of time and/or because there are intractable disagreements and no willingness to compromise – the talks break down;

- There is agreement in principle on the substance of a withdrawal agreement but more time is needed and the other EU Member States refuse to extend negotiations;⁵
- There is agreement in principle on the substance of a withdrawal agreement but more time is needed; the EU27 are willing to extend negotiations under Article 50 TEU but the UK refuses to ask for an extension;⁶
- The UK Parliament rejects the negotiated withdrawal agreement and framework for future relations;
- The European Parliament rejects the negotiated withdrawal agreement and framework for future relations;
- The Council does not endorse the withdrawal agreement by an enhanced qualified majority (20 of the 27 Member States, representing 65% of the EU population);
- A withdrawal agreement is concluded and enters into force, but at the end of the implementation/transition period there is no agreement on future EU-UK relations; or there is an agreement, but it has not been implemented in the UK or ratified in the EU Member States and has not entered into force provisionally.

1.3 Are any scenarios more or less likely than others?

It would appear less likely that the EU27 Member State governments or the European Parliament (EP) would unexpectedly vote against an agreement drawn up by the EU and UK negotiators. The EP, which has a power of veto over the final deal, has been kept fully informed of developments in the negotiations and its resolutions on Brexit have been taken into account so as not to jeopardise final agreement. The EU27 governments have (so far) maintained solidarity in their position on the negotiations, so surprises, either in the adoption of a final text or in allowing an extension of negotiations, are unlikely. Earlier reports that Spain could veto a withdrawal agreement because of its sovereignty claim on Gibraltar are unfounded, since no EU Member State has a veto

⁵ The Select Committee on Exiting the EU [recommended](#) in its Third Report of March 2018 that the Government should be prepared to seek a limited extension to the two-year article 50 period if substantive aspects of the future relationship are not agreed, or if Parliament votes against the withdrawal agreement, or if there is no deal, but acknowledged that the EU might not grant such a request.

⁶ Trade Secretary Liam Fox has said asking for an extension would be a “complete betrayal” of Brexit voters ([Politico, 27 July 2018](#)).

power,⁷ although Spain could, of course, contribute to a blocking minority against an agreement.

Some scenarios might provide a more or a less favourable environment for a no-deal departure than others (i.e. a ‘smooth’ no deal scenario or a ‘disruptive’ no deal), depending on the good will of the parties and the political mood. But the consensus among the negotiators and most stake-holders is that any no-deal outcome should be avoided.

In early August the Governor of the Bank of England, Mark Carney, described the possibility of no deal as “uncomfortably high”.⁸ The Government insists no deal is “unlikely”⁹ but also believes it is taking a “responsible” approach¹⁰ and making “sensible preparations”, so that even a no-deal scenario could be managed in an “orderly” fashion.¹¹

1.4 A ‘bare bones’ deal?

‘No deal’ would mean no withdrawal agreement, and this would mean no transition (implementation) period in which to adapt to being outside the EU and to finalise and ratify a future relationship agreement.

Professor Derek Wyatt and Hugo Leith of Brick Court Chambers [told](#) the Foreign Affairs Committee in March 2017 that a ‘no deal’ outcome next March did not necessarily mean the end of negotiations, suggesting that a negotiation outside the Article 50 process could take place:

The economic and political shock for the UK and the EU could lead to renewed attempts to deal with outstanding issues. The position might be recovered, and a belated withdrawal agreement which included transitional arrangements might be put in place.¹²

It might be possible to agree a “bare-bones” deal covering key issues of mutual concern, as David Davis suggested to the Lords EU Committee in October 2017: “in the event that we did not get a full deal, the interest of both sides on, say, counterterrorism co-operation, justice co-operation or data exchange co-operation is so great that I find it hard to believe that we will not get some fundamental deal there”.¹³

Or there might be an assortment of last-minute unilateral (EU) and/or bilateral (UK-EU27) ‘parachute’ agreements to minimise disruption in certain areas. Philip Rycroft (DExEU) [suggested](#) the European Commission would want to avoid “unnecessary disruption” to business

⁷ The EU27 ‘ratification’ of the withdrawal agreement and declaration on a framework for future relations will be by an enhanced qualified majority vote: 20 of the EU27 States representing 65% of the EU27 population.

⁸ BBC Today Programme, 3 August 2018.

⁹ See Theresa May, the [Chequers statement](#), 6 July 2018, and Dominic Raab, [UK government's preparations for a 'no deal' scenario](#), updated 24 August 2018

¹⁰ Ibid

¹¹ See, e.g. BBC News, [No 10 deny plan for Army role in 'no deal' Brexit](#), 30 July 2018.

¹² FCA, Ninth Report of Session 2016–17, [Article 50 negotiations: Implications of 'no deal'](#), 12 March 2017

¹³ House of Lords European Union Committee, [Oral evidence](#), 31 October 2017; 7th Report of Session 2017–19, [Brexit: deal or no deal](#), 7 December 2017.

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between the EU and UK and would therefore want to be pragmatic even in the event of 'no deal'. This assumption was part of the Government's thinking but could not be guaranteed. Dominic Raab told the Exiting the EU Committee on 5 September that there could be "no deal deals" in some areas if negotiations break down: the UK and EU could coordinate what they do without a legally binding agreement; sign Memorandums of Understanding (MoUs); or there could be more formal agreements.¹⁴

But there could still be a period of undeterminable length in which the UK and the EU are without any agreements on withdrawal or post-Brexit relations, and possibly little good will among the EU27 towards the UK. Anand Menon of 'UK in a Changing Europe' is pessimistic about all such no-deal mitigation scenarios:

Given the political capital expended by both the UK and the EU on reaching an agreement within the Article 50 timeframe, a no deal outcome of any kind is likely to generate considerable acrimony. In particular, there will be a lot of finger-pointing about who is to blame.

This matters on a number of levels. Most immediately, it will complicate any moves to secure emergency deals on critical systems such as air travel, medicines or fissile materials, especially if politicians on either side seek to use such issues to teach the other a lesson or force compromises elsewhere. Mitigations in the form of agreements with the EU would be particular to each sector, meaning the impact of no deal could vary considerably, with certain sectors more vulnerable than others. The difficulty is that we cannot know at this point just how many of these emergency agreements it would be possible to reach in a relatively short period of time and in a confrontational political atmosphere.

Moreover, a breakdown of the negotiations would colour the pursuit of any wider efforts to restart the UK-EU relationship, in terms of the attitudes of both sides and the lack of a clear basis upon which to work. No withdrawal agreement means no political declaration on the future relationship, and it would be wise to assume that the general level of trust and willingness to compromise would be small.¹⁵

Furthermore, Michel Barnier said on 3 September that the EU would not engage in any kind of "managed no-deal Brexit" if negotiations break down. He told the Exiting the EU Committee there would be no further discussions or negotiations, no "side-deals", no "mini-deals", the discussions would stop.¹⁶

¹⁴ Reported in [The Guardian, 5 September 2018](#).

¹⁵ UK in a changing Europe, [Cost of no deal revisited](#), 3 September 2018

¹⁶ House of Commons Exiting the EU Committee, [Oral evidence](#), 4 September 2018.

2. Preparations for no deal

2.1 UK Government preparations

The return of “no deal is better than a bad deal”

In her [Lancaster House speech](#) in January 2017 the Prime Minister, Theresa May, was “clear that no deal for Britain is better than a bad deal for Britain”. By the time of her [Florence speech](#) in September 2017, she firmly supported a negotiated withdrawal and the option of walking away from a bad deal was not mentioned. Both sides in the negotiations agreed that an orderly, negotiated withdrawal was preferable and in both their interests.

Agreement on phase one of the negotiations in December 2017 appeared to enhance prospects for a mutually acceptable negotiated withdrawal. The mutual benefits of a good Brexit deal were reiterated in the Prime Minister’s [Chequers Statement](#) in July 2018 and the ensuing [White Paper on future relations](#).¹⁷

But the prospect of a no-deal outcome to the negotiations has returned to the Brexit rhetoric in the UK as well as the EU (see section 2.2 below), with each side accusing the other of being inflexible and contributing to the possibility of a breakdown in the negotiations and a no-deal scenario. Theresa May said in her [statement](#) on the Chequers agreement on 9 July that unless the EU changes its negotiating position, “there is serious risk it could lead to no deal” and this would be a “disorderly no deal”. Michael Gove [said](#) on the Andrew Marr Show on 8 July that the UK was being “generous”, and that if the EU did not reciprocate, “we may have to come to the conclusion that we need to walk away without a deal” and “be in a position to walk away in March 2019”. The new Foreign Secretary, Jeremy Hunt, warned that without a “change in approach from the EU negotiators”, there is now a “very real risk of a Brexit no deal by accident”.¹⁸

The Prime Minister stands by her Lancaster House evaluation; she told the Liaison Committee on 18 July:

You ask me about the fact that I have said that no deal is better than a bad deal. I stand by that. I think that that is right. I think a bad deal—for example, some have suggested that we would be prepared to pay “any price” for something—would not be a good deal for the United Kingdom.

Michel Barnier insists the EU is prepared to be flexible if the UK Government gives way on its ‘red lines’.¹⁹

“We are preparing for a range of outcomes, in terms of our future relationship with the European Union, including, at one extreme, no deal and a non-co-operative environment”.

Philip Hammond, [evidence](#) to Treasury Committee, 11 October 2017

¹⁷ For information on the Government’s Brexit future relations White Paper, see Commons Briefing Paper 8387, [The Brexit White Paper on future relations and alternative proposals](#), 28 August 2018.

¹⁸ BBC News, [Brexit: Jeremy Hunt warns EU of 'no deal by accident'](#), 23 July 2018

¹⁹ Michel Barnier: [speech](#) 23 April 2018; [speech](#), Institute of International and European Affairs, 6 July 2018

The new Brexit Secretary Dominic Raab is reported to be “insouciant” about a no-deal Brexit.²⁰ He maintained there would be “opportunities” from a no-deal outcome (including immediate regulatory freedom, independent trade and immigration policies, and “a swifter end” to payments into the EU budget).²¹ Brexit supporter Jacob Rees-Mogg MP is reported to have said that no deal would be preferable to the Government’s Chequers proposal.²² But Business Secretary Greg Clark [told](#) the French newspaper [Le Figaro](#) on 24 July that no deal “would be bad for all countries and all citizens of the European Union. And that would impoverish everyone”.

Opposition leader Jeremy Corbyn has said that “No deal is a bad deal and would represent a historic failure”.²³

The Liberal Democrat leader Vince Cable has said a no-deal Brexit could be “potentially catastrophic”.²⁴

Departmental preparations

In its report published on 12 March 2017 on [Article 50 negotiations: Implications of ‘no deal’](#)²⁵ the Commons Foreign Affairs Committee recommended:

The Government should require each Department to produce a ‘no deal’ plan, outlining the likely consequences in their areas of remit and setting out proposals to mitigate potential risks. Such preparation would strengthen the Government’s negotiating hand by providing credibility to its position that it would be prepared to walk away from a bad deal.

In June 2018 an Institute for Government (IfG) report summarised what preparations the Government would need to make for different Brexit scenarios:

Some areas are not dependent on future negotiations, such as the settlement scheme to provide status to EU nationals after Brexit, meaning officials do not have to cope with multiple scenarios. But these are the exception. For others the uncertainty means that departments have to work on multiple plans in parallel. HM Revenue and Customs (HMRC), for example, needs to be ready for post-Brexit customs if there’s no deal in March 2019 or if talks end in failure come December 2020, as well as having plans for the Government’s two options for a possible future relationship. Each of the four plans, with their different constraints and requirements, would be, at best, extremely ambitious if they were the only scenario the department was working to.²⁶

Has the Government implemented “multiple plans in parallel” to prepare for all kinds of Brexit? Philip Rycroft, DExEU Permanent Secretary, [told](#) the Exiting the EU Committee on 4 September that Brexit

“If you are asking me whether we are going to say to people here and now, “If there is no deal, you will not be able to do A, B and C,” I would say that preparedness for no deal is about making sure that Government, business and those who have to take actions to prepare for no deal are able to do that and to do so in a timely way, because some of these actions may take time to put in place”.

[Prime Minister](#) to Liaison Committee, 18 July 2018

²⁰ Politico, [UK Cabinet chaos triggers countdown to Brexit explosion](#), 9 July 2018

²¹ Dominic Raab, [speech](#) on Brexit no deal planning, 23 August 2018

²² See The Times, [Jacob Rees-Mogg says Chequers Brexit deal may be worse than no deal](#), 7 July 2018.

²³ Politico, 5 July 2018

²⁴ The Guardian, [‘Catastrophic’ no-deal Brexit a real possibility, says Vince Cable](#), 11 June 2018

²⁵ Ninth Report of Session 2016-17

²⁶ IfG, [Preparing Brexit. How ready is Whitehall?](#) Summary. Joe Owen, Lewis Lloyd and Jill Rutter, 10 June 2018

planning, including for no deal, had been taking place across Departments for two years.

New Cabinet sub-committee

Damian Green, then First Secretary of State and Minister for the Cabinet Office, [announced](#) in October 2017 the creation of a new Brexit-focused Cabinet sub-Committee - the European Union Exit and Trade sub-Committee (Domestic Preparedness, Legislation and Devolution) to oversee domestic policy preparations and implementation of Brexit; and changes to the existing EU Exit and Trade (Strategy and Negotiations) sub-Committee (an extension of the EU Exit and Trade (Negotiations) sub-Committee), to oversee the Brexit and future relations negotiations. The new sub-committees would “sit alongside” the EU Exit and Trade Committee and the EU Exit and Trade (International Trade) sub-Committee which would continue as before.

Brexit workstreams

On 30 April 2018 in a letter to Meg Hillier, Chair of the Public Accounts Committee, DExEU published [Departmental summaries of EU Exit workstreams](#), setting out the areas of work being undertaken (“policy areas requiring particular focus, the current number of workstreams for which each department is responsible, and some specific examples”). The National Audit Office, which has been reporting on the Government’s Brexit delivery, noted that DExEU’s “delivery plan guidance required departments to formulate delivery plans to support a preferred negotiation (or ‘day one deal’) or a ‘no deal’ outcome for each EU Exit work stream”.²⁷ The DExEU summaries do not specifically indicate any no-deal planning, but this could be read into the “contingency outcomes” referred to in five instances.

Philip Rycroft [assured](#) the Exiting the EU Committee on 4 September that political divisions in the Government were not holding up any Brexit planning workstreams.

Machinery of government changes

On 24 July the Prime Minister [announced](#) changes to the machinery of Government in the light of Brexit. DExEU would continue to lead on domestic preparations “in both a deal and a no deal scenario, all of the necessary legislation, and preparations for the negotiations to implement the detail of the Future Framework”. DExEU would recruit new staff and Cabinet Office officials coordinating work on preparedness would move to DExEU, “while maintaining close ties with both departments”. Theresa May herself would lead the negotiations with the EU, with Dominic Raab deputising and supported by the Cabinet Office, whose Europe Unit, headed by Oliver Robbins, would “have overall responsibility for the preparation and conduct of the negotiations”. Philip Rycroft [told](#) the Exiting the EU Committee on 4 September that the changes would enable DExEU to focus on what comes after Brexit.

²⁷ NAO, [Implementing the UK’s exit from the European Union. The Department for International Trade](#), HC 713 Session 2017–2019, 25 January 2018

More staff

Dominic Raab said in his [speech](#) on 23 August 2018 that the Government was increasing staffing inside and outside Whitehall: “The UK government now has 7,000 people working on Brexit preparations and funding is in place for another 9,000”, and “in relation to frontline services, such as the UK’s Border Force, we are currently recruiting an extra 300 staff in time for our exit, with plans in the pipeline to recruit 1,000 more staff, so they are ready to deal with any increase in work”.

Philip Rycroft said DExEU was under no budget restraints with regard to staffing and resources for Brexit planning.²⁸

‘No deal’ funding

Chancellor Phillip Hammond set out the Government’s ‘no deal’ funding strategy in [evidence](#) to the Treasury Committee on 11 October 2017:

[...] we do have planning for all scenarios, including a no-deal scenario. I am committed to funding Departments for the work they need to do in preparation, and we have already allocated £250 million to Departments from the reserve. But there will be points of decision where it will be necessary to make go or no go decisions around future programme spending to be ready on day one. I am clear that we have to be prepared for a no-deal scenario, unless and until we have clear evidence that that is not where we will end up. At the moment, although we of course hope for a different outcome, we cannot be certain of it.

I am not proposing to allocate funds to Departments in advance of the need to spend. We should look in each area at the last point at which spending can begin to ensure that we are ready for day one of a no-deal scenario. That is when we should start spending hard-earned taxpayers’ money. Every pound we spend on contingent preparations for a hard customs border is a pound that we can’t spend on the NHS, social care, education or deficit reduction. I don’t believe that we should be in the business of making potentially nugatory expenditure until the very last moment, when we need to do so. We will be ready—we will spend the money in a timely fashion to ensure that we are ready—but we will not spend it earlier than necessary just to make some demonstration point.

Asked whether the Treasury had “done a broader assessment of how much it would have to spend in the event of a no-deal scenario, and how much money could not be spent on other things”, and whether the Treasury was “expecting to have to reopen the 2015 Departmental spending reviews”, Mr Hammond replied:

On the last point, no, because the money that is required to be expended against the contingency of a no-deal scenario will come from the reserve, so we will not reopen departmental spending settlements. In terms of quantum, it is a moveable feast. Obviously, one can plan for the most extreme scenario. Let me give you an example: it is theoretically conceivable that, in a no-deal scenario, no air traffic will move between the UK and the European Union on 29 March 2019. However, I don’t think anybody seriously believes that that is where we will get to.

²⁸ Commons Exiting the EU Committee, [Oral evidence](#), 4 September 2018

There are a range of outcomes, and at a point in time we will need to determine what a realistic worst-case scenario that we need to plan and invest for is. On that specific point, it is very clear that mutual self-interest means that, even if talks break down and there is no deal, there will be a strong compulsion on both sides to reach agreement on an air traffic services arrangement.

In the November 2017 budget the Chancellor also made an additional £3 billion of funding available for departments and the devolved administrations over the next two years to implement plans for various exit scenarios, including 'no deal'.

The Prime Minister summarised funding for a deal or no deal Brexit in [evidence](#) to the Liaison Committee on 18 July:

The Treasury set aside, over a period of two years, the sum of £3 billion for preparatory work. That was allocated at the spring statement. My right hon. Friend the Chancellor of the Exchequer explained the allocation for 2018-19 among Departments. As you might imagine, DEFRA is the Department that has £310 million allocated to it for that year. HM Revenue and Customs has £260 million, the Home Office has £395 million. The other big amounts include £185 to BEIS, and then, obviously, other Departments have some allocated. Those sums are for work they are doing in preparing for the outcomes, and of course those outcomes are a deal or no deal.

IT systems

New IT systems will be needed to replace databases currently shared with the EU. Many of them are in the Department for Environment, Food and Rural Affairs (DEFRA), HM Revenues and Customs (HMRC), the Department for Business, Energy and Industrial Strategy (BEIS), Department for International Trade (DIT) and the Home Office. The UK will also be disconnected from various IT systems that cannot be replicated domestically because of their inherent cross-border basis, such as the [VAT Information Exchange System](#) (VIES), which is a core component of the system that allows goods to move within the EU without VAT liability being checked at the border.

Developing new databases can be a lengthy process; an internal Cabinet Office report in 2015 leaked to Computer Weekly found that "the average time for a new digital service to reach public use – either fully live or in beta – was two years. The completed exemplars ranged from 1.2 years to three years in duration".²⁹

The technical publication The Register commented on DEFRA systems that could be at risk:

Key programmes at risk of delays or failure were the department's import controls systems, the database replacement for the Registration, Evaluation, Authorisation and Restriction of Chemicals, the export health certificates, catch certificate for

²⁹ ComputerWeekly.com, [So you want new IT systems for Brexit? Leaked GDS report shows it's already too late](#), 15 August 2017

marine caught fish for human consumption, and the system for veterinary medicines.³⁰

The Government is also relying on future technology-based solutions to the Irish border customs issues, despite these having been declared a partial solution at best by the EU.

in In a [report](#) published in April 2018³¹ the Public Accounts Committee (PAC) was critical of the Brexit preparations of the Department for Business, Energy and Industrial Strategy (BEIS) and was particularly concerned about the lack of IT procurement that would be necessary in the event of no deal:

We doubt the realism of the Department's plans to deliver the numerous IT systems required to support the implementation of its Brexit work streams, especially when it has yet to start procurement. The Department needs to build upwards of 12 new digital systems, such as a database to register trademarks. We took evidence in January 2018, before publication of the Draft Withdrawal Agreement proposing a transition period to December 2020. Extraordinarily, the Department had not yet started to procure any of these systems despite them being required by March 2019 in the event of a no deal scenario. They may still be required if negotiations should break down. The Department said it hoped to begin procurement in the next few months and that it was confident that it could acquire and test the systems by March 2019. Given the government's generally poor track record in delivering IT projects, we are extremely sceptical that the Department will be able to deliver these systems in time.

In its [response](#) in May 2018 to the Foreign Affairs Committee report on the implications of no deal, the Government said it was continuing "to implement plans to ensure that we are ready for the UK's exit from the EU, including procuring new systems, recruiting new staff and committing financial resources where necessary".³²

But some reports suggest civil servants are preparing 'manual workarounds' in case the technology fails or is not available. The Commons Science and Technology Committee has launched an inquiry into the state of the digital government strategy, which will include consideration of the post-Brexit digital skills that will be needed. The Committee is asking for written evidence to be submitted by 28 September 2018.

The Government steps up 'no deal' preparations

Boris Johnson, in his resignation letter on 9 July, said the Government had "postponed crucial decisions – including the preparations for no deal" in favour of pursuing what he called a "semi-Brexit". Others in

³⁰ The Register, [Defra to MPs: There's no way Brexit IT can be as crap as rural payments](#), 8 March 2018

³¹ PAC, *Exiting the European Union: The Department for Business, Energy and Industrial Strategy*, 34th Report of Session 2017–19, 18 April 2018

³² Government response to Foreign Affairs Committee 9th Report, 23 May 2018.

the EU,³³ the UK Government,³⁴ opposition politicians³⁵ and industry³⁶ thought more preparations were necessary. The [Financial Times](#) (20 July) reported on no-deal preparations by businesses across the UK, stating that “[a]s part of the preparations, some 250,000 small businesses will be asked to start making customs declarations, in a dry run for a hard Brexit”, and:

UK businesses are already spending heavily on their preparations. Adam Marshall, head of the British Chambers of Commerce, said companies have been thinking through the potential impact of changes to cross-border trade, staffing, contracts, VAT and intellectual property.

Overall, the Government believes it is being “responsible” about contingency planning.³⁷ For example, in his response to the European Scrutiny Committee [special report](#) (14 June) David Davis said the Government was “on course to deliver a functioning border in a ‘no deal’ scenario that enables trade to flow, the Government to collect revenues, and the UK to have a secure border”. DExEU Minister Lord Callanan insisted ([23 July](#)) the Government was preparing for a range of Brexit scenarios, from ‘orderly’ withdrawal to ‘no deal’ - but not by recommending the stockpiling of processed food, as reported in [The Sun](#) on 10 July and several other newspapers.³⁸ DExEU Minister Chris Heaton-Harris [told](#) the Commons on 19 July:

Departments’ plans are well developed and designed to respond to all scenarios, including the unlikely possibility that we leave the EU without a deal. Some contingency plans have already become evident and more will become public over the coming weeks.

He also [said](#) 300 extra staff had already been recruited to police UK borders and that there was “an ongoing programme to recruit a whole load more”.

Dominic Raab said after his first meeting with the EU negotiator Michel Barnier on 26 July that the UK Government, like any “responsible government”, was planning for no-deal, but conceded it needed to step up its plans.³⁹ He also [told](#) the Committee on Exiting the EU on 24 July (Q2472) that in the event of no deal, although there would be “uncertainty” in the short term, the UK would “still be able to thrive” in the long term.

³³ See BBC News, [Brexit: What do the EU's 'no deal' preparations say?](#) 19 July 2018.

³⁴ The statement on the Chequers agreement on 6 July said: “It remains our firm view that it is in the best interests of both sides to reach agreement on a good and sustainable future relationship. But we also concluded that it was responsible to continue preparations for a range of potential outcomes, including the possibility of ‘no deal’. Given the short period remaining before the necessary conclusion of negotiations this autumn, we agreed preparations should be stepped up”.

³⁵ See Commons [debate](#), Withdrawal Agreement: Legislation, 24 July 2018.

³⁶ See, for example, CBI, [CBI survey: How businesses are preparing for Brexit](#), 2018.

³⁷ See Government [response](#), 14 June 2018, to European Scrutiny Committee report of 20 March 2018, 19th Report of Session 2017–19, [EU Withdrawal: Transitional provisions and dispute resolution](#) (HC 763).

³⁸ See also Financial Times, [British food stores ridicule Brexit stockpiling plans](#), 26 July 2018.

³⁹ EUObserver, [UK Brexit minister warns of 'no-deal' preparations](#), 23 July 2018

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Philip Rycroft outlined staff numbers to the Exiting the EU Committee on 4 September, [saying](#) DExEU had high quality staff with a “diverse range of experience and talent”.

In a [speech](#) on 23 August on planning for the “unlikely event” of no agreement, Mr Raab said he would seek discussions with the EU over coordinated action to mitigate the effects of a no-deal Brexit (the Bank of England and European Central Bank are currently in talks). He also sought to dispel media rumours of stockpiling, shortages and a vindictive EU:

So let me reassure you all that, contrary to one of the wilder claims, you will still be able to enjoy a BLT after Brexit.

And there are no plans to deploy the army to maintain food supplies.

I think it's also worth saying that most of the worst case scenarios, being bandied around, imply that the EU would resist all and any mutual cooperation with the UK.

In reality, I find it difficult to imagine that our EU partners would not want to cooperate with us even in that scenario in key areas like this, given the obvious mutual benefits involved.

Dominic Raab updates the Commons on negotiations and no-deal preparations

Agreement has been reached in most areas

On 4 September Mr Raab [updated](#) the Commons on the progress of Brexit negotiations and the Government's ‘no deal’ contingency planning. He said the negotiators had “injected some additional pace and intensity into the negotiations, as we reach the final phases” and that the “vast majority of the Withdrawal Agreement” had been agreed. Progress had been made on the outstanding issues to do with the protection of data and information, the treatment of ongoing police and judicial cooperation in criminal matters, and ongoing EU judicial and administrative procedures after exit.

Northern Ireland issues still unresolved

Northern Ireland was still a major sticking point. They had continued to “work to complete a backstop” but he reiterated that the EU proposals were “unacceptable, because they would create a customs border down the Irish Sea”. He was determined to avoid a hard border but would “not permit a customs border down the Irish Sea, which would put at risk the constitutional and economic integrity of the United Kingdom, and of course, this can be done without compromising the EU's core principles”.

Bilateral meetings

He outlined the 60 or more bilateral meetings ministers had had with their EU counterparts since the publication of the Brexit future relations White Paper on 12 July, saying the proposals had “received a wide range of positive and constructive feedback” and:

Equally, just as we have presented our proposals in a spirit of compromise, so too they have proved challenging in some respects for some in the EU.

But, our friends across Europe are engaging seriously with our proposals on the substance.

He acknowledged that there were “some risks to a ‘no deal’ scenario”, but said the Government’s approach demonstrated that it was “taking the action to avoid, to minimise and to mitigate these potential risks so we are equipped to manage any short-term disruption”.

‘Opportunities’ provided by a no-deal Brexit

He again pointed to “some countervailing opportunities” that a no deal scenario would bring”.

- The UK could lower tariffs and negotiate and bring into effect new free trade deals straight away;
- The “immediate recovery of full legislative and regulatory control, including over immigration policy”;
- A “swifter end to our financial contributions to the EU”, while being “mindful” of legal obligations.

‘Technical notices’ on no deal preparations

On 18 July the Prime Minister [told](#) the Liaison Committee that over the course of the summer the Government would be releasing around 70 ‘technical notices’ for British businesses and citizens - “those that need to know that information” - setting out how the public and business could prepare for the consequences of a no-deal Brexit.

The Committee Chair, Dr Sarah Wollaston, tried to press the Prime Minister on the extent of advanced preparations for these possible consequences:

Q93 Chair: [...] there is still that growing possibility, I feel, that we could end up with a no-deal scenario; and my question was will you be laying out for the public what the consequences of that will be, very clearly?

The Prime Minister: If we are in a no-deal scenario then we will lay out the consequences for the public.

Q94 Chair: You won’t do it in advance.

The Prime Minister: What we are doing at the moment is working for a deal, and that is the basis on which the Chequers agreement was made; it is the basis on which the White Paper is made; it is the basis on which we started discussions with the European Union. At this point what we are doing is saying we will ensure, as we step up our no-deal preparations, that those technical notices are issued over August and September so that those who need to have that information have that information.

Chair: You have made that clear.

The Prime Minister: With due respect, I think what you are asking me to do is to do something else, which is to set out the argument for no deal versus the argument for a deal, rather than actually saying we are working for a deal, and we will make sure that those who know—

“While it is sensible for them to undertake contingency planning for ‘no deal’, both the UK and the EU must ensure that the very act of such preparations does not increase the likelihood of this outcome”.

Lords EU Committee,
Conclusions para 58,
[Brexit: deal or no deal](#),
7 December 2017

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Q95 Chair: Prime Minister, with respect, I am asking you to set out for the public—because I think sometimes the public don't realise the scale of the issues that we would be facing, and the costs and the absolute necessity that we start planning now, because time is getting so short. So I guess my request to you is will you agree to publish this so that the public can see what the consequences are, and what you are planning for?

The Prime Minister: What we will be doing is ensuring that more information is available on the preparations the Government are making for no deal, that we publish the technical notices so that those who need to make the preparations for no deal are able to do so.

Q96 Chair: You have made that clear, Prime Minister. My concern was for the wider public understanding of what the consequences are.

The first public information alerts - or 'technical notices' or 'guidance' - were published on 23 August on the [DExEU website](#). Their publication was interpreted by many as a sign that the Government was taking no-deal preparation more seriously, by others as an indication that the Government was panicking as the deadline for agreeing a deal approached. DExEU Permanent Secretary Philip Rycroft [told](#) the Exiting the EU Committee on 4 September that the Notices were drawn up by individual departments but managed by DExEU, and that there had been close consultation with the devolved administrations. He would not answer a question from Hilary Benn about when the Government would notify businesses about the likelihood of a deal not being reached or whether DExEU had given any consideration to possible litigation or judicial review concerning the impact on commercial operations of not knowing about 'no deal' in advance of it actually happening.

The Exiting the European Union Committee's Chair, Hilary Benn MP, [commented](#) on the Government's no deal plans on the Committee website:

Ministers have left their No Deal planning very late in the day. A lot of questions remain to be answered, and they seem to be relying on continued co-operation with the EU without any indication of what would happen if this was not forthcoming.

A failure to reach agreement with the EU will also mean no transition period so all this uncertainty could be just seven months away.

These papers tell us three things. First, they confirm that No Deal - far from being better than a bad deal - would be very damaging economically. Businesses that export to the EU would face the cost and bureaucracy of customs, safety and security and rules of origin declarations for the first time, and in certain sectors, tariffs.

Secondly, there is no guarantee for British citizens living in other EU countries about the future of their pension payments.

Thirdly, there is still no clarity on how the return of a hard border in Northern Ireland will be avoided, and ministers have simply told businesses to seek advice from the Irish Government. This is an extraordinary abdication of responsibility.

Having wasted two years, these papers show exactly why No Deal is unacceptable and why ministers must now ensure that an agreement is reached with the EU which provides a transition period and protects jobs, trade and investment.

Brexit legislation is passed

The Government's [reply](#) to the Foreign Affairs Committee report referred to the *European Union (Withdrawal) Bill* then going through Parliament and to other Brexit-related legislation "to prepare for all exit scenarios" (the [Nuclear Safeguards Act](#), [Sanctions and Anti-Money Laundering Act](#), [Haulage Permits and Trailer Registration Act](#), and forthcoming bills on immigration, agriculture and fisheries).

The [European Union \(Withdrawal\) Act](#) (EUWA) received Royal Assent on 26 June 2018.⁴⁰ Around 800 SIs will be made under the EUWA by February 2019⁴¹ to provide for a temporary continuation of EU provisions in the UK, with or without a withdrawal agreement. The aim is to ensure there are no (or few) sudden shocks or holes in the statute book on Brexit day.

Under the Act a [European Statutory Instruments Committee](#) (ESIC) has been set up in the Commons to check whether the choice of procedure to adopt certain Brexit-related SIs is appropriate. The degree of Parliament's involvement depends on the type of procedure used. The proposed negative instruments can be found on the Government's [EU Withdrawal Act 2018 statutory instruments](#) website, together with Explanatory Notes on each draft SI.

The constitutional implications of a no-deal Brexit are discussed in detail in section 3 below.

2.2 European Union preparations

According to Michel Barnier⁴² there is currently agreement on 80% of the UK's withdrawal terms. Matters still to be agreed include the protection of 'geographical indications', solutions for UK territories (e.g. the UK's Sovereign Bases in Cyprus, and Gibraltar, on which bilateral negotiations between the UK and Spain are ongoing) and the border between Ireland and Northern Ireland. According to one estimate, only 5-6% more text has been agreed since March, when 80% agreement was first announced.⁴³ In the absence of what the European Commission describes as "functional solutions" to the Irish border issue in particular, the EU has stepped up emergency "parachute" planning for the UK leaving the EU without a withdrawal agreement on 29 March 2019. The Commission, the EU Presidency (Austria) and other Member States are also reported to be considering how the UK exit date could be extended if more time is needed to prepare.⁴⁴ The

"The 'no deal' is not our objective. By the way, you do not need a negotiator for no deal. We are negotiating to avoid the 'no deal', but it still cannot be excluded".

Michel Barnier, [speech](#) at European American Chamber of Commerce, 10 July 2018

⁴⁰ For information on the EU (Withdrawal) Bill, see Parliament's [Brexit: research and analysis website](#), [Brexit: legislation](#).

⁴¹ Philip Rycroft, [oral evidence](#) to Exiting the EU Committee, 4 September 2018

⁴² On [10 July](#) and on [2 August](#)

⁴³ EUObserver, ["Dealbreaker" issues multiply in Brexit talks](#), 30 August 2018

⁴⁴ See Independent, [Brexit talks should be extended if no deal agreed](#), EU Council chair says, 5 July 2018.

Financial Times commented that any EU unilateral contingency provisions “would be tailored to the bloc’s interests and would remain in force only until the EU develops the infrastructure to enforce rules for a no-deal Brexit that could last for years”.⁴⁵

European Parliament report

In May 2018 the EP’s Constitutional Affairs Committee published an in-depth analysis of the institutional, budgetary and policy implications of a ‘hard Brexit’ for the EU ([The Institutional Consequences of a ‘Hard Brexit’](#)). The study looked at how UK withdrawal without a withdrawal agreement, transition arrangements or framework for future relations would affect each EU institution, the EU budget for the current Multiannual Financial Framework and EU policies in the areas of trade, security and justice. It provided “guidelines for the EU to be prepared in case such scenario were to materialise”.

Commission Brexit Preparedness Group

At the end of 2017 the Commission established a Brexit Preparedness Group composed of around a dozen civil servants and headed by Pascal Leardini. On the [Brexit Preparedness website](#) the Group posts ‘preparedness notices’, legislative initiatives and other relevant activities. The notices “aim at preparing citizens and stakeholders for the withdrawal of the United Kingdom” and “set out the consequences in a range of policy areas”. The website provides further information on EU preparedness for no deal:

In addition, [EU decentralised agencies](#) have published information in relation to the UK’s withdrawal from the EU, for example the [Community Plant Variety Office](#), the [European Chemicals Agency](#), the [European Medicines Agency](#) and the [European Union Intellectual Property Office](#). Furthermore, the three European Supervisory Authorities (the [European Banking Authority](#), the [European Securities and Markets Authority](#) and the [European Insurance and Occupational Pensions Authority](#)) and the [Single Supervisory Mechanism](#) have issued opinions and guidance.

Amending EU legislation to take account of Brexit

The Commission has been drafting amendments to EU legislation to take account of the UK’s exit in areas such as shipping, tariff obligations, energy, customs, aviation, health and safety, transport, citizenship⁴⁶ and the “adaptation of hundreds of databases and IT systems managed by the Commission and national capitals”.⁴⁷

On 12 June Commission Secretary-General Martin Selmayr presented the European Parliament’s Brexit Steering Group with a list of amendments to laws and regulations in a document entitled [Pending and planned legislative proposals for the purposes of Brexit preparedness](#) (as of 12 June 2018).

Commission official Pascal Leardini [told](#) the EP Committee on Constitutional Affairs (AFCO) on 2 July that the Commission would soon

⁴⁵ Financial Times, [Brussels steps up emergency planning for no-deal Brexit](#), 28 June 2018

⁴⁶ [MLex, 2 July 2018](#)

⁴⁷ [Politico, 3 July 2018](#)

complete its identification of the legal acts needing adaptation. The acts would be “either preparedness acts, that serve to fill gaps in the legislation, or contingency measures to remedy negative impacts in the cliff-edge situation”. They would take effect in the event of a no-deal scenario, “including the unwanted but still possible cliff edge”. Politico reported:

In addition to the practical contingency planning, Leardini said that officials are racing to develop legislation to close potential legal gaps. Some matters, he said, will require legislative acts and others like customs changes can be achieved via so-called delegated acts (legally binding acts that enable the Commission to supplement or amend nonessential parts of EU legislative acts).

Leardini said his group has also issued 66 preparatory notes to private stakeholders, urging them to be ready for a potentially disorderly Brexit. These, he argued, are “purely informative and not speculative.”

But Leardini said the Commission had “not done an overall impact assessment of what happens if there's no deal because there are too many variables”.⁴⁸

Brexit impact assessment

On 19 July the Commission published a Communication (COM(2018) 556 final), [Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019](#), in which it set out the main consequences of a no-deal outcome:

Box 1: Commission position on main consequences of UK withdrawal on 30 March 2019 without a withdrawal agreement

- The United Kingdom will be a third country and Union law ceases to apply to and in the United Kingdom.
- Citizens: There would be no specific arrangement in place for EU citizens in the United Kingdom, or for UK citizens in the European Union.
- Border issues: The European Union must apply its regulation and tariffs at borders with the United Kingdom as a third country, including checks and controls for customs, sanitary and phytosanitary standards and verification of compliance with EU norms. Transport between the United Kingdom and the European Union would be severely impacted. Customs, sanitary and phytosanitary controls at borders could cause significant delays, e.g. in road transport, and difficulties for ports.
- Trade and regulatory issues: The United Kingdom becomes a third country whose relations with the European Union would be governed by general international public law, including rules of the World Trade Organisation. In particular, in heavily regulated sectors, this would represent a significant drawback compared to the current level of market integration.
- Negotiations with the United Kingdom: Depending on the circumstances leading to the withdrawal without an agreement, the EU may wish to enter into negotiations with the United Kingdom as a third country.
- EU funding: UK entities would cease to be eligible as Union entities for the purpose of receiving EU grants and participating in EU procurement procedures. Unless otherwise provided for by the legal provisions in force, candidates or tenderers from the United Kingdom could be rejected.

⁴⁸ [Adam Fleming Tweet](#), 2 July 2018

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The Financial Times [reported](#) on 1 August that the EU was willing to “offer Britain a vague blueprint for future ties with the bloc — if it helps Theresa May avoid a “no deal” outcome and win parliamentary backing for a withdrawal treaty”. On 29 August Michel Barnier said the EU was “prepared to offer Britain a partnership such as there never has been with any other third country”.⁴⁹

The Commission has asked the other 27 EU Member States (the EU27) to accelerate their contingency planning for a no-deal Brexit, “warning of queues of freight at ports as well as implications for the pharmaceutical, financial services and aviation sectors”.⁵⁰

Several other EU States have been preparing contingency measures. A summary of EU27 planning is outlined in the Appendix to this paper.

⁴⁹ Politico, [Michel Barnier: EU will offer UK unprecedented deal](#), 29 August 2018

⁵⁰ [The Times \(Ireland\)](#), 14 July 2018

3. Constitutional implications in the UK

3.1 Parliament's role in the absence of a deal

The [European Union \(Withdrawal\) Act 2018](#) (EUWA) sets out a process by which Parliament could give Parliament a say in the event that no withdrawal agreement is reached and/or ratified. Section 13 of the Act makes provision for three no deal scenarios:

- if Parliament is taken to have rejected *either or both* the withdrawal agreement and the framework for the future relationship between the UK and EU;
- if the Prime Minister makes a statement before 21 January 2019 that "no agreement in principle can be reached" on the "substance" of *either or both* of those two agreements; and
- if "no agreement in principle" has in fact been reached on the "substance" of *either or both* of those two agreements.

In each of these three scenarios, a Minister of the Crown will be required, within 21, 14 and 5 days respectively, to make a statement "setting out how Her Majesty's Government proposes to proceed". In each of these three scenarios, the House of Commons must then be given an opportunity to vote on "a motion in neutral terms, to the effect that the House of Commons has considered the matter of the statement".

The House of Lords in each case must also be given an opportunity within a specified period to consider a motion "taking note" of the statement.

Can a motion in neutral terms be amended?

A "motion in neutral terms" normally cannot be amended in the House of Commons. This is because [Standing Order No. 24B](#) provides that:

Where, in the opinion of the Speaker or the Chair, a motion, That this House, or, as the case may be, the committee has considered the matter, is expressed in neutral terms, no amendments to it may be tabled.

However, the House is free to agree to disapply Standing Orders. A statutory provision cannot be used to force a specific Standing Order to be used in relation to a particular motion.⁵¹ In a [Written Statement](#) on 21 June (HCWS781), David Davis clarified:

Under the Standing Orders of the House of Commons it will be for the Speaker to determine whether a motion when it is introduced by the Government under the European Union

⁵¹ When the Fixed-term Parliaments Bill was being scrutinised, the then Clerk of the House, Dr Malcolm Jack, stated that 'decisions under or about the Standing Orders cannot be questioned by the courts or in any other place outside Parliament': see Political and Constitutional Reform Committee, [Fixed-Term Parliaments Bill](#), HC-436 2010-12, 2011, ev19-21, paragraph 16.

(Withdrawal) Bill is or is not in fact cast in neutral terms and hence whether the motion is or is not amendable.

Legal effect of a motion

As a matter of law, there are no consequences if one of the motions provided for in the three 'no deal' scenarios is rejected. The Act only requires that it shall be moved by a Minister of the Crown; not that it must be agreed to for the Government to proceed with its intended course of action.

A matter of confidence in the Government?

Depending upon the political circumstances, either Parliament's motion (a) to approve a deal, or (b) in relation to a Government statement following a "rejected deal" or "no-deal", could be taken to be a matter of "confidence" in the Government.

Historically, a Government that lost a vote of confidence was expected to resign, or else its Prime Minister was expected to request that the monarch dissolved Parliament for a General Election.⁵² Since the passage of the *Fixed-Term Parliaments Act 2011*, however, the calling of an early General Election has been a matter for Parliament to decide, rather than something the Head of Government can request of the Head of State.

Box 2: Authorisation of early general elections and the *Fixed-Term Parliaments Act 2011*

A General Election can now only be called "early" in two circumstances, either:

- if a motion for an early general election is agreed either by at least two-thirds of the whole House (including vacant seats), i.e. 434 Members out of 650, or without division; or
- if a motion of no confidence is passed and no alternative government is confirmed by the Commons within 14 days by means of a confidence motion.

The first scenario happened on 19 April 2017, giving rise to the 2017 General Election. The second scenario has not happened since the *FTPA* was enacted. For further information on the Act, see Commons Briefing Paper 6111, [Fixed-term Parliaments Act 2011](#), 27 April 2017.

If the Government states that such a motion is a matter of confidence, this would not necessarily require a General Election under the *FTPA*. A confidence motion as required under the Act or a vote for an early General Election would still be required.⁵³

3.2 Operation of the EU (Withdrawal) Act if there is no transition period

The UK has already legislated to seek to provide "legal continuity" as and when it leaves the EU. The *European Union (Withdrawal) Act 2018*

⁵² James Callaghan requested, and was granted, a dissolution of Parliament after an explicit motion of no-confidence in his Government was passed on 28 March 1979.

⁵³ For further information, see Commons Briefing Paper 2873, [Confidence motions](#), 13 May 2013, and Dr Catherine Haddon, Institute for Government, [The \(Not So\) Fixed-Term Parliaments Act](#), 14 April 2015.

both repeals the *European Communities Act 1972* and makes arrangements to “transpose” much, but not all, of EU law as it exists on exit day, into domestic law. The Act also makes arrangements to allow the UK’s governments (plural) to make “corrections” to domestic law (including retained EU law) to make sure that it functions properly in light of the UK no longer being an EU Member State.

The *EUW Act* operates ‘agnostically’ as to the existence or otherwise of a deal. It is intended to provide legal continuity regardless of the outcome of the Brexit negotiations. In practice, however, the manner in which legal continuity is achieved, and on what timescale, will depend on whether (and what type of) agreement is reached. The draft Withdrawal Agreement expects that a transition (or implementation) period will be part of any final agreement and that it will operate until the end of December 2020. During that transition period, EU law (including the jurisdiction of the Court of Justice of the EU - CJEU) will continue to have full force and effect. The UK will therefore be expected to provide domestic means of implementing EU law that comes into effect between exit day and the end of transition in its *Withdrawal Agreement and Implementation Bill*.⁵⁴

The key difference in a ‘no deal’ scenario is that no transition period would apply and the ‘default’ provisions of the *EUW Act* would come into effect from 29 March 2019. This would mean there would be no obligation, either in international law or domestic law, to ‘track’ or ‘shadow’ changes in EU law from that point onwards.

3.3 Devolution

Temporary restrictions on devolved competence

After exit day the devolved institutions will no longer be required to legislate compatibly with EU law. Section 12 of the *EUW Act* removes this requirement from the *Scotland Act 1998*, *Government of Wales Act 2006* and *Northern Ireland Act 1998*.

However, in its place, the Act allows the UK Government to make regulations to restrict, on a temporary basis, the legislative and executive competence of the devolved institutions. These regulations can be used to prevent the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly from “modifying” retained EU law in areas UK Ministers specify. The regulations cannot be made more than two years after exit day and no set of regulations can have effect for longer than five years.

Changes to competence would take place on (or in the case of regulations, potentially some point after) exit day, regardless of whether there was a deal. However, if there is a deal, further arrangements for compliance with EU law by devolved institutions would be expected to be made in the *Withdrawal Agreement and Implementation Bill*. In the

⁵⁴ The Government White Paper, [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#), Cm 9674, 24 July 2018, explains that a transition agreement will be delivered by legislating to delay the repeal of (parts of) the *European Communities Act* to a point after exit day.

absence of separate arrangements for a transition period, the UK Government would more likely seek to bring section 12 regulations into force from 29 March 2019 rather than from a later date.

Common Frameworks

The UK Government intends to bring forward legislation creating UK-wide “common frameworks”. These aim to replace, in devolved policy areas, some of the restrictions imposed by EU law that harmonise practices and standards in all Member states. The Government wants to create these frameworks to safeguard the UK’s internal market, to protect common resource and security interests, and to prevent internal regulatory divergence from undermining its capacity to enter into comprehensive trade agreements with third countries.

This legislation would be introduced regardless of whether the UK left with or without a deal, but there may be a greater urgency to legislate for these in the event of ‘no deal’. A transition period (and any further implementation periods in relevant policy areas) may reduce the urgency for these arrangements in the event of an agreement being reached.

The Scottish ‘Continuity Bill’

The Scottish Parliament approved its own legislation for legal continuity in devolved areas in March 2018. The [*UK Withdrawal from the European Union \(Legal Continuity\) \(Scotland\) Bill*](#) was prevented from gaining Royal Assent in April 2018 because the UK Government exercised a power in the devolution statutes to refer the Bill to the Supreme Court.⁵⁵ It contends that the Bill is outside the legislative competence of the Scottish Parliament and should therefore be declared void: “not law”. The UK Supreme Court [considered the legal arguments](#) over two days (24-25 July) before deciding in the autumn whether the “Continuity Bill” can go forward for Royal Assent.

If the *Continuity Bill* is cleared for Royal Assent, this will have implications for legal continuity regardless of whether the UK reaches a deal with the EU. Among the arrangements in the *Continuity Bill*, for example, is a power for Scottish Ministers to “keep pace with” developments in EU law after exit day. No such power exists in the *EUW Act* for either UK or devolved ministers.

In the event of a no-deal Brexit such a power could prove particularly important, since there will be no arrangements for a transition period. It will also have implications for the UK’s internal market, as some parts of the UK might continue to follow the substance of EU law more closely than others.

⁵⁵ Under the devolution statutes the UK Government can refer a devolved Bill within four weeks of it completing its legislative stages but before it gains Royal Assent. Such a reference allows the UK Supreme Court to determine whether the Bill is within legislative competence. See s. 33 Scotland Act 1998.

4. Governance

The European Union involves complex governance processes, as set out below. In the event of no deal, the UK will be outside those processes and there will be no agreement on how future relations between the UK and the EU should be managed, including how disputes should be resolved.

In order to appreciate the implications of a governance vacuum, it is necessary to understand the current arrangements.

4.1 Current governance of the UK-EU relationship

In discussing the governance of both the current UK-EU relationship and the future UK-EU relationship, a clear definition of the concept is helpful. While there are various ways to explain 'governance', the [Commission's definition](#) (echoing the terminology of the Council's negotiating guidelines) is a useful starting point. It suggests that governance of any international agreement is made up of three components:

1. Ongoing Management/Supervision
2. Dispute Settlement
3. Enforcement after dispute settlement

As an EU Member State, all three components of governance of the UK-EU relationship are currently dealt with via EU mechanisms.

Ongoing management and supervision of the EU Treaties, or the Member States' compliance with those, is carried out by several different institutions. There are various 'managerial' bodies in the EU, with tasks ranging from 'big picture' management to 'day to day' management.

The European Council, formally given legal personality in the Treaty of Lisbon, is the 'big picture' management institution. As the body where the EU Heads of State or Government meet at least bi-annually, it sets the direction of travel that it wishes other EU institutions to pursue. It is also the body that can formally re-open Treaty negotiations.

However, day to day 'management' as well as supervision of EU law falls to the European Commission. Unlike most other international organisations, which do not have powers to produce 'secondary' legislation, the EU has legislative abilities that are either initiated or (in the case of tertiary legislation) exercised by the Commission. It behaves like an executive in charge of 'management' in this sense, though its activities are steered by the political sign-posting of the European Council. Its supervision powers are more specific and can give rise to the 'infringement proceedings' set out in Article 258 of the Treaty on the Functioning of the EU (TFEU). Under this procedure, the Commission

can take action against any Member State it believes is not complying with EU law.

Supervision of compliance with the EU Treaties works in other directions, however. The Member States can also take action against each other (Article 259 TFEU) and the EU institutions (Article 263 TFEU), and the EU institutions can also accuse each other of *ultra vires* action (Article 263 TFEU). Consequently, rather than speaking of a single 'supervisor', the EU has a complex and multi-structural system of 'observing' compliance with, and the functioning of, the Treaties, which is led (but not exclusively) by the Commission.

Dispute settlement in the EU is first of all dealt with via the aforementioned infringement proceedings. If Member States are unresponsive to a Commission administrative action that sets out how they are perceived as not complying with their EU obligations, the Commission can take its case to the CJEU, which then issues a binding judgment either in favour of the Commission or the Member State.

However, early in the EU's existence, it was realised that the EU legal system would not only give rise to disputes between *Member States* and the EU, but also to disputes originating with *individuals and companies* who were either benefitting from or suffering from their Member States not having complied with EU law. Such complaints may arise between such private parties and their Member State, or even between two private parties affected by an EU law provision. The Treaties have to date remained silent on the dispute settlement mechanism applicable to private parties with complaints rooted in the EU Treaties; it is clear only that they do not (generally) have standing before the CJEU. Questions of dispute settlement stemming from EU law arose in national courts, however, and when the CJEU was asked how to address these disputes, the CJEU filled this gap in the Treaties with several seminal judgments.

First, it established in *Van Gend en Loos* that private parties could rely directly on EU law provisions before domestic courts where those EU provisions met certain criteria: they were clear, precise and unconditional.⁵⁶ Second, it established in *Costa* that EU law was 'supreme' over domestic law, and so where a national court observed a clash between domestic and EU law, EU law took precedence.⁵⁷ Third, it eventually found in *Von Colson* that even if EU law is *not* clear, precise and unconditional, domestic courts (under the duty of 'sincere cooperation' as set out in Article 4(3)TEU) must do everything within their power to interpret a national law *in light of* any EU law that a Member State was meant to comply with.⁵⁸

The consequence of this case law is that since 1963 there have been two concurrent streams of 'dispute resolution' within the EU. The first is at the 'macro' level and involves disputes between the Member States and the EU institutions; these are resolved by the Commission through administrative processes or by the CJEU if those administrative processes

⁵⁶ Case 26/62 *Van Gen den Loos* ECLI:EU:C:1963:1

⁵⁷ Case 6/64 *Costa v ENEL* ECLI:EU:C:1964:66

⁵⁸ Case 14/83 *von Colson and Kamann* ECLI:EU:C:1984:153

fail. The second is at the ‘micro’ level and involves private parties making a claim in a domestic court, which applies CJEU-developed principles to ensure that they attain their EU law rights.

Enforcement following dispute settlement is not EU-level enforcement; the judgment issued in private party complaints about a failure to comply with EU law is a purely domestic judgment and is enforced via whatever enforcement systems the Member States themselves have in place. The EU has no competence to dictate what those are.

The EU (like most international organisations) has very limited enforcement powers with regard to failures to comply with CJEU judgments. If Member States are persistently unwilling to comply with a CJEU judgment, under Article 260(2) TFEU the Commission can bring a further case to the CJEU regarding non-compliance, and the CJEU can impose a ‘lump sum’ or ‘penalty payment’ if it finds for the Commission, with the CJEU itself determining the amount of penalty payment or lump sum (or both) that is appropriate in a given case (albeit with Commission input, as set out in its applications under Article 260 TFEU).⁵⁹

Many other international agreements have enforcement mechanisms, such as an ability to suspend rights or ‘concessions’ gained under a treaty in response to persistent harmful non-compliance with treaty obligations. The EU model does not, however; the consequences of this appear to be that there is no EU-level enforcement option that ‘excludes’ a Member State from aspects of EU law as a punishment and source of pressure for its own non-compliance. This has been considered in the past; the [1984 Spinelli Draft Treaty](#) endorsed by the European Parliament included a sanctions mechanism that included the suspension of rights for “serious and persistent violations of treaty provisions”. The proposal was not adopted, however, and has not since been revisited.

Does this mean that a Member State cannot be ‘excluded’ from EU law against its wishes, even if it continuously fails to comply with its Treaty obligations? The argument has been made that public international law permits ‘sanctions’ options beyond those set out in Article 258-260 TFEU – suspension of rights on a temporary basis seems impossible, but expelling a Member State is accounted for in a general principle of international law, namely *pacta sunt servanda*. Article 60 of the [Vienna Convention on the Law of Treaties](#) (VCLT) permits the parties of a treaty to terminate the operation of a treaty vis-à-vis another signatory that has committed a ‘material breach’ of treaty provisions. A ‘material breach’ is defined as covering a “violation of a provision essential to the accomplishment of the object or purpose of the treaty”, which appears to be a similar trigger condition as that applicable to the infringement proceedings under EU law. Logically, therefore, a first ‘material breach’

⁵⁹ Case C-304/02 *Commission v France*

of the EU treaties should be dealt with under the infringement proceedings.⁶⁰

However, various international lawyers have argued persuasively that where the EU's own enforcement mechanisms do not work (and so there is consistent breaching of obligations), Article 60 of the VCLT covers a scenario that is *not* set out in the Treaties, and thus should apply. The alternative would be the Member States effectively being forced to tolerate a regime that consistently fails to comply with promises it has made under the Treaty, and still being obliged to extend the benefits of EU law to that regime.⁶¹ As a final resort, Article 60 of the VCLT appears to permit 'expulsion' of sorts from the EU – but not before any complaining Member State or EU institution has taken recourse to Article 258-260 TFEU.

4.2 Governance if there is no Withdrawal Agreement

Withdrawal from the EU will mean the end of most of the architecture described above. The relevant institutions will no longer have the jurisdiction to provide oversight/management, dispute settlement or enforcement functions unless the UK and the EU specifically agree this in any agreement on a future relationship.

Without such an agreement, and without an agreed Withdrawal Agreement that sets out its own governance structure (as discussed in [this](#) Commons Briefing Paper), there would be very little structure to the governance of the relationship between the EU and the UK. The framework of interactions would resemble that of the UK and any other third country: it would require diplomatic presence not only in the EU27, but presumably also in the EU seat, Brussels. Management and supervision of the overall relationship would need to take place via a newly established UK 'mission' to the EU – but it is inconceivable that diplomacy alone would govern the relationship for any length of time, given the significant connections between the UK and the EU in economic, political and social terms.

There are of course aspects of a no-deal EU-UK relationship that will be governed by existing international organisations and treaties that both the EU and the UK have ratified, each accompanied by their own dispute settlement and enforcement mechanisms. EU-UK trade, for instance, would fall under the WTO's remit, and disputes would be settled under the WTO's [Dispute Settlement Understanding](#), which has

⁶⁰ See, for the opinion that EU law's own 'sanctions' mechanism supersedes public international law, S Biernat, 'Ratification Of The Constitutional Treaty And Procedures For The Case Of Veto'. (http://www.ecln.net/elements/conferences/book_prag/BiernatFinal.pdf) 23.

⁶¹ E.g., B Simma, 'Self-Contained Regimes' (1985) 16 *Netherlands Yearbook of International Law* 127; G Conway, 'Breaches of EC Law and the International Responsibility of Member States' (2002) 13 *European Journal of International Law* 679. For a recent discussion, see Paul Gragl, '[The Silence of the Treaties: General International Law and the European Union](#)' (2014) 57 *German Yearbook of International Law* 375.

exclusive jurisdiction over WTO-related disputes (implications for trade are discussed in section 6 below).

Where the UK and the EU have ongoing 'relationships' in areas not explicitly covered by existing treaties, in the absence of an overarching deal with the EU, the parties would have to establish treaty infrastructure underpinning those relationships themselves. This would inevitably involve establishing governance mechanisms for the relationship as set out in these new treaties. These may take the standard form set out by the Commission in its [slides on governance](#), of having a joint committee, with representatives from both the EU and the UK, having supervision/management functions and 'first stage' dispute settlement functions, with second-level dispute settlement functions falling to binding arbitration.

Alternatively, any new treaty may include a jurisdictional clause that allows any disputes about its interpretation or application to be referred to the [International Court of Justice](#) at request of either party. A new court could also be established by any UK-EU treaties.

Raphael Hogarth of the Institute for Government [suggests](#) that in the future relationship, the UK and the EU may pursue novel or hybrid dispute settlement and enforcement setups. This is equally true for a no-deal relationship, but the key difference is that extensive governance structures tend to accompany international agreements that encourage or maintain close cooperation between countries. Agreements surrounding a no-deal Brexit may not necessarily be characterised as such. Any suggestion that a particular governance model or hybrid is likely to appear post-Brexit in the event of no deal would be purely speculative; the most that can be noted is that new governance structures would have to be adopted post-haste to take the place of the elaborate framework set up by the EU, and to manage the intertwined nature of UK-EU relations that on exit day will need careful unravelling, even without a deal.

5. Economic impact

The economic impact of the UK leaving the EU with no deal – without a withdrawal agreement, transition period, framework for a future trade deal or ‘mini-deals’ in certain areas – is difficult to pinpoint with certainty, not least because there is no relevant precedent for a major developed economy leaving a large trading bloc, especially one as integrated as the EU’s Single Market and Customs Union. That being said, economic analysis and estimates can broadly highlight some of the likely consequences for the economy both in the near and long term.

5.1 No deal WTO scenario over long term

‘No deal’ would mean trade between the UK and EU economies being conducted under the terms of the World Trade Organisation (WTO). See section 6 for further information on trade.

Generally speaking, economic modelling from the Government and others shows that as the cost of trading with the EU increases (via tariffs and non-tariff barriers), the greater the negative impact on the UK economy would be. In other words, a scenario where the UK trades with the EU on WTO rules is likely to result in UK GDP being lower in the long term than a scenario where the UK has a European Economic Area (EEA)-type arrangement or a free trade agreement (FTA).

These ‘losses’ could be mitigated by improved UK growth prospects from trade deals with other non-EU countries and from other policy areas (such as growth-enhancing changes to UK regulation). However, the vast majority of economic modelling in this area shows that these potential benefits of leaving the EU with no deal over the longer term do not make up for the higher trade barriers with the EU (given its importance to the UK).

For example, the Government’s “Cross Whitehall” [analysis](#) of leaving the EU, dated January 2018 and published by the Commons Committee on Exiting the EU, provides a summary of the analytical issues that go into modelling different Brexit trade scenarios. It also gives ‘illustrative profiles’ of the long-term impact on the level of GDP compared with staying in the EU. These show that the UK:

- could see its GDP around 1.6% lower in 15 years under an EEA-type scenario (staying in the Single Market) compared with what GDP would have been if the UK remained in the EU;
- could see its GDP around 4.8% lower in 15 years under a Free Trade Agreement-type scenario compared with what GDP would have been if the UK remained in the EU;
- could see its GDP around 7.7% lower in 15 years under a ‘WTO mitigated’-type scenario compared with what GDP would have been if the UK remained in the EU. Note this is a ‘smooth’ no deal scenario and not a ‘disruptive’ no deal.

The analysis shows that the economy will grow in all scenarios, but that growth would be slower compared with staying in the EU. For instance,

instead of GDP going up by 25% in total over 15 years, the WTO scenario has it going up by around 17%.⁶² These figures are broadly in line with most of the analysis conducted by others, both before and after the referendum.⁶³

The analysis states that it is not a forecast as such (there are many other factors that will affect the economy over this time) but a comparison of these different scenarios on a consistent basis. The analysis came with heavy caveats; it was marked as “Draft Analytical Thinking with Preliminary Results”, for example.

The analysis also suggested that borrowing could be around £80bn a year higher by 2023-34 if the UK leaves the EU with no deal.

In summary, a ‘no deal’ scenario with no transition or future trade framework would, in the view of a large majority of economists, result in the UK economy growing more slowly than with other scenarios over the longer term.

5.2 Short-term impact of ‘no deal’

This section highlights some of the possible short-term economic consequences of ‘no deal’ and looks at the factors that may play a role in determining their impact.

As with the long-term impact discussed above, the immediate economic effects of a no-deal scenario are uncertain. For example, we do not know the precise circumstances that would lead to no deal and how financial markets, businesses and consumers, among others, would react.

If the UK leaves the EU without any transitional arrangements or a framework for a trade agreement, the way trade between the UK and EU is conducted would change overnight. The UK would become a third country with regards to the EU. This is expected to result in the imposition of tariffs on UK exports to the EU and on EU imports to the UK.⁶⁴ On average these tariffs are low, averaging around 3%, but for some goods, such as many agricultural products, they are higher.⁶⁵

A potentially more disruptive consequence would be non-tariff barriers. These include additional administrative paperwork, customs procedures and checks (for example, relating to rules of origin), technical requirements and regulatory standards. For example, EU food safety law requires all meat products imported from countries outside the Single Market to be traceable to businesses that have been individually

⁶² [EU Exit Analysis: Cross Whitehall Briefing \(January 2018\)](#) published by DEXEU Commons Select Committee, 8 March 2018, page 16

⁶³ For example see: Angus Armstrong, [Comparing Brexit forecasts: who should we believe on the economy?](#), UK in a Changing Europe, 16 June 2016; National Institute of Economic and Social Research, [Deal, or no deal? The £2,000 question](#), 16 February 2018

⁶⁴ On the assumption that the UK would not change its Most Favoured Nation (MFN) tariffs under WTO rules.

⁶⁵ WTO, [European Union tariff profile](#) [accessed 17 August 2018]

approved by the European Commission's Food and Veterinary Office.⁶⁶ In a no deal scenario, those approvals would not exist and therefore - barring any unilateral, and most likely temporary, derogation from that legislation for British products - UK lamb, beef and poultry exports could be refused entry into the EU from March 2019 onwards. The UK would also no longer be party to the trade agreements the EU has negotiated (see section 6.3 for information trade with non-EU countries).

The impact of a no-deal scenario stretches beyond those who import and export goods and services. From the transportation to the financial services sectors, 'no deal' would have implications for businesses.

Many economists expect the pound to fall in value in the event of 'no deal'. If this did happen, the price of imports would rise, pushing up inflation (as it did following the EU referendum). In turn, the purchasing power of businesses and consumers would be squeezed. UK exports would become cheaper internationally, potentially moderating some of the effects of disruption to trading with the EU (depending on the extent to which they rely on imported goods and services, as these would have become more expensive). In this scenario there is a risk that confidence could fall with investments being deferred or scrapped and consumers cutting back on their spending.⁶⁷

An analysis of the possible effects of 'no deal' on the UK economy by the National Institute of Economic and Social Research think tank determined that it would be the disruption to trade with the EU that would have the biggest negative impact on GDP in the months following a no-deal Brexit.⁶⁸ It states that GDP would "stall due to an immediate reduction in services exports to the EU", mitigated somewhat by the expected fall in the value of the pound (supporting exports).⁶⁹

5.3 Factors that could influence the magnitude of the economic impact

Certain issues may influence the degree to which the economy is affected by a no-deal departure from the EU. A few are summarised in this section.

Preparedness

The more prepared the Government, businesses and the wider public are for no deal, the greater opportunity there will be for steps to be taken to limit the economic disruption caused. The Government, like the EU, has now published around a third of its guidance to businesses and consumers on how to deal with a no-deal Brexit. Further guidance is

⁶⁶ See article 12 of the Official Controls Regulation ([Regulation 854/2004](#)). The legislation allows this requirement to be waived for a specific country, but this requires a proposal by the European Commission and the approval of a qualified majority of Member States. That derogation can also be limited in time.

⁶⁷ UK in a Changing Europe, [Cost of No Deal](#), July 2017

⁶⁸ NIESR, *National Institute Economic Review* No 245, August 2018, Box A, F12-13 and NIESR blog post, "[How much would a 'White Paper Brexit' cost the UK economy?](#)", 1 August 2018

⁶⁹ NIESR, *National Institute Economic Review* No 245, August 2018, Box A, F12-13

expected in September. However, due to the inherent bilateral nature of trade, the extent to which the UK can unilaterally prepare for disruption is limited. It has, for example, no control over how customs officials in France, the Netherlands and Belgium would treat UK imports in a no deal scenario, and any delays in clearing freight moving from the UK to the EU27 could also disrupt traffic in the other direction. The Government's no-deal planning also relies to some extent on the EU acting unilaterally to avoid disruption, but this cannot be guaranteed.

Timing

How long before Brexit day will it be known that 'no deal' will happen? At least in principle, the longer there is to prepare for it, the more that can be done to plan for and adjust to such an outcome.

In December 2017, the House of Lords EU Committee stated that the later a no-deal outcome is known, the more damaging it is likely to be:

It is clear that the later 'no deal' emerges as the outcome of the negotiations, the more damaging its effects will be. To hold out the prospect of a 'no deal' outcome until the eleventh hour, and even to suggest that the clock could be 'stopped' to allow negotiations to continue beyond that point, even when there is no obvious legal mechanism to do so, would be irresponsible. For one thing, it guarantees that uncertainty for business and citizens will continue, and even increase, as 'Brexit day' approaches.⁷⁰

How long 'no deal' lasts

Even in the event of a no-deal outcome, some form of deal may be agreed subsequently, even if it takes the form of a basic functional 'bare bones' deal. The Government also appears to envisage that, even in absence of a Withdrawal Agreement, there may be some 'mini deals' ahead of the UK's exit from the EU – for example in relation to air traffic rights – to avoid some of the most immediate disruption to transport and trade links.

There may be economic pressures for talks following no deal. Possible economic effects in the UK have been described above, but EU Member States could also be impacted to a lesser degree, particularly in Ireland.⁷¹

5.4 The financial settlement

The March 2018 [draft Withdrawal Agreement](#) sets out how the UK and EU will settle their outstanding financial obligations to each other. The matter was discussed during the first phase of exit negotiations under the heading of the 'financial settlement'. The political agreement reached on the settlement was set out in the [Joint Report](#) between the UK and the European Commission.

The financial settlement was labelled in the media as the UK's 'exit bill' or 'divorce bill'. The Library briefing [Brexit: the exit bill](#) provides further

⁷⁰ House of Lords EU Committee, [Brexit: deal or no deal](#), 7 December 2017, para 59

⁷¹ IMF, [Euro Area Policies: Selected Issues](#), 19 July 2018, section on Long-term impact of Brexit on the EU

details about what has been agreed and how the negotiations proceeded.

What has been agreed?

The agreement reached on the financial settlement stipulated that the UK would participate in the EU Budget as if it were still a Member State from March 2019 until 31 December 2020, and contribute afterwards towards existing financial commitments that remain outstanding on that day, including the pension liabilities of EU staff. The settlement also provides that:

- the UK will, over time, wind up its financial involvement with the European Investment Bank (EIB) but remain liable for a share of any contingent liabilities that crystallise in relation to EIB lending that took place before 30 March 2019;⁷²
- the UK will continue to participate in the European Development Fund, which is legally separate from the EU budget, until the current round ends at the end of 2020.⁷³

All the text in the draft Withdrawal Agreement covering the financial settlement is coloured green, meaning it has been agreed by the negotiators and will only be subject to technical legal revisions.

What is the legal status of the financial settlement?

The terms of the settlement will only become legally binding once the Withdrawal Agreement is ratified by the EU (by votes in the EP and Council) and the UK. If there is no Withdrawal Agreement the political agreement reached on the financial settlement will not be legally binding.

Financial obligations if there is no deal?

There is a great deal of uncertainty about what happens to the outstanding UK-EU financial obligations if there is no deal. It is likely that politics and the appetite for an ongoing EU-UK relationship will largely dictate the extent to which the two parties honour the agreement reached over the financial settlement. The relevance of the financial settlement to the future UK-EU relationship is considered in section 5.4.

In [evidence](#) to the House of Lords EU Committee on 29 August, Dominic Raab said there was still a “question around quite what the shape of those financial obligations were” if the UK left with no deal, and that the UK “always pays its dues”. He did not say the UK would pay nothing, which some thought he implied when he [said](#) no deal would bring a “swifter end” to UK payments to the EU Budget.

The financial settlement brings together a range of financial items, not just those that arise from the UK’s participation in the EU Budget. For instance, it sets out how the UK’s financial relationship with the European Investment Bank (EIB) will be wound up and how the UK will

⁷² National Audit Office, *Exiting the EU: The financial settlement*, 20 April 2018, [para 2.28](#)

⁷³ See also the European Scrutiny Committee’s [Report of 25 April 2017](#).

continue to contribute to the European Development Fund. Below we consider what 'no deal' may mean for some of the significant individual items included in the financial settlement, in the absence of any further political agreement.

UK participation in the EU Budget

Items in the financial settlement that arise from spending and liabilities agreed while the UK was an EU Member State include spending under the current long-term EU budget (the 2014 – 2020 'Multiannual Financial Framework' or MFF), outstanding liabilities (largely those related to pensions) and contingent (as yet uncertain) liabilities, for example relating to the EU's macro-financial loans to Ukraine, Georgia and Moldova.

The Lords EU Financial Affairs Sub-Committee considered the UK's legal liability for these items if there is no Withdrawal Agreement in early 2017.⁷⁴ Legal expert witnesses to the Committee had different opinions on the legal status of these items. However, the Committee concluded that without a Withdrawal Agreement Article 50 TEU allows the UK to leave without being liable for outstanding financial obligations.⁷⁵ The Committee also concluded that individual EU Member States may seek to bring a case against the UK for outstanding payments under public international law, but also that "international law is slow to litigate and hard to enforce. In addition, it is questionable whether an international court or tribunal could have jurisdiction".⁷⁶

As discussed in section 5.4, the Lords Committee said that the political and economic consequences of the UK leaving without making any payment "are likely to be profound".⁷⁷

The Institute for Government has also suggested that if the UK refused to make any payments to the EU, then redress may be sought through the International Court of Justice or the Permanent Court of Arbitration.⁷⁸

Under the financial settlement, the UK would continue to be eligible to receive EU funding from the 2019 and 2020 EU Budgets as if it were still a Member State, while for CAP payments it would continue as normal, for discretionary grants such as like research funding the UK might receive less, even if it remains legally eligible for them. See section 5.5 on EU funding discusses the impact of no deal on this funding.

European Investment Bank

Currently, only EU Member States can be shareholders of the EIB, so it is likely that the UK will cease to be a member of the EIB, whether there is a ratified Withdrawal Agreement or not. The financial settlement explains how the UK's financial involvement in the EIB will be wound up. It sets out:

⁷⁴ House of Lords EU Committee, [Brexit and the EU Budget](#), 4 March 2017

⁷⁵ *ibid.*, [paras 135-137](#) and [para 159](#)

⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ Institute for Government, [The EU divorce bill](#), March 2018

- the schedule for the gradual return of €3.5 billion of paid in capital to the UK;
- that UK will provide a guarantee to the EIB equal to its callable capital (up to €39 billion) – an amount the UK currently agrees to provide if required. The guarantee will decrease as EIB loans associated with it mature.

What happens in a no deal scenario with respect to these financial aspects is not clear. It seems likely that a subsequent negotiation would have to take place between the UK and EIB to settle the matter.

UK participation in the European Development Fund

The European Development Fund (EDF) is the EU's main instrument for providing overseas development assistance to countries in Africa, the Caribbean and the Pacific. For historical reasons, it is separate from the general EU Budget in a legal and accounting sense. The EDF is broken down over time into 'EDF funds'. The UK's spending through the EDF contributes towards its commitment to spend 0.7% of gross national income (GNI) on overseas aid.⁷⁹

The financial settlement says that the UK will remain part of, and will contribute to, the EDF until the close of the 11th EDF fund in December 2020. The UK also has a share of the EDF's Investment Facility. This funding will be returned to the UK as the investments end.

Each EDF fund is set out in a separate treaty – called an 'internal agreement' – outside the EU Treaties.⁸⁰ Strictly speaking, the EDF internal agreements are not subject to the Article 50 process. Article 50 relates to the EU Treaties and provides that if there is no deal the EU Treaties will cease to apply in the UK after 29 March 2019, but the EDF internal agreements will not cease. This suggests that in the event of no deal the UK's legal obligation to make contributions to the EDF would persist in a legal sense, unless the UK can end its involvement in the internal agreements some other way.

Whatever happens, it is unlikely that the UK's total spending on overseas aid will decrease. In 2016, £1.5 billion of the £13.4 billion spent by the UK on overseas aid went through the EDF.⁸¹ Continuing to meet the statutory target for UK overseas aid of 0.7% of GNI would necessitate channelling any spending no longer going through the EDF to other overseas aid programmes. It is reasonable to anticipate that about 10% of the UK's 2019-20 aid budget will potentially be available for reallocation in the event if a no-deal Brexit. The UK is also considering seeking participation in the EU's development programme from 2021 onwards – the Neighbourhood, Development and

⁷⁹ For information on the UK's aid target, see Commons Briefing Paper 3714, [The 0.7% aid target: June 2016 update](#), 20 June 2016.

⁸⁰ European Scrutiny Committee, Documents considered by the Committee on 25 April 2017, [28 European Development Funds](#)

⁸¹ House of Lords Library Briefing, [Brexit: Overseas Development Assistance](#), 6 February 2018

International Cooperation Instrument – although the legal parameters for any such involvement are yet to be decided by the EU institutions.⁸²

Politics and future EU-UK relations

In reality, politics and the appetite for an ongoing EU-UK relationship are likely to dictate the extent to which financial commitments are settled if there is no deal.

For example, the UK Government has said that after Brexit it would like to participate as a third country in some EU programmes and agencies, such as the next research and innovation programme (Horizon 2020 is the current programme) and the European Defence Fund.⁸³ If there is no deal it seems unlikely that the EU would allow the UK to participate in any of its programmes unless a financial settlement outside the Withdrawal Agreement can be agreed.

There are other areas where the UK would favour an ongoing relationship with EU, and in the event of ‘no deal’, coming to an agreement on the financial settlement could help to facilitate such co-operation.

The Lords Committee concluded that “the political and economic consequences of the UK leaving the EU without responding to claims under the EU budget are likely to be profound”.⁸⁴

EU and UK views on the financial obligations

The EU and UK set out their views on the financial obligations before and during negotiations on the financial settlement. Their opinions may offer some insight into how each might respond if there is no Withdrawal Agreement.

Broadly speaking, for the European Commission the financial settlement is about ‘settling the accounts’⁸⁵ – without a deal it would presumably consider them ‘unsettled’. The Commission published a [position paper](#) on the principles of the financial settlement in June 2017 which went into some detail about individual obligations.

Since the referendum, the UK Government has stated its intention to negotiate a settlement “in accordance with the law and in the spirit of the United Kingdom's continuing partnership with the EU”.⁸⁶ The UK has also recognised that financial obligations between the two parties exist. In July 2017 former Secretary of State David Davis acknowledged that “the UK has obligations to the EU, and the EU obligations to the UK, that will survive the UK's withdrawal”.⁸⁷ The Prime Minister has said

⁸² The European Scrutiny Committee is expected to publish a report on the UK's post-Brexit involvement in EU development programmes on 18 September 2018.

⁸³ The Government White Paper on the [future relationship between the UK and the EU](#) proposes continued UK participation in several EU programmes and agencies.

⁸⁴ House of Lords EU Committee, [Brexit and the EU Budget](#), HL Paper 125, 4 March 2017, [paras 135-137](#)

⁸⁵ [Speech by Michel Barnier at the press conference on the adoption of the Commission's recommendation on draft negotiating directives](#), 3 May 2017

⁸⁶ Prime Minister's letter to Donald Tusk triggering Article 50, 29 March 2017, [page 4](#)

⁸⁷ [HC Deb 13 July 2017, c15-16WS](#)

that “the UK will honour commitments we have made during the period of our membership”.⁸⁸

During the first phase of withdrawal negotiations it was clear that the UK and EU had different views on the legal position of the financial obligations being discussed. David Davis said the Government was convinced there was no legal obligation for most of it and viewed it as a political rather than legal obligation.⁸⁹

5.5 EU funding

If the UK does stay involved in some EU agencies and programmes such as Horizon 2020 and the European Defence Fund, it would be as a ‘third country’ and with a financial contribution.

Negotiations over the future EU-UK relationship will determine which EU programmes and agencies the UK will participate in and how it will contribute financially to them. Some programmes are already open to ‘third countries’ – often these are programmes with cross-border or collaborative elements. The European Scrutiny Committee believed that negotiating participation in any of the regulator agencies integral to the architecture of the Single Market would be “especially difficult”.⁹⁰ Discussions about UK participation in EU programmes are complicated by the fact that these follow the EU’s seven-year budgetary cycle, of which the current one ends in December 2020. The legal – and financial – frameworks for the programmes from 2021 onwards are still subject to negotiations in the European Parliament and the Council as part of the [2021-2027 Multiannual Financial Framework](#). The outcome of those EU-level negotiations will determine the broad parameters for UK participation as a third country in specific programmes.

There is a precedent for determining the size of third countries’ contributions to EU programmes. Broadly speaking, third countries make contributions based on the EU’s budget for the programme and the size of the third country’s economy relative to the size of the EU economy plus the third country’s economy. Negotiations will determine whether the UK contributes according to this precedent.

Clearly there is uncertainty about which EU programmes the UK may participate in and how the associated costs will be calculated. For illustrative purposes the European Scrutiny Committee has estimated the potential gross cost of the UK participating in six EU programmes, all of which the Government has shown some interest in participating in.⁹¹

The estimates – which the Committee say are “necessarily extremely provisional” – are based on the precedent for third countries’

⁸⁸ [PM's Florence speech: a new era of cooperation and partnership between the UK and the EU](#), 22 September 2017

⁸⁹ Lords EU Committee, [Uncorrected oral evidence Scrutiny of Brexit negotiations](#), 31 October 2017

⁹⁰ European Scrutiny Committee, 34th Report of Session 2017-19, 10 July 2018, [para 6.8](#)

⁹¹ *ibid*

contributions described above. The estimates should be treated with some caution, as:

- the UK has not yet negotiated third party participation in any of the programmes;
- they are based on provisional EU budgets for the programmes during 2021 – 2027 that may change;
- the UK and EU may agree alternative approaches for calculating the UK's contribution;
- the estimates are gross contributions – they don't account for funding the UK might receive from the programmes, which would mean a lower net contribution. For instance, the UK has a strong record in securing funding from the EU's research and innovation programmes,⁹² which if continued would mean a significantly smaller net contribution.⁹³

The European Scrutiny Committee estimates that the UK's participation in six EU programmes could result in average gross payments of £4 billion per year

Potential gross UK contribution to select EU programmes, 2021-2027

	€ billion	£ billion
Framework Programme for Research	2.20	1.90
Euratom Research Programme	0.06	0.05
ITER nuclear fusion project	0.14	0.12
EU Space Programme (Galileo & Copernicus)	0.04	0.03
European Defence Fund	0.30	0.27
Neighbourhood & International Cooperation Instrument	2.00	1.79
Total per annum	4.8	4.2

notes:

The UK's gross payment is calculated by using the provisional EU budget for each programme and applying a 16% proportionality factor. The 16% relates to the UK's share of EU+UK GDP

source:

European Scrutiny Committee. Thirty-fourth report of session 2017-19, Table 2

In the event of 'no deal', it is highly unlikely that the EU27 would countenance UK participation in a new round of EU programmes as a third country until – at the very least - the financial settlement in the draft Withdrawal Agreement had been revived. Otherwise, they would effectively be allowing the UK to forego paying what they see as its financial commitments accrued during its EU membership.

Close integration with the Single Market

If the UK-EU future relationship results in the UK remaining closely integrated with all or part of the Single Market, then it is likely that the EU will request a financial contribution to the economic development of the poorer EU Member States. Norway, Iceland and Liechtenstein, which are in the EEA but not the EU, contribute funding to the [EEA grants](#) as a condition of their participation in the Single Market. Norway also

⁹² Commons Library briefing, [Brexit: UK Funding from the EU](#), has data on the funding received by the UK from EU programmes.

⁹³ The [European Commission has proposed](#) a mechanism for the 2021-2027 framework programme for research that would ensure that the UK does not become a net recipient from the programme if it participates as a third country.

provides [Norway grants](#). Switzerland, which is not part of the EEA, but has bilateral trade agreements with the EU, makes [enlargement contributions](#).

The size of any contribution would depend on the extent to which the UK remains integrated with the Single Market. The Government has stated on many occasions that the UK will leave the Single Market. If the UK were required to make payments, it is unlikely these would go to the EU Budget – the EEA, Norwegian and Swiss programmes are managed by their governments.⁹⁴

⁹⁴ op cit, [page 71](#)

6. Trade

The UK is currently party to over a thousand international agreements with third countries as a member of the EU. These cover trade, regulatory and policy co-operation in a range of areas, including fisheries, agriculture, the nuclear sector and transport (including aviation agreements). How many of these are pertinent to the UK is as yet unclear. There is little information available on what the Government's intentions are regarding continuity of arrangements covered by the EU's non-trade agreements.⁹⁵ But leaving the EU without a deal would mean a radical change in UK trade relationships with the EU and the rest of the world.⁹⁶

6.1 Trading under WTO rules

Trading under the WTO rules is the 'default' option, which would mean that the tariffs on trade in goods apply to trade between the UK and the EU and between the UK and the rest of the world (see also section 5.1). The UK is a founding member of the WTO in its own right, but as an EU Member State it is in practice represented in the WTO by the European Commission. After Brexit the UK will no longer be represented by the EU and will be a fully independent member of the WTO. The UK will need to update the terms of its WTO membership, for example by establishing its own 'schedule' of trade commitments at the WTO.⁹⁷ This process is not expected to be straightforward.⁹⁸

The WTO represents a rules-based trading system, based on multiple multilateral agreements between member states. Its General Agreement on Trade and Tariffs (GATT) governs how tariffs are applied and addresses non-tariff barriers (quotas, rules of origin and various other legal or bureaucratic trade restrictions). The leading principle of non-discrimination requires WTO members not to treat any member less advantageously than any other: grant one country preferential treatment, and the same must be done for everyone else. There are exceptions for free trade areas and customs unions like the EU, and a preference schemes for developing countries, and anti-dumping duties (which are not determined on a non-discrimination basis). Beyond these, the tariff and treatment that applies to the 'most-favoured nation' (MFN) must similarly apply to all.

Based on the application of the MFN principle of the WTO, the EU would have to apply the same tariff to imports from the UK as to imports from any other nation that has no preferential trade agreement

⁹⁵ For further information on the EU's trade and other agreements, see House of Commons Briefing Paper 8370, [UK adoption of EU external agreements after Brexit](#), 24 July 2018, and House of Commons International Trade Select Committee report on [Continuing Application of EU trade agreements after Brexit](#), 28 February 2018.

⁹⁶ The UK in a Changing Europe, [Cost of No Deal](#), 20 July 2017

⁹⁷ The UK will almost certainly have to establish its independent position at the WTO, irrespective of whether there is a deal with the EU.

⁹⁸ P. Ungphakorn, [Nothing simple about UK regaining WTO status post-Brexit](#), International Centre for Trade and Sustainable Development, 27 June 2016

with the EU in the event of no-deal. The same would apply to all other countries importing goods from the UK.

Without a deal the UK's trade in services with the rest of the world would be governed by the WTO General Agreement on Trade in Services (GATS). The MFN principle applies to trade in services in the same way it applies to trade in goods, albeit with more options for exceptional treatment. Members can tailor their commitments under GATS in line with their national policy and schedule their commitments to a handful of sectors or choose to provide market access in a wide range of services.

Leaving the EU, and the customs union in particular, would allow the UK to pursue its own trade interests and forge its own free trade agreements. What will trade look like after a no-deal Brexit? The next section looks at the UK in relation to the EU and the rest of the world.

6.2 UK trade with the EU

As an EU Member State, the UK is part of the EU Single Market and customs union. The EU, taken as a whole, is the UK's largest trading partner. In 2017 UK exports to the EU were £274 billion (44% of all UK exports). UK imports from the EU were £341 billion (53% of all UK imports).⁹⁹ Services accounted for 40% of the UK's exports to the EU in 2017.

All the trade within the Single Market takes place (up to the point of exit) without paying tariffs or facing quota restrictions on goods. The Single Market also aims to eliminate non-tariff barriers such as differing technical specifications and labelling requirements.

With regard to trade in services, the Single Market provides the freedom to establish and run a company in any Member State. This is facilitated by mutual recognition of professional qualifications, freedom of movement of people and capital, and harmonisation of various rules.

No deal in March 2019 means the UK will be a third country to the EU for the purposes of trade. From exit day onwards, its relations with the EU will be governed by general public international law and both the UK and EU will start trading on the basis of WTO rules. The EU will be obliged to treat the UK no more favourably than any other country that has no preferential trade agreement with the block.¹⁰⁰

Under the WTO the UK would no longer be obliged to follow the rules applied by the EU. There would be no requirement to implement EU legislation, although UK businesses would still have to comply with EU rules in order to export to the Single Market.

Trade in goods

The EU customs union sets the Common Customs Tariff (CCT): all members of the customs union apply the same set of tariffs on goods imported from outside the EU. UK exports to the EU would face the

⁹⁹ [Statistics on UK-EU trade](#), Commons Library Briefing Paper 7851, 31 July 2018

¹⁰⁰ Joe Owen, Alex Stojanovic, Jill Rutter, [Trade after Brexit](#), Institute for Government, December 2017, p46

EU's CCT and imports into the UK from the EU would face whatever tariffs the UK decided to impose. All exports from outside the EU are subject to the Rules of Origin (RoO) checks, even if they come from a country which has a trade agreement with the EU. This ensures that a correct tariff is applied and goods do not enter the EU customs union illegally via a low tariff country. As exporters from a third country, UK companies will immediately face such checks on all goods exported to the EU.

Trading under WTO rules means that the maximum tariff that can be applied to goods coming from the UK is the MFN rate. The EU's MFN tariffs have generally fallen over time. In 2015 the EU's average tariff was 2.6% for non-agricultural products.¹⁰¹ This is an average figure; tariffs on some individual products are higher. The EU tariff on cars, for example, is 10%. While the EU tariffs are low on average, they are still substantial for some sectors, particularly agriculture. The average EU tariff on sugar and confectionery, beverages and tobacco, is around 20%.¹⁰² This could be potentially economically disruptive, as it would increase the cost of the UK products in the EU. However, the MFN principle would prevent the EU from levying discriminatory or punitive tariffs on goods from the UK, or vice versa.

Non-tariff barriers

As a third country the UK could face various non-tariff barriers to trade, including administrative and bureaucratic delays at customs, technical barriers to trade, import licensing, standards and rules of origin.

A Commission Brexit 'preparedness notice' for a no-deal scenario indicates, for example, that imports from the UK entering its territory may be subject to customs controls. Businesses will have to submit customs declarations and may be required to provide guarantees to cover potential customs debts.¹⁰³

Manufacturers or importers established in the UK will no longer be considered as EU economic operators. A former EU distributor will become an exporter and will have to comply with a new set of conformity assessments.¹⁰⁴

UK industrial products are currently subject to the standards and requirements of EU product legislation on general product safety, public health, environmental safety or energy efficiency requirements, for example. However, a no-deal Brexit may introduce new bureaucratic requirements to prove compliance.

The import of certain goods from the UK and the export of such goods to the UK will become subject to import/export licensing. The EU imposes such restrictions on goods going to and coming from third

¹⁰¹ World Trade Organization, [WTO Tariff Profiles 2017](#), p 82. Trade-weighted average

¹⁰² Ibid

¹⁰³ European Commission, Notice to Stakeholders, [Withdrawal of the United Kingdom and EU Rules in the Field of Customs and Direct Taxation](#), 30 January 2018

¹⁰⁴ European Commission, Notice to Stakeholders, [Withdrawal of the United Kingdom and EU Rules in the Field of Industrial products](#), 22 January 2018

countries to protect health and safety and the environment. This affects goods such as waste, hazardous chemicals, genetically-modified organisms, live animals, products of animal origin, and some plants and plant products, such as wood packaging. The existing licences issued by the UK authorities will cease to be valid.¹⁰⁵

The licensing requirements will also apply to controlled goods, such as firearms and dual-use items that can be used for both civil and military purposes.¹⁰⁶

The Government's 'technical notice' [Trading with the EU if there's no Brexit deal](#) and [VAT for businesses if there's no Brexit deal](#) clarify that the obligations for businesses that trade with the EU would be broadly the same as those that apply to companies currently trading with countries outside the EU. Businesses would have to register as UK economic operators, submit customs declarations on imports and exports, and might have to pay tariffs or fulfil other administrative requirements.¹⁰⁷ Importers of goods from the EU would have to correctly classify these goods in order to apply the right UK import tariff.¹⁰⁸

Rules of origin

The EU has preferential trade arrangements with a range of other countries. UK inputs (materials or processing operations) currently count as 'EU content' for the purpose of determining if imports benefit from preferential tariffs the EU has agreed with those countries. As of the withdrawal date, in the absence of any other arrangement, goods originating in the UK that are incorporated in EU goods exported to third countries will no longer qualify as 'EU content'. EU exporters will no longer be able to cumulate the UK share in the product and may thus miss out on the benefits of preferential tariffs.¹⁰⁹

Trade in services

Without an agreement, the UK's trade in services with the EU will be governed by the WTO General Agreement on Trade in Services (GATS).

Within the EU Single Market, economic operators are free to establish and run a business in any Member State and can also provide services from their 'home' Member State in any other Member State.

Professional qualifications acquired in one Member State are recognised across the Single Market. Freedom of movement of people and capital, harmonised rules on VAT, intellectual property rights and data

¹⁰⁵ European Commission, Notice to Stakeholders, [Withdrawal of the UK and EU Rules in the Field of Import/Export Licences for Certain Goods](#), 25 January 2018

¹⁰⁶ Such items range from raw materials like chemicals to components and complete systems like lasers, as well as software and technology. Government Guidance, [Exporting controlled goods if there's no Brexit deal](#), 23 August 2018.

¹⁰⁷ Government Guidance, [Trading with the EU if there's no Brexit deal](#) and [VAT for businesses if there's no Brexit deal](#), 23 August 2018

¹⁰⁸ Government Guidance, [Classifying your goods in the UK Trade Tariff if there's no Brexit deal](#), 23 August 2018

¹⁰⁹ European Commission, Notice to Stakeholders, [Withdrawal of the United Kingdom and EU Rules in the Field of Customs and External Trade. Preferential Origin of Goods](#), 4 June 2018

protection all reduce the barriers to providing services across the EU. Many Single Market for Services measures are facilitated by the so-called [Services Directive](#). This Directive aims to remove the legal and administrative barriers to cross-border service provision. It does this using various mechanisms, including:

- abolishing “discriminatory requirements” placed on people establishing businesses in other countries, including residency requirements or nationality requirements;
- removing other “burdensome requirements”, such as complex authorisation schemes, economic needs tests, or business size and health checks;
- requiring Member States to establish a Single Point of Contact so businesses can access all relevant information easily.¹¹⁰

The Directive also removes a range of barriers to consumers accessing services in other EU countries or accessing services provided by non-UK EU companies in the UK.¹¹¹ Under a no-deal scenario, these provisions would cease to apply to UK operators in EU Member States.

There is a view among researchers that the WTO has made less progress in service liberalisation than the EU’s single market for services has to offer. GATS constitutes a broad framework for the liberalisation of trade in services rather than setting compulsory rules.¹¹² According to researchers at the London School of Economics (LSE), “since the WTO has made far less progress than the EU in liberalising trade in services, [no deal] would mean reduced access to EU markets for UK service producers”.¹¹³ Emerging work at the OECD suggests that, on average, EU barriers to services sector trade with third countries are four times greater than those which apply inside the Single Market.¹¹⁴

The Confederation of British Industry (CBI) has noted that if no deal is agreed, the WTO rules would not guarantee the same level of access to the EU market for services industries as there is now. The single market for services provides for “positive integration” measures (e.g. mutual standards), which GATS is lacking. This concerns harmonisation of rules or the mutual recognition of rules by default. A CBI report said:

The barriers services businesses could potentially face include nationality requirements for service providers, requirements for businesses to have a minimum number of locally-resident staff for different roles, restrictions on the number of establishments and foreign ownership, and authorisation requirements that are subject to economic needs assessments.

¹¹⁰ European Commission, [Services Directive: quick guide](#)

¹¹¹ European Commission, [Services Directive in practice](#)

¹¹² Prof. Dr. Friedemann Kainer, [The consequences of Brexit on Services and establishment: Different Scenarios for Exit and Future Cooperation](#). Analysis for the European Parliament Internal Market and Consumer Protection Committee, June 2017

¹¹³ S. Dhingra and T. Sampson, [Brexit and the UK economy](#), LSE Centre for Economic Performance, May 2017, p4

¹¹⁴ [‘A goods-only Brexit deal puts UK services sector jobs at risk’](#), Financial Times, 5 July 2018, [UK Trade Policy Observatory Analytical Studies of Brexit Conference Brochure](#), 3 July 2018

[...]

Companies in some of our most successful exporting sectors would be unable to export specific types of services to the EU at all. Those industries include airlines, broadcasters, and a range of financial, professional and business service providers.¹¹⁵

According to a study by UK in a Changing Europe, in a no-deal scenario

UK service exporters would also suffer from the loss of passporting rights for financial services, as well as access for other service providers (legal and accountancy services, etc).¹¹⁶

Financial Services

UK dominance in Europe

The UK's financial services sector is the dominant financial centre in Europe and arguably the world. As such, the links between it and firms in the EU run deep and broad with all the main European banks and insurance companies operating in London. They operate here, as UK companies do in Europe, under a system of 'passports'. Any company authorised in any EU Member State can operate in any other EU Member State under its 'passport'. It is the potential immediate and sudden loss of this 'passport' that is the biggest potential problem arising out of 'no deal'.

Temporary permissions regime

In December 2017 the Government announced its intention to introduce a temporary permissions regime, if necessary, which would allow EEA firms to continue operating in the UK for a time-limited period after the UK has left the EU without a deal. This temporary regime would be introduced later and would be bolstered by the main regulators (the Financial Conduct Authority and Bank of England) being given the power to implement changes to their rulebooks to permit it to become effective in support of whatever legislation is passed.

The main Treasury document is: [HM Treasury's approach to financial services legislation under the European Union \(Withdrawal\) Act](#) (published 9 August 2018). Extracts from this are shown below:

- The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU's single market in financial services. This will mean that access to each other's markets will continue on current terms and businesses, including financial services firms, will be able to trade on the same terms as now until 31 December 2020.
- Given the highly regulated nature of financial services, the volume of trade between our markets, and our shared desire to manage financial stability risks, we would need a stable process for maintaining equivalent regulatory outcomes as legislation evolves – including a system to resolve disagreements at regulatory and supervisory levels – alongside an open, collaborative relationship between supervisors that protects our respective financial systems and our taxpayers from financial stability risks.

¹¹⁵ CBI [5 Steps To Protect Services Post-Brexit](#), 8 March 2018, p14, 18

¹¹⁶ The UK in a Changing Europe, [Cost of No Deal](#), 20 July 2017

As well as the issuance of SIs to translate current EU law into UK law – an issue common to all areas of legislative activity – the Treasury has set out other steps to be taken:

- HM Treasury also plans to delegate powers to the UK's financial services regulators to address deficiencies in the regulators' rulebooks arising as a result of exit, and to the EU Binding Technical Standards (BTS) that will become part of UK law. Such sub-delegated powers will be subject to broadly the same constraints as HM Treasury's use of the Act's powers, as well as additional mechanisms to ensure robust HM Treasury oversight. An SI to achieve this will be laid before Parliament now that the EUWA has received Royal Assent. Further information on regulatory changes to BTS and regulators' rules for EU exit will be provided by the financial services regulators in due course.
- The government is continuing this work to ensure that the UK will have a functioning legislative and regulatory framework in all scenarios. As part of this, HM Treasury intends to legislate to provide the financial services regulators with powers to introduce transitional measures that they could use to phase in any onshoring changes.
- This means that firms do not need to prepare now to implement onshoring changes in the event no deal is reached with the EU.
- Firms should continue to plan on the assumption that an implementation period will be in place from 29 March 2019 – and, therefore, that they will be able to trade on the same terms that they do now until December 2020. They will need to comply with any new EU legislation that becomes applicable during this period.

Treasury approach to 'no deal'

The document addresses the point about what happens if there is no 'deal' (paras 1.17 – 1.20):

- In the unlikely scenario that the UK leaves the EU without a deal, the UK would be outside the EU's framework for financial services. The UK's position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.
- In light of this, our approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle, the UK would also need to default to treating EU Member States largely as it does other third countries, although there are instances where we would need to diverge from this approach, including to provide for a smooth transition to the new circumstances. The principles that would lead to deviations from this approach are set out below.
- In some areas, correcting deficiencies to reflect this environment would be relatively straightforward. The UK's world-leading financial sector is overseen by HM Treasury and underpinned by a strong legislative framework with world-class regulators (the Bank of England/Prudential Regulation Authority and Financial Conduct Authority). This

means that the responsibilities of EU bodies could be re-assigned efficiently and effectively, providing firms, funds and their customers with confidence after exit.

- In this scenario, EU financial services firms operating in the UK would broadly become subject to the same supervisory regime that the UK already applies to other third countries – a regime that is shaped by the highly global, cross-border nature of financial services and the UK's robust regulatory framework as set out in legislation, including in the Financial Services and Markets Act 2000 (FSMA), the Banking Act 2009 and the Bank of England Act 1998. This existing UK financial services legislative framework provides powers for extensive cooperation with global regulatory bodies. When the UK is no longer an EU Member State, and so the EU obligation of reciprocal cooperation no longer applies, this existing framework could be relied upon to ensure this important cooperation continues in this scenario.

On 5 September the Treasury published the [Draft Payments and electronic money \(Amendment\) \(EU Exit\) Regulations](#) and [The Credit Transfers and Direct Debits in Euro \(Amendment\) \(EU Exit\) Regulations 2018](#). The [Explanatory Notes](#) set out how the SI would create a temporary permission regime in a no-deal scenario:

The passporting system relies upon domestically implemented EU legislation – in the UK, the PSRs. If the UK leaves the EU without a deal, there will be no agreed legal framework upon which the passporting system can continue to function. As a result, without a deal, any references in UK legislation to the EEA passporting system will become deficient at the point of exit. To correct this deficiency, this SI seeks to create a Temporary Permissions Regime (TPR) akin to that contained within the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 for FSMA regulated firms.

There is a general [webpage](#) dedicated to further Government announcements and [another](#) on financial services legislation under the EUWA which will be amended as further decisions are made.

Bank of England comments on 'no deal'

The [Bank of England](#) commented on the Government's approach to responding to the no deal possibility:

We do not expect firms providing services within the UK's regulatory remit to have to prepare now to implement these changes. HMT has set out that it intends to provide regulators with powers to grant transitional relief, where appropriate, to ensure that, in a scenario in which an implementation period is not in place, firms and FMs have sufficient time to comply with the changes.

Against the possibility that the implementation period does not take effect on the 29 March 2019, HMT today confirmed that it will bring forward legislation under the EUWA shortly to create temporary permissions and recognition regimes. This will allow firms, including non-UK central counterparties, to continue their activities in the UK for a time-limited period after the UK has left the EU even if there is no implementation period. Those firms that wish to continue carrying out business in the UK in the longer term will also be able to use this time limited period to seek to

obtain full authorisation (or recognition) from UK regulators without disruption to their business.

Derivatives and 'no passports' issues

The derivatives market has been identified by the Governor of the Bank of England as the 'big issue' for the UK and EU to solve post Brexit day.¹¹⁷ Speaking to the [Treasury Committee](#) in July 2018 the Governor outlined the problem, saying that as it stands, contracts left to maturity and unaffected by life time events would still be valid, but:

The crucial point here is that on the day of leaving, the contract can still be serviced; however, life-cycle events will start to accumulate and, arguably, they will accumulate quite rapidly in the event of a cliff-edge Brexit because one would reasonably expect the volatility in markets to go up. How big is that potential risk? We have done the due diligence on that. For a mid-size firm there are about 1,000 life-cycle events a month. For a large derivative counterparty, there are up to 250,000 a week. If you think about it in the world of derivatives hedging underlying positions, with the inability to conduct these life-cycle events and an environment where there is volatility, the risk—the inability to dynamically hedge—increases with time, and you see a financial stability risk developing fairly quickly, in our opinion. We shared that opinion publicly through the FSR and directly with our counterparts in the EU.¹¹⁸

He also drew attention to the 'no passport' problem applying to cross-border clearing houses, where the EU has not come up with an equivalent temporary permissions regime:

... as it stands at present, the large, UK-based clearing houses would no longer be authorised clearing houses by the EU following the Brexit date. Therefore, the actions of European counterparties that had cleared in those clearing houses would be ultra vires; they would not be authorised to use those clearing houses. Those clearing houses would know that in advance and so the European counterparties would have to close out those positions in advance. The question is how rapidly that could be done. The orders of magnitude are much higher—it is a notional £60 trillion-plus of exposure—than they are in the uncleared space. That process, which the Bank of England oversees as the regulator of these clearing houses, would have to begin prior to the Brexit date.

I want to make two final points. First, the UK Government have signalled their intention and developed statutory instruments, which they will lay before Parliament as soon as is practical. Given the timing of the summer recess, that is likely to be in the fall, but it will be done in a timely way. Those statutory instruments will solve the UK side of this issue—both authorisation of EU CCPs and authorisation of the EU counterparties. The European Union has not yet indicated a solution to this.

¹¹⁷ For a more thorough examination of the derivatives market post Brexit see ISDA; [Contractual Continuity in OTC Derivatives Challenges with Transfers](#), July 2018.

¹¹⁸ Treasury Committee. Oral evidence: Bank of England Financial Stability Reports, HC 681

The combination of the 'no passport' issue and the derivatives issue is particularly troublesome for the insurance industry. This briefing from the Association of British Insurers sets out the problem:

1. When the UK leaves the Single Market, UK-based providers will no longer be able to rely on 'passports' and the right of establishment to service existing cross-border financial contracts throughout the European Economic Area (EEA). There will also be an identical impact on EEA providers who will be unable to service existing financial contracts with UK-based parties. This issue is often referred to as the contract continuity problem.

2. This will, for example, impact general insurance, long-term life insurance, pension schemes, medium and long-dated derivatives contracts, revolving credit facilities, and may also affect general customer terms of business, prime brokerage and custody arrangements.

3. The extent of this issue is significant and will affect both UK and EEA consumers. According to the Bank of England, approximately six million UK insurance policyholders, 30 million EEA insurance policyholders, and around £26trn of outstanding uncleared derivatives contracts could potentially be affected. The issue will also affect contracts relating to segregated mandate business under the Markets in Financial Instruments Directive (MiFID) II. In particular, failure to find a solution to derivatives contracts could potentially lead to significant financial stability risks.

4. Honouring existing obligations to customers is a key priority for the industry in the UK and the EU, and it is continuing to do all it can to address the issue. However, while service providers are preparing to take steps to mitigate the impact of the loss of passporting rights, it is highly unlikely that this will be adequate to fully address the contract continuity issue by March 2019.

5. As a result, it is imperative that action by service providers is coupled with action from policymakers and regulators in the UK and EU to mitigate this 'cliff edge risk'. The International Monetary Fund (IMF) flagged in its Article IV statement that a resolution would be "most efficiently achieved through coordinated EU and UK legislation.

- It is critical that the UK and EU implement the transitional period that was agreed at a political level at the European Council meeting in March 2018. Furthermore, it is also important for UK and EU regulators to issue commitments about the future treatment of these contracts to act as a regulatory 'back stop' in the event that the transitional period fails to materialise.
- Any UK/EU solution should also be underpinned by ongoing supervisory cooperation between UK and EU regulators. The new European Central Bank (ECB) and the Bank of England (BoE) technical working group on risk management, announced on 27 April 2018, would be an ideal forum to discuss solutions to this issue.
- The early announcement of grandfathering arrangements, either for a time-limited period or potentially until maturity, would allow for contract continuity which will deliver the

best results for UK and EEA customers, as well as European competitiveness more broadly.¹¹⁹

Public procurement

Becoming a third country could mean no mutual rights of access to public procurement markets in the UK and the EU – although many contracts may in practice still be open. In such a scenario the EU rules on public procurement would no longer apply and EU Member States' authorities would have to apply the same rules to a potential UK supplier as to any other business based in a third country with which the EU did not have an agreement on procurement.¹²⁰

This 'cliff-edge' and possible exclusion of UK bidders from procurement procedures in the EU can be largely avoided by joining the General Procurement Agreement of the WTO (GPA). The UK is currently a party to the GPA by virtue of its EU membership, but the Government has submitted an application to re-join as an independent party.¹²¹ This would ensure continued UK access to the EU27 procurement market for most tenders above certain thresholds. The GPA would not give the UK the same full access to EU procurement markets that it currently enjoys, however.¹²²

Commenting on the differences in scope between the EU Procurement directives and the GPA, Professor Sue Arrowsmith of the University of Nottingham states that some of them are of limited importance for the UK:

The scope of procurement covered for the EU/UK under the GPA is narrower than the scope of covered procurement under the EU procurement directives in relation to a few utility sectors, coverage of private utilities, the defence sector, some services, (possibly) concessions, and certain private contracts subsidised by government. The GPA also does not include below-threshold procurement. However, some of these differences are of limited importance in the UK context. Further, the procurement that does fall into the gaps between the directives and GPA, at least above the directives' thresholds, could easily be added to the GPA UK if desired.¹²³

For further information on the UK and the GPA, see the Commons Library briefing on [The Trade Bill](#). See also National Audit Office, Report by the Comptroller and Auditor General, Department for Business, Energy & Industrial Strategy, Competition and Markets Authority, [Exiting the EU: Consumer protection, competition and state aid](#), HC 1384 Session 2017–2019, 6 July 2018.

¹¹⁹ TheCityUK/[ABI briefing](#) June 2018

¹²⁰ European Commission, [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Public Procurement](#), 18 January 2018

¹²¹ International Centre for Trade and Development, [EU, UK Debate Next Steps as Key October Summit Approaches](#), 26 July 2018

¹²² Institute for Government Explainers, [Public procurement](#)

¹²³ Prof Sue Arrowsmith, [Consequences of Brexit in the area of public procurement](#), a study for the European Parliament Committee on Internal Market and Consumer Protection, April 2017

Consumer protection

BEIS has contingency plans if the UK loses access to EU-wide market surveillance and enforcement systems, but it will have a considerable task to implement them in the event of a no-deal scenario.

- To support its market surveillance capability, the UK currently relies on an EU-wide rapid alert system to identify unsafe products. BEIS sought a ministerial direction in March 2018 to spend £2.4 million on a replacement system. This was behind schedule but, following the direction, BEIS reports being on track to deliver a minimum capability by March 2019 in a no-deal scenario (paragraphs 2.19 to 2.21).
- National Trading Standards has identified product safety checks on imported goods as an issue that may be affected by EU Exit if provision is not made for the free movement of goods in a future UK–EU economic relationship. The borders in Kent could be some of the most affected by Brexit because the vast majority of goods imported through there are from the EU and not currently subject to product safety checks. Kent Trading Standards has estimated the impact on its workforce of different scenarios, including no deal, and has escalated this to their funding providers. There is no requirement in law that product safety checks must be carried out at the border and, to date, no changes have been made to the infrastructure at Dover to expand capacity for product safety checks (paragraph 2.24).
- Trading Standards services and the CMA are planning to work bilaterally with EU Member States on enforcement, as they currently do with non-EU countries, if there is no deal. Appropriate protocols already exist, but outside EU structures the authorities expect cross-border enforcement to take longer and be more expensive, and the UK authorities cannot mandate another country to cooperate (paragraphs 2.22 to 2.23).

6.3 Pursuing an independent trade policy

As an EU Member State the UK cannot operate its own independent trade policy. Through its membership of the EU, the UK is currently a party to around 60 EU trade agreements with other countries.¹²⁴ In the event of a no-deal Brexit, the UK will no longer be party to these agreements. At the same time, the UK will immediately be able to pursue its own trade policy and sign new agreements.

The Government has taken various steps to prepare for an independent UK international trade policy. These are designed to cover a range of possible outcomes, including no-deal.

¹²⁴ This figure varies, partly depending on whether trade-only agreements or all agreements with a trade element are included.

New UK legislation

The Government has introduced the *Trade Bill*¹²⁵ and the *Customs Bill*¹²⁶ which both aim to prevent disruption in trading arrangements and allow the UK to continue its existing trade policy as far as possible immediately after Brexit. The Trade Bill has provisions for the transitioning of EU trade agreements. The customs legislation under the Customs Bill will mostly follow the EU Customs Code. Neither of the Bills are intended to deal with future trade agreements with the EU or other countries.

In a no-deal scenario, there would be significant time constraints in an otherwise ongoing process in which the UK is developing the principles of its trade policy.

Trading with third countries

The UK is a member of the World Trade Organization (WTO) in its own right. However, as noted above, on leaving the EU it will need to update the terms of its WTO membership.¹²⁷

WTO schedules

In order to re-establish its autonomy from the EU in the WTO, the UK must take several procedural steps. In particular, it must agree 'schedules' for goods and services. These country-specific commitments refer to maximum tariff levels and tariff rate quotas (TRQs - quantitative restrictions on imports) on goods and levels of agricultural subsidies.¹²⁸

The Department for International Trade has stated that the Government plans to replicate as far as possible its current commitments after Brexit.¹²⁹ The Commission and the UK have mutually agreed to apportion the UK's TRQs based on recent years' trade flows.¹³⁰ On 24 July 2018, the UK notified its draft schedule for goods commitments to the WTO and within three months it should be clear if any WTO member has an objection.¹³¹ If no country disagrees with the apportionment of the schedules, they will be treated as final and no negotiations will be needed.¹³² However, formal objections can be expected as several major agricultural exporters, including the US,

¹²⁵ The Trade Bill passed its third reading in the House of Commons in July 2018 and will receive its second reading in the House of Lords in September.

¹²⁶ The Customs Bill will receive its second reading in the Lords on 4 September 2018.

¹²⁷ Department for International Trade, [Trade White Paper: Preparing for our future UK trade policy – Government Response](#), January 2018

¹²⁸ WTO, '[Members' commitments](#)'

¹²⁹ Department for International Trade, [Trade White Paper: Preparing for our future UK trade policy – Government Response](#), January 2018, Chapter 2.1

¹³⁰ European Commission Proposal on the apportionment between the United Kingdom and the EU27 of tariff rate quotas included in the World Trade Organisation schedule of the Union, [COM\(2018\)321 final](#), 22 May 2018

¹³¹ WTO, [United Kingdom submits draft schedule to the WTO outlining post-Brexit goods commitments](#), 24 July 2018

¹³² [EU, UK Debate Next Steps as Key October Summit Approaches](#), International Centre for Trade and Development, 26 July 2018

Argentina, Australia, Brazil, Canada and Thailand, have expressed disagreement with the proposed quotas between the EU and the UK.¹³³

The Government believes a failure to certify the schedules before March 2019 would not be a problem:

Should the goods and services schedules be uncertified as we leave the EU, we do not anticipate there to be any problems – it is not uncommon for WTO members to operate on uncertified schedules for periods of time.¹³⁴

For services schedules the UK has to comply with the GATS obligations and specify its commitments for each particular service sector, detailing the levels of market access and treatment under national laws.¹³⁵ The UK is preparing a list of UK-specific exemptions from the MFN Treatment under the GATS.¹³⁶ These unamendable lists of exemptions – a part of the services schedule – allow the extension of more favourable treatment to particular countries in particular service sectors for a limited period of time.¹³⁷

Public procurement and third countries

The UK is currently party to the WTO Agreement on Government Procurement (GPA) through its EU membership. Under the GPA, many large public sector procurement opportunities must be opened up to suppliers in countries which are the parties to the agreement. The Government has already formally requested to re-join the GPA after Brexit and has submitted a market access offer similar to the EU's terms.¹³⁸ Re-joining the GPA would ensure that the UK maintains a similar level of access to the government procurement markets of (non-EU) third countries. The GPA does not, however, cover the enhanced terms of access which the EU has negotiated for operators of its Member States under its free trade agreements with third countries like Canada and Japan.¹³⁹ This would be a matter for the UK's future bilateral trade treaties with these countries.

'Rollover' of existing EU trade agreements

As part of an orderly withdrawal, the Government would like the transitional adoption or 'rollover' of all the EU's trade agreements and other preferential trade arrangements with third countries. The Government published a [Technical Note](#) of February 2018 on continued

¹³³ MLex, 'Comment: UK trade can survive on 'uncertified' schedules after Brexit', 2 August 2018

¹³⁴ The EU, for example, updated its schedules in 2016, twelve years after its enlargement from 15 to 25 member states, and again in 2017, to reflect its expansion to 28 member states. For the Government's position see Department for International Trade, [Trade White Paper: Preparing for our future UK trade policy – Government Response](#), January 2018.

¹³⁵ House of Lords EU Committee, [Brexit: the options for trade](#), 13 December 2016, HL 72, chapter 6

¹³⁶ Department for International Trade, [Trade White Paper: Preparing for our future UK trade policy – Government Response](#), 5 January 2018, chapter 1.1; Reuters, '[Brexit advances at WTO as Britain sets out new services terms](#)', 28 February 2018

¹³⁷ WTO, [Services: rules for growth and investment](#)

¹³⁸ [EU, UK Debate Next Steps as Key October Summit Approaches](#), International Centre for Trade and Development, 26 July 2018

¹³⁹ The EU-Japan Economic Partnership Agreement is expected to enter into force in 2019, after its ratification by the European Parliament and Japan's National Diet.

application of EU international trade and other agreements during the envisaged transition/implementation phase by agreement of all the parties concerned. This would enable trade arrangements with third countries that the UK is currently party to as an EU Member State to be replicated in UK-third country agreements when the UK leaves. This would not preclude a fuller revision of these agreements in the longer term to create a more bespoke trading arrangement.

The EU agrees to rollover in principle

At the March 2018 European Council, the EU [agreed](#) to notify other parties to international agreements that the UK is to be treated as a Member State during the transition period for the purposes of these agreements. However, this remains a request and it is possible that the third countries concerned may not agree.

The Government's bilateral engagement

The Government [said](#) in January 2018 that it had engaged with 70 countries covered by over 40 EU international trade agreements and had received a positive reaction to its objective of ensuring continuity in these trading relationships.

An International Trade Committee (ITC) report on [Continuing Application of EU trade agreements after Brexit](#) published in February 2018 warned of trade with 70 nations "falling off a cliff edge" if the Government did not act quickly to roll over the EU's trade deals. It said there was an urgent need for clarity "over the number, type, scope, extent and importance of the EU's trade-related agreements" and warned that substantive amendments to the rolled-over agreements were almost certain to be required. The Government told the ITC in May that it was working bilaterally with partner countries to "to ensure continuity of effect for our international agreements beyond the Implementation Period".¹⁴⁰ Commons Briefing Paper 8370, [The UK adoption of the EU's external agreements after Brexit](#), 24 July 2018, provides a more in-depth account of the issues.¹⁴¹

Liam Fox told the ITC on 11 July 2018 that agreements in principle had been reached with third countries about continuing trading arrangements, but that many countries were waiting to see if there would be a transition (implementation) period first, with a view to using the extra time to negotiate a more bespoke agreement (rather than simply rolling over the existing arrangements). It was the Government's intention to have those agreements in place before Brexit.¹⁴² But Trade minister George Hollingbery told the ITC on 4 September that it is "not an absolute given" that all the EU trade agreements would be "transitioned" before exit day ([MLex, 4/9](#))

¹⁴⁰ International Trade Committee, [Continuing application of EU trade agreements after Brexit: Government Response](#), 15 May 2018, p 4

¹⁴¹ Commons Briefing Paper 8370, [The UK adoption of the EU's external agreements after Brexit](#), 24 July 2018

¹⁴² International Trade Committee, [The work of the Department for International Trade](#), 11 July 2018, Q 332-337

Government guidance

The Government's 'no deal' guidance published on 23 August included technical notices on "[Classifying your goods in the UK Trade Tariff if there's no Brexit deal](#)" and "[Trading with the EU if there's a no Brexit deal](#)". Both refer to separate technical notice on "Trade Agreement Continuity". However, "Trade Agreement Continuity" has not been published at the time of writing.

[Classifying your goods in the UK Trade Tariff if there's no Brexit deal](#)" states that "the UK intends to continue offering unilateral preferences to developing countries, and to seek to transition all EU Free Trade Agreements for day 1 in order to ensure continuity for both goods imported to the UK, and for UK exports" and that further information on preferential trade under the UK's existing trade agreements will be captured in the Trade Agreement Continuity technical notice.

Proposed UK-SADC agreement

On 28 August 2018, coinciding with a visit to South Africa, the Prime Minister [announced](#) that a new UK-Southern African Economic Partnership would be ready as soon as the current EU-Southern African Development economic partnership (covering the same six countries: Botswana, Lesotho, Namibia, South Africa, Eswatini/Swaziland and Mozambique)¹⁴³ ceases to apply to the UK.

UK Trade Minister George Hollingbery and Botswanan trade minister (representing the five Southern African Customs Union countries and Mozambique) issued a [joint statement](#) on 29 August, which referred to the importance of a UK-EU agreement on a post-Brexit transition period and continued cumulation between the UK, EU and all parties to the agreement in ensuring continuity to trade. It stated:

We take note of the progress achieved regarding the UK and EU's agreement on a time-limited implementation period between the EU and UK following the UK's departure from the EU, and in particular the intention for the UK to be treated, for the purposes of EU international agreements, as an EU Member State for the duration of the implementation period between the EU and UK. The SACU (Southern African Customs Union) and Mozambique Trade Ministers indicated that they look forward to receiving formal confirmation of the same via the proposed notification, and to continuing to receive regular updates on progress from the UK on the EU-UK negotiations under Article 50 of the Treaty of the European Union on the UK's withdrawal from the EU. SACU and Mozambique emphasise the importance of continued cumulation between all the parties in promoting continuity and to avoid disruption in trade, and urge both the UK and the EU to recognise the importance of cumulation in the discussions on a post-Brexit EU-UK arrangement.

Tariff rate quotas, rules of origin and cumulation

As highlighted in the ITC report, it will not be possible to simply replicate the terms of some of the EU's trade agreements, as they include arrangements for tariff rate quotas (TRQs) and rules of origins requirements which would need amending to make them more specific

¹⁴³ The first five countries making up the Southern African Customs Union.

to the UK. TRQs involve allowing imports of a fixed quantity of certain goods at a lower tariff rate, with a higher tariff applied to anything above this. A UK-specific free trade agreement may require a new TRQ calculation, although the UK's exit would also create problems for the EU, as it would most likely want to recalculate its TRQs with third countries to take into account the UK no longer being part of the calculations. TRQs are also an issue in establishing separate UK and EU27 schedules at the WTO post-Brexit, with a number of third countries objecting to the proposals made by the UK and the EU.¹⁴⁴

Trade agreements also involve rules of origin (RoO), whereby the origin of goods must be proven for them to qualify for preferential treatment in respect of customs duties. The application of origination status can be widened by means of provisions for 'cumulation', whereby components or inputs from outside a country can be treated as originating from there for the purpose of RoO.

The ITC report cited evidence from Mike Hawes of the Society of Motor Manufacturers and Traders, who explained that "most free trade agreements tend to have a minimum [domestic content] threshold of 55% to 60%" for automotive goods. Therefore, he said, merely copying and pasting the EU-South Korea free trade agreement, for example, would not benefit the UK "because we would not qualify for the preferential trading arrangements unless you could agree cumulation with the European context, which is what we currently enjoy".

The ITC report refers to the suggestion made by several witnesses and submissions to its inquiry that "diagonal" cumulation arrangements should be established allowing inputs from any of the three parties concerned (the UK, the EU and the third country in a trade agreement) to count as originating content.

One route to this would be for the UK separately to join the Regional Convention on Pan-Euro-Mediterranean Rules of Origin (the PEM Convention), to which it is currently party as a member of the EU. This allows for diagonal cumulation between all signatories, provided there are trade agreements in place between all the contracting parties concerned. However, as the UK Trade Policy Observatory pointed out in its [evidence](#) to the inquiry, "the EU can be quite difficult in agreeing to diagonal cumulation" and typically only does so if all countries involved have free trade agreements among themselves".

UK trade arrangements with EFTA and Turkey

Arrangements with the EFTA countries and Turkey would require a more substantial renegotiation. EFTA Members Iceland, Liechtenstein and Norway participate in the Single Market through the EEA Agreement and Switzerland participates in aspects of the Single Market

¹⁴⁴ The UK and EU sent a joint letter to the WTO in October 2017 informing it of their agreed plans to apportion existing agricultural quotas, as well maintain existing levels of farm subsidies. However, it was [reported](#) in April 2018 that following opposition to these plans from Australia, New Zealand, the USA and others the EU was now proposing a full renegotiation of WTO schedules, but this was being opposed by the UK Government.

through a series of bilateral agreements. Turkey is in a partial customs union with the EU. These agreements are based on extensive acceptance of the EU's regulatory and customs regimes. Trade with these five countries constitutes 6.2% of the UK's external trade. The Government has established a 'trade policy dialogue' with Norway and a Trade Working Group with Turkey.¹⁴⁵

Impact of 'no deal' on rollover

As of November 2017, EU bilateral and multilateral trade agreements covered 88 countries and accounted for 13% of UK trade.¹⁴⁶ The UK will no longer be part of those arrangements in the case of no deal.

A transition period would give the Government time to work on bespoke agreements, but 'no deal' would mean no transition period. The threat of 'no deal' presents the Government with considerable time pressure and it is uncertain if countries would agree to a temporary bilateral rollover of the agreements, as they would be cautious of missing out on an opportunity to renegotiate preferred terms in case the no deal scenario becomes a reality. Asked on the Andrew Marr programme on 2 September 2018 whether the new trade deals replicating the trading arrangements with third countries would be in place for Brexit day, Liam Fox said:

That remains our aim. Of course a lot of countries are waiting to see exactly what [the UK] relationship will be with the European Union. But not one of those countries have said to us that they don't want to get a trade agreement with the UK.

Responding to Andrew Marr's follow up question as to whether it would still be possible to get all these deals ready for the minute after the UK leaves the EU, Fox said: "It's possible but it's ultimately dependent on both parties agreeing".

The Institute for Government has suggested the Government prioritise agreements which should be in place before leaving the EU as part of its no-deal planning:

'No deal' planning has to assume that those arrangements will not be in place. That means the UK needs to prepare a priority list of countries and agreements, renegotiated and re-ratified by 29 March 2019 – and it needs to warn business of the consequences if those agreements are not in place. The Government claims it is making good progress on third country agreements, but it needs to be much more transparent to give business confidence this is really happening.¹⁴⁷

If the Government is successful in agreeing new rolled-over treaties with third countries to replace EU agreements, then it may be able to implement these irrespective of whether it reaches a deal with the EU on withdrawal and future relations. But a failure to agree on the future

¹⁴⁵ International Trade Committee, [Continuing application of EU trade agreements after Brexit](#), 7 March 2018, HC 520 (see Annex 2)

¹⁴⁶ This figure did not take into account newly signed agreements such as EU-Japan partnership. The Government's [Impact Assessment for the Trade Bill](#), November 2017.

¹⁴⁷ Institute for Government, [How the Government plans to roll over third country agreements](#), 19 July 2018

relationship is likely to complicate matters where third countries are awaiting confirmation of the UK's future relationship with the EU before concluding new agreements with the UK.

Rules of Origin

It would also not be possible to apply diagonal cumulation arrangements in relation to rules of origin (RoO), creating difficulties for the UK in meeting the current RoO requirements in EU trade agreements with third countries if it attempted to replicate these in UK-specific trade agreements. Given the complex supply chains with components coming from across the EU in sectors such as the car industry, this might require the threshold for domestic content in RoO to be revised significantly downwards.

In addition, concluding agreements with countries that have a particularly close relationship with the EU, such as the EFTA countries and Turkey, would be difficult in the absence of clarity over the future UK-EU relationship. In [evidence](#) in January 2018 to the ITC, Dr Holger Hestermeyer (Shell Reader in International Dispute Resolution at King's College London) said the UK would need to negotiate new agreements with these countries which would "differ substantially from the current arrangements".

Possible continuity of aspects of Mixed Agreements

Around a quarter of the EU's international agreements have been classified as mixed agreements because they cover competences shared by the EU and Member States. This means that they have been ratified separately by individual EU Member States as well as approved at EU level. It is possible that some aspects of these agreements could continue to apply in the event of the UK leaving the EU without a deal, but there is some debate about this. While EU-exclusive competence agreements will cease to apply to the UK once it leaves the EU, some legal experts have suggested that aspects of mixed agreements could continue to apply. However, the EU has stated that all agreements will cease to apply.¹⁴⁸

In the absence of definitive information about the state of play of negotiations with third countries on the rollover of existing trade and other co-operation arrangements, the areas of co-operation covered and the Government's assessment of which of the EU's international treaties require replacement in order to avoid disruption of relations, it is difficult to assess whether the necessary arrangements will be in place by March 2019.

New trade deals

In addition to its work on existing EU trade agreements, the Government is exploring options for new free trade agreements (FTAs) after leaving the EU:

¹⁴⁸ See House of Commons Library Briefing Paper CBP8370, [UK adoption of EU external agreements after Brexit](#), 24 July 2018, for further discussion of mixed agreements and their future application post-Brexit.

We have established working groups and high level dialogues with a range of key trade partners, including the United States, Australia, China, the Gulf Cooperation Council (GCC), India, Japan and New Zealand.¹⁴⁹

In July 2018 the Department for International Trade announced consultations on the UK's first bilateral trade agreements with Australia, New Zealand and the USA, as well as potentially joining the Trans-Pacific Partnership.

But trade negotiations are time-consuming and complex, and while it is an EU Member State the UK cannot officially negotiate and sign future trade deals. Even the legality of holding preliminary consultations on future deals has been debated, although the Government has been conducting bilateral discussion, as outlined above.¹⁵⁰ The draft withdrawal agreement allows the UK to negotiate and sign new trade agreements during the transition period, but not to implement them until after transition. But with no deal and no transition period, formal negotiations and/or the conclusion of new agreements could not happen until after March 2019, meaning new trade agreements with third countries would not be in place.

¹⁴⁹ Department for International Trade, [Trade White Paper: Preparing for our future UK trade policy – Government Response](#), January 2018, Chapter 2.1

¹⁵⁰ [The Trade Bill](#), Commons Library Briefing Paper, chapter 2.2

7. Customs

The effects of ‘no deal’ are expected to be most tangible at the UK border. At the moment of leaving the EU customs union without a deal, the border between the UK and the EU would become a customs border. This is likely to mean more customs controls, potentially involving increased costs and delays for business.

The port of Dover processes up to 10,000 incoming and outgoing freight vehicles a day. Currently, 99% of those originate in the EU and are processed in around two minutes. Customs checks on non-EU trucks take on average 20 minutes. An additional two-minute delay per freight vehicle in the ferry terminal would cause a 17-mile queue at Dover. The ports lack the physical space to accommodate the goods waiting to be processed. This [written Evidence from the Port of Dover](#) to the Commons Public Accounts Committee illustrates the urgent need for contingency measures for no deal.¹⁵¹ Also, manufacturers who make use of complex cross-border supply chains and “just-in-time” delivery of parts might be forced to make adjustments.¹⁵²

Disruption to trade because of uncertainty around customs procedures in the case of no deal is possible. But having contingency plans ready is essential on both the UK and the EU side of the border. These concern investment in infrastructure, IT systems and manpower.

The Government’s no deal guidance to businesses that trade with the EU aims to “minimise delays and additional burdens for legitimate trade”.¹⁵³

The Customs Bill

The [Taxation \(Cross-Border Trade\) Bill](#) (the Customs Bill) provides for a range of negotiation outcomes, including a contingency scenario for a no-deal outcome. The Bill covers the implementation of customs, VAT and excise regimes, and sets out the steps the Government would take to minimise disruption for businesses and travellers. The operational arrangements for future international agreements on trade and provision for customs import and export duties would have a significant operational impact on the work of HMRC.¹⁵⁴

Concerns about management of borders

The main issues and challenges for the management of the border after Brexit were highlighted in a report by the National Audit Office in October 2017, which noted that “the number of decisions that have to be made over whether to permit people and goods to cross the border could increase significantly (potentially 230% and 360%

¹⁵¹ [Port of Dover –written evidence](#) to the Public Accounts Committee, 23 October 2017

¹⁵² UK in a changing Europe, [Cost of no deal](#), 20 July 2017

¹⁵³ Government Guidance, [Trading with the EU if there’s no Brexit deal](#), 23 August 2018

¹⁵⁴ [Explanatory Notes, Taxation \(Cross Border Trade\) Bill](#), 20 November 2017, para 9

respectively)".¹⁵⁵ The Public Accounts Committee (PAC), which is monitoring HMRC's operational preparedness for a no deal scenario, expressed concerns at the end of 2017 about the Government's earlier assessment that risks to border activity would remain unchanged immediately post-Brexit:

Government departments are assuming that the risks to managing the border will not change immediately when the UK leaves the EU, and that border checks will therefore be the same after March 2019 as they were before.[..]

Particularly in the event of a no-deal scenario, the border could be exposed to risks on day 1 of the UK's departure. Officials are relying too much on there being a transitional period in order to have the time to develop the new systems and infrastructure that may be required.[..]¹⁵⁶

HM Revenue and Customs preparedness

A cross-government Border Planning Group (BPG) led by HMRC's Chief Executive, Jon Thompson, was established in early 2017 and tasked with the co-ordination of Brexit-related border challenges. In October 2017, the Treasury confirmed that this group had been allocated a budget of £2.5 million for the year 2017-18.¹⁵⁷ According to the Treasury:

The Border Planning Group has reviewed all border locations (ports, airports and the Channel Tunnel) to understand the implications at these locations of controls and checks; and concluded that there are a number of locations, especially 'Roll On - Roll Off' ports (for example, Dover), where significant extra controls and checks would be difficult to accommodate without affecting the flow of traffic and people.¹⁵⁸

The BPG also co-ordinates work with organisations such as local authorities and non-governmental organisations responsible for managing or enabling the border (port and airport operators, carriers, agents and others). Plans are being developed on a location by location, port by port basis.¹⁵⁹

As for 'no deal' planning, Jon Thompson recently explained to the PAC:

If, when we get to October, we will exit the European Union in March 2019 and go on to WTO rules, the Government will have to make some choices about what objectives take primacy at the border. A choice will need to be made between the free flow of trade, the security of the United Kingdom and the raising of revenue. I think it is fair to say that you will not get an optimal system in April 2019 across those three objectives. You will have to prioritise...¹⁶⁰

¹⁵⁵ National Audit Office, [The UK border. Issues and challenges for government's management of the border in light of the UK's planned departure from the European Union](#), 20 October 2017, HC513

¹⁵⁶ Public Accounts Committee, [Brexit and the UK border](#), 8 December 2017, HC 558, paras 1-3

¹⁵⁷ [WPO 107596 12 October 2017](#)

¹⁵⁸ HM Treasury, [Government response to the Committee of Public Accounts on the Fourth to the Eleventh reports from Session 2017-19](#), Cm 9575, March 2018, paras 1.2-1.3 and 3.2-3.3

¹⁵⁹ Ibid

¹⁶⁰ PAC, [HMRC's performance: progress review](#), 30 April 2018, HC 972, Q55

In response, the PAC wrote to HMRC stating:

We have previously reported that the Border Planning Group's assumption that the risks to border activity remained unchanged immediately post-Brexit is a risky approach, and this remains a concern. We are also not convinced that HMRC is sufficiently prepared for the different possible Brexit outcomes, for example, in terms of the potential new infrastructure that might be needed at ports.¹⁶¹

The PAC had previously noted that the new Customs Declaration Service, which the HMRC started planning and implementing before the EU Referendum, was at risk of not being fully operational by the planned date of January 2019.¹⁶² In July 2018 the BPG told the PAC that work had been done on risk mitigation and that an upgrade of the current customs declaration system was being tested. By the end of September it should be clear whether the system would be cope with a no deal scenario.¹⁶³

Regarding recruitment of new personnel at HMRC and Border Force, Jon Thompson recently reported:

I have been reasonably clear that, in these various scenarios, we will need somewhere between 4,000 and 5,000 additional staff. We recruited 1,113 by the end of May. [...] We will continue to recruit en route to the 4,000 to 5,000. Of those the estimation is that 3,000 people need to be trained—2,500 HMRC colleagues and 500 Border Force. [...]

Asked if an optimal staffing solution would be found by April 2019, Jon Thompson said:

The answer is, it is not. It will not be optimal, but from 2019, in the scenario that you are exploring of day one, no deal, we would continue to mature the system through 2019 and 2020—get more people and so on and so forth. We believe you would have a functioning border, but it would not be an optimal situation.¹⁶⁴

The Treasury has acknowledged "the practical difficulties to accommodate significant extra controls and checks without affecting the flow of traffic and people", and said that therefore:

... the Government is taking a pragmatic approach to border controls to ensure the flow of traffic at the border, and to implement controls and checks as they can be accommodated.¹⁶⁵

To minimise disruption in transit procedures, the parties to the Common Transit Convention (CTC) are preparing to invite the UK to re-join the Convention soon after leaving the EU. This would enable the UK to remain in the EU's common transit procedures with EFTA Members as

¹⁶¹ [Letter](#) from Meg Hillier, Chair of the Public Accounts Committee to Jon Thompson, HMRC Chief Executive, 6 June 2018

¹⁶² PAC, [Brexit and the future of Customs](#), 14 November 2017, HC 401, para 4

¹⁶³ PAC, [Customs Declaration Service: Progress Review](#), 11 July 2018, HC 1398, Q 25-26

¹⁶⁴ PAC, [Customs Declaration Service: Progress Review](#), 11 July 2018, HC 1398, Q79, 82, 84

¹⁶⁵ HM Treasury, [Government response to the Committee of Public Accounts on the Fourth to the Eleventh reports from Session 2017-19](#), Cm 9575, March 2018, paras 1.2-1.3 and 3.2-3.3

well as Macedonia, Serbia and Turkey. The CTC allows exporters to avoid customs checks until goods reach their destination country, so goods travelling to and from the UK and passing through the EU and into third countries would avoid paying EU duties.¹⁶⁶

Case study 1: impact on the automotive sector

Profile of the sector

Automotive production in the UK is a high profile and successful industry typical of many 'just in time' manufacturing sectors. It is part of an international supply chain and its manufacturing plants operate a low-stock, high-volume model that requires constant component delivery. The sector has relatively high levels of productivity, high investment and many high-skilled workers.

The sector in the UK is dominated by foreign-owned manufacturers based at large, high value plants mostly in the Midlands and the North East.¹⁶⁷

The sector:¹⁶⁸

- employed 162,000 people, 1% of total employment in Great Britain in 2016;¹⁶⁹
- generated economic output (in terms of Gross Value Added) of £16.6 billion, 0.8% of the UK's economic output in 2017;¹⁷⁰
- is 20% more productive than the overall manufacturing industry and 35% more productive than the average for the UK economy;¹⁷¹
- exported vehicles worth £44 billion in 2017; this was 13% of UK goods exports and 54% of vehicle exports were to the EU.¹⁷²

The sector is highly integrated with complex supply chains involved in the production of almost all the components of motor vehicles. The Automotive Council (a high-level forum composed of industry leaders and Ministers) estimates that "44% of parts used to make UK cars come from UK suppliers".¹⁷³ The Financial Times suggests that even this figure may overestimate the proportion of UK-made components:

Of [the] 30,000 components in modern vehicles, each one may contain 30 sub-components and have passed through 15 countries during the course of its production... With many of the parts going into Tier One components coming from overseas, it is

¹⁶⁶ MLex, 'UK could remain in EU's customs convention with its neighbours', 9 August 2018

¹⁶⁷ Exiting the EU Committee, [HM Government Sectoral Brexit Impact Assessments: Automotive sector](#), December 2017, p2

¹⁶⁸ The industry is defined as Standard Industrial Classification code 29.

¹⁶⁹ ONS, Business register and employment survey, 2017, via [NOMIS database](#)

¹⁷⁰ ONS, [Quarterly National Accounts Q1 2018, Low Level Aggregates Table](#), June 2018

¹⁷¹ ONS, [Labour productivity Q1 2018](#), Data: [Breakdown of contributions, whole economy and sectors](#). Data are current price, output per hour, automotive sector = Transport and equipment manufacturing

¹⁷² Society of Motor Manufacturers and Technicians (SMMT), [Motor industry facts 2018](#), pp7,9,10

¹⁷³ Automotive Council, [Rise in amount of British parts used in British car production](#), 20 June 2017

therefore highly likely that the true UK make-up of vehicle components is far lower than 44%...¹⁷⁴

The importance of supply chains to this industry means that the impact of a no-deal Brexit could be significant. The main possible impacts can be divided into (i) the impact of tariffs, (ii) the impact of non-tariff barriers to trade, and (iii) the changing regulatory regime.

Tariffs

While the UK is in the EU's customs union, no tariffs are charged on cars and automotive components (or any manufactured goods) that are imported from or exported to the EU. In a no deal scenario, it is assumed that EU-UK trade would be arranged under WTO rules governing trade between trade partners with no FTA.

This would mean the imposition of tariffs on trade in goods between the UK and the EU. UK exports to the EU would face the EU's tariffs and imports into the UK from the EU would face whatever tariffs the UK decided to impose.¹⁷⁵ The average tariffs imposed by the EU on the import of cars is 9.8%, and the average tariff for motor vehicle parts is 3.8%.¹⁷⁶

If tariffs are imposed on car exports to the EU or component imports from the EU, then the cost of manufacturing cars in the UK would increase. Honda, a major car manufacturer with plants in the UK, commented to the Business, Energy and Industrial Strategy (BEIS) Select Committee that the imposition of tariffs "would make UK manufactured vehicles 'uncompetitive'".¹⁷⁷ The BEIS Select Committee concluded that:

...it is difficult to see how it would make economic sense for multinational volume manufacturers – the bulk of the UK automotive sector – to base production in the UK in a no deal or WTO tariff scenario.¹⁷⁸

Section 6.2 above provides further information on tariff issues in a no-deal scenario.

Non-tariff barriers

Non-tariff barriers are practical, administrative or physical obstacles that make trade more difficult. The automotive sector in the UK could experience non-tariff barriers in the form of "delays at the new UK-EU border and...additional administrative requirements" in the event of a no deal Brexit.¹⁷⁹

The 'just in time' model that the automotive industry operates means that stock is delivered to the assembly line as it is needed. Only a very

¹⁷⁴ Financial Times, [Brexit triggers a great car parts race for the UK auto industry](#), 30 July 2017

¹⁷⁵ The Government has said that it intends to replicate the EU's tariff structure as far as possible, at least in the short term ([HCWS316](#) Written Statement 5 December 2016).

¹⁷⁶ WTO, [Tariff Download Facility](#) (WTO Most Favoured Nation average applied tariffs)

¹⁷⁷ Business, Energy and Industrial Strategy (BEIS) Select Committee, [Impact of Brexit on the automotive sector](#), Fifth Report of Session 2017–19, February 2018, [Section 2](#).

¹⁷⁸ Ibid.

¹⁷⁹ BEIS Committee *ibid.* [Section 3](#)

limited number of spare parts are stockpiled – manufacturers tend not keep more parts than are needed for the immediate future. Delays in the delivery of stock could prevent cars from being manufactured at the pace required to maximise efficiency and retain competitiveness.

Honda commented to the BEIS Select Committee that “a 15-minute delay could add around £850,000 per year in costs” to annual production at their Swindon factory.¹⁸⁰

Regulatory standards

Differing regulations that determine how a manufactured good is produced or tested are a type of non-tariff barrier. All cars sold or registered in the EU are subject to strict safety and other regulations. New cars must be issued with a Certificate of Conformity to prove that they meet EU regulations. Certificates of Conformity can only be provided by a ‘type-approval authority’ in an EU Member State. In the UK the type-approval authority is the Vehicle Certification Agency (VCA).¹⁸¹

If there is no deal and the UK immediately assumes third country status in relation to the EU, the European Commission has said the VCA will lose its status as a type-approval authority.¹⁸² Manufacturers would have to seek approval from a type-approval authority in another EU country, which could be costly and may add to the time taken to gain approval. The Society of Motor Manufacturers and Technicians commented to the BEIS Select Committee that the type-approval authorities in other EU Member States might lack the capacity to provide certification for UK manufactured vehicles in addition those manufactured in their own country.¹⁸³

Case study 2: professional and business services sector

Profile of the sector

The professional and business services sector includes industries that provide specialist, knowledge-intensive services to businesses. It includes legal services, accountancy, advertising, architectural services, engineering and management consultancy. It is a large sector and one in which the UK has a high international reputation.

The professional and business services sector:¹⁸⁴

- includes 645,000 businesses, 24% of all businesses in the UK in 2017;¹⁸⁵

¹⁸⁰ Ibid.

¹⁸¹ Exiting the EU Committee, [HM Government Sectoral Brexit Impact Assessments: Automotive sector](#), December 2017, p11

¹⁸² European Commission, [Brexit preparedness notices: Type Approvals \(automotive vehicles\)](#), February 2018, p2

¹⁸³ BEIS Committee, [Impact of Brexit on the automotive sector](#), 5th Report of Session 2017–19, February 2018, [Section 4](#)

¹⁸⁴ The Industry is defined as the following Standard Industrial Classification codes: 69, 70, 71, 72, 73, 74, 77, 78, 82.

¹⁸⁵ ONS, ‘Business activity, size and location’, 2017, via [Nomis Database](#)

- employed 4.1 million people, 14% of employment in Great Britain in 2016.¹⁸⁶
- generated economic output (in terms of Gross Value Added) of £198 billion, 11% of the UK's economic output in 2017.¹⁸⁷

The professional and business services industry provides essential services to all parts of the economy. Employees are typically highly skilled professionals. Businesses in this sector range from very large firms operating throughout the world and providing a range of services (such as the 'Big Four' accountancy firms or the 'magic circle' law firms), to small and medium sized enterprises that support a specific kind of business in one region of the UK.¹⁸⁸

Service industries in the EU

Professional and business services businesses are subject to the EU's Single Market for Services, which is not as far reaching as the Single Market for Goods. The core principles of the Single Market for Services are:¹⁸⁹

- the freedom to establish and run a company in any Member State;
- the freedom to provide services across Member State borders;
- mutual recognition of professional qualifications (qualified service professionals are recognised as such throughout the EU without having to re-qualify).

The Single Market for Services also allows freedom of movement of people and capital, and harmonises rules in VAT, intellectual property and data protection, all of which reduce the barriers to providing professional and businesses services in other EU Member States.¹⁹⁰

Section 6.2 above provides further information on the Single Market for Services.

Impact of no deal: regulatory frameworks

In the event of a no-deal Brexit, UK professional and business services companies operating only in the UK are unlikely to see any major direct impact. These services are largely regulated on a domestic basis, so EU-wide rules have only a limited impact.¹⁹¹

In areas where the regulatory framework is harmonised by EU Directives, a no-deal Brexit is also unlikely to have any immediate impact. For example, statutory audit is specified under the [Audit Directive \[2006/43/EC\]](#) and UK regulations will probably remain

¹⁸⁶ ONS, 'Business register and employment survey', 2017, via [NOMIS database](#)

¹⁸⁷ ONS, [Quarterly National Accounts Q1 2018, Low Level Aggregates Table](#), June 2018

¹⁸⁸ Department for Exiting the EU Select Committee, [HM Government Sectoral Brexit Impact Assessments: Professional and business services](#), December 2017, p3

¹⁸⁹ European Commission, [Single Market for Services](#), webpage accessed 30 July 2018

¹⁹⁰ European Commission, [Slides on Internal EU27 preparatory discussions on the framework for the future relationship: Services](#), 6 February 2018

¹⁹¹ Exiting the EU Committee, [HM Government Sectoral Brexit Impact Assessments: Professional and business services](#), December 2017, p9

unchanged for some time after withdrawal, whether or not a deal is reached. Any divergence would probably happen over several years.¹⁹²

However, a no deal scenario could have an immediate impact on UK companies operating or seeking to operate in the EU, and on EU companies operating or seeking to operate in the UK. Without a deal, these businesses would be viewed as third-country businesses, which means that EU Directives would not automatically apply to them. What rules do apply would depend on the company law in each Member State, so it is possible that some Member States would allow UK businesses to provide services as now, but this is not guaranteed.¹⁹³

Mutual recognition of qualifications

Another important area for the professional and business services sector in which 'no deal' could have a major impact is the mutual recognition of professional qualifications in the EU and the UK. It is possible that UK professionals working in the EU would no longer be recognised as having valid professional qualifications; this would depend on the Member States' existing rules on the recognition of qualifications awarded by third countries.

The European Commission has said that with no deal the UK's third country status would mean:¹⁹⁴

[t]he recognition of professional qualifications of United Kingdom nationals in an EU-27 Member State will be governed by the national policies and rules of that Member State, irrespective of whether the qualifications of the United Kingdom national were obtained in the United Kingdom, in another third country or in an EU-27 Member State.

The Commission also notes that this would apply to non-UK EU citizens in the UK (whose status would depend on the sector-by-sector rules in the UK regarding third country qualifications), and those EU citizens holding professional qualifications awarded in the UK but working in other EU countries.¹⁹⁵

See section 9.2 below for more information on free movement and recognition of qualifications.

¹⁹² Ibid, p11

¹⁹³ European Company Law Experts, [The consequences of Brexit for companies and company law](#), Section 5: Third Country firms: the post-Brexit regime, May 2017

¹⁹⁴ European Commission, [Notice to stakeholders - Withdrawal of the United Kingdom and EU rules in the field of regulated professions and the recognition of professional qualifications](#), June 2018, p3

¹⁹⁵ Ibid, p4

8. Northern Ireland and the Irish border

Many of the possible effects of 'no deal' on the Irish border and trade with Ireland are the same as those that would arise from UK - EU trade in general and at other ports/entry points for goods traffic.

But there are two unique characteristics that make the Irish border more complex. The first is the nature of that border - it is the only land border the UK shares with the EU.¹⁹⁶ The border is currently "invisible and seamless across its 310 mile/500 km length".¹⁹⁷ The second is the history of violence and conflict in the region, which was largely brought to an end with the signing of the 1998 Belfast/Good Friday Agreement. This means there are particular sensitivities about the erecting of border infrastructure and implementing checks on goods crossing the border. This is why the UK government has committed to "no new physical infrastructure at the border and no new checks or controls at the border".¹⁹⁸

The EU and the UK Government share a commitment to avoiding a hard border between Ireland and Northern Ireland. Although the two-sides have yet to reach an agreement on how best to avoid checks and infrastructure at the border, the types of solutions suggested, which include the use of technology, some degree of regulatory alignment and some sort of customs agreement, are likely to be absent in a no-deal scenario.

8.1 Customs checks

If the UK implements a new customs regime under WTO rules, what checks at the Northern-Irish border would it be required to conduct and could it waive some or all of them? The EU has consistently said that checks would be required on the Irish border if the UK leaves the Single Market and customs union. Michel Barnier said in February 2018, that such checks would be "unavoidable".¹⁹⁹

It has been reported that the Irish Prime Minister, Leo Varadkar, suggested in July 2018 that even with 'no deal', checks and infrastructure at the border would not be required. The *Irish Times* reported:

Mr Varadkar said that such a "doomsday scenario" would mean that the "commitments of others" would be relied upon to prevent a hard border. [...] "Also, president Juncker and my EU

¹⁹⁶ Gibraltar shares a land border with Spain but is a British Overseas Territory, and the UK's Sovereign Base Areas in Cyprus have no customs posts or frontier barriers, the UK government has committed to maintaining this status and the EU has largely agreed to ensuring this happens. See [CBP 8269](#) pp 81-5 for more detail.

¹⁹⁷ HM Government [Northern Ireland and Ireland- Position Paper](#), 16 August 2017

¹⁹⁸ See, for example, the Secretary of State for Northern Ireland, Karen Bradley's [evidence to the European Scrutiny Committee](#), EU Withdrawal, 16 May 2018, HC 763, Q326.

¹⁹⁹ BBC News, ['Michel Barnier: Irish border checks 'unavoidable''](#), 9 February 2018

colleagues have on many occasions said that they wouldn't require us to put in place a physical infrastructure and customs checks on the Border between Northern Ireland and Ireland," he said.²⁰⁰

However, the Irish Revenue Commissioners subsequently confirmed that they were making preparations for "full customs checks" on UK-Irish trade "in case no deal is reached on Brexit."²⁰¹

The Prime Minister's EU Advisor Oliver Robbins, in [oral evidence](#) to the Exiting the EU Select Committee on 24 July, acknowledged the European Commission's position that checks and controls would be necessary (Q2451) and said that if it came to that situation, there would be a "strong debate between the two sides as to what was necessary there", that both sides would "have to reflect on their responsibilities and make the appropriate measures and preparations".

Seamus Leheny, Northern Ireland Policy Manager at the Freight Transport Association, has written about the possible effects of customs checks on goods traffic crossing the Northern Irish border:

Commercial goods vehicle traffic across the Irish border was estimated at 4,677,772 vehicle movements for the year 2016, according to analysis of TII data by Irish Revenue & Customs This works out at a staggering 12,788 commercial vehicle movements daily across the border.

It's also worth highlighting that compared to 2014, commercial vehicle traffic across the Irish Border has increased by 21.4%. This clearly demonstrates that both economies, north and south, continue to become more reliant on one another as our supply chains become more entwined.

Even if customs checks were to be imposed on cross border traffic at the minimum 1% level, then, we would see around 128 physical inspections of goods vehicles daily. The impact of such checks would be additional costs for transport operators, delays and missed schedules.²⁰²

He also describes how the logistics of goods transport adds further complexities:

Many cross-border freight movements are consolidated loads: for example you could have one lorry carrying forty different consignments, each one unique with different points of origin and destination. This could mean a check on one pallet of goods on a truck could have consequences for dozens of other businesses.²⁰³

The reason most trade experts believe the UK will need to impose customs checks on goods coming into Northern Ireland is because of the MFN principle, which applies to all WTO agreements (see section 6.1 above).²⁰⁴ Countries can side-step this principle if they sign free trade

²⁰⁰ Irish Times, [EU calms Varadkar's fears of physical Border checks after Brexit](#), 19 July 2018.

²⁰¹ Irish Times, [Revenue preparing for full customs checks post-Brexit](#), 6 September 2018

²⁰² UK in a Changing Europe, [Making Northern Ireland a bridge between the UK and the EU](#), Seamus Leheny (Freight Transport Association), 18 June 2018

²⁰³ UK in a Changing Europe, *ibid*

²⁰⁴ See WTO, [Principles of the trading system](#)

agreements with each other or form customs unions, as the WTO permits those as 'exceptions' to the MFN rule.

One proposal to avoid infrastructure and checks on the Irish border in a no-deal scenario is for the UK to waive checks on goods as they enter Northern Ireland. However, if there is no deal, there is also no UK trade agreement with the EU, so many trade experts have argued that if the UK applied no customs tariffs or checks to EU goods coming across the Irish border, MFN requirements mean it would have to do the same for all goods coming in from other nations. Aoife O'Donoghue, Professor of International Law at the University of Durham, told Channel 4 News:

If the UK chooses not to impose any tariffs on goods coming across the [Irish] border... that would mean that the UK is giving the EU (because Ireland is the EU in this context) complete open access. So its most favoured nation tariff is zero. That means it would have to give a zero tariff access to every single country in the WTO.²⁰⁵

Dr Lorand Bartels, an international trade academic, gave evidence to the European Scrutiny Committee (ESC), and was asked what would happen if the UK did waive all customs and regulatory checks at the Northern Irish border. He suggested that while this would be a problem legally, the UK might receive a waiver from the WTO:

I can only speak about what that would mean legally. It would be something of a problem, essentially. The reason is that it would be granting the EU preferences that would not be shared with other WTO members. I do not think, I should say, that the WTO should in reality present this as a major problem. First of all, I have to insist as a WTO lawyer that WTO rules are binding and are law.

However, the reality is that it takes a long time to enforce them. It requires countries to complain. They might not see any value in complaining. More importantly, though, it would be appropriate to ask for a waiver of the WTO to cover this sort of situation, and there is a very good chance, given the circumstances of the Northern Irish border, that that waiver would be forthcoming. It is a technical problem but one that is relatively easily solved. Again, I do not know what this actually means on the ground.²⁰⁶

Federico Fabbrini, Professor of European law at Dublin City University, has suggested that the EU could use a previously unused provision in the General Agreement on Tariffs and Trade (GATT) to remove the need for customs checks (but not regulatory checks) in Northern Ireland:

In the event of a hard Brexit, therefore, contingency plans would need to be put in place from the EU side to deal with the sudden emergence of a customs border between Ireland and Northern Ireland. [...] [A]n option that the EU could consider ... would be to trigger Article XXIV(3) GATT, which introduces the so-called "frontier traffic exception" from the MFN principle. Under this never-used clause of the GATT, ordinary WTO customs rules "shall not be construed to prevent: a) advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic". Pursuant to this reading, the EU could declare the

²⁰⁵ Channel 4 News, [Fact check: What are the options for the Irish border after Brexit?](#) 29 November 2017

²⁰⁶ European Scrutiny Committee [Oral evidence: EU Withdrawal](#), HC 763, 27 June 2018, Q539

entire territory of Northern Ireland to be a frontier zone to the EU customs union; thereby removing the need for customs controls (at least on the EU side) but not the need to SPS checks. Clearly this solution would not be problem-free, as it would create a loophole in the impermeability of the EU external customs border, which could be exploited for illegal purposes. Nevertheless, it should remain in the armory of the EU to deal with a thorny issue....²⁰⁷

The ESC also asked Dr Bartels about this exception. He thought it could not be extended to the whole of Northern Ireland, as that was not its original intention:

The frontier travel exception is another one [exception] but it does not take you very far. The discussions on the frontier traffic exception at the time that the rule was drafted made it fairly clear that, where we were talking about situations where you had had a border running through a city, the traffic that counts as frontier traffic is about goods that are produced and consumed within a small distance of that border. The figure that was given by the United States, which drafted this provision, was 15km either side of the border. Essentially what we are talking about is market traffic.

[...] It is not designed to cover whole territories. It is really just for market traffic on the border in those sorts of special circumstances. It is not really anything more than that. With all due respect to my colleague, what he has said has been somewhat misunderstood and too much reliance has been placed on it.

[...] Quite clearly, the frontier traffic exception is of no particular use here except, if you really wanted to push it, to actual frontier traffic that extends in a very, very small zone either side of that frontier.²⁰⁸

David Collins, Professor of International Economic Law at City University, London, also told the ESC that this exemption could not cover the whole territory of Northern Ireland, but he did say it could help alleviate some issues for local goods traffic, explaining: "this is the basis for the discussion in some circles about having a two-tier checking system, one for local traffic and then another for larger traffic that might have an international destination".²⁰⁹

Sabine Weyand, the EU Commission's Deputy Chief Negotiator, told the Exiting the EU Committee in September, that such a border zone would not satisfy EU concerns about the integrity of the single market:

You referred to the exemption from MFN provisions in the WTO. Now this refers to tariff issues. Indeed you can create an economic zone 20 km around the border or wherever, but that does not address the issue we face on the island of Ireland.

Here we are talking very practically about—imagine—an import of shrimps from an Asian country where they treat shrimps with antibiotics, which are prohibited in the EU because they can lead to blindness. Now this shipment arrives in Liverpool and is

²⁰⁷ European Parliament Constitutional Affairs Committee, [The Institutional Consequences of a Hard Brexit](#), Professor Federico Fabbrini, May 2018.

²⁰⁸ European Scrutiny Committee [Oral evidence: EU Withdrawal](#), HC 763, 27 June 2018, Q532

²⁰⁹ Ibid

destined for the market in Northern Ireland and also the EU27. At what moment and how do we check that there are no residues of prohibited antibiotics? A 20 km zone does not address this issue. That is one example.

The second example is bicycles imported from China on which the EU levies anti-dumping duties. Maybe the UK in the future decides not to have such anti-dumping duties because you want to have your own system on this, so how can we ensure that bicycles, arriving in Liverpool again or somewhere else, do not end up undermining the anti-dumping duties that the EU is levying? How can we avoid that this becomes an entry point into the single market? Again, WTO rules on exemptions, of 20 km, do not address this issue.

The third issue—and a very important one—is VAT. How can we ensure that VAT is levied correctly? That is a major source of revenue for all our member states and is also a major source of fraud in the EU but also in the UK. Therefore, we will need to have a system where we can protect the integrity of the single market and the customs union, in a situation where we do not have a hard border between Ireland and Northern Ireland.

It is on these very precise and concrete issues that we need to find a solution.²¹⁰

In the same evidence session, Michel Barnier said that not only were checks unavoidable, but there was no neat distinction between customs and regulatory checks:

In the light of your Government's decision to leave both the single market and the customs union, it is obvious that we need to find ways and means to set in place a number of checks on goods entering Ireland. Without any checks, that would be a breach in the single market and customs union. Without checks, we cannot guarantee the safety of goods entering into the European Union and circulating in it, and vice versa obviously for the British market, as far as you are concerned, because the external border of your market would be there now.

In the joint report of December and then in a letter from Theresa May in March, the British Government committed itself to respecting the integrity of the single market and the customs union and the place occupied therein by Ireland. On the ground, ladies and gentlemen, it is impossible—this is nothing new—to distinguish between customs checks and other regulatory checks. The two kinds of checks are intrinsically linked in the technical physical organisation of what happens when things are checked on that border for the single market.²¹¹

The Prime Minister, in her evidence to the Liaison Committee in July 2018, suggested that the Government would not automatically impose border controls and checks if there were no deal:

Q4 Hilary Benn: Can you confirm that no deal would mean a hard border in Northern Ireland? It's a very simple question. If there is no deal, there will be a hard border.

The Prime Minister: There isn't the sort of simple answer to that that you are looking for, if I may say so.

²¹⁰ Exiting the EU Committee, [Oral evidence](#), 'The progress of the UK's negotiations on EU withdrawal', HC 372, 3 September 2018, Q2546.

²¹¹ Ibid Q2537.

Q5 Hilary Benn: Really?

The Prime Minister: Obviously, if we were looking at the question of no deal, the United Kingdom would need to consider what action we would take in those circumstances, and the Irish Government and the European Commission would need to consider what action they would take in those circumstances.

Q6 Hilary Benn: But you have put a huge amount of effort, including in your White Paper, into coming up with a proposal to avoid a hard border—presumably because, as you said to the House of Commons on 9 July, “The friction-free movement of goods is the only way to avoid a hard border between Northern Ireland and Ireland”. Therefore, if there is no deal, there can’t be friction-free movement of goods, and therefore there would be a hard border, wouldn’t there?

The Prime Minister: If there is no deal, there will be decisions for the United Kingdom Government to take about the action that it takes at its borders. The European Commission is very clear that if there is no agreement in relation to customs arrangements, there will have to be checks at the border, but, as I say, when you come to a circumstance—whatever the circumstances were—we would obviously need to look at the situation in which that deal was being put in place, the arrangements in which that lack of a deal was being put into place, and so forth.

Q7 Hilary Benn: But we are talking about no deal. You have just acknowledged that the Commission has said that checks would have to be put in place on the European side. Therefore there would be a hard border, and that would be the consequence of no deal. I suppose the question is, why would that be worth it? You have often said, “We’re prepared to contemplate no deal,” although you do not want that outcome. Why would that be a price worth paying for Northern Ireland?

The Prime Minister: If I can just recap on what I said, in my first answer in relation to this, I said that if we were in a no-deal situation we would obviously have to consider what action we were taking, not just in relation to the Northern Ireland border but more generally; the European Commission would have to consider what action it was taking with its responsibilities for customs, and indeed individual Governments would have to consider the action that they were taking in those circumstances.

As you know, the proposals that the European Commission have put forward so far have been based on the assumption that, if you do not have that frictionless trade, there is that border in place. What I am saying is if we were in the circumstances of no deal, all the parties concerned would have to consider what action they would take.

8.2 Regulatory checks

With or without a deal, the Government intends to leave the Single Market. The Single Market, as well as removing tariffs and quotas on goods trade between Member States, also removes non-tariff barriers to trade, such as differing technical specifications and labelling requirements (see section 6.2 above).

The Northern Ireland Affairs Committee report on the land border between Northern Ireland and Ireland describes how this regime allows

goods to pass across the border currently and the possible effects of the UK leaving the Single Market:

To facilitate the free movement of goods, the Single Market operates under the principle of “mutual recognition”. This means that any good lawfully produced in one member state can be sold in any other. To make this work, the EU has adopted harmonised regulatory standards which ensure that all member states observe, at a minimum, the same product standards. We heard that mutual recognition is “more than just having similar rules”, it relies on judicial enforcement and keeping national legislation in each member state constantly in alignment. When the UK leaves the Single Market, it will no longer be bound by the Single Market’s regulatory standards for goods or accept the powers of the EU institutions, which means UK and EU goods could cease to benefit from mutual recognition in each other’s markets. Regulatory differences can create barriers to trade because the greater the variance in regulations the more checks are required on goods traded between countries. For example, if the UK were to diverge from EU prohibitions on genetically modified food or chlorine-washed chicken it would become necessary to ensure that these goods do not cross the border into the EU via Ireland.²¹²

The debate over what would happen to goods traffic crossing the border in a no-deal scenario centres on whether the UK would be treated as a third country by the EU or not. While the UK would not be part of the Single Market, it would have in place all the EU regulatory requirements. But because it would not be legally obliged to maintain those requirements, the EU is likely to insist on checks to ensure compliance. The EU’s [preparedness notices](#) assume that the UK will be treated as a third country. The new requirements for businesses seeking to export to the EU, particularly on health and food safety, are extensive.

According to the Institute for Government (IfG), “[c]ustoms checks account for less than half of the border formalities” and regulatory checks are more “onerous” than customs checks.²¹³ The European Commission has produced [a slide](#) showing that most checks and controls on goods entering and exiting the EU are not related to customs duties.

Live animals, food and other agricultural products, are amongst the most regulated goods and therefore have the most rigorous regime of checks and controls. Regulatory checks would have a heavy impact on Irish border traffic because of the large volume of trade in these products across the border.

The Environment, Food and Rural Affairs Select Committee, in their report [Brexit: Trade in food](#), looked at the volume of trade in these goods across the Irish border and the potential impact of a harder border:

²¹² Northern Irish Affairs Select Committee, [2nd Report - The land border between Northern Ireland and Ireland](#), HC 329, 16 March 2018, para 43

²¹³ Institute for Government, [‘The Irish border after Brexit’](#), Tim Durrant & Alex Stojanovic, June 2018

111. The trade in live cattle and sheep, and beef and lamb across the Northern Ireland/Republic of Ireland border takes place on a daily basis, with approximately 390,000 live lambs crossing the border annually. The Livestock and Meat Commission for Northern Ireland told us that the Northern Ireland sheep industry was particularly exposed to the effects of more complicated border arrangements, with approximately 45% of all lambs born in Northern Ireland exported to the Republic of Ireland each year. In 2016, the value of this live trade was approximately £31.5 million.

112. The dairy industries in Northern Ireland and the Republic of Ireland act as one through the supply chain, and dairy products cross the border several times between the farm gate and the consumer. Republic of Ireland dairy co-operatives own approximately 60% of the processing capacity in Northern Ireland. Exports to the Republic of Ireland were approximately 15% of total sales of the Northern Ireland dairy industry in 2015.

113. Witnesses told us that it was essential that two-way access between Northern Ireland and the Republic of Ireland remained “without tariffs and free from burdensome non-tariff administrative measures”. Dairy UK said that a hard border would be the least desirable option for the dairy industry.²¹⁴

The report also describes the regime for third countries to export live animals and animal products to the EU:

104. Any consignment of animals or animal products from third countries to the EU, may only enter the EU at a designated border inspection post (BIP). All such consignments of imported animal food products are subject to a documentary, identity and possibly physical examination at the first point of entry into the EU, and all consignments must pay a hygiene inspection charge depending upon the type and amount of the commodity being examined. These charges are harmonised, laid down in EU legislation and quite independent of any customs dues payable.

[...] There are no control points at the land border between the Republic of Ireland and Northern Ireland.²¹⁵

In the event of no deal, if the EU insists on such checks, and in the absence of border inspection posts, it is unclear how such products could enter Ireland from Northern Ireland.

Seamus Leheny explains in more detail the checks on animal products, and the requirements if there were no special agreement between the UK and the EU to bypass them:

Customs checks on things like tariffs is only the tip of the iceberg in terms of checks, and there is potentially an even bigger problem facing supply chain logistics on the Island of Ireland. Council Directive 97/78/EC of 18 December 1997 states that food products of animal origin, including meat, entering the EU shall be subjected to veterinary checks. There are three elements to these checks:

1 – Documentary Checks: Verifying the veterinary certificates and documents accompanying the consignment.

²¹⁴ Environment, Food and Rural Affairs Select Committee, [3rd Report - Brexit: Trade in Food](#), HC 348, 18 February 2018

²¹⁵ Ibid

2 – Identity Checks: Check to ensure products in vehicle match those described in documents. This will mean physical inspection of vehicle to check seal numbers.

3 – Physical Check: Here the consignment is physically inspected, and this can include examining the packaging, checking temperatures, sending samples for to a lab analysis, or even smelling or tasting a product.

The EU stipulates the frequency of checks as follows:

Non-EU Import Checks	Product	Official that undertakes inspection	Frequency of Checks		
			Documentary Checks	ID Checks	Physical Checks
	Beef, Lamb, Pork	Official Veterinarian	100%	100%	20%
	Poultry		100%	100%	50%

Veterinary checks must take place at the physical point where goods enter the EU so without some special agreement, veterinary checks and the associated infrastructure would have to be put into place at the Irish Border in order to protect the integrity of the European food supply chain. This would result in every such load having to stop to lodge documents, ID checks and potentially a physical inspection.

The UK may also have to reciprocate such checks for goods entering Northern Ireland and Great Britain as potential future trade partners will want to limit the UK market from the supply of similar EU products that they wish to sell us instead.²¹⁶

Professor David Collins, however, believes that WTO agreements to which the EU are a party would prevent such a regime of checks being imposed on UK exports. He wrote in *The Spectator* in August 2018:

While EU leaders like to threaten us with hints that our exports would be unsellable in the EU, the fact is that non-tariff barriers such as arbitrary health and safety inspections and borders would be prohibited under the WTO's Sanitary and Phyto-sanitary (SPS) and Technical Barriers to Trade (TBT) agreements. The UK intends to retain conformity with EU regulations following Brexit, at least for the time being, meaning that the existing low levels of health and safety risks to the public in UK products will not change in the days after Brexit. There would, as a result, be no grounds for the EU to exclude our goods from its markets.

The WTO's new Trade Facilitation Agreement obliges the EU to maintain borders which are as frictionless as possible, using modern technologies such as pre-arrival processing of documents and electronic payments. Discrimination against foreign products through all sorts of internal regulations is forbidden. These rules are enforced by a well-respected international tribunal which has a high rate of compliance and cannot be overruled by the European Court of Justice.²¹⁷

²¹⁶ UK in a Changing Europe, [Making Northern Ireland a bridge between the UK and the EU](#), Seamus Leheny, Freight Transport Association, 18 June 2018.

²¹⁷ The Spectator, [Why a no-deal Brexit is nothing to fear](#), 4 August 2018.

Professor Collins' view is not shared by the majority of trade experts. Financial journalist Therese Raphael disagrees that regulatory goods checks are prohibited by WTO agreements: "Prohibited is a strong word. In fact, the WTO tells members to enter into consultations, but it doesn't force them to recognize another's standards".²¹⁸ She also disputes Collins' representation of what the WTO Trade Facilitation Agreement requires:

Similarly, the WTO's [Trade Facilitation Agreement](#) aims at frictionless borders, but the idea that it could be used to prevent border infrastructure in Ireland after a no-deal Brexit is fanciful. Every developed country has signed up to it, including some famously non-porous borders, which tells you something about its teeth.

While EU members may individually want to recognize British goods as compliant, the EU's Customs Code imposes more onerous procedures and checks on third-party goods than those member states are subjected to. For example, U.K. exporters would have to complete, among other forms, a Single Administrative Document, with 54 parts, for each declaration. They would lose access to the [New Computerized Transit System](#), the IT system that facilitates trade.

This isn't the EU deciding to be obstreperous or imposing new barriers; it's a legal thing -- or, as Stojanovic put it in a conversation, it's literally a case of "computer says no." The U.K. will be treated like any other outside country.

The U.K. government could take the EU to a dispute resolution body to complain that its standards haven't been automatically recognized. But good luck with that; the EU would fight any attack on its single market rights vigorously and it would all take a very long time to resolve.²¹⁹

Dmitry Grozoubinski, a former WTO negotiator for Australia, supports this view and has [said](#):

The SPS and TBT agreements call for technical regulations to be evidence based, to serve a policy objective and to minimally distort trade. They do NOT prevent, for example, the EU from requiring certification by an EU authority (which, absent an agreement, UKs won't be).

Peter Ungphakorn, a former senior information officer with the WTO Secretariat, looked specifically at what the WTO's Trade Facilitation Agreement says about checks on goods:

Basically, the Trade Facilitation Agreement is irrelevant to the question of whether the UK and EU can check each other's goods. [...]

The agreement is important. The main purpose is to slash the costs of trading by cutting red tape when goods cross borders. So it calls for streamlined procedures, paperwork handled electronically and as simply as possible, and so on. It also breaks new ground by allowing developing countries to promise to reform their procedures on condition they receive aid to implement it.

²¹⁸ Bloomberg, [Computer Says No' to Jacob Rees-Mogg on Brexit](#), 9 August 2018

²¹⁹ Bloomberg, *ibid*

Because customs and other procedures in developing countries tend to be slow and cumbersome, it's these countries that stand to gain the most from implementing the agreement.

But it would be wrong to say the agreement is targeted at only or even mainly developing countries. Far from it. There are important provisions that developed countries like the EU and UK have to respect or face legal challenges.

It's just that the provisions dealing with electronic paperwork and streamlined procedures don't fall into that category. They are written in a way that only requires countries to do their best to comply. And what "doing their best" means is left up to them.²²⁰

But Dr Bartels' view (which he acknowledges is not shared by all his colleagues or the EU) is that the UK's current alignment with the EU's regulations on goods could mean checks are not technically required straight away post-Brexit:

If on Brexit day the regulations that the UK has are considered by law and in fact the EU to be no more burdensome than necessary to achieve the EU's objectives, and that is because they are the same as the EU's regulations, I cannot see how that changes on Brexit day plus one. Down the track, things change, of course, and there are other aspects to this. One has to also look at the rules on checking for regulatory compliance and that depends on trust and there are slightly different rules that apply to that.

Just in terms of the underlying standards, yes, that is my view. I should say that it is an unpopular view, in Brussels and elsewhere and among my colleagues, but that is my view.²²¹

However, he also thought the EU would still probably impose regulatory checks on goods coming into the EU in the event of no deal, saying "you cannot stop that. It is the EU's border. It is going to protect it".²²²

There is no clarity at present as to exactly how goods traffic across the border will be managed in the event of no deal. The UK Government's own guidance on what would happen has little or no detail at present on regulatory/ sanitary and phytosanitary checks, although it is expected to publish more information in the coming weeks. Currently, there is one section on trading across the Irish border in the technical note on ['Trading with the EU if there's no Brexit deal'](#), which reads:

The Irish government have indicated they would need to discuss arrangements in the event of no deal with the European Commission and EU member states. We would recommend that, if you trade across the land border, you should consider whether you will need advice from the Irish government about preparations you need to make.²²³

VAT would also need to be collected on goods travelling from Northern Ireland to the Republic Ireland, and vice-versa, in the event of a no deal scenario. There is already a VAT border between Ireland and Northern

²²⁰ [How does the Trade Facilitation Agreement really affect Brexit?](#) Peter Ungphakorn, 16 August 2018.

²²¹ European Scrutiny Committee [Oral evidence: EU Withdrawal](#), HC 763, 27 June 2018, Q544.

²²² Ibid, Q540

²²³ HMRC, [Guidance: Trading with the EU if there's no Brexit deal](#), published 23 August 2018.

Ireland, as VAT and excise are not fully harmonised across the EU, meaning that both territories apply different levels of VAT to different goods. However, the need for infrastructure at the border has been abolished, by the introduction of an EU common regulatory framework under which businesses can sell goods with 0% VAT on the understanding that it will be paid by the recipient business. This arrangement relies on the VAT Information Exchange System (VIES) via which information on cross-border movements of goods is transmitted between the EU's national tax authorities. In contrast, customs officials at the EU's external border have a duty to ensure that the correct Value Added Tax (VAT) is paid on imports.²²⁴ The Government also accepted, in its [technical note](#) on the "temporary customs arrangement", that "to avoid a hard border between Northern Ireland and Ireland, the application of common cross-border processes and procedures for VAT and excise would be necessary".²²⁵

8.3 Impact on trade and the economy

The latest HMRC regional trade statistics show that Northern Ireland exported £2.8 billion worth of goods and services to Ireland - around 33% of the region's exports - and imported £2.1 billion of goods and services from Ireland - 28% of its imports.²²⁶ According to the IfG, agri-food accounts for close to 40% of Northern Irish exports to Ireland.²²⁷

The organisation InterTradeIreland²²⁸ commissioned the Economic and Social Research Institute (ESRI), an Irish think tank, to conduct [analysis](#) of the impact of Brexit on the Irish border. ESRI looked at several different scenarios, including one where trade between Ireland and the UK would be based on WTO rules. The resulting imposition of tariffs and non-tariff barriers in this scenario could result in Irish trade to Great Britain falling by 12%, British trade to Ireland falling by 6%, Irish trade to Northern Ireland falling by 14%, and Northern Irish trade to Ireland falling by 19% - resulting in a total reduction in cross-border trade of 16%.²²⁹

However, they also modelled a scenario where, as well as these trade barriers being imposed, there was a 10% fall in the value of the pound sterling (this is similar to the fall in the pound immediately after the EU referendum). Most economists believe there will be a significant drop in the value of the pound if the UK leaves the EU with no deal. The fall in sterling in ESRI's analysis would, for British and Northern Irish trade, partly mitigate the effects of the trade barriers being imposed, but it

²²⁴ See European Scrutiny Committee [report](#) on reform of EU VAT legislation, 28 March 2018, which also covers the implications of the reintroduction of VAT as an import tax on UK-EU trade in goods for Northern Ireland in particular.

²²⁵ Cabinet Office, 'Technical note on temporary customs arrangement', 7 June 2018.

²²⁶ HMRC, [Regional Trade Statistics](#), Q1 2018, released 7 June 2018 [accessed 29 August 2018]

²²⁷ IfG, [The Irish border after Brexit](#), Tim Durrant & Alex Stojanovic, June 2018.

²²⁸ *InterTradeIreland* are a cross-border trade and business development body funded by both the Irish and Northern-Irish governments. For more information see their [website](#).

²²⁹ InterTradeIreland, [Potential Impact of WTO Tariffs on Cross-Border Trade](#), 23 March 2018, Table 4, p 13.

would worsen the outcome for Irish exports to Britain and Northern Ireland.

In this scenario Irish trade to Great Britain would fall by 20%, British trade to Ireland would remain broadly similar (at +0.3 %), Irish trade to Northern Ireland would fall 21%, and Northern Irish trade to Ireland would fall 11% - so there would be a total fall in cross-border trade of 17%.²³⁰

The study also looked at trade of different categories of goods. It predicts that the volume of trade in agri-foods in particular would see large falls. In a no-deal scenario²³¹ they foresee that trade in meat and fish from Ireland to Northern Ireland could fall by 65%, while from Northern Ireland to Ireland it could fall 26%. Figures for dairy products were a fall of 66% and 52% respectively. A few categories of goods could see some increases in trade volumes from Northern Ireland to Ireland; for example, machinery and electrical goods might rise 6%.²³²

If the Government were to unilaterally waive customs and regulatory controls for goods entering the UK via the land border with Ireland, there would be a potential loss of revenue from the non-collection of import duties, VAT and excise. Jon Thompson, Chief Executive of HMRC, discussed this issue with the House of Lords EU External Affairs Sub-Committee. He talked of the 'trilemma' that faced the government for all of the UK's external borders:

Ministers would need to make a decision about the free flow of trade, the security of the United Kingdom and the raising of revenue, because those are the current three objectives at the border. In the scenario you are setting out [no deal], some choice may have to be made between those three objectives in the run-up to April 2019.²³³

Mel Stride, financial secretary to the Treasury, acknowledged this trade off to the same Committee.²³⁴ Mr Stride emphasised to the Sub-Committee that there were already checks in place at the moment in Northern Ireland away from the border to prevent excise fraud, and this capacity could be used in the event of no deal:

People assume that in Ireland there are no checks or interventions going on with goods going across, but of course there are. There is a substantial amount of trafficking, fuel laundering and tobacco smuggling. There are interceptions inland in Northern Ireland, so it is not the case that we would not have the ability to function in that particular environment, but there would clearly be some very significant restrictions.²³⁵

²³⁰ InterTradelreland, *ibid*.

²³¹ The scenario with WTO rules trade and a pound sterling depreciation of 10%.

²³² InterTradelreland, '[Potential Impact of WTO Tariffs on Cross-Border Trade](#)', 23 March 2018, Table 7,p18

²³³ House of Lords Select Committee on the European Union, Sub-Committee on External Affairs, 'Brexit: Customs Arrangements', oral evidence, 19 July 2018, Q87.

²³⁴ *Ibid*, Q114.

²³⁵ *Ibid*

The Financial Times reporting on the Committee's evidence session said, "the revenue losses have the potential to be large if the UK does not collect taxes at the border".²³⁶

8.4 Movement of people

The movement of people across the Irish border has remained a relatively uncontroversial part of the negotiations and poses fewer issues compared to the movement of goods. This is largely because of the Common Travel Area (CTA) between Ireland and the UK. The CTA allows British and Irish nationals to travel freely within the CTA without being subject to passport controls. The CTA is based on bilateral agreements and domestic legislation in the UK and Ireland that should be largely unaffected by Brexit. Both sides in the negotiations have agreed articles relating to the CTA in the [draft Withdrawal Agreement](#).

Another factor that makes the movement of people simpler in any Brexit scenario is that both Ireland and the UK are outside the Schengen Area.²³⁷

Bernard Ryan, Professor of immigration law at the University of Leicester, told the Lords EU Committee that the continuation of CTA arrangements post-Brexit would be compatible with EU law:

There is no apparent legal reason why the Republic of Ireland should not retain the benefit of Protocols 19 and 20 [Treaty on the Functioning of the European Union] after Brexit, so as to permit bilateral co-operation with the United Kingdom outside the Schengen Zone.²³⁸

In theory, a no-deal Brexit should not imperil such co-operation. For more information on the CTA see Library Briefing Paper: [The Common Travel Area, and the special status of Irish nationals in UK law](#).

However, the CTA only applies to Irish and UK citizens. Arrangements for non-CTA nationals are more complex. Although there are minimal immigration checks for journeys started within the CTA, non-CTA nationals must have the relevant immigration permission for the country they are seeking to enter.

There is also the issue of frontier workers - EU citizens who live in one Member State and work in another. The Irish journalist Tony Connelly, in his book on Brexit and Ireland, explains how Brexit could affect their status:

For those who are neither Irish nor British citizens, and who live and work on different sides of the Irish border, the prospects are particularly uncertain. Unlike citizens of Ireland and the UK, they are not protected by the provisions of the Common Travel Area. Under EU rules, such people are regarded as 'frontier workers'. That means they enjoy certain rights, such as access to medical services-including the right to a medical card-on the side of the

²³⁶ Financial Times, '[UK Treasury ready to relax border tax under 'no deal' Brexit](#)', 19 July 2018.

²³⁷ The Schengen Area eliminates internal border checks on the movement of people between the 26 countries that have joined the zone.

²³⁸ Lords EU Committee, Brexit: UK-Irish relations, 12 December 2016, HL Paper 76 2016-17, written evidence of Professor Bernard Ryan ([BU10008](#))

border where they work. There are similar rights regarding social-welfare and pension payments.

When Britain leaves the EU, those rights will fall. That would mean, for example, Lithuanian lorry drivers or mushroom harvesters who live in the North and work in the South (or vice versa) will no longer be regarded as frontier workers protected by EU rights. It is understood, however, that their particular situation will be looked at during the two-year withdrawal negotiations.²³⁹

The [draft Withdrawal Agreement](#) protects the rights of frontier workers, allowing EU and UK citizens to exercise their rights up to the end of the transition period (see Articles 9, and 22-24). It also allows frontier workers to exit and enter the UK and Ireland for work without requiring a visa,²⁴⁰ although it does require workers to have either a passport or official identification card to cross borders. But if there is no deal, none of these provisions will be in force, meaning that frontier workers could find themselves in a legal limbo.

8.5 Security concerns

The UK Government's position paper on the Irish border states that "the invisible and open border between Northern Ireland and Ireland is, as the Irish Government has said, arguably 'the most tangible symbol of the peace process'". The paper also notes that the Belfast ('Good Friday') Agreement included a specific commitment to "the removal of security installations".²⁴¹

George Hamilton, Chief Constable of the Police Service of Northern Ireland (PSNI), said in an interview with the Guardian in February that any infrastructure on the border would become a target for dissident republicans:

"Our assessment is that they would be a target because it would be representative of the state and in their minds fair game for attack. I would assume that that assessment is shared by senior politicians and officials who are negotiating [Brexit](#).

"While I am chief constable I do not want to enter the political debate over Brexit but I still think it's fair to comment on some of its implications and scenarios. And a hard border from a policing perspective would not be a good outcome because it would create a focus and a target."

He said fixed frontier customs and security posts would expose PSNI officers to greater danger than they already face from anti-peace process republican paramilitaries.

"Anything that makes the police presence predictable in places where terrorists are active of course raises the threat and increases the harm to my officers. We deal with risk every day and we are good at it but unfortunately the terrorists only have to be lucky once and get a result with catastrophic consequences. I think it

²³⁹ T Connelly, 'Brexit and Ireland: The Dangers, the Opportunities, and the Inside Story of the Irish response', 2017, p 260

²⁴⁰ They may be required to apply for a document proving their frontier worker status (see Article 24 of the [Agreement](#)).

²⁴¹ DExEU, [position paper: Northern Ireland and Ireland](#), 16 August 2017

would be a poor use of police resources if we are going to have to protect physical infrastructures at the border.”

Mr Hamilton thought hard border installations “could have a negative political impact” in Ireland and Northern Ireland, “re-emphasising the context and the causes of the conflict” and so creating tensions and challenges that the Good Friday Agreement had helped to dispel. Determined dissident republicans, he said, might regard such infrastructure on the northern side of the border “as a representation of the UK state”. He thought he might need more policing resources:

Asked if his force’s strength of 6,700 officers could properly police the 300-mile Irish border, Hamilton said that unless there were extra numbers recruited resources would have to be taken away from other areas of policing.

“There would be an increased demand due to a hard border and a pull of resources towards that which means either an uplift in police funding or else we would have to have reduced levels of service in other areas.”

In a May 2018 [paper](#) on the Irish border, the think-tank Policy Exchange argued that concerns about Brexit affecting peace in Northern Ireland were overblown:

The weak arguments that Brexit somehow endangers peace or undermines the Good Friday agreement have been allowed to take hold. Neither argument bears much examination, but importantly they have received minimal examination – and have been repeated unthinkingly in the British media. Sinn Fein’s Gerry Adams and Colm Eastwood, leader of the nationalist SDLP, have both stated that no general breakdown in peace is likely. Adams instead stresses the dangers to human rights from Brexit although few lawyers appear to agree with him.

The real danger is not any general return to the Troubles but rather that border infrastructure can be attacked, and officials attempting to protect or replace it may be put at risk. It is this risk which motivates the UK Government to promise a border with no infrastructure at all. Of course, the huge attention drawn to the border issue in the media makes it almost inevitable that dissident republicans would attempt some attack. This may however be a short-term danger. Once Brexit is complete, with no-one stopped at the border and with no visible infrastructure, any danger is likely to subside.²⁴²

Suzanne Breen, a Northern Irish journalist, argues in the Belfast Telegraph that even if infrastructure were put in place, while it might serve as a reminder of previous partition, the security threat is much reduced from the past:

There are many legitimate concerns around Brexit and its effects on both sides of the border. But claiming it’s a ticking time bomb for the peace process is quite simply scaremongering.

The customs checkpoints which existed along the border for almost half a decade after partition played no part in violence erupting here in 1969.

²⁴² Policy Exchange, [Getting Over the Line: Solutions to the Irish border: Why the UK \(including Northern Ireland\) can leave the Customs Union, avoid a hard border – and preserve the Good Friday agreement](#), Graham Gudgin and Ray Basset, 9 May 2018.

That IRA campaign was firmly rooted in the denial of civil rights - jobs, housing and political equality. A return to the border as we knew it from the 1970s onwards - with British soldiers in watchtowers on the hillsides above checkpoints - is not on the cards.

Of course, the introduction of any infrastructure will serve as a reminder - and perhaps an uncomfortable one for some - that partition and the border still do exist. But the youth of Ballymurphy or the Bogside will not go out to kill or be killed because of customs controls.

And who exactly are expected to wage any new armed campaign anyway? The Provisionals' war is over. Dissident republicans are having some success in recruiting young people in working-class nationalist areas, but I guarantee that none of those joining up are citing Brexit and the possibility of customs posts as their reasons.²⁴³

The IfG summarised the findings of a [May 2018 study](#) from Queen's University Belfast on Northern Irish attitudes to border checks:

'There is substantial and intense opposition to possible North-South border checks [of the kind that would be required if the UK were to become a third country with no special arrangements] between Northern Ireland and the Republic of Ireland and to East-West border checks between Northern Ireland and Great Britain.'

The report found that around 60% of people surveyed would support peaceful protests against checks on the border. It also noted that there is little support for violence against border infrastructure, with 'only 5% of the population as a whole... fairly or very supportive of vandalising border technology'. But the authors found that in focus group discussions, 'there are strong expectations that protests against either North-South or East-West border checks would quickly deteriorate into violence.'²⁴⁴

8.6 Energy

There has been an all-island electricity market on the island of Ireland since 2007. Although Northern Ireland is a net exporter of electricity (i.e. it exports more than it imports), it still relies on electricity imports from Ireland when there is insufficient local electricity generation capacity.

The *Financial Times* reported in July that 'no deal' could have a significant impact on the energy market in Northern Ireland, and the Government had drawn up emergency plans that could mean electricity generators being requisitioned to provide power for the region:

Thousands of electricity generators would have to be requisitioned at short notice and put on barges in the Irish Sea to help keep the lights on in Northern Ireland in the event of the hardest no-deal Brexit, according to one paper drawn up by Whitehall officials.

²⁴³ Belfast Telegraph, '[Suzanne Breen: Brexit scaremongering chorus grows](#)', 27 April 2018

²⁴⁴ IfG, '[The Irish border after Brexit](#)', Tim Durrant & Alex Stojanovic, June 2018

That could involve bringing back equipment from far-flung countries such as Afghanistan – where the UK is still part of Nato-led operations – said people familiar with the paper's contents.²⁴⁵

However, the Single Electricity Market (SEM) is based on bilateral agreement between the UK and Ireland, so according to ESRI, "should the UK leave the EU, the previous bilateral agreements would remain in force".²⁴⁶ But some experts say the SEM is, in turn, reliant on the EU's own Internal Energy Market (IEM – see section 12.1 below), so there could be consequences for the UK. Robert McCormick, general manager of the System Operator for Northern Ireland (SONI) which operates the electricity system in Northern Ireland, told the House of Lords EU Committee that "If GB is not part of the IEM, onward trading [from Northern Ireland] with Europe will be extremely difficult (if not impossible)".²⁴⁷

Other experts giving evidence to the Committee thought the SEM should be able to function even if the UK was no longer in the IEM.²⁴⁸

If a no-deal scenario did result in disruption of energy supplies across the border, there would be significant impacts on both Ireland and Northern Ireland. A European Parliament report in November 2017 described Ireland's dependency on UK gas supplies:

Gas supplies are of crucial importance to Ireland because gas plays a central role in electricity generation. Because of this, any interruption to supply could have very serious consequences. Nearly all of the gas used in Ireland comes through the interconnectors with the UK.²⁴⁹

The Government's position paper on Northern Ireland and Ireland states "the continued ability to trade gas between Great Britain and the island of Ireland is also critical for security of supply and efficient market operation".²⁵⁰

The UK is a net importer of gas from Europe, so it in turn relies on gas imports from mainland Europe, which could also be threatened by a no-deal scenario.

If there is no deal, tariffs on energy supplies would probably not be imposed by either side. The EP report (see above) stated that "for WTO members the EU has no tariff on electricity or gas imports",²⁵¹ but also warned:

Gas and electricity markets are complex service markets, not simple commodities markets, and the EU is in the process of

²⁴⁵ Financial Times, [Hard Brexit: the eye-catching contingency plans to stop NI power blackouts](#), 11 July 2018

²⁴⁶ Economic and Social Research Institute, Scoping the Possible Economic Implications of Brexit on Ireland', November 2015

²⁴⁷ Lords EU Committee, [Brexit: energy security](#), HL Paper 63, 29 January 2018, para 142

²⁴⁸ Ibid, see paras 141-147

²⁴⁹ European Parliament, Policy Dept A: Economic and Scientific Policy, [The impact of Brexit on the EU energy system](#), November 2017

²⁵⁰ DExEU, [position paper: Northern Ireland and Ireland](#), 16 August 2017

²⁵¹ EP report, November 2017

streamlining the interface between national market designs to create a single energy market.²⁵²

8.7 Other areas

There are other areas of cross-border cooperation that would be affected by 'no deal'. The UK and EU Brexit negotiators have conducted a joint 'mapping exercise' to identify cross-border policy areas that could be affected by Brexit and have reportedly found 142 of them. These 142 areas are all a subset of the six areas of North-South economic co-operation identified in the Good Friday Agreement: transport, agriculture, education, health, environment and tourism.

The December 2017 Joint Report says the mapping exercise:

[s]hows that North-South cooperation relies to a significant extent on a common European Union legal and policy framework. Therefore, the United Kingdom's departure from the European Union gives rise to substantial challenges to the maintenance and development of North-South cooperation.²⁵³

In evidence to the Lords EU Committee, Dominic Raab was asked if he would share the conclusions of the exercise. He replied that the "exercise has been going well", but that he would "need to get a final readout of the timeframes". This suggests it is still work in progress.²⁵⁴

There is more detail on the effect of no deal on transport across the Irish border in section 12.5.

²⁵² EP report, *ibid*

²⁵³ European Commission, [Joint Report](#), 8 December 2017, para 44

²⁵⁴ Lords EU Committee, Scrutiny of Brexit negotiations, [Dominic Raab oral evidence](#), 29 August 2018, Q5

9. Free movement of people, healthcare, social security and pensions

9.1 Free movement of people

A significant number of so-called 'citizens' rights' will be affected by Brexit. The primary one is the free movement of persons' rights, whereby currently any EU national can work in, live in or provide services in any EU Member State, providing they meet the conditions set out in the EU Treaties and Directive 2004/38/EC (the 'Citizenship Directive'). These primary 'residency' rights are complemented by a variety of further rights, co-ordinating social security coverage for mobile EU nationals and enabling them to access healthcare, education and so on.

This section will address the primary 'residency' rights and how they would be affected by a 'no deal' Brexit; secondary rights stemming from the primary free movement of persons rights are discussed in the subsequent sections. In particular, it is unclear whether UK nationals would continue to be covered by the EU legislation that helps coordinate social security in the EU27 – nor is it clear whether they would be able to continue to access UK social security benefits in the EU27 Member State they currently reside in.

The following sections look both at EU nationals living in the UK and UK nationals living in the EU27.

EU nationals living in the UK

EU nationals resident in the UK at the moment of 'withdrawal' will be covered by one of two legal regimes in the absence of a concluded Withdrawal Agreement. This is dependent on the speed with which the UK Parliament legislates to bring the negotiated 'citizens' rights' chapter of the Withdrawal Agreement into force in the UK – which it can do entirely separately from actually concluding that agreement with the EU.

Settled Status

If the 'citizens' rights' legislation is domestically implemented by 29 March 2019, this would mean the rights of EU nationals in the UK, from 30 March 2019 onwards, would actually be those rights agreed with the EU in the draft Withdrawal Agreement. All EU nationals resident in the UK at the date of withdrawal would be eligible for either 'settled status' itself – a new 'permanent residency', and a purely UK domestic status – or for the pathway to 'settled status', called 'pre-settled status', whereby they can qualify for 'settled status' by exercising relevant EU Treaty Rights for a period of five years.

The EU Treaties themselves will no longer be binding on the UK at this time, but domestic legislation that refers to these Treaties will nonetheless be legally valid. Consequently, as set out in the Home Office's [statement of intent on 'settled status'](#), EU nationals exercising

Treaty rights will be entitled to a temporary or permanent status document and will continue to qualify for those documents providing they meet the three conditions necessary under the proposed 'settled status' legislation:

- **identity:** they hold an EU nationality (or are a qualifying family member of an EU national);
- **eligibility:** they are resident in the UK as 'eligible' (meaning Treaty-rights exercising) EU nationals;
- **suitability:** they pass a criminality check.

The 'settled status' statement of intent makes clear that the status entitles qualifying EU nationals and their family members to "the same access as they currently do to healthcare, pensions and other benefits in the UK". This means in practice that access to all domestic public services that EU nationals can currently access if resident in the UK will continue.

Recent UK Government statements have suggested that it is the UK's intention to implement the 'settled status' regime regardless of whether a deal is successfully concluded with the EU.

On 11 July 2018, Minister of State for Immigration Caroline Nokes gave [evidence](#) to the Exiting the EU Committee on the 'settled status' regime in the event of no deal:

Chair: [...] What happens to people who have been given settled status—because you have rolled it out and they have made an early application—if we end up with no deal?

Caroline Nokes: I keep our commitments in this offer to EU citizens very seriously indeed. The Prime Minister has been very clear that we want EU citizens who are here to be able to stay here, and we recognise the very significant contribution they make to our communities and, indeed, to our economy. This is an international obligation that I take very seriously. We do not anticipate that there will be no deal, and in the event of no deal I personally hope that we will uphold everything that we have said and make sure that we deliver on our commitment to EU citizens.

Chair: That is very helpful. The Government are spending quite a lot of money preparing, just in case there is no deal; but leave that on one side. I take it from what you said that Government are saying to anyone listening who is an EU citizen, "Look, whether there is a deal or not we are going to do right by you and you will be able to stay". I think that clarity will be quite helpful, because if there is not clarity and people say, "We are preparing for no deal. No deal is a possibility", it could create anxiety, as I am sure you would accept, on the part of the 3 million European citizens currently in the UK if they felt there was any doubt about their continuing right to reside in the UK.

Caroline Nokes: Once we have opened the scheme and someone has achieved settled status, it is the equivalent of indefinite leave to remain. We would not be able to take that away from them. If they have it they will be able to keep it.

This echoes the [statement](#) made by Home Secretary Sajid Javid before the Lords EU Select Committee on 21 June 2018:

Lord Judd: Can you guarantee to us that the agreement on EU citizens' rights that has been reached with the EU will be honoured, even if the UK is unable to reach an acceptable deal with the EU 27 under Article 50?

Sajid Javid MP: The Prime Minister has been clear on this issue from day one, and I shall repeat her words. She said that EU citizens living lawfully in the UK will be able to stay. No matter what happens, if you are living lawfully in the UK you will be able to stay. Our focus has been, understandably, that we will get a deal—I am confident about that—and we are working on that basis. We have already reached agreement with the EU on citizens' rights, in both the December and March agreements. That is what we are working on in honouring through this scheme and that is where our focus has been.

If there is no 'settled status'

Should Parliament for any reason not legislate to bring the proposed 'settled status' regime into effect before 29 March 2019, the status of EU nationals resident in the UK on exit day will continue to be determined by the current legislation applicable to EU and EEA nationals. The [Immigration \(EEA\) Regulations 2016](#) will, under the EU Withdrawal Act 2018, be 'retained' and so remain in force unless repealed by either the 'settled status' legislation or any other future legislation.

Again, it is irrelevant that the EEA Regulations refer to Treaties that the UK is no longer bound by upon withdrawal from the EU: they confer rights within the UK to nationals of Member States, defined as the Member States of the EU, and consequently will continue to cover all EU nationals resident in the UK in the same way they do now. The related 'primary' rights that EU nationals hold, such as the ability to access healthcare services, are rooted purely in domestic law that references the concepts in the Immigration (EEA) Regulations 2016. So, for example, EU nationals exercising Treaty rights are generally considered to be 'ordinarily resident' in the UK and can on that basis access the NHS without payment under the NHS Act 2006.

This legislation is likely to be replaced with alternative immigration rules for EU nationals, either if a deal is concluded or in the absence of a deal. The 'settled status' regime is only intended to cover those EU nationals who were resident in the UK *before* its formal withdrawal (transition/implementation period included) from the EU. Any EU national moving to the UK outside that time period will need to be covered by a to-be-proposed domestic immigration regime. The Home Affairs Committee's [interim report](#) on future migration from the EEA published on 31 July 2018 stresses that in the absence of a government White Paper on immigration or an Immigration Bill, there is "little indication" of what this future immigration regime will look like. In the event of a deal, the future immigration regime may be the product of negotiations between the EU and the UK; in the absence of a deal, it is likely to be a purely domestic policy consideration.

However, the comments made by Sajid Javid (as cited above) make clear that it is not the Government's intention to remove existing statuses from any EU nationals currently resident under EU law, and it can be

assumed this will apply even if the 'settled status' legislation is not implemented. While it is therefore likely that the Immigration (EEA) Regulations will be repealed and replaced with domestic legislation that does not cross-reference the EU Treaties, the Government's position is that resident EU nationals should be granted a temporary or indefinite leave to remain in the UK under UK law.

Dominic Raab emphasised on 21 August that the rights of EU nationals to at least "stay" in the UK would be protected in the event of 'no deal':

We hugely value the contribution of EU citizens here in the UK and I am confident that in the unlikely eventuality that we don't have a deal, we will move swiftly to secure their position. It is inconceivable we would do anything other than make sure that they are legally in a position where they're secure to stay. ... we are talking about real people...and we have got a moral obligation. There's no question that we're going to see EU citizens turfed out. We've made that clear in the past. I've made that clear in the past, I'm happy to give that reassurance today.²⁵⁵

This reassurance, however, does not address what rights EU nationals will hold in the UK if no deal be reached and if there is no legislation in place for 'settled status'.

Other rights and unknowns

Unless the Government's position changes significantly, all rights described as 'primary' – e.g. the ability to live in, work in, study in and access public services in the UK – will be retained, at least in the short run, by EU nationals living in the UK, even in the event of 'no deal'. However, the situation with respect to secondary rights – particularly those relating to rights that are dependent on not only UK public services, but also public services in the EU27 – is significantly different. This is discussed in the sections below.

The position for EU nationals who are 'visiting' rather than 'resident' will also change as a result of Brexit. Regarding access to healthcare, for example, at the moment EU national visitors to the UK are not charged for using the NHS under an exemption in the [NHS \(Charges to Overseas Visitors\) Regulations 2015](#). But this exemption applies to those present in the UK and having rights stemming from secondary EU law, such as the social security coordinating Regulation 883/2004/EC. It is not clear if the concepts contained in that Regulation (such as a 'home Member State' or a 'host Member State') will continue to operate logically in the UK, even if the Regulation itself is 'retained'. The UK would have to identify itself (presumably in domestic legislation) as a 'host Member State' in order for that regulation to continue to operate with respect to the UK post-Brexit.. Other rights mutually agreed for 'short-term' EU national visitors (as opposed to EU nationals exercising free movement rights for longer than three months) are likely to experience similar problems without domestic amending legislation.

A further question that remains unanswered by the current legislative proposals relates to the future of non-EU EEA and Swiss nationals in the

²⁵⁵ BBC News, [EU residents will be secure if no Brexit deal says Raab](#), 21 August 2018

UK. As the current withdrawal negotiations are taking place with the EU27 alone, while the EU free movement of persons rights are also applicable to the non-EU EEA states under the EEA Agreement and to Switzerland by means of bilateral agreements, the rights of non-EU EEA and Swiss nationals are not addressed by the draft Withdrawal Agreement. On this point, the Home Office's [statement of intent](#) on 'settled status' gives the following insight:

Whilst the agreement with the EU does not cover the citizens of the non-EU European Economic Area states (Iceland, Liechtenstein and Norway) and Switzerland, we have been clear that we want to secure a similar deal for citizens of these states living in the UK and for UK nationals living there. Talks with all four states are progressing well and pending final agreement being reached with each on the detail of the arrangements, the Government intends that the scheme described in this Statement of Intent will be open to other EEA citizens and Swiss citizens (and their family members) on a similar basis as for EU citizens.

UK nationals in the EU

The legal situation of UK nationals resident in one of the EU27 Member States at the time of UK withdrawal is much less certain. While they are intended to be covered by the Withdrawal Agreement, and this will preserve a significant number of their rights, their status in the absence of a Withdrawal Agreement is dependent on domestic law in each of the EU Member States. The Withdrawal Agreement, if concluded, will produce a single regime that all Member States will apply to EU nationals – but reports to date (from, among others, the [European Parliament](#)) suggest that the Member States are not making significant strides in preparing to implement that legislation or produce any other legislation in the event of a no-deal Brexit.

This is problematic for UK nationals resident in the EU27. The legislation in each of the EU27 currently gives UK nationals rights to reside purely on the basis that they are 'EU nationals'. They do not have specific rights to reside as UK nationals, much as (for instance) German nationals do not have specific rights to reside in the UK under the Immigration (EEA) Regulations 2017. However, while EU27 nationals will still be 'Member State nationals' for the purposes of UK domestic laws following Brexit, UK nationals will no longer be 'Member State nationals' for the EU27.

In the absence of a Withdrawal Agreement, the basis on which UK nationals would have a right to reside in the EU27 State they currently live in would abruptly change on 30 March 2019. The Commons Exiting the EU Committee published a [report](#) on the rights of UK and EU nationals on 23 July 2018, which commented on this specifically:

If there is no agreement on ongoing free movement after the transition period ends, then the rights of UK citizens currently resident in the EU may be determined by EU rules on third country nationals (rules that apply to nationals of non-EU member states). Jane Golding, British in Europe, said there are different pieces of legislation that apply to third country nationals:

'The conditions are far more stringent and in no way compare with being an EU citizen, and there is no right of free movement.

There is a limited form of mobility. Then there are very big holes in this third-country national regime as far as self-employed people are concerned. There are a number of pieces of legislation that cover employees, but far fewer for self-employed people who are providing cross-border services. There are very big holes there.'

The Committee called on the EU27 to make a similar guarantee to that made by the UK Prime Minister, even in the event of no deal.

Steve Peers, Professor at the University of Essex, has [argued](#) that 'citizens' rights' should be ring-fenced from the rest of the negotiations so as to ensure continuity of rights for eligible UK and EU nationals. However, in the absence of any ringfencing, he has made a separate argument for a unilateral EU-wide regulation that echoes what the 'settled status' legislation does. He argues that the EU has the power to legislate on this issue and should do so for the sake of legal certainty. To date, however, no such legislation has been proposed (let alone adopted) at EU level.

9.2 Mutual recognition of professional qualifications

Automatic recognition in UK but not necessarily reciprocated

As just one example of the influence of EU law on domestic work entitlements, under EU [Directive 2005/36/EC](#) on the mutual recognition of professional qualifications, EEA healthcare professionals with a qualification from an EEA country have their qualification automatically recognised when applying to be registered with a relevant professional regulator. Regulators include the General Medical Council (GMC), Nursing and Midwifery Council (NMC) and General Dental Council (GDC).

Mutual recognition of qualifications is written into UK legislation and regulations governing doctors, nurses and other healthcare professionals, as well as a variety of other regulated professions set out in the EU Directive. This would probably be retained in UK law in the case of a no-deal Brexit, allowing UK regulators to automatically recognise EEA nationals' qualifications; however, as discussed below, the conditions under which recognition of EEA qualifications operates can be amended by Parliament at will in the event of 'no deal'.

'No deal' would mean that the qualifications of UK-trained medical professionals would no longer be automatically recognised when registering to practise in the EU27, unless equivalent provisions were swiftly introduced into national legislation by other EU countries.

The BMA has argued that continued mutual recognition of professional qualifications is crucial for hiring EU nationals to work in the health service, with any changes to this being particularly felt in Northern Ireland, whose health service employs a large number of healthcare professionals from Ireland.²⁵⁶

²⁵⁶ BMA, [The impact of leaving the EU on patients](#), February 2018

It is important to note as well that, although UK regulators may continue to be allowed to unilaterally recognise EEA nationals' qualifications, the UK would lose access to the current EU-wide alert system. This notifies UK regulators at the pre-registration stage of EU health professionals where concerns have been raised about their fitness to practise.

English language testing

The Government has commented to the Health Select Committee that after leaving the EU it would consider introducing more stringent pre-registration English language testing for healthcare professionals, which they are not currently allowed to do under the EU Directive on mutual recognition. Therefore, the Government may choose to amend the law on recognition of EU healthcare qualifications, rather than retain it in its current form. In its response to the Committee's report on Brexit and health and social care, the Government set out its view on the need for a balance between language stringency and avoiding bureaucracy:

The primary purpose of regulating healthcare professionals is to ensure public safety. Some regulatory bodies have concerns that MRPQ (Mutual Recognition of Professional Qualifications Directive) limits the action they can take when registering EEA professionals, particularly by restricting tests of language competence. The Department agrees that a balance needs to be struck between managing this risk in a proportionate way and ensuring that the flow of skilled and valuable healthcare professionals into the NHS is not impeded by unnecessary levels of bureaucracy.²⁵⁷

More information can be found in the Commons Briefing Paper, [Language testing for healthcare professionals](#), 7 March 2018.

9.3 Reciprocal healthcare

Current reciprocal healthcare arrangements

The EEA Member States and Switzerland co-ordinate the provision of social security including healthcare under [Regulation 883/004](#). The Regulation includes rules on the reimbursement of healthcare costs between Member States in the following main circumstances:

- for visitors using the European Health Insurance Card (EHIC) for all necessary care during temporary stays in another Member State;
- for state pensioners and their dependants who have moved abroad, the state that pays their state pension is responsible for paying the costs of their healthcare – known as the S1 route;
- for a person who has been authorised to undergo a planned medical treatment in another Member State, costs are paid by the Member State that has referred them – known as the S2 scheme;

²⁵⁷ Department of Health, [Government response to the House of Commons Health Committee report Brexit and health and social care – people & process](#), Cm 9469, December 2017, page 6

- for a dependant (usually a spouse or child) of someone who lives in another EEA Member State or someone from another EEA Member State working in the UK.

What the draft Withdrawal Agreement provides

The (draft) Withdrawal Agreement aims to protect reciprocal healthcare arrangements for UK nationals resident in the EU before the end of the transition period (and vice-versa), so long as they continue to live or work in the country where they lived or worked at the end of the transition.²⁵⁸ This includes UK state pensioners who have retired to the EU27, as well as people who have started a course of pre-planned health treatment abroad.

The Government will continue to seek agreement with the EU that protects the reciprocal healthcare entitlements of state pensioners, including those not covered by the terms of the Withdrawal Agreement, and seek to fully protect rights under the EHIC S1 and S2 schemes, including:

- the rights of UK state pensioners who retire to the EU (and vice versa) after the end of the implementation period to benefit from a reciprocal healthcare scheme;
- the rights of UK residents to continue to receive needs-arising treatment in the EU under the EHIC scheme (and vice versa); and
- the rights of UK residents to be able to receive planned treatment in an EU Member State when this is pre-authorised by the UK (and vice versa).²⁵⁹

Possible impact of no deal

In the event of a no-deal Brexit, the existing reciprocal healthcare arrangements for UK citizens in the EU and EU citizens in the UK would probably end. The Government has said it is developing contingency plans for this eventuality:

We are confident of securing a comprehensive deal but, to fully prepare for the unlikely event the UK and the EU do not agree the Withdrawal Agreement and implementation period, or secure a deal on future reciprocal healthcare rights, we are further developing contingency plans to minimise disruption for patients after the UK exits the EU. This includes building our understanding of the systems, processes and infrastructure needed in Member States to prioritise the safety of both UK and EU patients in all scenarios.²⁶⁰

But the Department added that it was not at this stage “in a position to reveal further details of our contingency planning” as it was focussing on “securing a reciprocal deal with the EU”.²⁶¹

²⁵⁸ Department of Health and Social Care, [Government response to House of Lords European Union Committee. 13th report of session 2017-19. 'Brexit: reciprocal healthcare'](#), June 2018, p 6

²⁵⁹ Ibid, p 8

²⁶⁰ Ibid, p 10

²⁶¹ Ibid

The British Medical Association (BMA) provided the following summary of what a no deal could mean:

Should there be a failure to agree a withdrawal agreement by March 2019, access to reciprocal healthcare arrangements for UK citizens and residents within the EU, and EU citizens and residents within the UK, would end. This would lead to significant disruption to those individuals' healthcare arrangements, an increase in costs of insurance, and uncertainty regarding accessing healthcare abroad. Moreover, the NHS would face a drastic increase in demand for services, which could dramatically increase its costs and place greater pressure on doctors and clinical staff. [...]

The impact of the loss of reciprocal care on patients would be significant, especially given the number of beneficiaries that are pensioners living abroad. Evidence given to the House of Commons Health Select Committee has suggested that many of them will be unable to fund private healthcare and so will be forced to return to the UK.¹² UK citizens travelling within the EEA, and EEA citizens visiting the UK, will also need to purchase their own travel or health insurance should access to reciprocal arrangements be lost. This is a particular concern for those with disabilities or long-term conditions, as the cost of health and travel insurance for those with pre-existing conditions could be prohibitively high.²⁶²

The UK currently has bilateral reciprocal healthcare arrangements with 16 non-EEA countries.²⁶³ In the event of no deal, the UK could negotiate similar arrangements with the EU as a whole or with individual EEA Member States. However, bilateral agreements cannot be negotiated while the UK remains in the EU,²⁶⁴ which means that in the event of no deal, and before bilateral agreements have been agreed, there could be a sustained period where UK citizens do not have any access to reciprocal healthcare arrangements.

The UK has some reciprocal healthcare arrangements which pre-date EU membership (see below), but the status of these agreements if no deal is agreed remains unclear. Evidence given to the Health Select Committee noted that such agreements would not be comprehensive if relied upon as a contingency:

Of course, we have a number of agreements that predate the European Union that we could fall back on, but each of those has different terms and conditions, different eligibilities, different limits and different numbers of people who can be covered.²⁶⁵

Access to the NHS of EU nationals resident in UK

While visitors from the EU to the UK have access to the NHS governed by reciprocal healthcare arrangements, EU nationals who are 'ordinarily

²⁶² BMA, [Brexit briefing: Reciprocal healthcare between the UK and EU](#), September 2017, page 2-7

²⁶³ NHS Choices, [Non-European Economic Area \(EEA\) countries that have reciprocal healthcare agreements with the UK](#)

²⁶⁴ Health Committee, [Brexit and health and social care—people & process](#), 25 April 2016, HC 640 2016-17, para 108

²⁶⁵ *Ibid*, para 111

resident'²⁶⁶ in the UK access free NHS treatment through a different legal mechanism.

Under the *National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238*, providers of NHS healthcare in England are required to charge overseas visitors (people not classed as 'ordinarily resident' in the UK) for use of the NHS, unless they have one of the exemptions set out in the regulations.

As set out in the Government's [Guidance on implementing the overseas visitor charging regulations](#), there is a three-fold test of ordinary residence for EEA nationals:

- Is the individual lawfully in the UK?
- Is the individual here voluntarily?
- Is the individual properly settled here for the time being?

There are similar ordinary residence requirements in the Scottish, Welsh and Northern Irish equivalent regulations.

As set out above, in the event of a no-deal Brexit, the Government has stated its intention for EU nationals living in the UK to be able to apply for settled status, giving them the same access to the NHS as they have currently:

Wera Hobhouse (Bath) (LD)

...I have a very simple question. Do settled status and pre-settled status give EU citizens the same right to use the national health service as UK nationals?

The Minister for Immigration (Caroline Nokes)

Yes.²⁶⁷

Medicines supply and availability

Concerns about the potential impacts of a no-deal Brexit on medicines supply in the UK relate to how medicines (and medical devices) will be regulated and monitored for safety in future, and the impacts on medicines supply and future pharmaceutical trade.

UK imports of medicine and pharmaceutical products were worth £24.8 billion in 2016, and mostly came from the EU. UK exports of these products were worth £24.9 billion – around half of these went to EU countries. The Association for the British Pharmaceutical Industry (ABPI) has said that this reflects:

45 million packs of medicines that leave the UK every month and go to Europe, and 37 million packs of medicines that leave the continent and come to the UK.²⁶⁸

Currently, the European Medicines Agency (EMA) provides and coordinates licensing, expertise and support for medicines and medical devices throughout the EU. Marketing authorisations (medicines

²⁶⁶ Access to the NHS is based on the concept of 'ordinary residence', rather than nationality or citizenship.

²⁶⁷ [HC Deb 21 June 2018, c519](#)

²⁶⁸ BEIS Committee, [The impact of Brexit on the pharmaceutical sector](#), 9th Report of Session 2017–19, May 2018 p8

licences) may be granted centrally or through a mutual recognition process and apply across the EU or may be granted by the Member State regulator to apply in one country. The [Medicines and Healthcare products Regulatory Agency](#) (MHRA) is the UK medicines regulator. It currently works with the EMA as part of a regulatory network and contributes to its work.

The Government has said that it wants to seek an 'associate' membership of the EMA. The Secretary of State for Health and Social Care has said this means "as close as possible participation with the European Medicines Agency with observer rights". However, in the event of a no-deal Brexit, and without other arrangements in place, the UK could not continue to participate in the shared regulatory framework with the EMA. The Government has confirmed that the MHRA would take on responsibility for functions currently undertaken by the EMA and that this would require changes to the [Human Medicines Regulations 2012](#).²⁶⁹

Delays in licence applications

However, concerns have been expressed that a separate regulatory system could mean delays in applications for licences because the UK would represent a much smaller market than the EEA, and this could impact on how quickly medicines would be available.^{270,271}

For those medicines that are to be licensed and supplied in the EU, the EMA has set out that, in the event of a no-deal Brexit, there will be requirements for marketing authorisation holders and batch testing of medicines to be based in the EU from 30 March 2018.²⁷²

Medicines supply

Beyond the regulation of medicines, there are concerns about potential trade barriers and resulting delays in medicines supply that may occur in the event of no deal. Pharmaceutical companies in the UK and EU say they are stockpiling medicines in preparation for this scenario.²⁷³

In the absence of a trade agreement with the EU, under the WTO Pharmaceutical Tariff Elimination Agreement, tariffs on medicines are unlikely to increase significantly, compared with other products.²⁷⁴ However, not all medical products are included in this Agreement; pharmaceutical companies have reported that relying on WTO rules could disrupt supply chains and lead to higher costs of medicines.²⁷⁵

²⁶⁹ Department of Health and Social Care, [Guidance: How medicines, medical devices and clinical trials would be regulated if there's no Brexit deal](#), 23 August 2018

²⁷⁰ House of Lords Select Committee on Science and Technology, [Corrected oral evidence: Brexit: regulation and standards](#), January 2017 (Q7)

²⁷¹ BMA, [Brexit Briefing: Medicines and medical devices regulation](#), October 2017

²⁷² EMA, [Questions and Answers related to the United Kingdom's withdrawal from the European Union with regard to the medicinal products for human and veterinary use within the framework of the Centralised Procedure](#), 19 June 2018

²⁷³ David Crow and Adam Samson, [Drugmakers prepare to stockpile drugs in UK before Brexit](#), Financial Times, 1 August 2018

²⁷⁴ BEIS Committee, [The impact of Brexit on the pharmaceutical sector](#), Ninth Report of Session 2017–19, May 2018

²⁷⁵ BEIS Committee, [The impact of Brexit on the pharmaceutical sector](#), Ninth Report of Session 2017–19, May 2018

There are also concerns about an increase in non-tariff barriers in the event of no deal, and the potential delays this could mean for medicines supply, especially for those medicines with a short shelf life, such as medical radioisotopes.²⁷⁶

Box 3: Medical radioisotopes: Radioisotopes are used in the diagnosis and treatment of a range of conditions²⁷⁷ and are imported to the UK from (mainly EU) research reactors.²⁷⁸ Although radioisotopes can be sourced from beyond the EU, the materials often have short half-lives, meaning they can decay rapidly and cannot be stored for very long. In the UK around 700,000 nuclear medicine procedures using radioisotopes are carried out each year.²⁷⁹

Concerns have been raised that Brexit could affect the supply of radioisotopes²⁸⁰ by causing import delays²⁸¹ and causing the UK to leave the Euratom Observatory which manages supply chains in times of shortages.²⁸² A no-deal Brexit could mean that any potential customs agreement and cooperation with the Observatory which might be sought as part of a deal would not be realised.

The Government has said that the availability of radioisotopes should not be impacted by Brexit.²⁸³ For further information on the supply of nuclear material, see section 12.2.

Government preparedness

In July 2018 Secretary of State for Health and Social care Matt Hancock said the Department was preparing for range of outcomes, including a no deal scenario.²⁸⁴ Furthermore, he said that:

We are focusing on the importance of a continuous supply of medicines that have a short shelf life; some of the medicines that would be most difficult to provide in a no-deal scenario where there was difficult access through ports would need to be flown in, for instance. I hope that, even under a no-deal scenario, there will still be smooth movement in through ports, because it is not our intention to provide barriers to that, and the work will take that into account. But you can imagine that it is incredibly important for me, as Secretary of State, to ensure that people will have access to the medicines they need.²⁸⁵

He said the Department was working with industry on the stockpiling of medicines and that he was “confident that with the right amount of work we can mitigate the worst of the circumstances”.

On 23 August the Government published ‘technical notices’ relating to medicines regulation in the event of no deal:

- [How medicines, medical devices and clinical trials would be regulated if there’s no Brexit deal](#)

²⁷⁶ Dayan M, [Over the edge: a no deal Brexit and the NHS](#), Nuffield Trust comment, August 2018

²⁷⁷ European Commission, [Supply of medical radioisotopes](#), Accessed 13 August 2018

²⁷⁸ World Nuclear News, [Radioisotopes in Medicine](#), May 2017

²⁷⁹ [Supply of Medical Radioisotopes](#), POSTnote 558, July 2017

²⁸⁰ Dr Nicola Strickland, [‘RCR statement on the potential impact of leaving the Euratom treaty’](#), Royal College of Radiologists, 10 July 2017

²⁸¹ Lords Select Committee on the EU, Home Affairs Sub-Committee, [Brexatom: the health implications of leaving Euratom, Oral Evidence](#), 22 November 2017, Q3

²⁸² Ibid Q4

²⁸³ HC Deb 27 June 2017 [Vol 626](#)

²⁸⁴ Health and Social Care Committee, [Oral evidence: Work of the Secretary of State, HC 523](#) (Q209), 24 July 2018

²⁸⁵ Ibid, Q308

- [Batch testing medicines if there's no Brexit deal](#)
- [Submitting regulatory information on medical products if there's no Brexit deal](#)

The technical notices state that in the event of no deal:

- existing EU law on medicines would be converted into UK law under the EUW Act;
- the UK will recognise medical devices that are CE marked and approved for the EU market and will comply with new EU medical devices regulations due to come into force in 2020 and 2022;
- current marketing authorisations granted through the centrally authorised product route will be converted to UK marketing authorisations, but after 29 March 2019, all new applications for a marketing authorisation in the UK would have to be made to the MHRA;
- batch testing of imported medicines from the EEA and named third countries will continue to be recognised in the UK;
- marketing authorisation holders and those responsible for pharmacovigilance (Qualified Persons) should be established in the UK by the end of 2020; and
- new systems for the submission and processing of regulatory information are being developed for March 2019.

The Government said that the MHRA would:

...take a streamlined approach to approving UKMA applications that places no greater burden on industry and ensures that patients can access new and innovative medicines at the same time as EU patients.²⁸⁶

On 23 August 2018, alongside the publication of the technical notices, Mr Hancock wrote to hospitals, GPs, pharmacies and pharmaceutical companies, setting out what action would need to be taken to ensure medicines supply to patients continues in the event of a no-deal Brexit. The letter requested that pharmaceutical companies ensure that by 29 March 2019 they have an additional six weeks' supply of medicines on top of the normal buffer stock held and that for products with short shelf lives, suppliers should make plans to air freight these to avoid border delays.²⁸⁷

The letter informs pharmacists and hospitals that they should not stockpile medicines and asks clinicians to advise patients about Government plans to maintain medicines supply - and that they too should not stockpile medicines.²⁸⁸

²⁸⁶ DHSC, [Guidance: How medicines, medical devices and clinical trials would be regulated if there's no Brexit deal](#), 23 August 2018

²⁸⁷ DHSC, [Letter from Secretary of State for Health and Social Care to pharmaceutical companies](#), 23 August 2018

²⁸⁸ DHSC, [Letter to the health and care sector: preparations for a potential no-deal Brexit](#), 23 August 2018

The Department of Health and Social Care (DHSC) has launched the [Medicines Supply Contingency Planning Programme](#) through which it will require pharmaceutical companies to provide information about its contingency planning for medicines supply in the event of no deal. More information on the scheme is provided on the [DHSC website](#).

The Government guidance on preparing for no deal has been welcomed by healthcare organisations²⁸⁹ and the pharmaceutical industry,²⁹⁰ but there have been calls for more detailed information to be made available. The Brexit Health Alliance (formed of NHS providers, medical royal colleges and other health organisations) has said the Government guidance is a first step and the NHS will want to see more detailed operational advice. It said its members would work with the Government to ensure “these issues are addressed in future guidance and that patients will continue to receive the treatment they need whatever the outcome of the negotiations”.²⁹¹

9.4 Social security

In the event of ‘no deal’, the provisions in EU law on the co-ordination of social security schemes for people between Member States²⁹² – in [Regulation 883/2004](#) and associated regulations – would cease to apply. The co-ordination rules do not harmonise social security systems across the EU, but instead support freedom of movement by, for example, providing for equal treatment in access to benefits with nationals of the host state, clarifying which state is responsible for paying benefits, allowing aggregation of insurance periods across countries, and enabling certain benefits to be ‘exported.’ A well-established system of administrative co-operation between Member States ensures the effective operation of the co-ordination rules, dispute resolution and secure data sharing.²⁹³

For some of the states covered by the co-ordination rules, the UK has bilateral, reciprocal social security agreements pre-dating the UK’s EEC entry.²⁹⁴ These agreements were superseded by the EU co-ordination rules, but remain in force for limited purposes. Should the co-ordination rules cease to apply it is possible that these bilateral agreements would become applicable again, although this is by no means certain.²⁹⁵ These bilateral agreements are, however, far more limited in scope than the

²⁸⁹ NHS Providers, [On the day briefing: UK government's preparations for a 'no deal' scenario](#), 23 August 2018

²⁹⁰ ABPI, [ABPI responds to Brexit 'no deal' planning guidance](#), 23 August 2018

²⁹¹ NHS Confederation, [Time for planning not panic, says Brexit Health Alliance after government publishes no-deal guidance](#), 23 August 2018

²⁹² The co-ordination rules apply to countries in the European Economic Area (EEA), and to Switzerland

²⁹³ For further information on social security co-ordination see section 13 of Commons Library briefing CBP-7213, [Brexit: impact across policy areas](#), 26 August 2016

²⁹⁴ EEA states with which the UK has historic bilateral social security agreements include Austria, Belgium, Croatia, Cyprus, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Slovenia, Spain, and Sweden. The UK also has a social security agreement with Switzerland.

²⁹⁵ Article 8 of EC Regulation 883/2004 provides that the co-ordination rules “shall replace” any pre-existing social security convention entered into by a Member State. It is not clear whether this means these conventions effectively cease to exist or merely remain ‘dormant’.

EU co-ordination rules; they vary widely in terms of the persons and benefits covered and they may refer to benefits which no longer exist. Administrative mechanisms would also need to be established in tandem with each of the other countries for any reciprocal arrangements to work.

The implications of having no comprehensive post-Brexit agreement to co-ordinate social security for people moving, or who have moved, between the UK and the EU27 have not as yet received much attention. Situations that could occur include, for example:

- individuals being unable to aggregate contributions paid or periods of residence in the UK and the EU27 States to satisfy the conditions for benefits;
- no clear rules about which country, if any, is responsible for paying a person's benefits where they have lived in more than one country, and no mechanism for resolving disputes; and
- posted workers – i.e. employees working in another country temporarily – finding themselves liable to pay social security contributions in both countries, instead of remaining insured only under the scheme of their home country.

In a recent report the House of Lords European Union Committee noted concerns voiced by, among others, the Association of British Orchestras, that requiring its members to pay social security contributions when working in EU27 countries could make touring too expensive. This potential problem would affect all posted workers, not just those working in the cultural sector. The Committee warns: "Failure to secure a reciprocal commitment on social security would undermine any broader agreement on migration between the UK and EU".²⁹⁶

EU nationals in the UK

As noted in section 9.1 above on primary free movement of people rights, the Government has signalled that it intends to implement the proposed 'settled status' regime for EU nationals in the UK, regardless of whether a deal is successfully concluded with the EU. Those with settled status should have full access to UK social security benefits. The position of those who, on 29 March 2019, have not been resident in the UK for five years – those with 'pre-settled status' – is less clear.

The expectation is that by exit day the UK will have incorporated into domestic legislation existing EU laws, including those relating to the co-ordination of social security. However, for social security co-ordination to operate in any meaningful sense post-exit, the EU27 would have to reciprocate by continuing to apply the EU rules and allowing the UK full access to existing administrative mechanisms.²⁹⁷

In the absence of any agreement with the EU27 on social security co-ordination, the pre-existing (and limited) bilateral social security

²⁹⁶ Lords EU Committee, [Brexit: movement of people in the cultural sector](#), HL 182 2017-19, 26 July 2018, para 58

²⁹⁷ Herwig Verschueren, 'Scenarios for Brexit and social security', *Maastricht Journal of European and Comparative Law*, 2017, Vol. 24(3), pp367-381

agreements the UK has with some states – if they remain viable and operable – would be the only fall-back.

The position on access to benefits for EU nationals coming to the UK after exit day will depend on the yet-to-be-specified future immigration regime. The Government's future relations White Paper said the UK would "seek reciprocal arrangements on the future rules around some defined elements of social security coordination".²⁹⁸ Should this not be achieved, the existing bilateral agreements – if they still apply – would provide the only continuing framework. The UK could attempt to negotiate new reciprocal social security agreements with individual states, but such negotiations could prove difficult and protracted. Until any new arrangements were in place, there would remain significant gaps in social security coverage for people moving between the EU and the UK.

UK nationals in the EU

The position on access to benefits for UK nationals in the EU27 in the event of 'no deal' is even less clear. EU States would not be obliged to enact measures to protect citizens' rights – including to social security – for UK nationals in their jurisdictions. The EU could, as Professor Steve Peers has suggested, enact a unilateral EU-wide regulation to 'ring-fence' citizens' rights, mirroring the UK's 'settled status' legislation.²⁹⁹ Failing that, individual EU27 States could amend their domestic laws to provide guarantees for UK nationals, or agree bilateral social security agreements with the UK (although it seems highly unlikely that separate agreements could be negotiated and put in place before exit day).

If no such alternative arrangements are in place, by default UK nationals in EU27 countries would become third-country nationals for the purposes of the EU social security co-ordination rules. Existing bilateral social security agreements might provide some measure of protection for UK nationals in some Member States, but for those in others the loss of social security rights would be sudden and could have serious consequences.

For UK nationals moving to EU27 States after exit day, in the absence of an EU-wide agreement the position on access to benefits would depend on the host country's immigration policy and the terms of any bilateral social security agreement it has with the UK (if these still apply).

Migrants in the UK

The NRPF Network – a "network of local authorities and partner organisations focusing on the statutory response to migrants with care needs who have no recourse to public funds (NRPF)" – notes on its [webpage about EEA Nationals](#) that at present "EEA nationals and family members of EEA nationals, who are not eligible for welfare benefits social housing, may be able to receive housing and financial assistance from social services" only "if this is necessary to prevent a breach of

²⁹⁸ [Cm 9593](#), July 2018, para 89

²⁹⁹ Steve Peers, [UK citizens in the EU after Brexit: Securing unilateral guarantees after a 'no deal' Brexit](#), EU Law Analysis blog, 3 July 2018

their human rights or their European Treaty rights” and that any such assistance is limited to:

- Families where there is a child in need (if the family are destitute then the child will be in need) [for a definition of “children in need”, see the [Library briefing paper](#) on this issue]
- A young person who was formerly looked after by a local authority
- An adult requiring care and support due to a disability, illness or mental health condition

In a no-deal scenario, the NPRF Network states that “the Government and EU have yet to reach a final agreement on the full terms that will apply to the UK when it leaves, and it is unclear how a 'no deal' situation will impact on these proposals. Arrangements have not yet been confirmed for non-EU EEA (Iceland, Liechtenstein and Norway) or Swiss nationals, but the Government has indicated it intends for them to be subject to the same process”, adding that:

The Government is currently proposing that after the UK has left the EU on 29 March 2019, there will be a transition period that ends on 31 December 2020. EU nationals and their family members living in the UK by the end of the transition period will need to take action before 30 June 2021 and apply for either settled or pre-settled (temporary) status under the EU Settlement Scheme if they wish to stay here. EU nationals and family members who arrive after 29 March 2019 and people who have already obtained a permanent residence document will also need to apply. The Government has indicated that a person who fails to apply by the end of June 2021 may have no lawful basis to remain in the UK, but it is unclear what the consequences of this will be. The EU Settlement Scheme is being piloted at the end of August and is due to be implemented by the end of the year. .

9.5 Pensions

State Pensions

The social security co-ordination rules allow periods of insurance for State Pensions purposes to be aggregated, so an individual who has worked in more than one Member States can on reaching pension age make one application to the relevant agency in the country of residence – in the UK, the [International Pension Centre](#). This agency then notifies details of the claim to all countries in which the person has been insured. Each Member State in which the person was insured then calculates its pro-rata contribution and puts that amount into payment. There is information about these rules on the Europa.EU website – see [State Pensions abroad](#).

Future arrangements will depend on the Brexit negotiations.³⁰⁰ In phase 1, subject to the caveat that nothing is agreed until everything is agreed, both sides to the negotiations committed to:

³⁰⁰ PQ 60094, 20 January 2017

- lifetime export of uprated pension;
- recognising contributions both before and after exit in the EU27 and the UK, for those covered by the Withdrawal Agreement; and
- equal treatment under the conditions set out in EU law.³⁰¹

If there is no deal, these social security co-ordination provisions would cease to apply. In their absence, individuals in a cross-border situation could potentially be covered by:

- any bilateral social security treaties already in place between the UK and the relevant Member State (if these became operable again and depending on the extent of their scope and current relevance (as discussed in section X above);
- the legislation of the relevant Member State;
- EU directives on the status of third-country nationals finding themselves in a cross-border situation, to which EU Member States would be bound.³⁰²

DExEU Permanent Secretary Philip Rycroft [told](#) the Exiting the EU Committee on 4 September that Ministers would decide when and what to advise UK citizens living in an EU27 State about the pensions situation.

Pension uprating

For people in receipt of the UK State Pension overseas, a major concern is whether it will be uprated annually.

The UK State Pension is payable overseas. However, the policy adopted by successive governments is that it is only uprated in EEA countries or where there is a reciprocal agreement requiring this.³⁰³

In the event of 'no deal', residents of some EU Member States may be covered by more limited existing reciprocal agreements, as discussed above. Beyond this, a decision whether to uprate the UK State Pension overseas is a matter for the UK Government. It could, presumably, seek to negotiate new bilateral agreements with individual Member States.

For more detail, see Library Briefing Paper SN-01457 [Frozen Overseas Pensions](#) (August 2018).

Aggregation

The UK is expected to incorporate into domestic legislation existing EU laws, including those relating to the co-ordination of social security. As noted above, however, for social security co-ordination to operate fully, the EU27 would have to reciprocate.³⁰⁴ It is possible that any existing reciprocal agreements would become applicable again on account of

³⁰¹ [Joint technical note on the comparison of EU/UK positions on citizen's rights – 28 September 2017](#), p13-14; EU-UK [Joint report](#) on the negotiations December 2017, para 4-5

³⁰² Herwig Verschueren, 'Scenarios for Brexit and social security', *Maastricht Journal of European and Comparative Law*, 2017, Vol 24 (3), pp367-381

³⁰³ [HC Deb 2 December 2010 c953W](#); [HC Deb. 7 July 2011 c132W](#)

³⁰⁴ Herwig Verschueren, 'Scenarios for Brexit and social security', *Maastricht Journal of European and Comparative Law*, 2017, Vol 24 (3), pp367-381

bilateral agreements. Beyond that, it will presumably depend on the legislation of the country in question.

The same might be relevant to a further aspect of the current arrangements – whereby years of insurance or residence in another Member State or EEA country can count towards satisfying conditions of entitlement (for example, the minimum qualifying period for the new State Pension).³⁰⁵ While the UK could unilaterally offer to treat those years of 'residence' as contributing to entitlement conditions, it is not clear that it would do so unless UK nationals in the EU27 are likely to benefit from similar provisions.

Private pensions

UK workplace pensions operate on a national basis subject to UK legislation.³⁰⁶ However, they invest internationally and a solution to the financial services passporting and derivatives issues discussed in section 6.2 is therefore important.

Another issue that will need to be addressed is ensuring that the small number of schemes operating across borders (in particular, between the UK and Ireland) are able to continue to do so.

These issues are discussed in more detail in Library Briefing Paper CBP-07629 [Brexit – implications for private pensions](#) (August 2018).

³⁰⁵ [Pensions Act 2014](#), s2; [State Pension Regulations 2015 \(SI 2015/173\)](#), reg 13 ([Explanatory Notes, para 7.23](#)); DMG para [74162](#)

³⁰⁶ See Library Briefing Paper CBP-07629 [Brexit – implications for private pensions](#), August 2018

10. Food and Farming

The National Farming Union (NFU) has said that a no-deal outcome is the worst possible one for the farming industry.³⁰⁷ The Food and Drink Federation has called 'no-deal' a 'grisly prospect'.³⁰⁸

In a 'no deal' scenario for agriculture, trading arrangements - i.e. tariffs and standards - are the main issue. Without an alternative arrangement, the EU will treat the UK as a third country and a range of tariffs, checks, registrations, certifications etc will start to apply for the first time for a range of commodities, food and feed, and plant and animal-based products. Agriculture is also impacted by the 'no deal' effects of other policies such as immigration (for seasonal, agri-food workers and vets).

The UK will leave the farm support and rural development funding systems of the EU Common Agricultural Policy (CAP) in any Brexit scenario, so preparations for alternative domestic arrangements are already underway. This is because the CAP is enshrined in EU Treaty arrangements for Member States. Consultations on new domestic agriculture policy are either in train or complete across the UK legislatures and the UK Government has guaranteed current funding levels until 2022.

The UK Government issued the following no-deal technical notices on 23 August 2018:

- [Farm payments if there's no Brexit deal](#)
- [Receiving rural development funding if there's no Brexit deal](#)
- [Producing and processing organic food if there's no Brexit deal](#)
- [Developing Genetically Modified Organisms \(GMOs\) if there's no Brexit deal](#)

In view of the current regulatory regimes, which are largely EU based, it is likely that future technical notices will also need to cover areas such as food safety and food labelling, imports of food and feed, plants and seeds, veterinary medicines, fertilisers and pesticides.

For example, the Food Standards Agency (FSA) has highlighted that Brexit will create gaps in the food safety regime for the UK. Some of the institutions which currently carry out regulatory activities Europe-wide will no longer carry out those activities on behalf of the UK and some systems used for administering the regulatory regime will not be available.³⁰⁹

³⁰⁷ NFU Online, [Technical notice serves warning over continuity of British food exports](#), 23 August 2018

³⁰⁸ FDF, [FDF response to Government's no deal technical notices](#), 23 August 2018

³⁰⁹ Food Standards Agency, [An update on the FSA's preparations for the UK's Exit from the EU](#), FSA Board Meeting, 20 June 2018

10.1 Tariffs and standards

'No deal' could mean applying WTO tariffs where there currently are none for EU trade, as well as WTO rules for plant and animal health checks (in trade terms these are known as sanitary and phytosanitary measures).³¹⁰ This could have a significant impact on the farming industry and consumers in terms of changing the balance of import and export markets and consumer choice, the speed of supply chains and prices.

Tariffs are usually higher for agricultural products than for other goods and services. Perishable goods such as milk are also more sensitive to delays at borders, as are live animals. With no withdrawal agreement in place, there could be different regulatory regimes for the UK as a third country relating to pesticide regulation, GM food and plant controls (such as seed certification requirements).³¹¹

However, the UK Government has said it will be establishing its own Geographical Indication (GI) scheme to protect regionally protected goods such as Scotch Whisky, Welsh Lamb etc. This will be consistent with the WTO Agreement of Trade-Related Aspects of Intellectual Property (TRIPs).³¹²

This new UK framework will go beyond the requirements of TRIPs, and will provide a clear and simple set of rules on GIs, and continuous protection for UK GIs in the UK. The scheme will be open to new applications, from both UK and non-UK applicants, from the day it enters into force.

10.2 Food supply

Introducing the technical notices, Dominic Raab said that for food, the Government had set out "practical measures to mitigate any risks of disruption to supply". He said this would be achieved through "the recognition of EU food standards, our pursuit of equivalency arrangements on food regulation with the EU and indeed with non-EU countries, and through our support for UK farmers in terms of financial funding schemes".³¹³

He emphasised that the UK's food and drink supply is diverse, with the UK supplying half of the food that we consume, with 30% imported from the EU and 20% from the rest of the world. He confirmed (contrary to media reports) that there were no plans to deploy the army to maintain food supplies and played down the likelihood of the EU not offering some kind of mutual recognition in this area in a no-deal scenario: "Who is credibly suggesting, in a no deal scenario, that the EU would not want to continue to sell food to UK consumers?"

³¹⁰ The WTO's [Agreement on the Application of Sanitary and Phytosanitary Measures](#) (SPS measures) sets out the basic rules for food safety and animal and plant health standards

³¹¹ See e.g. [Seed breeders warn of major Brexit impact](#), *Fresh Produce Journal*, 9 June 2018

³¹² Cm 9593, *The Future relationship between the UK and the EU*, July 2018

³¹³ GOV.UK, [Secretary of State Dominic Raab's speech on no deal planning](#), 23 August 2018

Potential short-term disruption to food supplies immediately after a no-deal Brexit has been given regular media coverage and Dominic Raab was asked by the Exiting the EU Committee (July 2018) whether the Government was considering stockpiling food in preparation for this. He responded:

Again, we will set this out in the technical notices, but it would be wrong to describe it as the Government doing the stockpiling. Of course, the idea that we only get food imports into this country from one continent is not appropriate, but we will look at this issue in the round and make sure that there is adequate food supply as well as all these other things.³¹⁴

The retail sector has expressed concerns about the practicalities of stockpiling food. The British Retail Consortium said:

Stockpiling of food is not a practical response to a no-deal on Brexit and industry has not been approached by Government to begin planning for this. Retailers do not have the facilities to house stockpiled goods and in the case of fresh produce, it is simply not possible to do so. Our food supply chains are extremely fragile and this is yet further demonstration of the need for an agreement on the backstop to ensure frictionless trade is maintained after the 29 March 2019.³¹⁵

The Food and Drink Federation (FDF) has said that the technical notices published so far confirming anticipated burdens on importers and exporters would “frighten many SME food businesses”. The FDF also pointed out that there was “no substantive information” on mitigating the effect of no-deal on the island of Ireland, where the effects would be most significant.³¹⁶

10.3 Organic Food

The technical notice on organic food maintains that UK businesses could experience delays of up to nine months after a no-deal Brexit because UK organic control bodies offering the necessary certification would need to be approved for operation in the UK by the EU. The UK is hoping to find ways to speed up this process.³¹⁷

The NFU claims this would in effect be a trade embargo on UK organic products and could have wider, disruptive implications for the future trade of all agri-food products if all of them were subjected to the same problems with approvals and certification. The FDF has pointed out that similar issues would apply for other food currently displaying EU marks or logos.³¹⁸

³¹⁴ Exiting the EU Committee, [Oral evidence: The progress of the UK's negotiations on EU withdrawal](#), HC 372, 24 July 2018, Q2406

³¹⁵ British Retail Consortium media statement, [Stockpiling of food is not a practical response to a no-deal on Brexit](#), 26 July 2018

³¹⁶ FDF, [FDF response to Government's no deal technical notices](#), 23 August 2018

³¹⁷ Defra, [Producing and processing organic food if there's no Brexit deal](#), 23 August 2018

³¹⁸ Ibid

Farmers Weekly reports that although no official data is available, it is estimated that about 10% of the UK's organic output (worth some 2.2bn in 2017) is exported, predominantly to EU countries.³¹⁹

The Government has said it anticipates "continuing to accept EU organic products in a 'no deal' scenario, but this will be at the UK's discretion" and it expects to negotiate an equivalence arrangement because the UK will be retaining existing EU requirements for organic food.

The technical notice also states that the UK will continue to require certification and traceability of organic food and feed products, but a new UK-owned imports traceability system would replace the current [EU Trade Control and Expert System](#) (TRACES) system to ensure the traceability of organic food and feed. TRACES tracks the entire trade and certification process for animals, food, feed and plants. The FDF doubts the UK Government can replace it with a new, comprehensive, functional UK alternative IT system in time for exit day.³²⁰

10.4 Genetically Modified Organisms

Applications for new Genetically Modified Organisms (GMOs) are managed at EU level and include an assessment of the application by the European Food Safety Authority (EFSA) as well as by the national authorities in the EU Member States. The Commission can propose a GMO be authorised only when there is a favourable risk assessment by EFSA. Member States vote in a regulatory committee on the authorisation decision proposed by the Commission.

The Government's technical notice for 'no deal' on GMOs states that there will be "no significant implications for UK stakeholders".

Regulatory decisions on proposed GM trials would continue as usual on a devolved basis and the UK would apply the same risk assessment process for regulatory decisions on marketing GMOs as currently takes place at EU level (although it has not yet been decided whether this would be on a joint-UK basis or separately across the devolved legislatures).

As the UK would be treated as a third country, UK businesses would only be able to export GMO products to the EU if the GMO had EU marketing approval. This would be the same for the EU with UK marketing approval.

10.5 Farm support

CAP support is made up of direct payments under the [Basic Payment Scheme](#) (Pillar I) and payments for agri-environment measures, and grants for rural development projects which contribute to wider rural development objectives (Pillar II) under the Rural Development Programmes for each part of the UK.

³¹⁹ [No deal Brexit could wipe out British Organic Farming](#), *Farmers Weekly*, 23 August 2018

³²⁰ *Ibid*

Currently CAP support makes up around 50-60% of farm incomes in England. In other parts of the UK it is a larger proportion, mainly because there is more land which has more difficult farming conditions, e.g. hill farming.³²¹

In terms of overall agricultural policy and future farm support, the UK is already preparing farm support payment systems outside the CAP, whatever the Brexit scenario. This is because only EU Member States can participate in the CAP and its payment schemes.

The technical notices on farm payments and rural development funding confirm previous statements.

Defra's Agriculture Command Paper, [Health and Harmony](#) (the precursor to an Agriculture Bill), sets out proposals for managing a transition period from 2019 to 2022 and a new scheme of farm support beyond. The devolved legislatures have also set out their proposals.

The UK Government has pledged to maintain the same cash funds as currently for farm support under the CAP until the end of the Parliament (assumed to be 2022).³²² This is for all of the UK and across all aspects of current CAP funding, i.e. Pillars I and II. Further details about current CAP funding are provided in Commons Library briefing [Brexit: Future Agriculture Policy](#) (January 2018), which is being updated.

Farmers that graze livestock are known to be the most dependent on farm subsidies and vulnerable to changes in the farm support system – in particular those grazing sheep in remote parts of the UK. The UK pig and poultry sectors have the least support but have some of the highest farm incomes.³²³

10.6 Pesticides

The UK currently works within an EU regulatory system of pesticide approval. Active ingredients are authorised at EU level for use across the EU but Member States authorise the specific products that make use of these ingredients and set conditions for their use. The competent authority for doing this in the UK is the Chemicals Regulation Directorate (CRD) in the Health and Safety Executive.

The Government is already planning for the regulatory capacity needed to implement the regulation of plant protection products in the UK "building on the existing capacity in the Health and Safety Executive".³²⁴ The Government has also said it is "considering future arrangements for the regulation of pesticides" as part of the preparation for EU exit and "remains of the view that decision on the use of pesticides should be based on careful scientific assessment of the risks".³²⁵

³²¹ [Northern Irish agriculture subsidies to fall after Brexit report warns](#), *The Irish News*, 16 January 2018

³²² GOV.UK [The Unfrozen Moment – Delivering a Green Brexit](#), 21 July 2017

³²³ See data such as Defra, [Farm Business Income](#), February 2018

³²⁴ HC [PO 163617](#) 18 July 2018

³²⁵ [PO 1510 4 July 2017](#)

10.7 Potential sector impacts of no-deal

A 2016 [analysis commissioned by the NFU](#) looking at a range of potential Brexit trade scenarios (including trading on WTO rules) and farm support levels found that for most sectors the biggest driver of UK farm income changes was the level of public support payments available. The loss of these support payments offset positive price impacts in all of the potential Brexit trading scenarios examined. Various more recent sector reports are available at <https://ahdb.org.uk/brexit/>.

Food and drink

The potential impacts of a no-deal scenario vary widely by commodity and sector of the food chain. The Federation of Wholesale Distributors has cautioned that without a trade agreement, the food and drink wholesale distribution sector will face upward pressure on their suppliers' prices.³²⁶

Dairy

Dairy UK has said the worst Brexit outcome would be for trade with the EU to be based on WTO rules alone; this is because the tariffs for dairy products in the EU's WTO MFN tariff schedule are "prohibitively high", in order to prevent the import of dairy products into the EU. Working to the WTO schedule in the absence of an agreement would make EU dairy imports into the UK much more expensive, which would impact on UK wholesale prices.³²⁷

Lamb and beef

[Scenario modelling](#) by the Agriculture and Horticulture Development Board (AHDB),³²⁸ and the [NFU](#),³²⁹ have shown the lamb and beef sectors to be potentially two of the most vulnerable UK sectors post-Brexit overall. In particular, the sectors' prospects suffer if there is no comprehensive trade deal with the EU that maintains similar tariffs to now, and if subsidies are reduced or removed.

³²⁶ FWD, [Brexit: Current issues](#) [as viewed on 26 July 2018]

³²⁷ Dairy UK, [The White Paper](#), October 2017, p7

³²⁸ NFU online, [NFU and AHDB team up for Brexit Roadshows](#), 25 October 2017

³²⁹ NFU Online, [British Agriculture: The implications of a UK Exit from the EU – Summary of a study by the LEI Wageningen UR for the NFU of England and Wales](#), April 2016

11. Fisheries

After Brexit the UK will no longer be part of the [EU Common Fisheries Policy \(CFP\)](#). It will become an [independent coastal state](#) and be fully responsible for managing fisheries in the UK's Exclusive Economic Zone (EEZ) of 200 miles. This will include setting total allowable catches (TACs), distributing quotas and determining who has access to fisheries.³³⁰ Access for EU vessels to UK waters and vice versa is likely to be part of any agreement reached with the EU, as part of a future relationship.

The UK will continue to be bound by the requirements of the UN Convention on the Law of the Sea ([UNCLOS](#)) and how they relate to the management of fisheries in any Brexit outcome. UNCLOS requires coastal States to give other States access to the surplus of the allowable catch in its EEZ and emphasises the need to minimise economic dislocation in States whose nationals have habitually fished in the zone. It also provides an obligation to co-operate with other coastal states on the management of shared stocks or stocks of associated species.³³¹

The Government's [Fisheries White Paper](#) *Sustainable fisheries for future generations*, published in July 2018, set out the Government's intention to continue to co-operate closely with the EU and other coastal states on the sustainable management of fish stocks that cross borders, and states that "any decisions about giving access to our waters for vessels from the EU, or any other coastal states including Norway, will then be a matter for negotiation".³³²

Setting the system for quota distribution to individual fishing vessels is already the responsibility of Member States and therefore largely unaffected by any Brexit agreement. However, the White Paper makes clear that the Government is considering some changes to how fishing effort is set post-Brexit, particularly for smaller and inshore fishing vessels.³³³

For further information of the UK's current approach to fisheries management within the context of the Common Fisheries Policy please see the POST note on [UK Fisheries Management](#).

11.1 Priorities for fisheries

The fisheries sector is very diverse in the UK, with both a significant inshore and offshore fleet. There are also differences in the size and type fishing vessels across the devolved administrations.³³⁴ Both EU quota species and non-quota species are important for different parts of

³³⁰ Article 61(1) of the [UN Convention on the Law of the Sea \(UNCLOS\)](#) states that "[t]he coastal State shall determine the allowable catch of the living resources in its exclusive economic zone".

³³¹ [UN Convention on the Law of the Sea \(UNCLOS\)](#)

³³² Defra, [Fisheries White Paper](#) *Sustainable fisheries for future generations*, published July 2018

³³³ Defra, [Fisheries White Paper](#), 4 July 2018

³³⁴ MMO, [UK Sea Fisheries Statistics 2016](#), 28 September 2017

the sector.³³⁵ Non-quota species do not fall under the CFP and include most shellfish, which is often high value and exported from the UK. The UK also has significant processing and aquaculture industries. This results in a diversity of views on priorities for the sector, as was noted in the White Paper:

A full range of views have been expressed across a very wide range of issues and there is no consensus. Different sectors within the fishing industry (catching, processing, and trading) have different priorities. Within each of those sectors, there is a range of views.³³⁶

The House of Lords Committee on the European Union 2016 report, [Brexit: Fisheries](#), set out some of the potential concerns and priorities for fisheries going into the Brexit negotiation. The report recognised that whilst the fishing industry represents “a very small part of the UK’s GDP” it is of great importance to many coastal communities and that opportunities exist for the UK in leaving the CFP. It also noted that the majority of fish caught in the UK are exported to the EU and that the UK currently imports most of the fish it consumes.

The report highlighted concerns about the potential impact on the fisheries industry of a lack of agreement during the Brexit negotiations on access, quotas and trade. The conclusions on access and quota included the following:

20. Unilateral restriction on access to fishing in the UK EEZ would almost certainly lead to reciprocal restrictions being placed on UK vessels fishing in the EU EEZ. This would also have a profound effect both on the fishing industry in the EU and on the UK fleet that relies on fishing outside the UK EEZ. Some form of mutual access arrangements must therefore be negotiated.

21. The historic reluctance of Member States to renegotiate the relative stability key suggests that negotiating new quota allocations after Brexit will be difficult. Such difficulty will be accentuated if these negotiations overlap with the wider negotiations on EU withdrawal. The Government could use access to fishing within the UK EEZ as a lever for achieving a better allocation of quotas but must also bear in mind that co-operation will be crucial for the long-term sustainability of stocks.

22. As an independent coastal state the UK will in principle be able to ‘walk away’ from negotiations with other coastal states if the compromises reached on TACs or quota shares are not aligned to UK interests. Walking away would, by leading to unilateral management of shared stocks, risk undermining the sustainability of fish stocks. It would also invite retaliation in other areas, including trade. Consequently, walking away should be a last resort.³³⁷

And on fisheries and trade:

23. Trade in fish and seafood is essential to the wider seafood industry, which relies heavily on importing raw goods at reduced or zero tariffs for domestic consumption, and on exporting domestic catches and production. Any disruptions to the current

³³⁵ MMO, [UK Sea Fisheries Statistics 2016](#), 28 September 2017

³³⁶ Defra, [Fisheries White Paper: Sustainable fisheries for future generations](#), July 2018

³³⁷ Lords EU Committee, [Brexit: Fisheries](#), December 2016

trading patterns could have profound effects on both the catching and processing sectors.

24. Trade with the EU in fish products will be a key factor to the future success of the UK fishing industry and fish processors. We therefore urge that the fish sector should be included in the Government's consideration of priorities for a future trading relationship with the EU.³³⁸

Fisheries Minister George Eustice emphasised to the Environment, Food and Rural Affairs (EFRA) Committee on 5 September that the Government's position on fisheries and trade should be dealt with as separate issues with annual quota negotiations:

Our [position] is crystal clear [...]. There is a negotiation to be had on fisheries but it is entirely separate to the negotiations on trade. Fisheries is a dynamic environment. You need to have annual discussions and negotiations on the state of stocks, state of science and where those stocks are so it will always be a separate negotiation in our view.³³⁹

11.2 'No deal' scenarios

A no-deal Brexit, in which there was no transitional agreement on fisheries up to the end of 2020, would mean that the UK would become an independent coastal state from 30 March 2019, taking over responsibility for its EEZ. The UK would no longer be bound by the Common Fisheries Policy and could deny access to EU Member States' vessels. Likewise, UK vessels which currently fish in other Member States' waters could be denied access by the EU, although under international legislation ([UNCLOS](#)) there is an emphasis on the need for States to minimise economic dislocation to other States whose nationals have habitually fished in a zone.

In the event of no deal, the Government would have to legislate to replace a number of [EU regulations](#) on fisheries under *the EU Withdrawal Act 2018* by March 2019. In addition, the Government is also planning to introduce a wider Fisheries Bill, by the end of 2018, which will provide powers to amend any regulations.³⁴⁰

Quotas and access to fishing grounds

In the event of a no deal, should the Government decide to introduce any immediate changes to access to fisheries, the impacts for the different parts of the fishing industry would depend what changes are made. As yet, there has been no indication from the Government if any changes would be made immediately, or rather whether the current quota allocations and access arrangements would be maintained in the first instance. The position may be clarified when the Government publishes the technical notice on fisheries. However, [UK in a Changing Europe](#) noted in its briefing [Cost of a No Deal Revisited](#) that, unlike in other areas, maintaining the current approach could be difficult for the Government:

³³⁸ Lords EU Committee, [Brexit: Fisheries](#), December 2016

³³⁹ Oral evidence at <https://parliamentlive.tv/Event/Index/6aa99bfb-d1aa-4dd3-808d-317c863683b9>

³⁴⁰ EFRA Select Committee [Evidence Session](#), 17 July 2018, Fisheries, Q385

The government's mitigation strategy in key policy areas has been to manage disruption through unilaterally retaining the status quo. However, this approach seems unsustainable in the case of fish. Maintaining current levels of EU access to UK waters would be politically problematic in the event of no deal; the pressure on the government to reclaim control of UK waters would be substantial.³⁴¹

After Brexit the UK Government will have to reach agreement on a common framework for fisheries with the devolved administrations. In the case of a no deal scenario UK in Changing Europe notes that this will have to be "resolved as a matter of urgency".³⁴² In the longer term, as set out in the [White Paper](#), the Government plans to maintain the system for the existing quota while exploring new ways to allocate any additional fishing opportunities that arise as a result of leaving the CFP.

TACs are agreed on a yearly basis at the EU [Agriculture and Fisheries Council](#) meeting every December for the following calendar year, starting in January. The implications of the UK leaving the CFP part way through the year on the 2019 TACs agreements are unclear, as is how agreements with non-EU countries on shared stocks would be managed by all parties for the remainder of 2019.

In 2017, UK exports in fish and related products to the EU were worth £1.3 billion and comprised 70% of all UK fish exports from the UK by value. Fish imports from the EU were worth £1.1 billion (34% of all fish imports to the UK by value).³⁴³

The impact of a no deal Brexit on the fisheries industry's ability to export and trade are likely to be felt across the sector. With no agreement, as in other areas, trade in fisheries products would default to WTO tariffs. Generally, tariffs are higher on the most processed fish products. Defra set out, in evidence to the House of Lords EU Select Committee in 2016, examples of the level of tariffs that the EU currently applies to Most Favoured Nations under WTO rules:

The EU's MFN tariffs on fisheries products range from 0% (e.g. on imports of fresh eels) to up to 25% (e.g. on fillets on processed mackerel). Generally, tariffs are higher on highly processed products compared to lightly or unprocessed products – for example, the EU's MFN tariff on unprocessed salmon is 2%, while the tariff on prepared salmon is 5.5%. The EU's MFN tariff for the UK's five products lines with the largest exports to the EU are shown below, with their HS product code:

- Fresh, whole Atlantic Salmon, exports to the EU worth £168m in 2014 (HS 03021400): 2%
- Live, fresh or chilled scallops, exports worth £62m in 2014 (HS 03072100): 8%
- Frozen unsmoked Norway Lobsters (Nephrops), exports worth £56m in 2014 (HS 03061590): 12%

³⁴¹ UK in a Changing Europe, [Cost of a No Deal Revisited](#), 3 September

³⁴² Ibid

³⁴³ [UK Trade Info database](#), downloaded in April 2018, using product code SITC 03 – 'Fish, crustaceans, molluscs & aq. inverts & preps thereof'

- Not frozen and unsmoked Norway Lobsters (Nephrops), exports worth £45m in 2014 (HS 03061590): 12%
- Frozen whole mackerel, exports worth £44m worth £44m in 2014 (HS 03035410): 20%.³⁴⁴

In its evidence, Defra also highlighted the EU would also face tariffs on fish exports to the UK and that “such an arrangement is unlikely to be attractive to the EU”.³⁴⁵

In addition to tariffs, fisheries products, as all perishable products, could be impacted by any increased delays at borders resulting from greater custom controls. Box 1 below sets out concerns expressed by the UK shellfish sector on the impacts of a no deal scenario.

Box 4: Shellfish Sector

The shellfish sector does not fall under the CFP quota system, other than for Norway lobster and northern prawn in certain areas, and therefore fishing opportunities would be unlikely to change significantly as a result of the UK being outside the CFP.

However, a report commissioned by Shellfish Association, NFFO and SFF, published in July 2018 and [reported by Fishing News](#), highlighted the impact of a no-deal on an industry that relies on “smooth unimpeded trade”:

Businesses throughout the shellfish supply chain in the UK and in the EU are reliant on smooth, unimpeded trade. We are dependent on the European market, but likewise there is heavy dependence on our products on the continent. We have undertaken this study to identify the issues to ensure that, as far as possible, no part of our industry will be disadvantaged. The study makes clear that both in terms of the tariff regime but also non-tariff barriers, there is a great deal at stake.³⁴⁶

The article goes on to highlight the conclusion that “the possibility of replacing EU markets with alternative high-value markets is challenged not only by the difficulty of reproducing such traditions through marketing, but also by the global production and trade of most shellfish types” The article refers to an estimated cost of EU tariffs to the sector of £41m per year, in the event of no deal.

EU Regulations

The EU Commission published a [preparedness notice to stakeholders on Fisheries and Aquaculture](#) in April 2018, setting out how UK withdrawal would impact both the UK and EU sectors in the absence of any kind of withdrawal agreement. It sets out that under [Regulation \(EU\) 2017/2403](#) on the sustainable management of external fishing fleets, EU flagged vessels would need to obtain authorisation from both the UK and EU to fish in UK waters, and that UK vessels would have to obtain EU authorisation to fish in EU waters.

With regards to landings, as the third country the UK would only be able to land or transfer fish at [designated EU ports](#) as set out in [Regulation 1005/2008](#). The Regulation also requires third country vessels arriving at EU ports are inspected to ensure they comply with requirements on illegal, unreported and unregulated fishing (IUU). In

³⁴⁴ Lords EU Committee, [Brexit: Fisheries](#), December 2016, [Defra written evidence](#)

³⁴⁵ Ibid

³⁴⁶ Fishing News, [Brexit shellfish threat: No deal Brexit shellfish warning](#), 30 July 2018

addition, under the Regulations the UK would be required to send a flag notification to the EU to be able to export fish products to the EU:

In order to export fishery products caught by third country flagged fishing vessels to the EU, the Commission has to have received a notification from the flag State. As of the withdrawal date, this applies to the United Kingdom.³⁴⁷

UK exports to the EU, together with EU exports to the UK, would also require to be accompanied by a catch certification under the regulations from the relevant competent authority:

The catch certificate to be validated by the United Kingdom must certify that the catches concerned have been made in accordance with applicable laws, regulations and international conservation and management measures. The catch certificate must have been validated by the United Kingdom competent authority.³⁴⁸

Certification of organic aquaculture products

As set out in the [Commission's notice](#), EU regulations require organic aquaculture products sold in its markets to be certified as such and that "a no-deal scenario would make UK issued certificates invalid".

As set out by the Government in its preparedness note [Producing and processing organic food if there's no Brexit deal](#), businesses could experience delays of up to 9 months after a no deal Brexit because UK organic control bodies offering the necessary certification for export to the EU would need to seek approval by the EU. The Government has stated it is hoping to find ways to speed this process up.³⁴⁹

Funding for fishing communities

The EU provides funding for fishing communities through the [European Marine and Fisheries Fund](#), which is part of the CFP, and runs to 2020. The UK has an allocation of [€243m](#) for the period 2014-2020. The EMFF falls under the 2014-20 Multiannual Financial Framework allocation for structural and investment funds and as the Government made clear in the notice on [The government's guarantee for EU-funded programmes if there's no Brexit deal](#), it has guaranteed its funding until 2020.

Longer term impacts

The [New Economics Foundation](#) published a report on the impact of various Brexit scenarios on fisheries, [Not in the same Boat](#) in November 2017. In a modelled no deal scenario, where there was agreement with the EU on shared fish stocks which increased UK share of stock, WTO tariffs were applied on trade and EU vessels were excluded from UK waters, there was an overall increase in catch and profitability for the sector. However, this was not evenly distributed, with the benefit mainly accruing to UK flagged vessels, fishing offshore, that fish quota species that currently fall under the CFP:

³⁴⁷ EU Commission, [Preparedness notice to stakeholders on Fisheries and Aquaculture](#), 9 April 2018

³⁴⁸ EU Commission, *ibid*

³⁴⁹ Defra, [Producing and processing organic food if there's no Brexit deal](#), 23 August 2018

This divide in quota ownership is one of the contributing factors to a sharp divide in current economic performance, with the large-scale fleet recording profit margins of 19% and the small-scale fleet operating at a profit margin of 0%. As the gains from quota increases accrue to those who hold the quota rights, these gains further entrench the 'haves and have nots' of UK fisheries. Small-scale vessels also see little benefit from exclusive access out to 200 nautical miles, as they fish exclusively in inshore waters.³⁵⁰

It should be noted that the study did not include in its no deal model any new obstacles to trade with the EU, although it did highlight the potential negative of impact of these for fisheries trade:

New obstacles to selling to the EU market – such as product standards and port inspections – are also a significant concern for the future economic performance of the UK fishing fleet. Fortunately, the UK is starting from a good position: current product standards are harmonised. However, to avoid border delays and inspections, there will need to be a continued close relationship between the EU and the UK on fisheries and the avoidance of an adversarial relationship that could ultimately force the EU to retaliate with a strong and obstructive hand.³⁵¹

A study, [Impact of hard Brexit on European fisheries](#), published by the Wageningen University and Research in April 2018, modelled the impact for the EU as a whole of loss of a mutual access to waters, together with the application of non-tariff measures (NTM) and the cost of measures required to facilitate trade. The study covered fisheries, aquaculture and fish processing. The authors concluded that a hard Brexit would lead to reduced fish prices in the UK and noted that the fish processing and aquaculture sectors could decline due to the impact of trade measures:

If the United Kingdom (UK) would completely close its marine areas, the UK, Ireland, the Netherlands and Belgium would be affected the most. For the UK aquaculture and fish processing production will decline due to trade measures. For the other three countries production of all fish producing sectors will decline. Also, because of a higher production volume of wild fisheries in the UK, the price of fish in this country will go down, resulting in lower production value and thus income of the sector. In the whole of Europe fish prices will rise. Especially Irish consumers will have to dig deep into their pockets: fish prices can increase up to 8%.³⁵²

[Fishing for Leave](#) criticised the study, particularly the conclusion that a no deal would lead to an increased UK fish production of only 15%.³⁵³ It responded by highlighting the large potential increase in available catches to UK flagged vessels that could follow if other vessels were excluded from UK waters:

³⁵⁰ NEF, [Not in the same Boat](#), November 2017, p4

³⁵¹ NEF, [Not in the same Boat](#), November 2017, p73

³⁵² Wageningen University and Research, [European consumers pay the price for fish when hard Brexit occurs](#), 24 April 2018

³⁵³ Wageningen University and Research [Impact of hard Brexit on European fisheries](#), April 2018, p11

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Currently the EU catches 675,000 tons in UK waters – 60% of the fish caught in the UK sector – whilst the UK only catches 88,000 tons or 16% of the fish taken in EU waters.³⁵⁴

The [Wageningen report](#) does refer to an increase in fisheries access having the potential to increasing fisheries landings in the UK by up to 60%.³⁵⁵ However, it concluded that for this to be realised would require no trade measures being put in place by the EU, and that this would be unlikely:

Gains of \$400m could be expected if UK gains back its fishing territories and there are no trade protectionism measures. However, under NTMs and MFN [most favoured nation] tariffs, which is the more likely scenario, most of these gains are faded away and there is a zero sum.³⁵⁶

George Eustice [told](#) the EFRA Committee on 5 September that UK fishermen would benefit from Brexit even if there is no deal: “Fisheries is one of the key areas where we would gain by having more rapid control”.

³⁵⁴ Fishing for Leave, [Flawed Fisheries Report Brings Serious Questions Over Economists Analyses](#), 27 April 2019

³⁵⁵ Wageningen University and Research [Impact of hard Brexit on European fisheries](#), April 2018, p5

³⁵⁶ *Ibid*, p11

12. Energy, the environment and transport

Although Member States remain ultimately responsible for the energy supply to their citizens and for deciding on the most appropriate energy mix, the UK and EU energy sectors are integrated through trade, EU legislation, the interconnection of energy supply and nuclear cooperation under the Treaty establishing the European Atomic Energy Community (Euratom). Since the mid- 1990s, the EU has been implementing an internal energy market (IEM) to build a more efficient energy market.³⁵⁷

Given the existing energy integration between the UK and the EU - notably through Euratom and the IEM - the UK energy sector would probably be affected by Brexit. However, the UK Government is committed to leaving Euratom and is open to leaving the IEM, and has begun preparations for leaving. As such, although the Brexit White Paper contains preferences on energy integration in future, the impact of a sudden no-deal Brexit on energy could be much the same as a Brexit deal.

Potential impacts of 'no deal' could be a less integrated relationship than the UK's position in the White Paper, and that UK preparations to leave are not ready in time for a no-deal Brexit. These are in addition to the potential impacts of Brexit in any scenario.

12.1 Internal Energy Market

In 2017 the UK imported 4.2% of its electricity demand through interconnectors to Europe and the island of Ireland, and 36.8% of its gas.³⁵⁸ The UK also imports Liquefied Natural Gas, though not through interconnectors and predominantly not from EU countries.

The IEM facilitates harmonised, tariff-free trade across these interconnectors. The Government's Brexit White Paper said the UK wanted to "explore" options for the UK's future relationship with the IEM and contains options to either leave or remain in the market.³⁵⁹ Therefore, it is possible that 'no deal' could be much the same as a deal, as the UK could stay in or leave the IEM in the event of a deal or leave in the event of no deal.

Leaving the IEM (as a result of a negotiated deal or a no-deal scenario) could have an impact on the trade of energy through interconnectors. However, it is also important to note that several countries outside the

³⁵⁷ European Parliament, Factsheets on the European Union, [Internal Energy Market](#)

³⁵⁸ Department for Business, Energy and Industrial Strategy, [Digest of UK Energy Statistics 2018](#). Tables 5.5 and G.5

³⁵⁹ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, para 144

EU currently trade energy through interconnectors with the EU, and the EU does not generally apply tariffs to these imports.³⁶⁰

National Grid told the BEIS Committee that 'no deal' posed no immediate risk to the UK's security of electricity supply, which could be supported through greater domestic generation.³⁶¹

There may be other, longer term costs of leaving the IEM (with or without a deal) without any other sort of agreement to cooperate on energy matters, such as less efficient trading, which could increase the cost of energy,³⁶² exclusion from EU solidarity principles for gas supply crises,³⁶³ more difficultly securing future interconnector projects³⁶⁴ which can help increase flexibility and resilience of grids, especially with increasing intermittent renewables, and less influence on future IEM rules.³⁶⁵ These costs would impact EU Member States that export or import energy to and from the UK, as well as the UK itself.

Ireland

Ireland's Single Electricity Market (SEM) allows free trade of power across the island, with all generators and suppliers trading through a central mandatory wholesale market.³⁶⁶ The SEM is undergoing significant change; the Integrated Single Electricity Market (I-SEM) is designed closely around the rules of the IEM.³⁶⁷ Although in the short term, a no-deal Brexit is unlikely to affect the transport of electricity, in the longer term regulatory divergence could be problematic for the continued functioning of this Irish market (including in relation to the EU ETS - see below for details). There could also be potential impacts on Ireland's gas supply as a result of Brexit, as Ireland imports much of its gas from the UK (see above for 'no deal' issues).³⁶⁸

12.2 Euratom

The European Atomic Energy Community (Euratom) provides the basis for regulation of civil nuclear activity in its Member States. The Euratom Treaty shares the EU's institutional framework but is a distinct legal entity from the EU.³⁶⁹ The Government announced in the March 2017 Article 50 letter that the UK would leave Euratom as well as the EU.³⁷⁰

³⁶⁰ Gustav Frederiksson, Alexander Roth, Simone Tagliapietra, Georg Zachmann, [The Impact of Brexit on the EU Energy System](#), 23 November 2017, p. 25

³⁶¹ BEIS Committee, [Leaving the EU: negotiation priorities for energy and climate change policy](#), Fourth Report of Session 2016–17, HC 909, 2 May 2017, p. 12

³⁶² BEIS Committee, *ibid*

³⁶³ BEIS Committee, *ibid*, p. 13

³⁶⁴ Andrew Ward, [Our friends electric: interconnection and Brexit](#), *Financial Times*, 15 January 2018

³⁶⁵ BEIS Committee, *ibid*, para. 39

³⁶⁶ [CER Factsheet on the Single Electricity Market](#), April 2011

³⁶⁷ [Information note](#), Proposed Amendment to the Electricity Regulation (Amendment) (Single Market) Act 2007

³⁶⁸ Irish Government, [Ireland and the negotiations on the UK's withdrawal from the European Union The Government's Approach](#), May 2017, p. 38

³⁶⁹ [Euratom Treaty](#), 1957

³⁷⁰ HC Deb 1 February 2017, [Vol 620](#)

The legal basis for leaving Euratom as part of the UK's exit from the EU has been a subject of ongoing debate.³⁷¹

The UK began preparations for leaving Euratom by passing the *Nuclear Safeguards Act 2018* and negotiating replacement Nuclear Cooperation Agreements for trade. But if there is no deal and no transition period there is a risk that these alternative domestic arrangements are not completed in time.

For other aspects of Euratom such as nuclear research, a no-deal Brexit could have a clearer impact, with funding arrangements affecting the continuation of existing projects (radioisotopes are discussed in section 9.3).

As to its future relationship with Euratom, the UK Government's White Paper says (para 144):

The UK will seek a close association with Euratom: a new relationship that is more comprehensive and broad than any existing agreement between Euratom and a third country.

A no-deal Brexit could mean this relationship with Euratom is not realised. It is also possible that even without a deal, the UK could still secure a separate deal with Euratom. For more general information, see the Library's briefing paper on [Euratom](#).

- **Nuclear Safeguards:** these are measures to verify that countries comply with international obligations not to use civil nuclear materials for weapons.³⁷² The *Nuclear Safeguards Act 2018* makes provision for a new domestic safeguard regime after the UK leaves Euratom. In May 2018 concern was raised in the press that the new regime would not be ready by exit day.³⁷³ However, in an appearance before the House of Lords Energy and Environment Sub-Committee in July 2018, the Office for Nuclear Regulation (who are responsible for implementing the new regime) said they were "confident" that timeframes would be met.³⁷⁴ 'No deal' should therefore have little impact on Nuclear Safeguards, if domestic provisions are in place in time. The Library Briefing on the [Nuclear Safeguard's Bill](#) has further detail.
- **Nuclear Cooperation Agreements:** the UK Government is in the process of negotiating new Nuclear Cooperation Agreements (NCAs) with relevant nuclear states to replace existing Euratom agreements. These agreements facilitate trade such as in nuclear materials including fuel. An NCA is not a legal requirement for trade in many countries (where export licences can be used), but is a requirement in Australia, Canada, Japan and the US. The UK agreed an NCA with the USA in May 2018, which will need to be approved by both countries' parliaments.³⁷⁵ The *Nuclear*

³⁷¹ Jonathan Leech and Rupert Cowan, [Brexit and Euratom: No Rush to exit?](#), *World Nuclear News*, 20 January 2017

³⁷² Office for Nuclear Regulation, [What are nuclear safeguards?](#) (accessed 13 August 2017)

³⁷³ [Red warnings for UK's post-Brexit nuclear safeguards](#), *Sky News*, 16 May 2018

³⁷⁴ Lords EU Committee, Energy and Environment Sub-Committee, [The Office for Nuclear Regulation's Brexit preparedness](#), 11 July 2018, Q1

³⁷⁵ Department for Business, Energy and Industrial Strategy, [Euratom Exit Factsheet. Nuclear Cooperation Agreement](#), June 2018

Safeguards Act 2018 included an amendment to provide that if the NCAs are not ready in time, the UK must make a request to the EU that existing Euratom NCAs be extended. In the event of a no-deal Brexit, if replacement NCAs have not been agreed and approved in time and existing arrangements with Euratom are not extended, it is possible that trade will cease with the countries concerned, and the UK may have to transfer its trading needs to a country where an NCA is not required.

- **Research:** the UK collaborates with the EU on a number of nuclear research projects, including Joint European Torus (JET), a fusion power project at Culham. The Brexit White Paper stated that the Government wanted a deal to “provide for UK association with the Euratom Research and Training Programme”.³⁷⁶ Euratom provides 87.5% of the funding for the Culham JET project and the UK Government provides the rest.³⁷⁷ The funding is secure until the end of 2018 and the Government has committed to paying its “fair share” of the funding until 2020.³⁷⁸ However, it is possible that Euratom will not renew its funding as a result of Brexit, either later this year or in the event of no deal. It is also possible that in the event of ‘no deal’ for Euratom cooperation in general, the UK and Euratom do agree to collaborate specifically on Culham, or on research more generally. Further information on research collaboration and no deal Brexit is provided in section 13)

12.3 Chemicals

What is REACH?

The main EU legislation for the regulation of chemicals in the EU is the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (No [1907/2006](#)), known as REACH.³⁷⁹ REACH requires all substances that are manufactured or imported into the EU (in quantities of more than 1 tonne) to be registered with the European Chemicals Agency (ECHA), along with safety information about the chemical and its uses.³⁸⁰ REACH also provides a framework for controlling the manufacture, sale and/or use of hazardous substances in the EU.³⁸¹

The [Health and Safety Executive](#) (HSE) is the competent authority for REACH in the UK and plays a role in enforcement and in assessing substances before ECHA registration.³⁸² Defra is the lead Government department with overall policy responsibility across the UK.

³⁷⁶ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, para 144

³⁷⁷ BEIS, [Euratom Exit Factsheet, Research and Development](#), June 2018

³⁷⁸ Gov.uk, [Government commits to continue funding its share of Europe’s flagship UK-based nuclear fusion research facility](#), 27 June 2017

³⁷⁹ There is also specific EU legislation, e.g. for certain types of chemicals. Background information can be found in Library briefing paper 7681, [Chemicals Regulation](#), 11 August 2016). This section only deals with REACH.

³⁸⁰ Health and Safety Executive, [What is REACH?](#), [accessed 7 November 2017]

³⁸¹ Health and Safety Executive, [Other REACH Processes](#), [accessed 22 August 2018]

³⁸² Ibid

The chemicals industry is the second largest exporter to the EU from the UK after the automotive industry and the second biggest manufacturing industry in the UK overall.³⁸³ Substances registered under REACH are used in many industries and in the manufacture of many products, including household and consumer goods and pharmaceuticals.

The Government's preferred approach is to seek an agreement on a form of "associate membership" of the ECHA such that substance registrations remain valid in both the EU and UK markets.³⁸⁴ The European Chemical Industry Council reported in June 2018 that members of the European Commission's Brexit taskforce had said that the ECHA was "part and parcel of the Single Market" and advised industry to prepare for "all eventualities", including 'no deal'.³⁸⁵

Many of the concerns surrounding a no-deal situation for REACH relate to the status of REACH registrations and how the UK would replicate a system such as that carried out by the ECHA.³⁸⁶ REACH registrations are complex, expensive and can take months to produce; they often involve several companies contributing information.³⁸⁷

No deal

If there is no EU agreement on some form of associate membership of the ECHA, the UK will become a third party to REACH on exit day. In this case, the ECHA has stated that UK registrations will become immediately invalid.³⁸⁸ The Government appears to have accepted this position.³⁸⁹

Two broad issues arise for a no-deal scenario:

- how UK companies will be able to export chemicals to the EU if registrations are invalid in the EU market;
- how chemicals will be regulated in the UK without REACH in place.

Exporting to the EU market

Regarding the EU market, in the absence of a deal the ECHA has said the UK will be treated like other third-party countries.³⁹⁰ This means UK companies exporting to the EU, like companies in non-EEA Member

³⁸³ Environmental Audit Committee, [Future of Chemicals Regulation after the EU Referendum](#), Eleventh Report of Session 2016-2017, para 5, 29 April 2017

³⁸⁴ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, section 1.2.3.

³⁸⁵ European Chemical Industry Council (Cefic), [Question and answer with Michel Barnier's team, the Brexit taskforce](#), 12 June 2018.

³⁸⁶ See, e.g. Lords EU, Energy and Environment Sub-Committee, [Oral evidence: The future of REACH regulations post-Brexit](#), 18 July 2018.

³⁸⁷ Lords EU Committee, Energy and Environment Sub-Committee, [Oral evidence: The future of REACH regulations post-Brexit](#), 27 June 2018, Q11.

³⁸⁸ European Chemicals Agency, [UKs withdrawal from the EU](#), [accessed 7 November 2017].

³⁸⁹ Lords EU Committee, Energy and Environment Sub-Committee, [Oral evidence: The future of REACH regulations post-Brexit](#), 18 July 2018, Q16 [Gabrielle Edwards].

³⁹⁰ See European Chemicals Agency, [Advice to companies / O&As](#), [accessed 22 August 2018]

States, will have to nominate an 'only representative' agent registered in an EU Member State to take over the responsibility of complying with REACH on their behalf.³⁹¹ This is not straightforward while the UK is a Member State, because currently REACH only allows companies in third-party countries to appoint 'only representatives'.³⁹²

Alternatively, the obligation for compliance with REACH will fall to the importer of the substance.

Industry representatives from both chemical industries and industries that use chemicals have raised concerns about the potential impact on trade if UK REACH registrations become invalid in a no-deal scenario, pointing to the complex supply chains that exist in the chemicals sector, and manufacturing sectors in general.^{393 394} The impact of 'no deal' on trade is complex; it is not simply that all exports to the EU would automatically cease. Each substance and/or company would need to be assessed on a case-by-case basis depending on its registration status.³⁹⁵

UK preparations for no deal: a 'UK REACH'

The Government has indicated that if there is no agreement on associate membership of the ECHA, the UK will set up its own system for regulating chemicals in the UK – a 'UK REACH'.

The *EUW Act 2018* provides a framework for converting EU law to the UK's post-exit statute book. However, for REACH this is not straightforward because the system relies heavily on EU institutions and Member State cooperation.³⁹⁶ Defra's Deputy Director for chemicals, pesticides and hazardous waste, Gabrielle Edwards, told the Lords EU Energy and Environment Sub-Committee in July 2018 that the Government was working on a "large and detailed" statutory instrument to deal with the "complex inoperabilities" that arise when transposing REACH into UK law. The SI is intended to address a no-deal situation and create a framework for a 'UK REACH'.³⁹⁷ The legislation is expected to be finalised in autumn 2018 and laid in Parliament "later this year".³⁹⁸

Any such UK-wide framework would require the consent of the devolved Administrations, which has not yet been formally agreed.³⁹⁹ In June 2018 the Scottish Government stated that "regulation of

³⁹¹ European Chemicals Agency, [Only Representative](#), [accessed 7 November 2017].

³⁹² See European Chemicals Agency, [Advice to companies / Q&As](#), [accessed 22 August 2018].

³⁹³ Chemical Business Association (CBA), [Growing Concerns On EU Market Access Post-Brexit](#), 27 April 2018; Chemical Industries Association (CIA), European Chemical Industries Association (Cefic), [European Chemical Industry Joint Statement on Brexit and the Future](#), November 2017.

³⁹⁴ Lords EU Committee, Energy and Environment Sub-Committee, [Oral evidence: The future of REACH regulations post-Brexit](#), 27 June 2018 Q9.

³⁹⁵ *Ibid.*, Q9 [Silvia Segna]

³⁹⁶ For background, see: Environmental Audit Committee, [Future of Chemicals Regulation after the EU Referendum](#), HC 912, 2016-17, para 4, 29 April 2017.

³⁹⁷ Lords EU Committee, Energy and Environment Sub-Committee, [Oral evidence: The future of REACH regulations post-Brexit](#), 18 July 2018, Q14 [Gabrielle Edwards]

³⁹⁸ *Ibid.*

³⁹⁹ *Ibid.*, Q24 [Dr Thérèse Coffey MP]

chemicals is an area where the adoption of a UK-wide approach, within devolved responsibilities would be desirable".⁴⁰⁰

Two of the main challenges to setting up a UK REACH include:

- establishing a regulatory authority in the UK to perform the functions currently carried out by the ECHA; and
- setting up a UK database of registered substances, in effect replicating the ECHA system.

A UK regulatory authority: in July 2018 Defra Parliamentary Under-Secretary Dr Thérèse Coffey told the Lords EU Energy and Environment Sub-Committee that the Government had not decided which body would act as the authority for a UK REACH. Defra official Gabrielle Edwards referred to "extending the role" of the HSE and the Environment Agency.⁴⁰¹

A UK database of registered substances: Dr Thérèse Coffey, told the Lords EU Energy and Environment Sub-Committee in July 2018 that the Department was working on building an IT system to support a database.⁴⁰² However, it remains unclear how the UK will populate the database with information or what the process for registering in the UK would be. Dr Thérèse Coffey told the Lords Sub-Committee that the Government had not yet made a policy decision about whether to accept existing ECHA registrations as valid without the accompanying data.⁴⁰³ Defra's Gabrielle Edwards went on to explain to the Committee that in a no-deal scenario, the Government expects that it would have to ask companies to resubmit registration information to a UK authority. However, as pointed out in the session, some companies may not have access to all the information they would need to do this:

If we are in a no-deal scenario, our expectation is that we would need to ask companies to resubmit data to the UK authority. Some of them will have ready access to that, because they own the data; for some of them, as the Minister mentioned, the data will have been put together or will be owned by another registrant, so that will be a more complex and potentially costly operation for the businesses.⁴⁰⁴

Chemical industry groups have raised concerns about the uncertainty of the approach to registrations in the absence of a deal.⁴⁰⁵ Lord Teverson, Chair of the Lords EU Energy and Environment Sub-Committee,

⁴⁰⁰ Scottish Government, [Environmental governance in Scotland after Brexit: report](#), 1 June 2018, para 3.8.6.

⁴⁰¹ Lords EU Committee, Energy and Environment Sub-Committee, [Oral evidence: The future of REACH regulations post-Brexit](#), 18 July 2018, Q14 and 24 [Gabrielle Edwards].

⁴⁰² Ibid, Q24 and 22; see also [PQ126353, 8 February 2018](#) [Defra: ICT].

⁴⁰³ Ibid, Q22 [Dr Thérèse Coffey MP]

⁴⁰⁴ Lords EU Committee, Energy and Environment Sub-Committee, [Oral evidence: The future of REACH regulations post-Brexit](#), 18 July 2018, Q22 [Gabrielle Edwards]

⁴⁰⁵ For example, Chemical Business Association (CBA), [Growing Concerns On EU Market Access Post-Brexit](#), 27 April 2018; Chemical Industries Association (CIA), [Making Brexit Work for the Chemical Industry](#), February 2018

expressed concern about the level of the Government's preparedness for a no-deal scenario,⁴⁰⁶ stating in July 2018:

...the UK is entirely unprepared to regulate chemicals independently post-Brexit. [The Minister] is expecting industry to prepare for a potential departure from REACH, but hasn't started equipping a UK body to do the same. Given the potential cliff edge facing the industry, this simply isn't good enough."⁴⁰⁷

Thérèse Coffey told the Lords Sub-Committee that the Government intends to have a framework that is "pretty much aligned to REACH" when the UK leaves the EU.⁴⁰⁸ Nonetheless, environmental groups argue that if the UK system is slower than the EU in making regulatory decisions, or is not as legally robust, there could be loopholes or legal challenges, with the result that chemicals that are restricted in the EU are not restricted in the UK.⁴⁰⁹

12.4 The environment

Government funding and preparations

The Liaison Committee questioned the Prime Minister about 'no deal' on 18 July 2018. She confirmed that of the £3 billion that the Treasury has set aside over two years for no deal preparations, Defra was allocated £310 million for 2018-19.⁴¹⁰ The Prime Minister assured the Committee that the UK would not reduce its environmental standards in the event of 'no deal'.⁴¹¹

Defra Secretary of State Michael Gove confirmed to the Commons European Scrutiny Committee in July 2018 that "although no one wants it", Defra was stepping up its preparation for the possibility that the UK would have to trade on WTO terms from March 2019.⁴¹²

'No deal' scenarios

A March 2018 risk analysis report commissioned by Friends of the Earth, [UK environmental policy post-Brexit](#) by the Tyndall Centre, University of East Anglia⁴¹³ examined a number of scenarios, including a "chaotic" no deal ('cliff-edge' Brexit) and a "planned" no deal (the WTO option) and the impact each could have on specific environmental policy areas. Waste, chemicals, habitats and birds and climate change were all

⁴⁰⁶ [UK chemical regulation needs a plan B for 'no deal'](#), Lord Treveson, blog post for Inside Track (Green Alliance), 2 August 2018

⁴⁰⁷ Lords EU Energy and Environment Sub-Committee, [Minister fails to reassure Committee on post-Brexit chemical regulation](#), 18 July 2018

⁴⁰⁸ Lords EU, Energy and Environment Sub-Committee, [Oral evidence: The future of REACH regulations post-Brexit](#), 18 July 2018, Q26

⁴⁰⁹ Greener UK, [What would a no deal Brexit mean for the environment?](#), July 2018; Green Alliance, [A new direction for UK resource strategy after Brexit](#), November 2017

⁴¹⁰ Commons Liaison Committee, Oral evidence: the Prime Minister, [HC 1393](#), 18 July 2018, Q3

⁴¹¹ Ibid, Q116

⁴¹² Commons European Scrutiny Committee, Oral evidence: EU Withdrawal, [HC 763](#), 18 July 2018, Q718

⁴¹³ Burns, C., Gravey, V., and Jordan, A., 2018. [UK Environmental Policy Post-Brexit: A Risk Analysis](#), a report for Friends of the Earth, Brexit and Environment, March 2018.

identified as policy areas at moderate to very high risk under a no-deal scenario. Waste is discussed further below.

Greener UK (a coalition of environmental bodies) published a report [What would a no deal Brexit mean for the environment?](#) (July 2018) highlighting a number of 'no deal' concerns, including losing mechanisms for co-operating with the EU on transboundary environmental issues (of particular importance for Ireland), and a potential gap in governance between exit day and the date that any new UK environmental watchdog is established.⁴¹⁴ During a Commons Environmental Audit Committee evidence session, similar 'no deal' concerns were raised by MPs, including Green Party MP Caroline Lucas who stated:

It is massively urgent. An air gap sounds like quite a benign thing, but if we fall off a cliff after March 2019 and we do not have all of the infrastructure of environment protection and the enforcement mechanisms and all of that, that can have serious implications in terms of the state of our environment in this country.⁴¹⁵

The Secretary of State confirmed in reply that the Government was "stepping up preparations in the event of there not being that [withdrawal] agreement". He confirmed:

[...] work that is going on at the moment with my team looking at all of the statutory, legislative and other underpinnings that require to be put in place.⁴¹⁶

Further discussion of environmental issues in the context of Brexit is provided in the [Library Briefing Paper on Brexit and the environment](#), 8 August 2018.

Waste

There is concern about the implications for the movement of waste in both deal and no-deal Brexit scenarios. The UK is both an exporter of waste to EU and non-EU countries and an importer of waste from other EU countries. In particular, it is estimated that Ireland ships 40% of its hazardous waste to the UK for treatment.⁴¹⁷

Movement of waste

Articles 34 and 3(5) of Regulation (EC) No 1013/2006 on shipments of waste prohibit the export of waste for disposal and mixed municipal waste for recovery operations from the EU to a third country, unless it is a member of EFTA and a party to the Basel Convention. As a Commission notice to stakeholders sets out, once the UK become a third country, it will no longer be possible for EU Member States to

⁴¹⁴ Greener UK, [What would a no deal Brexit mean for the environment?](#) July 2018 [accessed 20 July 2018]

⁴¹⁵ Environmental Audit Committee, Oral evidence: Environmental principles and governance consultation, [HC 1062](#), 11 July 2018, Q164

⁴¹⁶ Ibid

⁴¹⁷ [Letter](#) from the House of Lords European Union Committee to Dr Thérèse Coffey MP, 17 January 2018

export hazardous waste to the UK.⁴¹⁸ The House of Lords EU Committee Energy and Environment Sub-Committee asked Defra Ministers to clarify the impact of this on UK businesses if they were no longer able to receive imports of hazardous waste from the EU.⁴¹⁹ Dr Thérèse Coffey replied that “we have estimated the impact to be very small”.

On the export of waste shipment from the UK to other countries, the Commission notice states that “[i]mports of waste into the EU-27 will be governed, as of the withdrawal date, by Title V of Regulation (EC) No 1013/2006, whereby imports of waste from a third country party to the Basel Convention remains allowed, subject to the requirements set out in that Regulation”.⁴²⁰

Trade and tariffs

Further concerns are about whether it will take a long time to export waste out of the country and whether there will be “frictionless” trade with EU after Brexit.⁴²¹ Dr Coffey was asked about this by the Lords Energy and Environment Sub-Committee:

Lord Krebs: (...) the Environmental Services Association told us that a hard Brexit, if that were the outcome, could disrupt some of the trade in waste and drive up costs of waste management. Do you think that it is unnecessarily worried?

Dr Thérèse Coffey MP: I think it is. It might come back to the concept of frictionless trade and its checks and mechanics, rather than to the regulations. I see no reason why it is in the interests of different countries to make those changes. We are not anticipating particular problems, even if it did happen.⁴²²

Dr Coffey also replied to questions about the possibility of tariffs being imposed on the export of UK waste in the situation where there was a reversion to WTO trading rules. She expressed confidence that because the EU was an importer of waste, “the tariff would end up on them for importing our waste, which would not be in their interest” and that “If tariffs ended up being the outcome, it would increase the costs of materials for EU companies. I expect that we will want to work together to make sure that that is not the outcome.”⁴²³

EU Emissions Trading Scheme

The EU Emissions Trading Scheme (ETS) is a mandatory cap-and-trade scheme for greenhouse gases.⁴²⁴ It operates in 31 countries (the 28 EU

⁴¹⁸ European Commission on [The Withdrawal of the United Kingdom and EU Waste Law](#), February 2018

⁴¹⁹ [Letter](#) from Dr Therese Coffey MP to the House of Lords European Union Committee to, 31 January 2018

⁴²⁰ European Commission on [The Withdrawal of the United Kingdom and EU Waste Law](#), February 2018

⁴²¹ See for example, concern in the Greener UK briefing paper, [What would a no deal Brexit mean for the environment?](#) July 2018

⁴²² Lords EU Committee, Energy and Environment Sub-Committee, Corrected oral evidence: Impact of Brexit on the UK's trade in waste Wednesday 10 January 2018, [Q16](#)

⁴²³ Ibid, [Q17](#)

⁴²⁴ The greenhouse gases covered by EU ETS are carbon dioxide (CO₂), nitrous oxide (N₂O) and perfluorocarbons (PFCs). Greenhouse gas emissions are linked to global

countries, Iceland, Liechtenstein and Norway) and covers the 45% of the EU's greenhouse gas emissions that come from energy intensive sectors.⁴²⁵ The EU ETS is currently in its third trading phase (2013-2020).

If there is no deal the UK would drop out of the EU ETS before the end of Phase 3 and all relevant EU legislation would cease to apply on exit day.⁴²⁶ This scenario - leaving part way through a trading phase - would have practical consequences for the overall EU ETS market and both EU and UK participants. Some of these are discussed further below.

More generally, a no-deal scenario would not impact the UK's domestic targets to reduce emissions under the *Climate Change Act 2008* (which are more ambitious than EU targets) and the Government has committed to continuing to meet its international climate change commitments.⁴²⁷

While both the UK Government and the European Commission have proposed that the UK continues to participate in the EU ETS until the end of any transition/implementation period, and thus the end of Phase 3 of the scheme (2020),⁴²⁸ neither party has formally indicated their preference on the UK's post-Brexit participation in the scheme.⁴²⁹ So the UK could also stop participating in the EU ETS under the terms of a negotiated withdrawal agreement, albeit under different terms and a longer timeframe. The Government has confirmed it is committed to carbon pricing but is concerned that the EU ETS has not set a sufficiently strong carbon price signal. The Minister of State for Energy and Clean Growth, Claire Perry, has said:

We are committed to carbon pricing as a tool and want the best possible way to deliver that carbon pricing. If there is a long-term opportunity to improve the carbon pricing signal in the economy by amending or changing our relationship with the ETS, we would be short-sighted not to take that.⁴³⁰

If the UK leaves the EU ETS on exit day, a key risk identified in 2017 was that UK participants could flood the market with a mass sell-off of EU ETS allowances, which would result in a crash in the price of carbon. In October 2017 the International Emissions Trading Association (IETA) was reported to have said:

warming. See for instance the US Environmental Protection Agency, [Overview of Greenhouse Gases](#),

⁴²⁵ European Commission, Climate Action, [EU Emissions Trading System \(EU ETS\)](#), [accessed 18 July 2018]

⁴²⁶ Lords EU Committee, Energy and Environment Sub-Committee, [Oral evidence: EU Emissions Trading Scheme](#), 14 March 2018, Q1

⁴²⁷ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, Para 108

⁴²⁸ Lords EU Committee, [Oral evidence: Minister of State for Energy and Clean Growth](#), 21 March 2018, Q6; and European Commission [Draft Withdrawal Agreement](#), 19 March 2018, Article 92

⁴²⁹ See Cm 9593, para 140

⁴³⁰ Lords EU Committee, [Oral evidence](#), 21 March 2018, Q6

140 What if there's no Brexit deal?

A hard Brexit scenario poses a risk of approximately 220 million allowances issued by the United Kingdom to be offloaded onto the market between 1 January 2018 and 29 March 2019.⁴³¹

To safeguard against this, both the EU and the UK have amended legislation⁴³² with the aim of avoiding a mismatch between the functioning of the EU ETS and the timing of Brexit for the 2018 compliance year. The purpose of the amendments was to ensure that 2018 UK allowances retain their value while also ensuring that they do not flood the market on the UK's exit. Further explanation of these safeguarding measures is set out in the European Commission press release: [Update on safeguard measures for EU ETS](#) (13 February 2018).

In [evidence on the EU ETS](#) to the Lords Energy and Environment Sub-Committee, the Managing Director of Sandbag (a climate change think tank), Debbie Stockwell, explained some practical implications and the default position if there is no agreement and no UK participation in the EU ETS:

The default position, if a deal is not reached about UK involvement in the ETS, is that the UK would leave the Scheme at the point of leaving the EU. That said, transitional arrangements could be put in place to enable the UK to remain in the Scheme until the end of Phase 3. In our view, it would be much simpler for the UK to remain in the Scheme until that time. In practical terms, the UK would cease to be subject to the ETS Directive on departure from the EU and relevant UK legislation would need to be repealed. The EU would need to adjust the terms of the Emissions Trading Directive: for example, the cap and how it applies to the remaining 27 Member States.⁴³³

Energy and climate lawyer Silke Goldberg, Partner at Herbert Smith Freehills LLP, picked up on other possible practical and legal implications of 'no deal', including for the Single Irish Electricity Market, the uncertainty for scheme participant companies that would need to make very short-term and quick adjustments, and the impact on existing contracts:

There are a number of practical implications. You have already mentioned Ireland, so let us start there. The practical implication for the Single Irish Electricity Market would be distortion of the electricity price on the island of Ireland. At the moment, SEM works on a pool basis. From May onwards, it will move to bilateral. That effectively means that SEM, the single Irish electricity market, would need to cope with some of its participant electricity generators and market participants being subject to the EU ETS, and others not. That might have an impact on the pricing on the island of Ireland, and a distortive effect on electricity pricing and the functioning of the Single Irish Electricity Market.

The Commission, in its Regulation of 12 February 2018, has already issued arrangements to mark UK allowances for the possibility of there being a no deal and related surrender

⁴³¹ Reuters, [EU measures to safeguard carbon market from Brexit](#), Julia Fioretti, 18 October 2017 [accessed 9 August 2018]

⁴³² The EU amended the [EU ETS Registry Regulation](#); the UK amended the *Greenhouse Gas Emissions Trading Scheme Regulations 2012* by passing the [Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2017](#)

⁴³³ Lords EU Committee, Energy and Environment Sub-Committee, [Oral evidence: EU Emissions Trading Scheme](#), 14 March 2018, Q1

arrangements. There is also the practical implication that that, in itself, could distort pricing for companies that rely on UK-issued EU ETS allowances.

Typically, companies do not enter EU ETS trading arrangements for compliance on an extremely short-term basis. Companies know that over the next however many years, for Phase 3 of the EU ETS, which we are currently in, they have a particular carbon strategy. That strategy may be curtailed, and companies may need to make very short-term and quick adjustments. That will have practical consequences. Perhaps Lawrence can add to that in further detail.

From a legal perspective, that may have an impact on the existing contracts. It may be quite disruptive, and it will require an awful lot of organisation, in a scenario with quite a lot of price distortion. At the moment, the EU ETS is at a seven-year high. It trades at around €11. Brexit, in a no-deal scenario, will almost certainly have a negative impact on it.⁴³⁴

Other potential no-deal impacts identified are the loss of income from auction revenues to the Treasury (£530 million last year⁴³⁵) and the possibility of legal action by adversely affected companies.⁴³⁶ The Government has confirmed it is preparing for a range of scenarios for the EU ETS, including 'no deal',⁴³⁷ but has not commented in detail on the practical/ legal implications of a sudden exit.

12.5 Transport

As with many other areas, it is difficult to say with certainty what 'no deal' would mean for transportation between the UK and the EU27. In a report published on 19 July the National Audit Office acknowledged that the Department for Transport had "made a determined effort to address the significant and complex challenge of delivering the wide-ranging set of actions required of it to support the UK's exit from the EU", but concluded:

Despite these efforts, the Department still faces a considerable challenge. For example, it still has much to do on the contingency arrangements required by DExEU in case no deal is reached, with an increasing risk of not being able to deliver them all within the time available.⁴³⁸

Aviation

In its December 2017 report on a 'no deal' Brexit, the Lords EU Committee stated that "[t]he consequences of failure to reach a deal

⁴³⁴ Lords EU Committee, Energy and Environment Sub-Committee, [Oral evidence: EU Emissions Trading Scheme](#), 14 March 2018, Q1

⁴³⁵ Lords EU Committee, [Oral evidence: Minister of State for Energy and Clean Growth](#), 21 March 2018, Q10

⁴³⁶ See: ENDS Report, [Environmental risks of no-deal Brexit loom large](#), Dr Paul Hatchwell, 10 August 2018 [subs only] [accessed 13 August 2018]

⁴³⁷ Lords EU Committee, [Oral evidence: Minister of State for Energy and Clean Growth](#), 21 March 2018, Q12

⁴³⁸ Report by the Comptroller and Auditor General. Department for Transport. [Implementing the UK's Exit from the European Union](#), HC 1125 Session 2017–2019 19 July 2018, p. 12

[on aviation] would be grave".⁴³⁹ It had previously reported in March 2017 that:

There is no adequate 'fall-back' position for aviation services in the event that no agreement is reached with the EU. Air services are excluded from the WTO, and the pre-existing bilateral air services agreements between the UK and individual EU Member States may not be valid, given the EU's extended competence in this area. It follows that, in order to avoid significant damage to the UK aviation sector, either a UK-EU bilateral air services agreement must be agreed before the UK leaves the EU in 2019, or a transitional arrangement must be adopted, to allow continuing UK participation in the Single Market for aviation pending conclusion of a comprehensive agreement.⁴⁴⁰

'The UK in a Changing Europe' looked at aviation in a July 2017 paper:

So would planes actually stop flying between the UK and the EU27? In principle, absent measures to mitigate the impact of no deal, that is possible – if only because their lawyers would not let them. But, even assuming that some stop-gap arrangement were to be put in place, it seems likely that there would be very serious impacts, with many airlines reducing their schedules to the UK, both immediately and in the medium term.⁴⁴¹

Timing is very important. The International Air Transport Association (IATA) has urged "an early resolution for aviation in the Brexit discussion":

Time is precious. The Brexit clock is ticking towards a deadline of March 2019. But the aviation deadline is earlier. Normally passengers can book travel about a year in advance. At a minimum, the flight schedules and seat and cargo inventories must be available at least six months in advance. So that puts the airlines' deadline at October 2018...⁴⁴²

There were reports towards the end of 2017 that some airlines were tightening their terms and conditions for flights booked in advance for travel after Brexit, warning customers that they may not take off and that airlines will not pay compensation if planes are grounded.⁴⁴³

The Civil Aviation Authority (CAA) has said it is preparing to assume new functions and capabilities that the European Aviation Safety Agency currently deals with, in case of a no-deal Brexit, "identifying how many new staff would be needed and preparing safety systems to take on work now carried out by European authorities".⁴⁴⁴ The CAA has updated its [website](#) to give information on what it will have to do in the event of 'no deal'.

The Government [indicated](#) earlier that if there is no deal, a 'bare bones' aviation agreement could nonetheless be concluded before the UK

⁴³⁹ Op cit., [Brexit: deal or no deal](#), Box 5, p15

⁴⁴⁰ Op cit., [Brexit: trade in non-financial services](#), para 238

⁴⁴¹ The UK in a Changing Europe, [Cost of no deal](#), 20 July 2017, p16

⁴⁴² IATA press notice, "[UK Aviation Priorities: Clarity on Brexit and Expanding Heathrow](#)", 8 November 2017

⁴⁴³ [Airlines may not guarantee flights after exit from EU](#), *The Times*, 18 October 2017; see also: [Ryanair confirms roll out of "Brexit clause" in tickets](#), *City A.M.*, 31 January 2018

⁴⁴⁴ Reuters, [British aviation regulator steps up planning for disorderly Brexit](#), 10 July 2018

leaves the EU. The European Commission has not commented on this possibility and it is doubtful that an agreement on a complex regulatory area such as aviation could be drafted at the last minute.

Road transport

In the event of a no deal scenario, UK hauliers (both companies and individual drivers) would lose their current rights of access to the EU road transport market, which are set out in EU Regulation 1072/2009⁴⁴⁵. The House of Commons European Scrutiny Committee⁴⁴⁶ [explained](#) what this would entail, noting that the EU road transport market eliminates quota restrictions on international traffic between Member States, including cross-trade (international road transport between two Member States performed by a road motor vehicle registered in a third Member State), transit traffic to and from non-Member States, and even permits a certain amount of 'cabotage' (journeys entirely within the territory of another EU Member State).⁴⁴⁷

In the event of no deal, a small proportion of UK hauliers would retain limited access to the EU market through the European Conference of Ministers of Transport (ECMT) multilateral permit scheme, which provides permit-based access across 43 European states for some operators with vehicles compliant with Euro 4, 5 and 6 standards. However, the ECMT scheme is only designed to provide for a small proportion of the total international access that is needed (approximately 5–10% of international road haulage in Europe), with the principal objectives being to incentivise improvements in road safety and environmental standards, and as such could provide only a very small proportion of the freight transport that would be necessary.

For the majority of operators, a no deal scenario would therefore entail a shift from intra-EU market rights to a bilateral permit system, for which the Government has made some preparations. The UK's decision finally to ratify the 1968 [Vienna Convention on Road Traffic](#) means that there will be a framework for international driving permits post-Brexit, and the [Haulage Permits and Trailer Registration Act](#) would allow the Secretary of State to create an international road haulage permit scheme.⁴⁴⁸

As such an arrangement would have to be negotiated, potentially with individual EU Member States, it is unclear whether a functional arrangement could be operational on day one of an abrupt, non-negotiated exit.

⁴⁴⁵ Regulation EC [1072/2009](#) of the EP and Council of 21 October 2009 on common rules for access to the international road haulage market (Text with EEA relevance)

⁴⁴⁶ <https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-xxix/30111.htm>

⁴⁴⁷ ESC. Mobility Package: market pillar. Summary and Committee's conclusions, published 12 June 2018

⁴⁴⁸ Further information on these issues can be found in the Library Briefing Paper 8297, [Haulage Permits and Trailer Registration Act 2018](#), 9 August 2018

Regarding the implications of a shift to a permit scheme, the Road Haulage Association (RHA) has estimated⁴⁴⁹ that “a simple bilateral permit system will add approximately £53 per movement in and out of the UK for UK operators and about £26 for EU operators”, and that such an arrangement would “impact greatly on the costs of services provided and also create impediments for the smooth and effective movement of goods”.⁴⁵⁰ The Road Haulage Association concluded that this would be the worst possible outcome for the UK, and that there are no benefits for either the haulage industry or supply chains arising from the introduction of a system of bilateral permits. However, the European Scrutiny Committee noted that permit schemes are not a fixed quantity, and “can vary both in terms of cost and level of market access”.

A no deal scenario would potentially have particularly disruptive effects for hauliers operating between the UK (particularly Northern Ireland) and Ireland, as integrated cross-border supply chains mean that there is a high occurrence of cabotage activity on the island of Ireland. The Government said in the July 2018 [White Paper](#) that “the UK will ensure that there is no requirement in any scenario for new [haulage] permits for transport services between Northern Ireland and Ireland” [para 134].

If there is no transitional arrangement, UK-issued certificates of professional competence for road transport operators and certificates of professional competence for drivers will [automatically become invalid](#) in the EU27. Coach and truck drivers with a UK-issued certificate would therefore have to obtain a new certificate of professional competence in an EU Member State before they could work in the EU.

Rail

On rail the White Paper states that the EU and UK have agreed that “the UK will pursue bilateral agreements with France, Belgium and the Netherlands to ensure the continued smooth functioning and operation of services through the Channel Tunnel, and with Ireland to do the same for the Belfast-Dublin Enterprise line” [para 136]. Thus, for *international* rail, ‘no deal’ might look much the same as ‘a deal’.

Maritime/shipping

In maritime/shipping the Government is generally confident that the global nature of shipping means Brexit of whatever sort will have little effect on how companies currently operate (see e.g. para 135 of the July White Paper). This does not of course account for the possible impact of customs and immigration issues, discussed in sections 7 and 9).

⁴⁴⁹ Road Haulage Association, [Brexit—Unimpeded Access for International Road Haulage](#), 3 February 2017

⁴⁵⁰ Road Haulage Association, [Evidence](#) to the House of Lords EU Internal Market Sub-Committee, 4 October 2016

But a no-deal Brexit would affect the ability of seafarers with UK-issued certificates of competency and proficiency to work onboard ships flagged in EU Member States. The current EU-level system provides for the mutual recognition of seafarers' certificates between Member States. This means that pending endorsement - a form of authorisation - seafarers holding certificates issued in one Member State can serve onboard ships flagged in any other Member State. In the event of 'no deal' and the UK becoming a third country for the purposes of the current system, a separate procedure would apply to the recognition of UK-issued certificates. Seafarers with UK-issued certificates would only be able to serve onboard vessels flagged by Member States that have unilaterally recognised UK qualifications.

In a [Brexit preparedness notice to stakeholders](#) (19 January 2018) the European Commission warned that in the event of an agreement not being reached, endorsements issued to UK-certified seafarers would only be valid until their date of expiration and that seafarers would not be able to change and work onboard vessels flagged by another Member State.

13. Higher education, science and research

Access to research funding and Erasmus+ Research funding

The UK currently does disproportionately well in securing EU research funding and UK Universities are the top performers in receiving EU funds based on scientific excellence.⁴⁵¹ Recent figures show that UK Universities receive over £836 million in research grants and contracts from EU sources, representing more than 14.2% of all income from research grants and contracts.⁴⁵² Million+, The Russell Group and the British Heart Foundation said in their evidence to the House of Lords EU Committee inquiry on a no-deal Brexit that 'no deal' could stop the UK's access to EU research funds and prevent UK collaboration in EU projects:⁴⁵³

MillionPlus argued that no deal would be "extremely damaging for UK universities and should be avoided if at all possible". They cited in particular the reputational damage, deterrent effect and confusion that could arise from the designation of EU students as international students. No deal could also place existing EU-funded research projects in jeopardy.

The Russell Group concluded that no deal would affect universities' ability to deliver world-leading research and education. No deal on the rights of EU citizens to live, study and work in the UK could lead to a loss of talented researchers and technicians with specialist skills who could not be replaced easily by UK nationals. If the UK and EU did not secure an agreement on science and research collaboration, UK institutions would cease to be eligible for Horizon 2020 funding on the day of exit. This would mean funding for existing projects would be withdrawn and researchers would immediately lose the ability to bid for this funding, with a detrimental impact on international competitiveness.

The British Heart Foundation also noted that the EU was a major funder of UK research, and helped to promote international collaboration. Uncertainty about what could happen to UK access to Horizon 2020 funding after March 2019 could discourage EU researchers from approaching British counterparts to collaborate on projects. They too expressed concern about the reputational damage caused by uncertainty over the status of EU researchers and healthcare professionals in the UK.

In October 2017 EU Commissioner Carlos Moedas also said that 'no deal' could result in the UK losing EU funding from the date of withdrawal from the EU:

"For research, 'no deal' means programmes could potentially stop with barriers erected in ongoing projects, and significant projects and programmes terminated or not initiated"

[Million+](#) 25 October 2017

⁴⁵¹ The Royal Society, [UK research and the European Union](#), December 2015

⁴⁵² Figures for 2014-15. See [Economic Impact on the UK of Research Funding to UK Universities](#), Report to Universities UK, May 2016. For further information on Erasmus+, see Commons Briefing Paper 8326, [The Erasmus Programme](#), 20 June 2018.

⁴⁵³ House of Lords paper 46. [Brexit: Deal or no deal](#), 7 December 2017

Until the UK leaves, its researchers, universities, organisations, and companies are eligible to participate and receive funding in Horizon 2020.

But the eligibility criteria must be complied with for the entire duration of the grant. This is why it was important to be transparent and inform UK-based applicants now that if the UK withdraws from the EU without concluding a withdrawal agreement they may be required to leave the project and no longer receive funding.⁴⁵⁴

The Russell Group have further warned of the dangers of no deal on international research competitiveness:

A sudden cliff-edge in research funding from the EU will have a serious impact on our universities' international competitiveness in research. It is already the case that talented researchers at our universities are being approached by universities in other European countries with offers of academic contracts, so a sudden loss of access to EU research programmes in the UK could motivate many to relocate.⁴⁵⁵

The Government guidance published on 23 August provides further information in "[Horizon 2020 funding if there's a Brexit no deal](#)".

Erasmus+

On the 30 May 2018 the EU Commission announced that for the funding cycle starting in 2021 any country in the world would be able to participate in the Erasmus+ programme if they met set requirements. It is possible, therefore, that in the event of 'no deal' the UK might still be able to access the Erasmus+ programme, provided the UK meets criteria for admission to the scheme.⁴⁵⁶

The Government guidance published on 23 August 2018 includes a paper, "[Erasmus+ in the UK if there's no Brexit deal](#)", which gives some information on no deal implications for studying in the EU or the UK.

EU students

'No deal' could potentially result in EU students being re-classified as international students, being charged higher fees and denied access to student support. Million+ have said that a "'no deal' which resulted in EU students being treated as international students would have a very

⁴⁵⁴ *Holyrood*, [Brexit 'no deal' will rip up university research funding, warns European Commission](#), 26 October

⁴⁵⁵ Lords EU Committee, [Brexit: Deal or no deal](#), 7 December 2017, Written evidence from [Russell Group \(DND0044\)](#)

⁴⁵⁶ In its proposal for the Erasmus+ programme for the period 2021-27, published on 30 May, the European Commission said that countries outside the EU and the EEA would be able to participate fully as long as they do not have a "decisional power" on the programme and agree to a "fair balance" of contributions and benefits. Any agreement with third countries would include "the calculation of financial contributions to individual programmes and their administrative costs". See [Erasmus+ exchange programme set to open to all countries in 2021](#), *Times Higher Education*, 31 May 2018.

significant and negative impact on EU student mobility and the EU market".⁴⁵⁷

EU staff in UK universities

EU staff represent 16% of the academic workforce.⁴⁵⁸ Million+ has said that a no-deal could result in EU staff leaving UK universities and that this would have a particularly damaging effect on university foreign

language and Science, Technology, Engineering and Mathematics (STEM) departments:

The situation would be even starker for EU staff, as their legal status would be in question and their rights not guaranteed. It would be difficult to make any claim to say they will definitely be able to stay in the UK to work, if indeed they then still wanted to. Any significant loss in EU staff, through voluntary means or otherwise, would disproportionately impact on certain key subjects, like foreign languages and STEM courses, as EU staff make up significant proportions of staff in those subject areas. It would also, as for students, damage the effective running of institutions and the image and reputation of the sector. This would be particularly concerning at a time when the UK is already being seen as less open than its competitor nations, and when it is losing international market share to direct competitors like Australia and Canada.⁴⁵⁹

The Russell Group has also warned about the damaging effect of a loss of highly qualified EU staff:

If EU staff were required to meet current Tier 2-style visa conditions in the absence of an agreement which guarantees their rights to stay, our analysis shows that nearly a quarter of existing EU staff (over 6,000 people) at Russell Group universities would not be eligible to work in the UK. This includes a significant number of staff with postgraduate, doctoral and other higher degrees (over 2,100 individuals). This would be a great loss for the UK's science base and one that could take many years, and probably decades, to rebuild. It is certainly not the case that EU staff at Russell Group universities could be replaced easily by UK nationals (particularly in the short term) as they are unlikely to have the specialist skills, expertise and experience to match those brought to the UK by excellent European academics.⁴⁶⁰

⁴⁵⁷ House of Lords paper 46. [Brexit: Deal or no deal](#), 7 December 2017, Written evidence [MillionPlus \(DND0013\)](#)

⁴⁵⁸ [Universities UK submission](#) to the House of Commons Education Committee inquiry on 'The impact of exiting the European Union on higher education', November 2016.

⁴⁵⁹ *ibid*

⁴⁶⁰ House of Lords paper 46. [Brexit: Deal or no deal](#), 7 December 2017, Written evidence – [Russell Group \(DND0044\)](#)

14. Internal security

The UK currently participates in approximately 40 EU measures that aim to support and enhance internal security and police and judicial cooperation in criminal matters. Measures identified as being of particular significance include the European Arrest Warrant (EAW), access to databases, including the Second Generation Schengen Information System (SIS II), European Criminal Records Information Exchange System (ECRIS) and Passenger Name Records (PNR), and participation in agencies, in particular Europol and mention the Prüm Convention⁴⁶¹ – the framework for the exchange of DNA profiles, fingerprints and vehicle registration data.

The Government would like future cooperation with the EU on all the EU police and criminal justice measures in which the UK currently participates, suggesting it anticipates a significant operational impact if this cooperation were brought to an abrupt no-deal end.

14.1 Data protection and exchange

Under the EU's [data protection framework](#), personal data can only be transferred to third countries when an "adequate" level of protection is guaranteed. The EU can make an [adequacy decision](#) so that data can flow from Member States to third countries, or one or more specific sectors in those countries. The European Council's [guidelines](#) for future EU-UK relations state that the protection of personal data "should be governed by Union rules on adequacy".

In its December 2017 [report on deal or no deal](#), the Lords EU Committee warned that a complete 'no deal' would bring UK-EU cooperation in a number of areas – including data exchange - to a "sudden halt".⁴⁶² This would be "deeply damaging for the UK".⁴⁶³ However, David Davis told the Committee that in the absence of a full deal, a "bare bones" deal could include an agreement on data sharing:

(...) in the event that we did not get a full deal, the interest of both sides on, say, counterterrorism co-operation, justice co-operation or data exchange co-operation is so great that I find it hard to believe that we will not get some fundamental deal there...⁴⁶⁴

⁴⁶¹ This Convention (often referred to as 'Schengen III') was signed on 27 May 2005 by Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain. It deals with cross-border cooperation, particularly in combating terrorism and cross-border crime.

⁴⁶² House of Lords European Union Select Committee, [Brexit: deal or no deal](#), HL Paper 46, December 2017, p3

⁴⁶³ Ibid, para 48

⁴⁶⁴ Ibid, para 34

14.2 Cooperation in law enforcement and criminal justice

Both the UK and the EU have emphasised the importance of maintaining cooperation in the field of security, law enforcement and criminal justice. The Home Secretary told the House of Commons Home Affairs Select Committee (HASC) that security “is something that should not be linked to any of the other discussions”, and that the UK’s proposals are “completely unconditional”.⁴⁶⁵

However, if there is no agreement at the point of exit, the UK will cease to have access to the EU measures in this area.

Possible impact of ‘no deal’

Representatives from the worlds of law enforcement, criminal justice, and security and intelligence have provided insights into the possible consequences of the UK losing access to EU measures in this area. The impacts centre around three broad themes: loss of operational capacity, loss of strategic influence and an increased demand on resources resulting from the need to compensate for these losses. The consensus is that a no-deal scenario would have a significant negative impact on public safety.

Concerns have also been raised about the impact of a loss of cooperation on the security situation in Northern Ireland and around the Irish border (see section 8).

Sir Rob Wainwright, former Director of Europol, said in evidence to HASC:

Serious crime today and terrorism today is without doubt a transnational problem and requires that kind of response, of course. That is precisely why the UK, as much as any other member state of the European Union, has invested so much effort over the last three decades in constructing the closest possible, most cohesive and effective cross-border police co-operation arrangements in Europe. It is therefore axiomatic to say that in the face of these threats that are continuing to grow and evolve in that way that any dislocation in that effort, any break-up of that would lead of course to a decrease in the overall effectiveness of all of us to keep all of our citizens safe here in the UK, but across Europe as well. I think therefore that is a well-understood point.⁴⁶⁶

Asked whether there was cause for concern given the different positions of the UK and the EU in negotiations on future security cooperation, he said:

We should be worried if we reach a point of no deal or effectively no deal on security because that will certainly have an adverse effect on our collective ability in Europe to fight crime and terrorism.⁴⁶⁷

Asked specifically about the consequences of ‘no deal’, he said:

⁴⁶⁵ [Oral evidence on the work of the Home Secretary, 10 July 2018, Q489](#)

⁴⁶⁶ [Oral evidence: EU policing and security cooperation, HC 1356, 3 July 2018, Q1](#)

⁴⁶⁷ Ibid, Q32

We would survive as a country, of course. However, without a doubt we suddenly lose access to instruments of very direct and practical operational value to the UK on an everyday basis. That would be quite serious for the ability of our national police authorities to keep us safe.⁴⁶⁸

Sir Julian King, European Commissioner for the Security Union, expressed a similar view to the Lords EU Home Affairs Sub-Committee

[I]f there is no agreement, we all stand to lose, because we will be less well-equipped to cooperate effectively against these shared threats [terrorism, cyber, and serious and organised crime].⁴⁶⁹

Members of the Association of Policing and Crime Commissioners' Brexit Working Group wrote to the Home Secretary on 2 August 2018, expressing concerns that a no-deal scenario would lead to a significant loss of operational capacity, which could pose significant risks to communities.⁴⁷⁰ The [letter](#) from Matthew Scott (Kent), Lord William Bach (Leicestershire) and Martyn Underhill (Dorset) stated that "[t]he UK and EU share a common and ever evolving threat picture. We believe that a comprehensive partnership in all areas of policing and security cooperation is of mutual benefit to all". They continued:

Through discussions with the NCA and NPCC, we understand that considerable additional resource would be required for policing to operate using non-EU tools and that such tools would be sub-optimal – potentially putting operational efficiency and public safety at risk.

It is also recognised that recruitment, vetting, and training of staff to use these tools would take a substantial amount of time.

Should an implementation period not be agreed, contingency plans will need to be implemented by the end of March 2019. Given that the implementation period decision is not likely to be known until October 2018, the resultant five month window is likely to be very challenging.

We are therefore concerned that a 'no deal' scenario could cause delays and challenges for UK policing and justice agencies.

The Police and Crime Commissioners asserted that the "shared tools, measures, initiatives and capabilities" developed over the years of the UK's EU membership had "saved many lives", and that ways had to be found "to protect these mutually important capabilities [...] to ensure the safety and security all our citizens". The PCCs called on Sajid Javid to "[c]onfirm that the Home Office has developed effective contingency plans for a 'no deal' scenario".

The Law Society of England and Wales suggested in written evidence to the Lords EU Committee Home Affairs Sub-Committee that leaving the EU without a deal on security would lead to legal and organisational

⁴⁶⁸ Oral evidence, *ibid*, Q63

⁴⁶⁹ [Brexit: the proposed UK-EU security treaty. Uncorrected oral evidence, 14 June 2018, Q115](#)

⁴⁷⁰ ['No deal Brexit poses serious risk to public safety, say police leaders'](#), *The Guardian*, 6 August 2018

chaos, and create a void which could be exploited by terrorists and criminals.⁴⁷¹

The Committee's subsequent report [Brexit: the proposed UK-EU Security Treaty](#) reiterated its previous conclusion⁴⁷² that current cooperation arrangements were "mission-critical" for the UK's law enforcement agencies.⁴⁷³

Operational impact

Databases

The House of Lords EU Home Affairs Sub-Committee concluded in their report [Brexit: future UK-EU security and police cooperation](#), that access to EU law enforcement databases and data-sharing platforms is integral to day-to-day policing, and that loss of access could pose a risk to the safety of the public.⁴⁷⁴

In its report, [Brexit: the proposed UK-EU Security Treaty](#), the Committee stated:

Were the UK to lose access to the EU's security databases, information that today can be retrieved almost instantaneously could take days or weeks to access, creating not only a significant hurdle to effective policing but a threat to public safety.⁴⁷⁵

These conclusions reflect evidence taken from law enforcement bodies, former members of the security and intelligence agencies, the Crown Prosecution Service (CPS) and the legal profession, among others.

Richard Martin, Deputy Assistant Commissioner of the Metropolitan Police, told the Committee that under current arrangements police officers on the street are able to run checks on a car or person on the police national criminal database and on SIS II simultaneously. He described this ability as "absolutely essential" in order to keep people safe.⁴⁷⁶ He suggested that without access to these databases, the police would not be able to make as many checks, and the system would be much slower and less efficient. Delays in access to information on suspects could mean that opportunities to prevent crime would be lost. He concluded that a loss of access to databases would mean "[W]e will get a poorer picture, a lot more slowly than we do now, which will affect our operational capability".⁴⁷⁷

Steve Smart, Director of Intelligence at the National Crime Agency, set out the operational impact at a tactical and strategic level:

At a tactical level, the impact of losing access to those datasets is that more bad people will get into the UK, and it will be harder

⁴⁷¹ [Law Society of England and Wales, written evidence](#)

⁴⁷² In [Brexit: future UK-EU security and police cooperation](#), 7th Report, 2016-17, HL Paper 77, December 2016

⁴⁷³ Lords EU Committee, Home Affairs Sub-Committee, [Brexit: the proposed UK-EU security treaty](#), 18th Report 2017-19, HL Paper 164, 11 July 2018, para 40

⁴⁷⁴ Lords EU Committee, [Brexit: future UK-EU security and police cooperation](#), 7th Report, 2016-17, HL Paper 77, para 120

⁴⁷⁵ HL Paper 164, para 152

⁴⁷⁶ Lords Home Affairs Sub-Committee, [Brexit: the proposed UK-EU security treaty, oral evidence](#), 2 May 2018, Q59

⁴⁷⁷ *Ibid*, Q63

for us to find and deal with them. At a more strategic level ... As an organisation, we are looking to build, on behalf of wider law enforcement, a national data exploitation capability over the next three years. Not being able to link to the data that our European partners hold, the data that sits at Europol and on the Schengen information system, would undoubtedly have a negative impact on what we can do with the data we already have.⁴⁷⁸

Rob Wainwright told HASC that the UK derives specific and important operational value from all the main databases, including the Europol Information System, SIS II and the Prüm Convention.⁴⁷⁹ He explained that the ability to quickly circulate information about criminal and terrorist suspects has a direct operational benefit

The analogy might be that a serious criminal, maybe a sex offender from one member state, would be registered on the Schengen Information System in case, unknown to those authorities in Germany or France, he were to travel around Europe, then were he to arrive at Dover Docks, then the fact that he is on the Schengen Information System would allow our border officials here to identify him as that suspected offender. If those officials do not have access to that common database on which the other authorities have placed his name, then it is pretty obvious what possible detrimental effect that might have on the ability of that border official to make the right decision about letting him in the country.⁴⁸⁰

These concerns were shared by Lord Evan of Weardale, former Director General of MI5. When asked whether the loss of access to databases could cause problems for the security service, he agreed that it could:

[O]ne of the main ways in which we seek to reduce the risk of harm is by getting criminals locked up who are involved in planning terrorism or whatever. For that, we have to rely on law enforcement agencies because the Security Service has no law enforcement powers. From that point of view, a very important part of the overall counterterrorism efforts in the country is dependent on law enforcement, which in turn is reliant upon international cooperation.⁴⁸¹

It should be borne in mind that Article 7 of the [draft Withdrawal Agreement](#) makes clear that the UK will not be able to access “any network, any information system and any database established on the basis of Union law” at the end of the transition/implementation period, unless there is a further agreement authorising it to do so.

European Arrest Warrant and other criminal justice cooperation measures

Writing in *The Times* on 9 August, Ed Davey, Liberal Democrat spokesperson for Home Affairs, asserted that losing access to the European Arrest Warrant (EAW) would mean UK criminals could evade

⁴⁷⁸ Ibid, Q63

⁴⁷⁹ This Convention is often referred to as ‘Schengen III’. It is a treaty signed on 27 May 2005 by Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain. It deals with cross-border cooperation, particularly in combating terrorism and cross-border crime.

⁴⁸⁰ [Oral evidence: Eu policing and security cooperation, HC 1356, 3 July 2018](#), Q22

⁴⁸¹ [Brexit: the proposed UK-EU security treaty, oral evidence](#), 16 May 2018, Q97

justice in other European countries, and that criminals from elsewhere in the EU would be able to evade justice in the UK.⁴⁸²

In support of this contention, he quoted the then Home Secretary Theresa May in 2014, who described the EAW as “a vital tool for ensuring that justice is done in this country and for keeping the British public safe”, without which the UK risked becoming “a honeypot for all of Europe’s criminals on the run from justice”. Mr Davey cited the example of an ongoing case in Ireland, in which an individual is seeking to resist extradition to the UK to stand trial for murder, arson and rape, on the grounds that he will not be able to rely on EU derived rights after Brexit.⁴⁸³

Debbie Price, Head of International Justice at the CPS, gave evidence to the Lords EU Home Affairs Sub-Committee on the impact of losing access to criminal justice cooperation measures, including the EAW, on prosecuting crime. She highlighted the operational importance of speed in being able to obtain people, evidence and the proceeds of crime, which the current arrangements facilitate. She also raised the issue of legal certainty:

[A] reversion to a different set of instruments will lead to a period of legal uncertainty where things need to be tried and tested in the courts, which takes a lot of resources, time and money from everyone involved.⁴⁸⁴

She explained that alternative extradition arrangements were slower and more expensive, and that alternatives to the European Investigation Order and Mutual Legal Assistance mechanisms would also be slower. This could lead to a capability gap, for example where someone was on remand awaiting trial, but it was not possible to obtain crucial evidence in time for the trial.

She also noted potential costs to victims and witnesses of having to travel to trials in other countries if extradition was not possible.⁴⁸⁵

Richard Martin suggested that criminals may seek to exploit changes to extradition arrangements:

[C]riminal groups are not daft. They may already be thinking that, if certain powers do not exist, there are opportunities for them to either operate here, knowing it is far harder to be extradited from the country, especially if they are a foreign national, or vice versa.⁴⁸⁶

Jim Brisbane, CPS Brexit lead, gave evidence about contingency planning. In the context of the EAW, he explained that there was a need to ensure that the correct processes were in place and that the CPS had the necessary expertise to deal with extradition in a different context. He suggested this would require additional resources because

⁴⁸² [Accept the jurisdiction of the ECJ – or criminals will walk our streets](#), Ed Davey, The Times, 9 August 2018

⁴⁸³ See Court of Justice of the EU, [Case C-327/18 PPU](#)

⁴⁸⁴ [Brexit: the proposed UK-EU security treaty. oral evidence](#), 16 May 2018, Q104

⁴⁸⁵ Ibid, Q108

⁴⁸⁶ [Brexit: the proposed UK-EU security treaty. oral evidence](#), 2 May 2018, Q67

the process would be less streamlined and there would be more legal challenges. However, it was not yet possible to estimate the scale of the additional demand.⁴⁸⁷

Rob Wainwright suggested that the loss of the EAW would have an adverse impact on the UK's overall security arrangements.⁴⁸⁸

Richard Martin and Steve Smart discussed the resource implications of losing access to existing measures. Richard Martin said their contingency planning included looking at the impact of losing access to the EAW:

If that is the case, it is much slower and there are a lot more manual linkages. It means that we have to get a warrant for certain things. That means there is an impact on the CPS.

We are now trying to quantify what that means at ground level for local policing and what each organisation will need in order to process things in a different way at a slower rate... Other things include ... what our overseas liaison network looks like. What might our footprint in Europol look like as a third country? How many people do we need? Do we need greater influence? Does that equal more people or are there key countries that we need to be better represented in?⁴⁸⁹

Northern Ireland

The Police Service of Northern Ireland (PSNI) provided evidence to the Lords EU Home Affairs Sub-Committee on the impact of losing access to EU measures in the context of cooperation with the Garda in Ireland in relation to the border. PSNI noted the importance of good working relationships, but also emphasised the need for a clear legal framework:

For example, the loss of European Arrest Warrants would impact on the PSNI ability to pursue those who use the land Border to evade prosecution. This will affect Counter Terrorism, Serious/ Organised Crime and Volume Crime. [...]

There is significant interaction and relationships between Organised Crime Groups operating on both sides of the Border and they often work together across a number of types of organised crime. It is likely that organised crime groups will seek to exploit any new arrangements for criminal gain. Many of these groups have links to terrorist activity and the funding of acts of terrorism.⁴⁹⁰

Others have also noted that the loss of the EAW would be felt particularly acutely in Ireland/ Northern Ireland context. Alternative extradition arrangements allow for exceptions for offences that are political in nature, and for the extradition of own nationals, both of which may lead to a barrier in extraditing those suspected of involvement in dissident Irish Republican terrorism.⁴⁹¹ Any reversion to a system based on requests via diplomatic, rather than judicial, channels (as is the case with extradition arrangements outside the EAW) would

⁴⁸⁷ [Brexit: the proposed UK-EU security treaty, oral evidence](#), 16 May 2018, Q106

⁴⁸⁸ [Oral evidence: Eu policing and security cooperation, HC 1356, 3 July 2018](#) Q56

⁴⁸⁹ [Brexit: the proposed UK-EU security treaty, oral evidence](#), 2 May 2018, Q68

⁴⁹⁰ [Police Service of Northern Ireland, Written submission to the House of Lords EU Sub-Committee on Brexit: the UK-EU Security Treaty](#), June 2018

⁴⁹¹ For example, European Union Committee, [Brexit: the proposed UK-EU security treaty](#), 18th Report of Session 2017-19, HL Paper 164, para 165-167

also pose difficulties in an environment where political relationships may be strained.

Robert Hannigan, former Director of GCHQ, suggested that the presence of a physical border on the island of Ireland would be a threat to internal security in itself:

It is hard to see any of the current solutions not resulting in more smuggling, and anyone who has worked there knows that smuggling and crime on the border are corrosive to the peace process because the money tends to go to paramilitary groups, or the rump of paramilitary groups. That is a worry. It is the threat and the criminality that might be affected rather than the cooperation.⁴⁹²

Strategic influence

Rob Wainwright told the Lords EU Home Affairs Sub-Committee that a change in the UK's relationship with Europol would be felt mainly in the context of strategic influence. He explained that the UK is currently the lead Member State in a number of important projects in the areas of modern slavery, large-scale fraud and cocaine trafficking, for example. The UK is also currently chair of the counter-terrorist programme board at Europol and has been one of the primary architects in the development of police cooperation systems in the EU.⁴⁹³

Steve Smart and Richard Martin both emphasised the need for the UK to continue to be able to influence the development of law enforcement tools in light of the evolving nature of crime.⁴⁹⁴ Steve Smart pointed out that the UK was responsible for instigating many of the measures to which law enforcement now hopes to retain access, such as the EAW and PNR. He suggested that as the threat changes, new tools will be needed and "[w]e have to maintain the ability to drive that discussion".⁴⁹⁵ If the UK ends up with a radically different relationship with Europol to the one it has now, influencing and shaping Europol's agenda would be a lot harder.⁴⁹⁶

As an example of UK influence, Richard Martin said the UK had been successful in persuading Europol to include firearms on its list of priorities:

... which allows them to collect intelligence against that, allows them to develop products, and gets it on to some of the work groups that we need to have. It was our influence that got it on. It was not originally on. Areas such as that would concern me.⁴⁹⁷

Lord Evans and Robert Hannigan also regarded a change in the UK's status as detrimental to its ability to influence. Mr Hannigan suggested that although for cultural reasons the UK could still be a bridge between the EU and the Five Eyes countries:⁴⁹⁸

⁴⁹² [Brexit: the proposed UK-EU security treaty, oral evidence](#), 16 May 2018

⁴⁹³ [Brexit: the proposed UK-EU security treaty, oral evidence](#), 7 March 2018, Q3

⁴⁹⁴ [Brexit: the proposed UK-EU security treaty, oral evidence](#), 2 May 2018, Q60

⁴⁹⁵ *Ibid*, Q65

⁴⁹⁶ *Ibid*, Q66

⁴⁹⁷ *Ibid*, Q66

⁴⁹⁸ The USA, Australia, Canada, New Zealand and the UK

[T]here is no question that removing ourselves from one of those groups is going to have an impact as we become another member of the Five Eyes that is outside the EU.⁴⁹⁹

Lord Evans expressed concern that the UK's absence from the Council of the EU and the European Parliament would mean the loss of a well-informed and influential voice in the formation of policy that impacts on national security:

We will not be there in the same way in future. It was always noticeable that when the Club of Berne [a group comprised of heads of EU security agencies] would brief the permanent representatives in Europe, which we did periodically, at a quasi-political level, they were always keen to have the British there, because we tended to be better connected in some of those areas and more familiar with some of the policies than some of the smaller countries perhaps were. We were able to be a helpful voice, which will be more difficult going forward. That is an area of vulnerability.⁵⁰⁰

Robert Hannigan agreed, and emphasised the role of the UK in the debate about balancing privacy and security in the context of investigatory powers:

That is an important point on data, in particular. After the referendum one of the concerns that I picked up from counterparts in Europe was that the strongest voice at one end of the spectrum on balancing privacy and security and getting a sensible UK-style balance would be gone. There is a wide spectrum among the member states. Some are at the extreme other end. I know that some of our colleagues worry a lot about the absence of that voice.⁵⁰¹

Steve Smart suggested that as the Five Eyes partners look to the UK to put forward their point of view within Europol, a loss of access to Europol would therefore have a negative impact on them as well.⁵⁰²

Could the UK fall back on other mechanisms for international cooperation?

In some areas there are existing fall-back options, but they have been characterised as suboptimal in comparison with EU measures.

The 1957 Council of Europe Convention on Extradition could be an existing fall-back option on extradition. However, it does not impose time limits and requests are made through diplomatic rather than judicial channels. There are also more grounds on which extradition can be refused, so this process would probably be slower,⁵⁰³ more costly and lead to fewer extraditions. Furthermore, because there are EU measures, some EU Member States have repealed legislation giving effect to the Convention.

⁴⁹⁹ [Brexit: the proposed UK-EU security treaty, oral evidence](#), 16 May 2018, Q99

⁵⁰⁰ Ibid

⁵⁰¹ Ibid

⁵⁰² [Brexit: the proposed UK-EU security treaty, oral evidence](#), 2 May 2018, Q64

⁵⁰³ According to Camino Mortera, Centre for European Reform, "extradition under the Convention takes almost 20 times longer than it does with the EAW", Financial Times, 7 September 2018.

A 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters could provide a fall-back in the context of mutual assistance in criminal investigations. But this would also be a slower, more bureaucratic process than under existing arrangements, and it has not been ratified by all EU Member States.

In police cooperation, the UK would have to rely on cooperation through the International Criminal Police Organization (Interpol) and bilateral agreements. Interpol's capabilities are less developed than those of Europol, and the quantity and quality of data shared via Interpol are regarded as inferior.

Camino Mortera of the Centre for European Reform suggests:

... the UK could try to negotiate a surrender agreement similar to the one Norway and Iceland have with the EU. But this agreement took 13 years to negotiate, is still not in force, and will allow countries to refuse to extradite their own nationals.⁵⁰⁴

Richard Martin explained in evidence to the Lords EU Sub-Committee that law enforcement teams working with the Home Office on contingency planning were looking at using the Interpol database I-24/7. However, he suggested that this would have limitations compared to existing mechanisms:

[The fall-back options] all have limitations compared to what we currently have, but we are mapping through all those processes. What does that look like when it is a bit slower? How does that work for officers on the street, and the NCA officers, when they are doing their roles? ...

If there was a cliff edge scenario ... we would have these fallbacks ready to use. They would be clunky and they would be slower, but we would still be able to operate in a way around all that.⁵⁰⁵

Steve Smart added that in some areas there were no obvious fall-back options, and reliance on what was available would make law enforcement agencies less dynamic and less effective:

We will not be able to work at the speed we work now, assuming all things remain the same. There will be a resourcing issue, both for national policing and for the NCA, if we end up with a treaty that does not give us a lot of what we currently have.⁵⁰⁶

National security is not part of EU law and remains the responsibility of Member States. Some have therefore suggested that the impact of Brexit of any sort in this area will be minimal, because intelligence cooperation can and will continue at an intergovernmental level. Before the EU referendum, Sir Richard Dearlove, former head of the Secret Intelligence Service, suggested that the cost of Brexit to the UK in national security terms would be low, because the practical business of counter-terrorism and counter-espionage is conducted principally through bilateral relationships.⁵⁰⁷

⁵⁰⁴ Financial Times, [What Brexit means for extradition](#), 7 September 2018

⁵⁰⁵ [Brexit: the proposed UK-EU security treaty, oral evidence](#), 2 May 2018, Q62

⁵⁰⁶ Ibid

⁵⁰⁷ Richard Dearlove, "Brexit would not damage UK security", [Prospect Magazine](#), 23 March 2016

Andrew Parker, Director General of MI5, seemed to support this view in a speech in Berlin to the German domestic intelligence agency BfV in May 2018. He described existing structures for bilateral and multilateral intelligence cooperation in Europe, before concluding:

This highly developed national security collaboration largely takes place outside EU structures, and doesn't depend on membership. So, at the primary level, Brexit makes no difference to the strength of those partnerships.⁵⁰⁸

However, he then went on to explain how EU mechanisms contribute to this cooperation:

But that is not the whole story. National level and multilateral security work between European nations draws strength from a range of important EU systems and arrangements.

Exchanging data through EU law enforcement databases, and Passenger Name Records on the travel of terrorist subjects across Europe provides vital intelligence. Practical cooperation to efficiently arrest and surrender terrorists and criminals using the European Arrest Warrant enables the swift delivery of justice. And our exchanges with EUROPOL and other EU bodies, where the UK is a major contributor, make us all safer.⁵⁰⁹

A similar point was made by Lord Evans in evidence to the Lords EU Home Affairs Sub-Committee. He said that most cooperation took place bilaterally or multilaterally outside EU measures, but added:

It is important, certainly from MI5's point of view, that you cannot understand the counterterrorism work of MI5 in isolation from the law enforcement and policing work because we have an extremely interrelated model between the intelligence agencies and the police. The dependence of the law enforcement community on Europol, the European Arrest Warrants, law enforcement cooperation and so on was therefore extremely important to the overall efforts that we made collectively, although MI5 was not itself a member of Europol because we are not a law enforcement agency.⁵¹⁰

Robert Hannigan explained that for GCHQ, relationships with European counterparts were extremely important, but that cooperation takes place largely outside EU structures

Over the last five years there has been an extraordinary change in the quality and quantity of sharing with European counterparts, driven partly by terrorism but also by other threats, cyber in particular and Russia. In general, the cooperation is better than ever. One of the things that all the agency heads did after the referendum was to reassure each other that that would continue. The legal basis ... is bilateral in most cases. It does not touch on EU structures. Where it is multilateral in signal intelligence and cyber, it is done through a series of bilateral legal frameworks that exist between the SIGNIT agencies of the Five Eyes and a number of European countries both inside and outside the EU.⁵¹¹

⁵⁰⁸ [Director General Andrew Parker Speech to BfV Symposium](#), 14 May 2018, [mi5.gov.uk](#) [accessed 8 August 2018]

⁵⁰⁹ *Ibid*

⁵¹⁰ Brexit: the proposed UK-EU security treaty, oral evidence, 16 May 2018, Q94

⁵¹¹ *Ibid*

Government contingency planning

HASC reported in March 2018 that the National Crime Agency was unwilling to give public evidence on its contingency planning and expressed frustration that as a result, the public debate on this aspect of Brexit has been lacking in detail and urgency.⁵¹²

The Committee recommended that the Government devote a substantial proportion of its Brexit planning fund to policing and security cooperation, including detailed impact assessments of losing access to existing measures and fully costed plans for contingency arrangements such as UK-based call centres for bilateral cooperation with EU agencies.⁵¹³

In a follow-up inquiry, the Home Secretary told HASC that the Government was preparing contingencies for security arrangements but that they would be “suboptimal” in many areas, providing the example of the 1957 European Convention on Extradition.

HASC concluded that contingency planning in this area had been inadequate and that the Home Office’s Brexit planning budget was largely devoted to the UK’s future immigration system:

It is often said that the primary purpose of any Government is to protect its citizens from violence and harm – yet crucial questions about the UK’s future security relationship with the EU remain unanswered, and the issue continues to be side-lined by public debate about customs, borders and immigration after Brexit. [...]

Without urgent action to make progress in these negotiations, and to put workable contingency plans in place for a ‘no deal’ scenario, the safety and security of UK and EU citizens will be put at serious and unnecessary risk.⁵¹⁴

Are there any potential advantages to ‘no deal’?

The Government’s current position, as reflected in the July White Paper, accepts the EU’s requirement that future cooperation in this area should be underpinned by safeguards, including the UK’s continuing membership of the European Convention on Human Rights (ECHR), and adherence to adequate data protection standards.

In a no-deal scenario, the UK would no longer need to adhere to these requirements and would therefore have greater latitude in its approach to balancing security against other factors. Some have advocated departure from the ECHR in order to pursue security objectives,⁵¹⁵ but the Government has committed to adhering to it.

⁵¹² [UK-EU security cooperation after Brexit](#), Home Affairs Committee, Fourth Report of Session 2017-19, HC635, 21 March 2018, para 137

⁵¹³ Ibid, para 139

⁵¹⁴ UK-EU security cooperation after Brexit: Follow up report, House of Commons Home Affairs Committee, Seventh Report of Session 2017-19, HC 1356, 24 July 2018, para 65

⁵¹⁵ Sir Michael Fallon suggested in a Commons debate on returning fighters that the ECHR makes it difficult to prosecute individuals who have travelled to join terrorist organisations overseas, and that the UK should therefore withdraw from it ([HC Deb 23 July 2018, c727](#)). A similar point was made by [Colonel Richard Kemp](#) writing in The Telegraph, 24 July 2018 about the prosecution of returning fighters: “Brexit

Proponents of Brexit also suggested during the referendum campaign that there would be a security dividend in the UK obtaining greater control over its borders, and thus being able to apply more stringent tests to EU nationals entering the country.⁵¹⁶

Richard Martin made a similar point in evidence to the HL EU Home Affairs Sub-Committee, suggesting that post-Brexit there would be an opportunity to have stronger borders and to have more intervention at borders. However, he noted that this opportunity was dependent on having access to information about people attempting to enter the country.⁵¹⁷ Other representatives of law enforcement, such as Rob Wainwright, suggested that a loss of access to databases would have a detrimental impact on border security, as noted above.

enables us to leave the European Convention on Human Rights, which never contemplated the type of conflict we face and shackles our legal system in a way that costs innocent lives"- although he is mistaken about Brexit being connected to leaving the ECHR.

⁵¹⁶ See for example: "[Iain Duncan Smith: UK risks Paris-style attacks by staying in the EU](#)", *The Guardian*, 21 February 2016

⁵¹⁷ [Brexit: the proposed UK-EU security treaty. oral evidence](#), 2 May 2018, Q70

15. External relations

15.1 The EU's international agreements

The UK is currently party to numerous international agreements with third countries as an EU Member State. The EU's Europa online treaties [database](#) lists 1,256 international agreements to which the EU is party. How many of these are pertinent to the UK is as yet unclear. But as most aspects of external relations are Member State or shared competences, there are more options available to the UK to establish working bilateral mechanisms for cooperation in a no-deal scenario.

A report in the *Financial Times* in May 2017 suggested that there were 759 separate EU international agreements with potential relevance to the UK. These included 295 agreements related to trade (discussed in section 6), as well as agreements on regulatory co-operation, fisheries, agriculture, nuclear co-operation and transport co-operation (including aviation agreements enabling air transport). The agreements cover 168 countries, with multiple accords with certain countries.

Liam Fox has indicated that such high figures are misleading, and that not all of the treaties would require action to maintain continuity following Brexit. Some of these treaties have been superseded, are redundant or no longer relevant to the UK, and there are also multiple agreements that could be understood as one agreement. It is not possible to identify which treaties remain in force from the FCO UK Treaties Online database. Dr Fox [said](#) in December 2017 that work was "ongoing" to "identify the full range of agreements that are affected by exit and to take action to ensure continuity for businesses and individuals on exit".

UK relations with most of the states that are party to the European Neighbourhood Policy (ENP)⁵¹⁸ are, at least partially, mediated through that relationship. So 'no deal' would mean the UK would drop out of the Association Agreement with Ukraine, for example, and in addition to losing the EU-Ukraine Deep and Comprehensive Free Trade Area, it would not be able to participate any longer in EU-led stabilisation initiatives there.

The impact of 'no deal' on trade agreements specifically is discussed in section 6.3⁵¹⁹

FCO funding

According to the NAO report, [Implementing the UK's exit from the European Union. The Foreign & Commonwealth Office](#), April 2018, "Under a 'no deal' outcome with the EU the FCO will request a further

⁵¹⁸ The ENP seeks to link countries to the east and south of the territory of mainland Europe to the EU.

⁵¹⁹ For further information, see House of Commons Briefing Paper 8370, [UK adoption of EU external agreements after Brexit](#), 24 July 2018, and House of Commons International Trade Select Committee report on [Continuing Application of EU trade agreements after Brexit](#) published on 28 February 2018.

£65 million for 2018-19” and possibly more to support some of the Overseas Territories. The report notes:

Having previously reduced the number of UK diplomats across the EU27, the FCO now intends to increase them in order to enhance its ability to engage bilaterally with member states. Although the FCO does not have reliable data on actual numbers, it is clear that the number of UK diplomats reduced substantially in the decade up to the EU referendum. To compensate for leaving the EU institutions the UK is increasing staffing numbers across the FCO’s Europe network in the EU27 member states. In March 2018, the FCO announced 250 new posts in its overseas network, including the Europe network.

Overseas aid spending

The EU has been one of the UK’s largest multilateral aid partners. We are still waiting to find out whether any UK aid will be channelled through the EU after Brexit. It is reasonable to anticipate that about 10% of the UK’s 2019/20 aid budget will potentially be available for reallocation after Brexit. This looks all but certain in the event of ‘no deal’.

The EU has so far not commented publicly. [Current proposals](#) for future EU development funding emphasise converting multiple funding streams into a single external action instrument, rather than the kind of openness and flexibility towards non-member states which the UK has advocated. That would make it particularly difficult for the UK to continue funding and overseeing the European Development Fund, which is formally outside the framework of the EU treaties and therefore – in its current form – offered the possibility of continued UK involvement on the same basis as EU Member States.

In recent weeks, there have also been concerns that the European Commission may take the [view](#) that UK-based NGOs should be immediately ineligible to continue to receive EU funding in the event of a ‘no-deal’ Brexit.

The Government spent £884 million in aid through the EU in 2017, around 6% of all aid spending.⁵²⁰ If the UK stops contributing to the EU’s budget and paying into the European Development Fund, this will not result in it spending less money on aid (because it is legally obliged to continue to spend 0.7% of gross national income as aid each year); it will, however, mean that this aid will have to be spent differently.

In the White Paper on the future relationship between the UK and the EU, the UK government proposed that the two parties make a series of cooperative accords, one of which would cover international development and international action.⁵²¹ This would provide a framework under which the UK could continue to participate in EU programmes, potentially including those which spend aid money. The EU does already have agreements with third countries covering specific

⁵²⁰ DFID, [Statistics on International Development: Provisional UK Aid Spend 2017](#), 5 April 2018

⁵²¹ DExEU, [The future relationship between the United Kingdom and the European Union](#), 12 July 2018

aid programmes, implying that such collaboration is possible at some level.

A more detailed explanation of the UK's aid spending, and a discussion of the possible ways in which it could change after Brexit, are covered in a House of Lords Library briefing paper on [Brexit: Overseas Development Assistance](#).

15.2 External security

Foreign and defence policy

With no deal the UK would lose access to Common Foreign and Security Policy (CFSP) decision-making mechanisms used to co-ordinate joint responses to foreign policy challenges across all EU Member States. A recent example is the EU response to the Skripal assassination attempt, when the EU recalled its ambassador from Moscow, and EU Member States, as well as NATO partners and the US, ordered the expulsion of Russian diplomats. There are also questions around intelligence sharing, if there is no legal mechanism in place to share classified information (as discussed in section 14 above).

But the implications of 'no deal' for UK defence policy and the UK armed forces would be arguably relatively limited.

Successive Governments have stated that NATO is the cornerstone of European defence and security, supported by a network of strong multilateral and bilateral alliances and partnerships of which the UK is a participant, including permanent membership of the UN Security Council. From the UK's perspective the EU has instead been a notable 'soft power' actor, focusing on crisis prevention, crisis management and post-conflict stabilisation. In terms of military capabilities the UK could also be considered a net contributor to the EU.⁵²²

Were the UK to leave with EU with 'no deal', the most immediate implication would be that that UK would no longer be able to participate in CSDP missions, the EU battlegroups or in organisations such as the European Defence Agency (EDA). All military personnel deployed on EU-led operations, such as Operation Althea in Bosnia, would have to return to the UK, along with all UK military staff seconded to the EU.⁵²³ Yet, the UK's ability to project military power would arguably remain largely unaffected at this time. 'Hard' power would continue to be the purview of NATO or 'coalitions of the willing';

⁵²² The UK is one of the largest and most advanced military powers in the EU in terms of manpower, assets, capabilities and defence spending. It currently provides 20% of the EU's force catalogue, including strategic enablers such as airlift, refuelling and intelligence surveillance and reconnaissance. It is also one of only five EU countries capable of deploying an operational HQ and therefore taking command of a mission. At present the UK provides the operational HQ of the CSDP mission Operation Atalanta. On the other hand, the UK contributes only 3-5% of CSDP spending (it varies a little depending on whether military only or civilian and military together are taken into account).

⁵²³ It would also no longer be able to provide the operational headquarters of Operation Atalanta, although this would also be the case under any withdrawal agreement.

while any shortfalls in soft power projection could be compensated for through other multilateral or bilateral frameworks.

In terms of capability development, the UK would no longer be able to participate in the European Defence Agency, or any projects currently underway under the remit of the European Defence Research Programme (which is part of the European Defence Fund).⁵²⁴ Even during the proposed transitional period, the UK could already be [excluded](#) from certain EU-funded research & development projects related to defence because of their 'sensitive' nature.

In the longer term, however, and regardless of a 'no deal' scenario, the UK could seek to re-negotiate its participation in EU military operations via a third party framework agreement, in much the same way that the United States, Canada and Norway have.⁵²⁵ The same is true of the European Defence Agency,⁵²⁶ and the European Defence Fund, although under current assumptions third country access to the European Defence Fund will be tightly controlled and therefore the impact on the UK will be the same whether it leaves the EU with an agreement or not.

Indeed, in the event of a 'no deal', and were the UK to pursue third country agreements in the longer term, then the majority of the negotiations and debate would centre around exactly the same discussions which are happening now with respect to Brexit. Yet, the political will of the EU27 to positively engage with the UK in such negotiations following a 'no deal' scenario is debatable. As a result the process could be lengthy, and the terms of engagement could be less favourable.

There is a school of thought which would argue that, in defence terms at least, the EU needs the UK. And given recent shifts in the international security environment, the increasing belligerence of Russia and a US President who appears to have very little time for European security or the US' European allies, engaging the UK as a third country participant in CSDP regardless of a no deal scenario may not be so unappealing. There is another view that it could be helpful for the UK to

⁵²⁴ The UK is currently part of the Pythia project and Ocean 2020 project. The 'capability' strand of the EDF (the European Defence Industrial Development Programme) is currently being established, with a view to the first projects being financed from 2019. Third party arrangements allowing access to the fund are currently being negotiated and would be relevant to Brexit regardless. The UK is also not currently part of Permanent Structured Cooperation (PESCO). Details on all of these initiatives is available in Library Briefing Paper CBP 8216, [European defence: where is it heading?](#)

⁵²⁵ As a result, Canada and Norway have both contributed forces to Operation Althea in Bosnia, Canada has provided personnel for EU police Missions in Bosnia and the Democratic Republic of Congo, while Norway has contributed assets to Operation Atalanta (EUNAVFOR) and has provided forces to the EU Nordic Battlegroup.

⁵²⁶ In 2006 Norway, for example, signed an administrative agreement with the EDA which allows it to participate in the Agency's research and technology projects. Switzerland also has a similar cooperation agreement. Under current Brexit discussions the UK will still have to conclude an Administrative Agreement with the EDA to continue participating in specific EDA capability projects.

be leaving, after years of blocking developments such as an Operational Headquarters.⁵²⁷

But there are also non-EU initiatives afoot, such as French President Macron's European Intervention Force proposal, in which the UK could take part whether or not there's a Withdrawal Agreement, if there is sufficient political will.⁵²⁸

Sanctions

A no-deal Brexit seems not to have been discussed during debates on the [Sanctions and Anti-Money laundering Bill](#). The UK Government currently imposes sanctions and updates the anti-money laundering (AML) regime using powers in the *European Communities Act 1972*. Those powers will disappear with the repeal of the 1972 Act on exit day and the commencement of provisions under the [Sanctions and Anti-Money Laundering Act](#), which gives the UK Government new powers not dependent on EU membership.

If the UK agreed to continue implementing EU AML and sanctions law during a transitional period after Brexit's official date, it would delay the inception of an independent UK policy in these areas.

A no-deal Brexit would give the UK Government the immediate freedom to implement regulations that differ from the EU's. Sanctions and AML regimes are usually coordinated internationally (depending on the regime), for example at G7 meetings, by UN resolution, or following decisions by the international Financial Action Task Force, so the freedom to impose unilateral UK rules is unlikely to be exercised. The Government has in any case repeatedly insisted - including during the debate following the [statement](#) on 5 September on the Salisbury Skripal investigation - that it intends to keep aligning its sanctions policy with the EU's. This is unlikely to change in a no deal scenario.

⁵²⁷ A decision to establish an EU Military Planning and Conduct Capabilities (MPCC) unit to run "non-executive" training missions in parts of Africa was adopted in June 2017, having been blocked by the UK Government, which objected to the use of the term 'operation headquarters'.

⁵²⁸ See Guardian, [Nine EU states sign off on joint military intervention force](#), 25 June 2018.

Appendix

No deal contingency planning in the EU27

Austria

The Austrian Chancellor Sebastian Kurz would prefer to extend negotiations rather than surrender to a hard Brexit if a deal on the Irish border is not agreed.⁵²⁹ According to [Bloomberg \(19 July\)](#), Austria does not anticipate customs problems “because the current WTO regime could handle shipments to and from the U.K”. It is also “confident the country’s banking industry is prepared for all scenarios”.

Belgium

The Belgian Government is reported to be hiring more agents for the port of Antwerp and looking into “the need for scanners, sniffer dogs, weapons and drones to beef up post-Brexit customs surveillance” to monitor its coastline and the North Sea.⁵³⁰

Bulgaria

Bloomberg reports that Bulgaria is preparing for the risks of three possible Brexit scenarios: a comprehensive agreement, a partial agreement, and no deal. In September or October the Government “will develop a detailed action plan for the three scenarios”.

Denmark

The Danish Government says it has been preparing for no deal throughout the Brexit process (although it expects a deal to be reached) and has instructed all ministries to prepare for no deal.⁵³¹

Finland

The Finnish Government has instructed ministries to prepare for any outcome in the Brexit negotiations. It is concerned mainly about the aviation industry, “but no concrete contingency preparations have started”.⁵³²

France

France is reported to have been preparing for Brexit “for almost two years in sectors spanning from fisheries and borders to financial services”.⁵³³

⁵²⁹ See Politico, 6 July 2018

⁵³⁰ [New York Times, 19 July 2018](#); The Express, [Brexit no deal MAPPED: How EU countries are secretly preparing for no deal UK exit from EU](#), 20 July 2018

⁵³¹ Ibid

⁵³² Bloomberg, *ibid*

⁵³³ The Express, [Brexit no deal MAPPED: How EU countries are secretly preparing for no deal UK exit from EU](#), 20 July 2018

Prime Minister Édouard Philippe said 27 August that France would be ready in the event of a 'cliff edge' exit. He has "tasked ministers to prepare contingency measures that would be necessary... to mitigate the difficulties linked with this unprecedented challenge".⁵³⁴ France is preparing measures on the status of UK citizens living in France and ensure smooth border controls. "The approximately 150,000 British citizens living in France are being actively encouraged by Macron's government to apply for a 'carte de séjour' residency permit to avoid administrative chaos post-Brexit".⁵³⁵ Reports maintain that if there is no deal, Mr Philippe wants plans in place to "facilitate the residency of British nationals already living in France" and to ensure "the greatest possible fluidity of border controls".⁵³⁶ The Government will shortly present a bill to the French Parliament.

According to *The Guardian*, Xavier Bertrand, a former French minister and president of Hauts-de-France, has said that "Calais was prepared to solve the problem of space for checks in Dover". The port had acquired 17 hectares (42 acres) of land, which could be used for customs inspection posts and storage. France is also reported to be planning to recruit 700 new customs officials, some of whom will be based in Calais. The port also wants to test a new "Fastpass" virtual queuing system, whereby preloading passport and cargo information would increase the speed of border inspections.⁵³⁷

Germany

German companies were reported in 2017 to be preparing for a range of outcomes to the Brexit negotiations, including a no deal scenario. The Federation of German Industries (BDI) chair, Joachim Lang, said in October 2017 that "German companies with a presence in the UK should be planning for a 'very hard Brexit' ".⁵³⁸

Contingency plans were staved off at the end of 2017 with the Joint Report on agreement in phase 1, but there are indications that they are once again on the table. The German Government has told drug manufacturers to examine their supply chains for any exposure that might cause medicines shortages in the event of a no-deal Brexit. The Federal Institute for Drugs and Medical Devices (BfArM) asked drug manufacturers (such as Bayer, Merck KGaA and Boehringer Ingelheim and foreign suppliers such as Teva and Roche) to collect data on the impact of a worst-case scenario.

Greece

Georgios Katrougalos, Greece's alternate foreign minister, has said the government is studying the "improbable" scenario of no deal and is

⁵³⁴ France24, [France and Germany are making contingency plans for a no-deal Brexit, with Paris looking at residency issues and Berlin examining medical supply chains with the UK](#), 29 August 2018

⁵³⁵ Ibid

⁵³⁶ The Local Fr, [No-deal Brexit: French government makes contingency plans for Brits living in France](#), 28 August 2018

⁵³⁷ 'Dover-Calais 'facing economic catastrophe' due to Brexit', *Guardian*, 17 July 2018

⁵³⁸ BBC News, [Plan for a very hard Brexit. German firms told](#), 5 October 2017

trying to estimate the possible consequences and taking the necessary measures.⁵³⁹

Ireland

The Irish Government's [2018 National Risk Assessment – Overview of Strategic Risks](#) analysed a range of Brexit-related risks for Ireland and concluded:

While the Irish Government will continue to do all in its power on both a domestic and European front to work for a Brexit agreement in line with Irish interests, the risks to our interests, our trade, our economy at both the macro and micro level⁸, and our relationship with Northern Ireland, and the UK which could emerge from potential Brexits are manifold and significant, and it is likely that Brexit will remain one of the most significant risks facing this country over the coming years.

Leo Varadkar, the Irish Taoiseach, has said his Government is making contingency plans for a no-deal Brexit, including extra customs officers and veterinary inspectors to deal with changes in trade rules.⁵⁴⁰

Ireland has also been considering whether to relocate part of the emergency oil stocks that it stores at UK refineries back to Ireland or to other EU countries.⁵⁴¹

Foreign Affairs Minister Simon Coveney presented Brexit contingency plans to the Cabinet on 18 July.⁵⁴² Speaking after the Cabinet meeting, the Taoiseach said:

The key decisions are particularly focused on areas where the Government has direct responsibility and on measures that need to be taken on an East-West basis, such as customs and veterinary controls at ports and airports. The Government also reiterated its position today that it would not countenance a return of a border on the island under any circumstances, including in the event of a hard Brexit.⁵⁴³

Simon Coveney said a "huge amount of work has been underway across Government and its agencies for many months", and that the Government would also be carrying out preparations "on an EU-wide basis, in cooperation with our EU partners".⁵⁴⁴

Italy

⁵³⁹ Bloomberg, [How Europe Is Bracing for Messy Brexit: Dogs, Drones, Do Nothing](#), 19 July 2018

⁵⁴⁰ See The Telegraph, [Brussels warns EU countries: get ready for a no-deal Brexit](#), 19 July 2018

⁵⁴¹ Sunday Independent, [Ireland set to remove oil reserves from Britain as Brexit deadline looms closer](#), 15 July 2018, and [Cabinet to move Irish oil reserve from UK](#), 15 July 2018

⁵⁴² See RTÉ, [1,000 new customs and veterinary inspectors to be hired](#), 20 July 2018

⁵⁴³ Merrion Street, Irish Government News Service, [Cabinet Agrees Brexit Preparedness Measures](#), 18 July 2018

⁵⁴⁴ Ibid

According to reports Italy's new populist, eurosceptic government does not have contingency plans for a no-deal Brexit, which it, like Greece, considers unlikely.⁵⁴⁵

Netherlands

The Dutch government is reported to be preparing a 'playbook' to be ready for a no-deal scenario and is employing extra officials, mostly in the port of Rotterdam, "to prepare for the extra bureaucracy required for British goods to go through customs before entering the EU after Brexit".⁵⁴⁶ According to the [New York Times \(19 July\)](#), "[t]he Dutch government is hiring nearly 1,000 customs officials". The Government is also recruiting up to 90 veterinarians for animal and food inspections and warehouses for inspection are being considered.⁵⁴⁷

Its web-based 'Brexit impact scanner' can be used by SMEs to assess their exposure to potential problems related to Brexit, and it offers [€2,500 'vouchers'](#) for small companies to obtain independent advice about the Brexit implications for their business.

The UK being the Netherlands' third largest trading partner, the Dutch customs authorities are expecting an increase of the number of customs operations by a third and are expanding the staff capacity by 20%.⁵⁴⁸

MLex [reported](#) on 4 September on research for the Dutch Government by Kantar Public that concluded that around 18% of Dutch companies doing business with the UK are "actively preparing for Brexit", up from 10% in 2017. The study was carried out in the period 28 June – 3 July among 245 companies doing business with the UK.

Poland

Several ministries are reported to be analysing the potential impact of no deal. "The government is determining how many additional customs agents will be required and is investigating measures to limit the risks to business".⁵⁴⁹

Portugal

According to the Bloomberg report, Portugal is not expecting major changes or increases in staff at the ports of Sines and Lisbon from any kind of Brexit. "Almost three-quarters of goods trading at the port of Sines -- the nation's largest -- is with countries outside the EU, so it's already well equipped to deal with shipments to and from non-EU nations".

⁵⁴⁵ Bloomberg, *ibid*; Express, [Brexit no deal MAPPED: How EU countries are secretly preparing for no deal UK exit from EU](#), 20 July 2018

⁵⁴⁶ Reuters, [Dutch cabinet drafting 'playbook' for chaotic Brexit: parliament](#), 9 July 2018

⁵⁴⁷ [New York Times, 19 July 2018](#)

⁵⁴⁸ ['Nederlandse Douane nog niet klaar voor Brexit, honderden extra mensen nodig: 'Het effect is echt groot'](#). (The Netherlands Customs administration not yet ready for Brexit, need more people: 'The effects are major'), *De Volkskrant*, 16 February 2018

⁵⁴⁹ *Ibid*

Spain

An Elcano policy paper in May 2018 stated that in preparation for a possible no deal:

... it is important for Spanish companies to design contingency plans for coping with a reduction in business, whether in terms of preparing for changes in the regulatory framework or seeking alternative customers and suppliers in other markets, both within and beyond the EU.⁵⁵⁰

It also noted the possible effects on the Spanish tourism industry (“Spain receives millions of British tourists every year, accounting for almost a quarter of visitors to the country”):

it is important that the Spanish tourism industry prepares for a possible reduction in British visits and draws up contingency plans both with the Spanish authorities and with British tour operators, who are equally dependent on tourism to Spain.

The Spanish Government is looking at different potential outcomes to the negotiations, including the cliff-edge scenario. Its analysis includes input from companies and business groups, and since last year, Spain “has been working on a plan to shield its tourism industry from any disruption to air travel”.⁵⁵¹

Sweden

Sweden has established a “preparedness group” to look into the potential consequences of no deal, but is hopeful of a deal.⁵⁵²

⁵⁵⁰ [Spain and the prospect of Brexit](#), Salvador Llaudes, Ignacio Molina, Miguel Otero Iglesias & Federico Steinberg, May 2018

⁵⁵¹ Bloomberg, 19 July 2018

⁵⁵² Ibid

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