



House of Commons  
Exiting the European Union  
Committee

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**The process for exiting  
the European Union  
and the Government's  
negotiating objectives**

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**First Report of Session 2016–17**

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

*Ordered by the House of Commons to be printed  
11 January 2017*

## Exiting the European Union Committee

The Exiting the European Union Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Exiting the European Union and related matters falling within the responsibilities of associated public bodies.

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### **Committee staff**

The current staff of the Committee are James Rhys (Committee Clerk), Kevin Maddison (Second Clerk), Claire Cozens (Second Clerk), Dr Ariella Huff (Senior Committee Specialist), Duma Langton (Committee Specialist), Judy Goodall (Committee Specialist), Jamie Mordue (Senior Committee Assistant), Hannah Finer (Senior Committee Assistant), Henry Ayi-Hyde (Committee Assistant), and Nick Davies (Media Officer).

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# Conclusions

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## What the Government needs to do before triggering Article 50

1. Coordinating the policy analysis, putting in place the staff required and ensuring necessary coordination to support the UK's negotiations to exit the EU and managing and implementing the decisions required to prepare the public service for life outside the EU represent a significant challenge for the civil service. The work required to "deliver Brexit" will be the highest priority across the civil service for some years and it must be properly resourced and structured by Ministers. (Paragraph 21)
2. We welcome early reports of the strength of the team assembled at the Department for Exiting the European Union and the work clearly being undertaken. We also note the resignation of Sir Ivan Rogers from his key role as UK Permanent Representative to the EU. We wish his successor, Sir Tim Barrow, well in his challenging new role. We will wish to take evidence on the issues raised in Sir Ivan's letter. (Paragraph 22)
3. We note that evidence has emerged of the strain that preparation for exiting the EU is placing on Government, not just on the Department for Exiting the EU but on other Departments with responsibilities in "delivering Brexit". It is essential that all those involved are clear about the objectives. This will be a matter which we, and our counterpart committees, will continue to keep under close watch. (Paragraph 23)
4. It is not yet clear what the long term impact of Brexit will be on civil service headcount, but the additional burden of delivering Brexit and the new functions that the public service will need to take on may well require, at least in the short to medium term, an increase in numbers of civil servants. The Government should also identify where the gaps in the knowledge and experience of the civil service lie and consider bringing in people from a range of backgrounds to ensure that it is up to the task at hand. (Paragraph 24)
5. A common request from witnesses has been for greater clarity from the Government about its plans for exiting the EU so that those affected can plan accordingly. We welcome the Prime Minister's commitment to set out more detail on the UK's objectives in January and we look forward to publication of the Government's plan. Article 50 envisages two years for negotiation and ratification of any agreement on exit. There is no timescale that limits negotiations on a new relationship between the UK and the EU. If the latter negotiations are not concluded within the two years envisaged by Article 50 then the UK would leave the EU without a new relationship in place. (Paragraph 32)
6. We welcome the Prime Minister's assurance that Parliament will have the opportunity to scrutinise the Government's negotiating plan, but in order to do that the plan must be published in sufficient time before the triggering of Article 50. We therefore expect to see the plan by the middle of February 2017 at the very latest. It should be published in the form of a White Paper given its huge significance, and we will call the Secretary of State to give evidence on it. When the Government does produce its plan, it should declare its position in relation to membership of the Single Market and Customs Union. (Paragraph 38)

7. The Government has pledged to hold a series of debates in the run up to the triggering of Article 50. However, it has given no advance indication of when future debates will take place. A great deal of work is going on in the Committees of both Houses to identify opportunities and risks arising from Brexit which should be taken into account in preparing the Government's negotiating plan. The Government should now publish a timetable of the further debates that it will be scheduling. This will help the Committees of both Houses to time their work to help to inform these debates. (Paragraph 39)
8. Once the negotiations begin, Parliament will need to be kept fully informed about progress. We welcome the Government's stated commitment to ensuring that the UK Parliament is kept as well-informed throughout the negotiation process as the European Parliament will be. We ask the Secretary of State to set out exactly how the Government intends to meet this commitment. (Paragraph 40)
9. While it is clear that no part of the UK has a veto over the outcome of the negotiations, it is essential that all the devolved governments, and the different regions of England, are duly involved in the process and have their views taken into account. (Paragraph 52)

#### The Article 50 negotiation: what will it cover?

10. The UK's future relationship with the EU should be negotiated in parallel with the Article 50 negotiation so that there is clarity about both the divorce settlement and the new relationship at the moment we formally leave the EU. This would appear to be the intention of the wording of Article 50 and it would be in the best interests of both the UK and the EU-27 were this to be the case. However, this will not be in the Government's gift to deliver; the sequencing of negotiations in this way will require the agreement of both sides in the negotiations. (Paragraph 58)
11. The key differences between an agreement made under the procedure laid down by Article 50 and one using the procedure set out in Article 218 TFEU (which would apply to a separate agreement on future arrangements between the UK and the EU) are that, as EU law and practice currently stands, the latter requires each Member State's agreement (rather than a Qualified Majority) and also the possible agreement of up to 34 national and regional parliaments. However, if the Article 50 agreement were to be a "mixed agreement" its procedure would, in practical terms, be the same as for Article 218 TFEU agreement. (Paragraph 66)
12. As these procedural considerations may well affect the outcome of the negotiations, we consider it important for the Government to provide early clarification of its expectations on whether or not the Article 50 agreement is likely to be mixed, the respective scope of an Article 50 agreement and a future arrangements agreement made under Article 218, and the room for flexibility in the choice between the two and, if the expectation is that it is a mixed agreement, the Government should put plans in place at that time to engage with other regional and national bodies throughout the EU in order to ensure safe passage of the agreement. (Paragraph 67)



13. The Great Repeal Bill will introduce the legislation that ought to provide legal certainty in the UK on the day after Brexit day. EU legislation will be incorporated into UK law and can then be either retained or repealed. Given the significance of the repatriation of legislative competences to the UK for the constitutional make-up of the UK, the Bill will also have implications for the devolution settlement. The Secretary of State must publish this Bill in draft to enable the fullest scrutiny to take place. The Great Repeal Bill, and the procedure with which it is dealt, will need to be consistent with the existing devolution settlement. (Paragraph 71)
14. The UK's relationship with the EU is deep and complex, not least in terms of the legal rights of parties in both the UK and the EU-27. It would be unsatisfactory and potentially damaging to both sides were the UK to leave the EU with no agreement having been reached. (Paragraph 76)
15. It will be essential to provide clarity as soon as possible, and certainly by the time the UK leaves the EU, about the Government's preferred option for the UK's future participation in EU regulatory bodies. If it is decided, however, not to seek to maintain membership of these bodies then the Government must set out the new arrangements it proposes to put in place to ensure that these functions are carried out in future. (Paragraph 83)
16. It is clearly in everyone's interests to resolve the position of EU nationals currently in the UK and of UK nationals in other EU member states as quickly as possible so as to provide certainty and reassurance to the individuals, their families and the businesses and services that rely on them. We were struck by the fact that witnesses who were on either side of the referendum debate were unanimous, when asked, in expressing their opinion that EU nationals working in the UK should have their status assured. This must be an early priority for the negotiations. (Paragraph 87)
17. It is essential that closer UK-Irish relations and stability in Northern Ireland and the Good Friday Agreement are not jeopardised by the UK's exit from the EU. The Executive and the Assembly in Northern Ireland should be duly involved at every stage in the process. In the light of current developments in Northern Ireland, a way will have to be found to make this happen. (Paragraph 92)
18. It will be essential to maintain cooperation with the other 27 member states on defence, foreign policy, security and the fight against terrorism after the UK has left the EU. This is clearly in the UK's and EU-27's mutual interests to do so and the negotiations should ensure that it happens. (Paragraph 99)
19. The negotiations that the UK is about to embark upon will not be easy and they will certainly not be completed in six months. There will be an enormous amount of ground to be covered in what may be a period of as little as 18 months in order to provide time for any deal to be properly scrutinised by member states and their parliaments, the European Parliament and, of course, the UK parliament and the devolved national Parliaments. (Paragraph 101)
20. The Government has stated that it will be looking for the best deal that it can secure in respect of continued access to European markets without tariffs or other obstacles, the Government should look to secure a mutually beneficial relationship

in other areas where the UK currently cooperates with other Member States. The UK should also seek a future relationship with the EU based on continuing close cooperation in Justice and Home Affairs, Security, Foreign Affairs and Defence Policy. (Paragraph 102)

21. No one can predict how negotiations will unfold once Article 50 is triggered. However, as a bare minimum, by the time that the UK exits the EU, it is essential that clarity has been provided around
  - The institutional and financial consequences of leaving the EU including resolving all budget, pension and other liabilities and the status of EU agencies currently based in the UK;
  - Border arrangements between Northern Ireland and the Republic of Ireland and a recognition of Northern Ireland's unique status with regard to the EU and confirmation of the institutional arrangements for north-south cooperation and east-west cooperation underpinning the Good Friday Agreement;
  - the status of UK citizens living in the EU;
  - the status of EU citizens living in the UK;
  - the UK's ongoing relationship with EU regulatory bodies and agencies;
  - the status of ongoing police and judicial cooperation; and
  - the status of UK participation in ongoing Common Foreign and Security Policy missions;
  - a clear framework for UK–EU trade; and
  - clarity on location of former EU powers between UK and devolved governments. (Paragraph 103)

### Negotiating the future relationship

22. The Government will undoubtedly be undertaking economic assessments of the different options for market access and trade looking both at risks and opportunities. In the interests of transparency, these should be published alongside the Government's plan in so far as it does not compromise the Government's negotiating hand. The UK Government's negotiating plan should outline its position in relation to membership of the Single Market and the Customs Union. (Paragraph 123)
23. A return to tariffs and other regulatory and bureaucratic impediments to trade would not be in the interests of UK businesses and therefore the Government should strive to ensure that this does not happen. (Paragraph 136)
24. It will also be important for the Government to set out clearly its policy on membership of the Customs Union as part of its plan for the negotiations. (Paragraph 137)

25. Given the importance of the financial services industry to the UK economy in terms of jobs and tax revenues, the Government should seek to ensure continued access to EU markets in financial services for UK providers whether by way of a continuation of passporting or mutual recognition of regulatory equivalence or some other means. What will be important is that the industry has confidence that any new arrangements will enable them to carry on doing business. Both the UK and the EU-27 benefit from the presence in London of a world class financial services hub and ensuring that there is minimal disruption to services from Brexit will be important for broader European financial stability. (Paragraph 143)
26. In deciding on a new system for controlling EU migration, the Government will need to take full account of the importance of workers from the EU, including the highly skilled, and the ability to undertake intra-company transfers to a large number of sectors of the UK economy. (Paragraph 152)
27. The Secretary of State has said that he wants to secure the best possible access for goods and services to the European market. The Prime Minister has made it clear that she places a top priority on controlling the UK's borders and extricating the UK from the jurisdiction of the European Court of Justice. The pronouncements of the EU's chief negotiators on the indivisibility of the four freedoms seem to indicate that achieving all these objectives will be difficult. (Paragraph 162)
28. A "cliff edge" change in circumstances could be extremely disruptive in some sectors to businesses both in the UK and in the EU 27, whether it be the need to adjust to new provisions for regulatory approval, new customs requirements, or the need to adjust to new costs or restrictions in employing EU workers. The risk of a cliff edge – ie the absence of transitional arrangements – might also push some businesses to pre-empt the result of negotiations and minimise the risks to their business. For some, this could involve re-locating out of the UK or investing elsewhere in future. A period of transition, or adjustment, is a factor in most trade agreements. The Government must make clear from the outset that a period of adjustment to any change in trading arrangements or access to EU markets for UK service industries will be sought as part of the negotiations. (Paragraph 163)
29. If final agreement is not possible by the time that the UK leaves the EU, it would be in the interests of both sides of the negotiations for an outline framework, with appropriate transitional arrangements, for the UK's future relationship with the EU to be agreed in respect of access to the Single Market for goods and services and future trade policy. (Paragraph 164)
30. In addition to the economic aspects of the relationship, it is essential that cooperation in defence, foreign policy, security and the fight against terrorism, which is of benefit to both the UK and the EU-27, is not lost when the UK exits the EU. If it is not possible to conclude an agreement on all areas of cooperation in Justice and Home Affairs and Common Foreign and Security Policy before the UK leaves the EU, transitional arrangements to ensure that mutually beneficial cooperation is not brought to an abrupt end by Brexit will be needed. (Paragraph 165)

31. Although the Constitutional Reform and Governance Act 2010 provides the House of Commons with powers to withhold ratification of Treaties, this is not a satisfactory way of dealing with such an important Treaty. We therefore call on the Government to make it clear now that Parliament will have a vote on the Treaty and that the timetable for this vote will allow for proper consideration of any deal that is negotiated. (Paragraph 168)

# 1 Introduction

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1. On 23 June 2016, the people of the United Kingdom voted to leave the European Union. The result was a narrow, but clear, decision.<sup>1</sup> Consequently, the UK will be leaving the EU. The precise and detailed nature of our future relationship with the EU-27 remains to be determined by negotiation.

2. On taking up office as Prime Minister following the referendum, the Rt Hon Theresa May MP set up the Department for Exiting the European Union to oversee negotiations to leave the EU and establish the future relationship between the UK and EU. On 31 October 2016, the House of Commons set up the Committee on Exiting the European Union with the remit to examine the policy, expenditure, and administration of the new Department.

3. Article 50 of the Treaty on European Union (TEU) provides the legal base and sets out the process which must be followed for a Member State to leave the EU. The question of whether the Government requires the consent of Parliament, and more specifically, the legislative authority provided by Parliament, to begin the process of exiting the EU under Article 50 of the TEU, is a matter that is currently being determined by the Supreme Court of the United Kingdom. This report does not seek to assess what role Parliament should have in triggering Article 50.

4. The process of exiting the European Union will be a hugely complex task. The UK originally joined the Common Market 43 years ago and the country's membership of the EU touches on almost every area of national life and affects the work of every Government Department. It is our role to scrutinise the Government as it seeks to ensure that the UK makes the most of the opportunities and mitigates the risks of leaving the EU. We agreed terms of reference for our first inquiry to examine

- What should be the UK's objectives in negotiating its future economic and political relationship with the EU, looking at both risks and opportunities?
- What will have to be included in the negotiations to leave the EU under Article 50 and to what extent will this include provisions relating to the UK's future relationship with the EU?
- Is there a case for the UK seeking to negotiate transitional arrangements in the event that it is unable satisfactorily to reach agreement on its future political and economic relationship before it has left the EU under Article 50?
- Does the Government have the capacity and the appropriate structures to meet its objectives?

5. This report examines the process that is set out by Article 50 TEU and makes recommendations about how the Government should approach its task. Before Article 50 is triggered we will continue to examine the different components of the relationship between the UK and the EU and seek to influence the Government in identifying its negotiating objectives. Once Article 50 is triggered, it will be our role to hold the Government to

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<sup>1</sup> Whilst the majority of voters in England and Wales voted to leave, the majority in Scotland and Northern Ireland voted to remain. The result of the referendum was 51.9 per cent voted to leave and 48.1 per cent voted to remain. The breakdown of the vote for each of the four nations of the UK was as follows: England (53.4 per cent leave; 46.6 per cent remain), Scotland (38 per cent leave; 62 per cent remain), Wales (52.5 per cent leave, 47.5 per cent remain), Northern Ireland (44.2 per cent leave, 55.8 per cent remain). [The Electoral Commission](#)

account for the progress of negotiations. We will continue to seek to inform the public and the House about the process and we will seek to engage with other Member States and EU institutions to understand their perspectives on the negotiations.

6. A number of other Select Committees in both the House of Commons and the House of Lords have undertaken a great deal of work both in the run-up to and since the referendum. We do not intend to duplicate their work but instead will draw upon it to help us to build a picture of the negotiations that covers the full remit of the Department for Exiting the EU and its relationship with other Government Departments. We are grateful to our colleagues working on other Committees for their assistance in informing both Parliament and the public.

7. One of our first priorities has been to launch a programme of visits around the country. We have already been to Sunderland and Aberdeen, and in the coming weeks we will be visiting Wolverhampton, Stoke-on-Trent, Shoreditch in London, Boston, Cornwall, Swansea and Derry~Londonderry.

## 2 What the Government needs to do before triggering Article 50

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### Capacity

8. The new Department for Exiting the EU is charged with leading the UK's negotiations and leading the effort across Whitehall to deliver Brexit. We visited the Department for Exiting the European Union (DExEU) on 8 November, and discussed progress with Robin Walker MP, Parliamentary Under Secretary of State at the Department and members of the senior management team.

9. As of 14 December, the Department had a complement of 330 staff all on secondment from elsewhere in Whitehall.<sup>2</sup> When asked whether the Department needed some expertise from outside the civil service, the Secretary of State told us that it was “gradually bringing some in”.<sup>3</sup> The Department also works with 120 staff at UKRep (the UK Representation to the EU) in Brussels. Where UKRep staff work on bilateral relations with other Member States, they report to the Foreign and Commonwealth Office. When engaged in day-to-day business with the EU, they report to DExEU. The Rt Hon David Jones MP, Minister of State, Department for Exiting the EU, represents the Government on the General Affairs Council in Brussels, the Council body responsible for co-ordinating and preparing the work of the European Council.<sup>4</sup> We were told on our visit to the Department that the DExEU team had begun their work in scoping policy areas and providing analysis to Ministers to help them decide what negotiating approach to take.

10. In evidence to us, Sir Simon Fraser, former Permanent Secretary at the Foreign and Commonwealth Office, described the Government as being in “information-gathering mode”.<sup>5</sup> The Secretary of State described his Department as initially taking on a policy coordinating role and said that the Department was undertaking a substantial programme of policy analysis and consultation and was:

in the midst of carrying out 57 sets of analyses, each of which has implications for individual parts of 85 per cent of the economy. Some of those are still to be concluded. We have work still to be done on justice and home affairs, so there is a fair number of things still to do.<sup>6</sup>

11. We heard evidence on the sheer scale of the task facing the Government in circumstances where there is a great deal of uncertainty. Sir Simon Fraser described this initial scoping work as involving an “extraordinarily complex range of activity across a wide range of domestic and international policies”.<sup>7</sup> Professor Catherine Barnard, Professor of European Law at the University of Cambridge, told us that this was a “gargantuan exercise”.<sup>8</sup>

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2 [Q421](#)

3 [Q510](#)

4 This role was previously carried out by the Minister for Europe within the Foreign and Commonwealth Office.

5 [Q1](#)

6 [Q404](#)

7 [Q1](#)

8 [Q1](#)

12. In terms of preparations for the negotiations, the Institute for Government was complimentary about the work of officials in the Department for Exiting the European Union:

The Department for Exiting the EU (DExEU) has established itself quickly, putting new teams in place and developing cross-government structures. Teams working across government are doing so with energy, optimism and professional dedication.<sup>9</sup>

13. However, Dr Hannah White, Director of Research at the Institute for Government (IfG), warned that the Government needed to be clear where its priorities lay:

The Civil Service cannot do everything. It is 19 per cent smaller now than it was in 2010. It has all of the manifesto commitments from the Government when they came into power. It has some new things that the Prime Minister has said she wants to do. It is dealing with these cuts and Brexit is an additional burden.<sup>10</sup>

14. The IfG raised some broader concerns about Whitehall's capacity to deliver both Brexit and the Government's "business as usual". It identified potential problems in:

- Uncertainty in some Departments about what they were required to do before Article 50 was triggered;
- Lack of clarity about how negotiations would be managed; and
- Insufficient focus on preparation for day one outside the EU.

It concluded that Whitehall had the skills but not the capacity or resources to deliver Brexit.<sup>11</sup>

15. The IfG's Report focussed on the challenges facing five particular Departments—Environment, Food and Rural Affairs, Health, HM Revenue and Customs, Home Office and Ministry of Justice—in meeting pre-referendum manifesto commitments and managing and implementing the decisions required, subject to negotiations, to effect exit from the EU. For example, the Report notes that HMRC is already engaged in work on the One Government at the Border programme (sharing data on the movement of goods), the Making Tax Digital programme and a major tax office restructuring. It may need to establish a new customs regime following the Brexit negotiations as well as considering whether to repeal, amend or retain existing EU legislation, including tax legislation, after the UK leaves the EU. It will be expected to address these challenges with a budget that, by 2020, will be 26 per cent lower than it was in 2011. Its staff headcount has already reduced by 12 per cent.

16. On top of its existing commitments, DEFRA will need to develop a replacement for the Common Agricultural Policy; develop an approach to trade policy and relations with the EU; work through the implications for devolution of repatriating legislative

9 [Whitehall's preparation for the UK's exit from the EU](#), Institute for Government, Joseph Owen and Robyn Munro, Briefing paper December 2016

10 [Q1](#)

11 [Whitehall's preparation for the UK's exit from the EU](#), Institute for Government, Joseph Owen and Robyn Munro, Briefing paper December 2016



competences in agriculture and environmental regulation; and decide its approach to existing EU legislation. This will be expected with a budget that by 2020 will be 34 per cent lower than it was in 2011 and with a staff headcount already 35 per cent smaller than it was in 2011.

17. Sir Simon Fraser told us that, depending on the outcome of negotiations, new demands would be placed on the civil service, requiring in some cases more staff or staff with different skills:

If we leave the customs union, we may need more people to monitor the movement of goods. We may need more people on the borders as well. [ ... ] there are a range of ways in which we may need to reinforce.<sup>12</sup>

18. Whilst Sir Simon Fraser suggests that the process of exiting the EU will require a substantial increase in civil servants, it has also been argued that departure opens up opportunities for greater efficiencies in the public sector. Although some additional functions will be required within the public sector, the UK will be able to take more decisions about its own regulatory framework and may have the potential to offset these increases with savings elsewhere.

19. The Secretary of State told us that the Department's work was proceeding at a "hell of a pace" and he expressed great confidence in the commitment of the Department's officials:<sup>13</sup>

this Department is at the pivot of a historic change in our country. They all want a part of that. I tease civil servants as well as the next man—remember, I used to be PAC Chairman and am fairly familiar with the syndrome—but these people want the best for their country, as do I and as does everybody in this room. They will do their best for their country.<sup>14</sup>

20. Crucial to the success of DExEU and its work preparing for and supporting the negotiations is successful integration with UKRep in Brussels. On 3 January 2017 the outgoing UK Permanent Representative to the European Union, Sir Ivan Rogers, told his staff that "serious multilateral negotiating experience is in short supply in Whitehall" and that "the structure of the UK's negotiating team and the allocation of roles and responsibilities to support that team, needs rapid resolution. The working methods which enable the team in London and Brussels to function seamlessly need also to be strengthened."<sup>15</sup> He also revealed that "we do not yet know what the government will set as negotiating objectives for the UK's relationship with the EU after exit."

**21. Coordinating the policy analysis, putting in place the staff required and ensuring necessary coordination to support the UK's negotiations to exit the EU and managing and implementing the decisions required to prepare the public service for life outside the EU represent a significant challenge for the civil service. The work required to "deliver Brexit" will be the highest priority across the civil service for some years and it must be properly resourced and structured by Ministers.**

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12 [Q6](#)

13 [Q509](#)

14 [Q510](#)

15 [BBC News, Sir Ivan Rogers' letter to staff in full](#), 4 January 2017

22. We welcome early reports of the strength of the team assembled at the Department for Exiting the European Union and the work clearly being undertaken. We also note the resignation of Sir Ivan Rogers from his key role as UK Permanent Representative to the EU. We wish his successor, Sir Tim Barrow, well in his challenging new role. We will wish to take evidence on the issues raised in Sir Ivan's letter.

23. We note that evidence has emerged of the strain that preparation for exiting the EU is placing on Government, not just on the Department for Exiting the EU but on other Departments with responsibilities in "delivering Brexit". It is essential that all those involved are clear about the objectives. This will be a matter which we, and our counterpart committees, will continue to keep under close watch.

24. It is not yet clear what the long term impact of Brexit will be on civil service headcount, but the additional burden of delivering Brexit and the new functions that the public service will need to take on may well require, at least in the short to medium term, an increase in numbers of civil servants. The Government should also identify where the gaps in the knowledge and experience of the civil service lie and consider bringing in people from a range of backgrounds to ensure that it is up to the task at hand.

### Decision-making processes within Government

25. The Prime Minister has said that she will not be delivering a "blow by blow" account of negotiations. However, she has also said that she will share more detail before triggering Article 50. We asked witnesses what level of detail should be provided in the Government's articulation of its negotiating objectives and where the line should be drawn between informing the public about the most significant change in governance in the UK for decades and revealing too much of the Government's negotiating hand. Dr White argued that:

You would not go into things like what your assessment was of the other party's view on things. You would not talk about what your fallback positions were. You would not distinguish between the things that were your absolute priority and the things that you were willing to give way on—all those things that come into the category of a negotiating strategy.<sup>16</sup>

However, what should be disclosed was:

more likely to include what the Government's objective was in terms of some sort of future relationship. [ ... ] It is the objective in terms of where we want to end up, in our relationship with the EU.<sup>17</sup>

26. Sir Simon Fraser outlined why it was important to provide information to the public on what the Government was seeking to achieve in the negotiations, ie to help them:

to understand what is at stake and [ ... ] have a sense that the Government has mastered the issues, has a clear sense of the national interest and is in a position to pursue those interests effectively in negotiation, both in terms of our separation and the clarification of the future relationship.

16 [Q37](#)

17 [Q38](#)

That will affect all of us because the outcome of that negotiation could lead to different trading arrangements, different economic relationships and therefore potentially impacts on jobs across the economy in different sectors in different ways.<sup>18</sup>

27. We were told on our visit to the Department about the huge exercise that the Government has embarked on in trying to engage with stakeholders. However, Dr White argued that the Government needed to be clearer about the processes by which decisions on its negotiating objectives were being reached:

there could be a great deal more clarity about [ ... ] the process that the Government plans to use to get to its negotiating position before it triggers article 50. [ ... ] What we want and think would be really useful, both for external stakeholders of the Government and Whitehall Departments more generally, is to understand the process for getting to the position where the Government is happy to trigger article 50.<sup>19</sup>

28. Others have argued that the Government needs to provide more clarity about its negotiating objectives as uncertainty, in itself, could be damaging to UK business or could cause some businesses to pre-empt the outcome of any negotiations and leave the UK. Robin Niblett, Director, Chatham House, argued that “uncertainty” was a major concern for business. There was concern about when there would be certainty around the UK’s relationship with the EU as “decisions need to be made in a matter of months, not years”.<sup>20</sup> Gary Campkin, Director for Policy and Strategy, CityUK, told us that the most important objective was ensuring “minimum disruption to customers and clients.”<sup>21</sup> CityUK’s top priorities were delivering “clarity and stability”.<sup>22</sup>

29. During our visit to Sunderland, Ross Smith, Director of Policy at North East England Chamber of Commerce told us that businesses needed to be given more confidence that Government understood the concerns of both importers and exporters. He complained that much of the debate about the impact of Brexit was

still in referendum mode, where people are either certain it will be a disaster or certain it will be a triumph. The fact of the matter is it could be either and it will probably be somewhere in between. Where on that scale we end up depends on the decisions that are taken in the next couple of years and how effectively they are implemented. I think businesses just need to see a bit more confidence that the people who are taking those decisions understand that, understand that range of possibilities, are willing to listen to the implications that their decisions may have and are up for the challenge of making sure that they do that in the most successful way possible for our members.<sup>23</sup>

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18 [Q62](#)  
 19 [Q35](#)  
 20 [Q68](#)  
 21 [Q146](#)  
 22 [Q126](#)  
 23 [Q368](#)

30. Shanker Singham, Director of Economic Policy and Prosperity Studies at the Legatum Institute, agreed that more could be done to set out the framework of what the Government would be looking to achieve during the negotiations:

The outlines of what you are going to do are triggering Article 50, entering a withdrawal agreement, and looking for interim measures in certain areas. You can do a lot of that without giving your negotiating hand away at all. Frankly, a lot of that is well known by Europe anyway, but it does enable people to talk to manufacturers, investors, and people who hold UK gilts and equities, and suggest that there is a pathway forward. There does need to be a little light shown on the pathway forward, probably now.<sup>24</sup>

31. The Government has committed to publishing its “plan for leaving the EU” before Article 50 is triggered. We asked the Secretary of State when this would be and were told that publication would not be before the end of January.<sup>25</sup> He declined to be drawn on whether the plan would be published in the form of a White Paper or on the level of detail that it would contain. However, he did clarify that his key criterion for publication would be:

what can I put in the public domain without jeopardising the negotiating brief? That is it. As much as I can, I will put in under that criterion. At this stage I don't know what that will be.<sup>26</sup>

The Prime Minister told the Liaison Committee that she would be setting out more of the Government's plan in a speech in the new year.<sup>27</sup>

**32. A common request from witnesses has been for greater clarity from the Government about its plans for exiting the EU so that those affected can plan accordingly. We welcome the Prime Minister's commitment to set out more detail on the UK's objectives in January and we look forward to publication of the Government's plan. Article 50 envisages two years for negotiation and ratification of any agreement on exit. There is no timescale that limits negotiations on a new relationship between the UK and the EU. If the latter negotiations are not concluded within the two years envisaged by Article 50 then the UK would leave the EU without a new relationship in place.**

## Role of Parliament

33. Dr White emphasised the important role that Parliament and its Select Committees could play. She agreed that greater clarity about the Government's undertakings in relation to provision for debates in Parliament would be of assistance in this respect. Advanced notice of dates of debates would help the Select Committees to carry out scrutiny work that would help to inform those debates.<sup>28</sup>

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24 [Q91](#)

25 [Q404](#)

26 [Q476](#)

27 Liaison Committee, Oral evidence from the Prime Minister, 20 December 2016, [Q13](#)

28 [Q35](#)

34. The Government has undertaken that it will hold a number of debates in Parliament before Article 50 is triggered. So far, four debates have been held in Government time in the House of Commons on the implications of exiting the EU on worker's rights, science and research, fisheries and transport. However, no more notice has been given of these than the regular business statement in the House of Commons. In addition debates have been scheduled in the Chamber and in Westminster Hall by the Backbench Business Committee and adjournment debates have been secured by individual Members.

35. As noted above, a number of Departmental Select Committees have undertaken substantial inquiries or gathered a great deal of evidence since the referendum. It would assist the Select Committees in planning their work if the Government published a schedule of when these debates will be held in advance. Committees will then be in a position to arrange evidence sessions and consider reports so that they can best contribute to these debates.

36. The Secretary of State has also committed to ensuring that Members of Parliament are "at least as well informed as the European Parliament as negotiations progress".<sup>29</sup> This Committee will expect:

- Appropriate access to relevant documents, including draft negotiating objectives, draft amendments to those objectives, draft negotiating texts, agreed articles and draft agreements;
- Provision of these documents in sufficient time for the Committee to be able to express its view (or elicit views from other Committees), and for the Government to take account of the Committee's views;
- The Government to respond to Committee recommendations in a timely manner and to explain fully where any recommendations are not accepted; and
- Consideration to be given to information being provided on a confidential basis to the Committee.

37. The Prime Minister told the Liaison Committee that Parliament "need have no concerns about having the opportunity" to scrutinise the Government's negotiating plan but was unable to say when the plan would be published.<sup>30</sup>

**38. We welcome the Prime Minister's assurance that Parliament will have the opportunity to scrutinise the Government's negotiating plan, but in order to do that the plan must be published in sufficient time before the triggering of Article 50. We therefore expect to see the plan by the middle of February 2017 at the very latest. It should be published in the form of a White Paper given its huge significance, and we will call the Secretary of State to give evidence on it. When the Government does produce its plan, it should declare its position in relation to membership of the Single Market and Customs Union.**

**39. The Government has pledged to hold a series of debates in the run up to the triggering of Article 50. However, it has given no advance indication of when future debates will take place. A great deal of work is going on in the Committees of both**

29 [Letter from the Secretary of State to the Chair of the Committee](#), 31 October 2016

30 Liaison Committee, Oral evidence from the Prime Minister, 20 December 2016, [Q14](#)

**Houses to identify opportunities and risks arising from Brexit which should be taken into account in preparing the Government's negotiating plan. The Government should now publish a timetable of the further debates that it will be scheduling. This will help the Committees of both Houses to time their work to help to inform these debates.**

**40. Once the negotiations begin, Parliament will need to be kept fully informed about progress. We welcome the Government's stated commitment to ensuring that the UK Parliament is kept as well-informed throughout the negotiation process as the European Parliament will be. We ask the Secretary of State to set out exactly how the Government intends to meet this commitment.**

### Involving the devolved governments

41. The importance of ensuring a reflection of the voices of each of the component parts of the UK is reflected in this Committee itself. Uniquely for a House of Commons Select Committee, Members from all four nations of the UK are represented. We are committed, in the course of our work and in our visits around the UK, to ensuring that the specific concerns of all parts of the UK are carefully examined and will look to take evidence from Ministers in each of the devolved governments in the coming weeks.

42. The Prime Minister visited Belfast, Cardiff and Edinburgh in July 2016 to meet the leaders of the devolved governments. One of the Prime Minister's first public statements on Brexit after taking office was that she would not trigger Article 50 "until I think that we have a UK approach and objectives for negotiations".<sup>31</sup> It was also reported that the Prime Minister said that she was "willing to listen to options" on Scotland's future relationship with the EU.<sup>32</sup>

43. The Prime Minister and the leaders of the devolved governments agreed in October to establish the Joint Ministerial Committee on EU Negotiations (JMC(EN)) as the central forum for engagement between the UK and devolved governments on the UK's withdrawal from the EU. The Committee notes that the Prime Minister also committed to holding a session of the Joint Ministerial Council Plenary before Article 50 is triggered. Its Terms of Reference state that the governments will work collaboratively through the JMC(EN) to:

- Discuss each government's requirements of the future relationship with the EU;
- Seek to agree a UK approach to, and objectives for, Article 50 negotiations;
- Provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations; and
- Discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive.<sup>33</sup>

31 BBC News, [Brexit: PM is 'willing to listen to options' on Scotland](#), 15 July 2016

32 Ibid

33 [Letter from the Permanent Secretary of the Department for Exiting the EU to the Committee Chair](#), 13 December 2016



44. Dr White emphasised the importance of ensuring that all parts of the UK were involved in a meaningful way in establishing the UK Government's negotiating position:

That means joint working at ministerial level, [ ... ] but also at an official level, with a thorough exchange of information, which I understand is under way, and also, as I say, a seat [at the] table so that views are clearly understood and explained.<sup>34</sup>

45. The Secretary of State told us that:

The purpose of the JMCEN is to get input from all the devolved Administrations on their views on what the policy aim should be. [ ... ] It will help to inform the decision on what the aim should be.[ ... ]

Of course there may well be conflicting aims. [ ... ] I would be surprised if there were not different views around the table on some elements of immigration, for example, and there will be other matters. We will have to resolve them as best we can in the overall national interest.<sup>35</sup>

He concluded that “you cannot give one part of the country a veto over the outcome, but you can do everything possible to make sure it gets the best outcome”.<sup>36</sup>

## Scotland

46. The Scottish Government set out its proposals last month in its report on “Scotland's place in Europe”.<sup>37</sup> The report concludes that:

The UK Government has made a firm commitment to the people of Scotland. The Prime Minister says the UK is a partnership of equals, that the Scottish Government will be fully engaged in the Brexit process, and that Article 50 will not be triggered until there are agreed UK objectives for negotiations.

47. The report also calls on the UK Government to seek to remain a member of the Single Market or agree to support Scotland in remaining a member. This would be a “shared endeavour” for the Scottish and UK Governments and the paper sets out the Scottish Government's position on how this “differentiated” solution could be made to work.

48. The Committee will take evidence from the Scottish Government in the near future on the specific implications that Brexit may have for Scotland.

49. The Supreme Court is currently considering the potential statutory application of the legislative consent procedure.

## Wales

50. The Committee will take evidence from the Welsh Government on the specific implications that Brexit may have for Wales. We note that the Welsh Government will be publishing its own White Paper on this subject.

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34 [Q30](#)

35 [Qq439–40](#)

36 [Q441](#)

37 [Scotland's place in Europe, The Scottish Government, December 2016](#)

## **England**

51. It is also important that different views in the English regions are taken into account in the process. One of the reasons behind our decision to launch a programme of visits around the UK was to ensure that we could meet individuals and businesses not only in each nation of the UK but also across the regions of England to discuss their hopes and concerns around the UK's exit from the EU. Our visit to Sunderland provided us with particularly valuable evidence on the views of manufacturers in the city and the region, many of whom were connected with the automotive industry. The formal evidence that we took during the visit has already been published.<sup>38</sup> A note of our informal meetings is published as an annex to this report. We will also be taking evidence from the Mayor of London.

**52. While it is clear that no part of the UK has a veto over the outcome of the negotiations, it is essential that all the devolved governments, and the different regions of England, are duly involved in the process and have their views taken into account.**



## 3 The Article 50 negotiation: what will it cover?

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### Introduction

53. The formal process for the UK to exit the EU is set out in Article 50 of the Treaty on European Union (TEU) which states that:

- (1) Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
- (2) A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
- (3) The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
- (4) For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
- (5) If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

54. Although Article 50 specifies that the agreement should be negotiated “taking account of the framework for [the departing state’s] future relationship with the EU”, the precise relationship between the negotiation under Article 50 to give effect to exit and provision for negotiations to establish the terms of the UK’s future relationship with the EU is not clear.<sup>39</sup> Sir Simon Fraser told us that:

the orthodox position [ ... ] that has been taken by the European Commission has been that article 50 has to be completed before the article 218 or 207 negotiation begins. [ ... ] In practical political terms, I do not think it is a

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<sup>39</sup> Article 218(3) TFEU sets out the procedure for the EU to authorise the opening of negotiations and nominate the negotiator or the Union’s negotiating team. Where unanimity is required this can be achieved with Member States abstaining (but not voting against). The qualified majority required for the Council to conclude any agreement with the UK under this Article must comprise at least 72 per cent of the continuing Member States (20) comprising at least 65 per cent of their total population.

very realistic position to take, and indeed article 50 itself says that article 50 will be negotiated and concluded, taking into account the provisions of the future relationship. There is an inherent contradiction there.<sup>40</sup>

55. Michel Barnier, appointed by the Commission to lead its negotiating team, has set out his views on the conduct of negotiations. At a press conference on 6 December, M. Barnier said that it was legally impossible for the EU to negotiate a “new partnership” agreement with the UK until the narrow terms of the UK’s “divorce” from the EU were complete. These “divorce” terms were reported to include demands for payments from the UK to cover pensions and other budgetary commitments, as well as a number of narrow technical and legal matters that would need to be resolved. M. Barnier also noted that the Article 50 negotiations would need to be concluded by October 2018 so as to enable the European Council, the European Parliament and the UK Parliament to ratify the deal. Reports have suggested that Michel Barnier has secured agreement with the 27 EU Member States for a “three phase divorce” plan, consisting of withdrawal, transition and then a new relationship.<sup>41</sup>

56. We asked the Secretary of State how Article 50 negotiations would be sequenced with negotiations on the future relationship given the provision in Article 50 that negotiations should “take account” of the future framework. He told us that the sequencing of negotiations, what would be included in the Article 50 negotiation and what would be included in a separate negotiation on the UK’s future relationship with the EU would be a matter for discussion with Michel Barnier:

I have every belief that he wants to get a practical outcome out of this as much as I do. I know Michel of old; I have known him for 20 years. He will be a tough negotiator but he will want the best outcome. The aim of this for all of us is the best outcome for the United Kingdom and the best outcome for the European Union. I am entirely persuaded that if we maintain that and we negotiate in good faith and are clear about what we are trying to do, we will get a good outcome.<sup>42</sup>

57. The Prime Minister told the Liaison Committee that she would be looking to negotiate the Article 50 “divorce” in parallel with negotiations on the UK’s future relationship with the EU:

It is also what is implied by article 50 and by the treaty itself, which makes it clear that you have to know the framework of the future relationship before you can finalise the deal for withdrawal. Of course, at the point at which we exit the European Union, we will need to know what our new relationship with the European Union is.<sup>43</sup>

**58. The UK’s future relationship with the EU should be negotiated in parallel with the Article 50 negotiation so that there is clarity about both the divorce settlement and the new relationship at the moment we formally leave the EU. This would appear to be the intention of the wording of Article 50 and it would be in the best interests of**

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40 [Q25](#)

41 Politico, [Europe’s three-stage Brexit divorce plan](#), 15 December 2016

42 [Q466](#)

43 Liaison Committee, Oral evidence from the Prime Minister, 20 December 2016, [Q19](#)

**both the UK and the EU-27 were this to be the case. However, this will not be in the Government's gift to deliver; the sequencing of negotiations in this way will require the agreement of both sides in the negotiations.**

## Procedure for approving an agreement

59. Article 50 specifies that any agreement would be subject to super Qualified Majority Voting in the European Council and agreement by the European Parliament.<sup>44</sup> However, there is some debate as to the scope of any agreement that could be agreed under the terms set out in Article 50. Professor Barnard emphasised the distinction between an agreement under Article 50, which she described as being “only about the divorce” and an agreement about future arrangements between the UK and the EU which would need to be adopted, like other EU agreements with third countries, using the procedure laid down in Article 218 TFEU.<sup>45</sup>

60. The agreement of the Article 50 “divorce” in the Council by QMV (with a role for the European Parliament but no role for national parliaments) is likely to cover matters which the EU can deal with alone, because they are legally within either the exclusive competence of the EU<sup>46</sup> or competence is shared by the EU and Member States but is, as a matter of political choice, exercised by the EU. In this case, Member States would not have a separate role outside their participation in the Council.

61. There has, however, been some suggestion that the Article 50 Agreement could cover matters for which Member States must or can exercise their own competence.<sup>47</sup> The agreement is “mixed” where either Member States have sole competence for some part of the agreement or there are matters of shared competence which they have chosen to exercise. A “mixed” agreement is entered into by the EU and its Member States acting in their own right. A mixed agreement would need to be agreed by each Member State separately, which in turn gives 34 national and regional parliaments some say in the process.

62. Given the depth and breadth of any agreement the UK would be likely to want to negotiate on its future relationship with the EU, a future arrangements agreement using the Article 218 TFEU procedure would, on the basis of current EU law and practice, be very likely to be a mixed agreement. It would, therefore, be likely to require agreement by unanimity in the Council (a higher hurdle than simply securing the votes of a super qualified majority), the consent of the European Parliament, and the involvement of up to 34 national and regional parliaments in the EU.<sup>48</sup> Recent experience in ratification of

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44 A super Qualified Majority requires 72 per cent of the Council Members representing at least 65 per cent of the EU population

45 [Qq25–26](#)

46 Where the EU has exclusive competence, only it can exercise it, for example in respect of the common commercial policy

47 [Open Europe: The mechanics of leaving the EU – explaining Article 50](#)

48 With the exception of Belgium, regional parliaments do not play a major role in the ratification procedure of international agreements, other than through their seats in second chambers. In Belgium, the agreement needs to be approved by the Belgian House of Representatives in the Federal Parliament (The Belgian Senate has no vote), at the regional level the Flemish Parliament, the Brussels-Capital Parliament, and the Parliament of Wallonia, and at the Community level, the Parliament of the French Community, Parliament of the German-speaking Community, and the Walloon-Brussels Federation. (Note the Flemish Parliament encompasses representation of the Flemish Community and the Flemish Community Commission, together with the Flemish region.) [Ratification of international agreements by EU Member States](#), EP Briefing, November 2016.

CETA, the EU's free trade agreement with Canada, has shown that regional or national parliament involvement can lead to unpredictable results. The CETA deal was signed over seven years after negotiations began and was held up by the Parliament of Wallonia, a region of Belgium. It has not yet been ratified.

63. There is currently a case before the European Court of Justice on the EU's trade agreement with Singapore to determine the extent to which that relatively comprehensive agreement falls within exclusive EU competence or shared competence.<sup>49</sup>

64. The Prime Minister suggested to the Liaison Committee that the Article 50 agreement could include some matters of mixed competence that would need to be ratified by national Parliaments and agreed by unanimity in the Council. She noted that work was ongoing in this respect but questions did arise around the extent to which a future trade agreement with the EU would be a matter of exclusive EU competence or of mixed competence.<sup>50</sup>

65. Whilst the need for national ratification can undoubtedly delay agreements coming into effect, the delay can be alleviated if the agreement can be provisionally applied. Current agreements with third countries frequently include provisional application, such as the EU-Ukraine Association Agreement.

**66. The key differences between an agreement made under the procedure laid down by Article 50 and one using the procedure set out in Article 218 TFEU (which would apply to a separate agreement on future arrangements between the UK and the EU) are that, as EU law and practice currently stands, the latter requires each Member State's agreement (rather than a Qualified Majority) and also the possible agreement of up to 34 national and regional parliaments. However, if the Article 50 agreement were to be a "mixed agreement" its procedure would, in practical terms, be the same as for Article 218 TFEU agreement.**

**67. As these procedural considerations may well affect the outcome of the negotiations, we consider it important for the Government to provide early clarification of its expectations on whether or not the Article 50 agreement is likely to be mixed, the respective scope of an Article 50 agreement and a future arrangements agreement made under Article 218, and the room for flexibility in the choice between the two: If the expectation is that it is a mixed agreement, the Government should put plans in place at that time to engage with other regional and national bodies throughout the EU in order to ensure safe passage of the agreement.**

## Notification

68. Sir Simon Fraser was asked what level of detail would be expected in the Government's formal notification under Article 50 of an intention to leave the EU. He noted that the form of notification would be important and that it was important to avoid any "mismatch of expectations".<sup>51</sup>

49 [Formal Opinion 2/15](#). Advocate General's opinion delivered 21 December 2016, the Court's definitive ruling expected in the first half of 2017.

50 Liaison Committee, Oral evidence from the Prime Minister, 20 December 2016, [Qq72-74](#)

51 [Q58](#)

69. The Secretary of State assured us that he had “an idea of what they expect” in terms of the form of the letter that is sent to trigger Article 50.<sup>52</sup> He, understandably, declined to elaborate further.

## Great Repeal Bill

70. The Prime Minister has announced her intention, through the Great Repeal Bill, to incorporate existing EU law into UK law. The Bill will raise a number of important questions around how legislative competence will be restored in a number of areas to the UK and what the implications are for the role of Parliament and the future of the devolution settlement. We have not yet explored the issues that will be raised by the Bill but will be looking to carry out detailed scrutiny of its provisions. We asked the Secretary of State whether this Bill would be produced in draft to facilitate full scrutiny by Parliament. He was unable to commit to this request.<sup>53</sup> The Bill will be designed to provide legal certainty, ensuring that EU law will remain in force in the UK until the point where it may be repealed or amended by the UK Parliament.

**71. The Great Repeal Bill will introduce the legislation that ought to provide legal certainty in the UK on the day after Brexit day. EU legislation will be incorporated into UK law and can then be either retained or repealed. Given the significance of the repatriation of legislative competences to the UK for the constitutional make-up of the UK, the Bill will also have implications for the devolution settlement. The Secretary of State must publish this Bill in draft to enable the fullest scrutiny to take place. The Great Repeal Bill, and the procedure with which it is dealt, will need to be consistent with the existing devolution settlement.**

## What must be agreed before the UK leaves the EU?

72. Article 50 provides that “The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification [ ... ] unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period”. It is therefore conceivable that the UK could leave the EU with no agreement.

73. The Foreign Affairs Committee is taking written evidence on the implications for the UK of a failure to reach any deal under Article 50 including for the UK's status in international organisations and the implications of sudden withdrawal from EU regulatory and other bodies. We will follow their deliberations with interest.

74. There are a number of other areas in which, as a bare minimum, legal certainty will be required on the day of exit even if no agreement is reached under Article 50. These matters will need to either be covered by any Article 50 agreement, covered by a future relationship agreement that is already (at least partially) in force, or subject to other provisions.

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52 [Q493](#)

53 [Q524](#)

75. The organisation UK in a changing Europe identified four aspects of the UK's relationship with the EU that would have to be resolved by any Article 50 agreement:<sup>54</sup>

- Acquired rights: the extent to which rights acquired by virtue of the EU Treaties (including property, contract, pension and residence rights) are protected after the UK leaves the EU;
- Transitional regime: the extent to which the EU and UK may be bound by the principle of legitimate expectations in respect of areas such as receipt of EU funds; pending applications for authorisations for products and processes and protection of existing contracts;
- Shared liabilities and entitlements: the extent that, as a contributor to the EU, the UK should incur some share of both; and
- Transfer of regulatory and policing responsibilities: how regulatory and policing functions in areas such as competition law, genetically modified food and pharmaceuticals are transferred and how sensitive information is handled.

**76. The UK's relationship with the EU is deep and complex, not least in terms of the legal rights of parties in both the UK and the EU-27. It would be unsatisfactory and potentially damaging to both sides were the UK to leave the EU with no agreement having been reached.**

### ***Budget commitments and pension liabilities***

77. According to Michel Barnier, the Article 50 negotiation would need to cover outstanding budgetary commitments and pension liabilities in addition to other technical and legal matters. Negotiations over the budget will include commitments to a wide range of EU programmes, including the Common Agricultural Policy, research funding and regional development funds. A percentage of these will be paid to UK recipients.

78. The Financial Times has estimated that the "cost" of exiting the EU (in respect of resolving ongoing obligations) would be up to 20 billion euros.<sup>55</sup> However, Michel Barnier has suggested that his opening position may be that this figure should be as high as 60 billion euros. We have not yet conducted detailed analysis on the likely terms of this negotiation but will be undertaking scrutiny in the new year.

### ***Location of EU agencies based in the UK and continuing participation in other EU agencies***

79. The European Medicines Agency (EMA) and the European Banking Authority (EBA) are both based in London. Soon after the UK's vote to leave the EU took place, there were reports that Member States had started to "jockey" for position to secure the relocation of the agencies to their jurisdictions.<sup>56</sup> We are not aware of a precedent for an EU agency such as the EMA being based primarily outside of the EU.

54 [Brexit and beyond: how the UK might leave the European Union](#), The UK in a Changing Europe for Political Studies Association of the UK, November 2016

55 Financial Times, [UK faces Brexit divorce bill of up to €20bn](#), 12 October 2016

56 The Wall Street Journal, [Two EU Agencies in London Face Uncertain Future](#), 26 June 2016



80. The UK's future relationship with both Agencies will be a matter to be defined by negotiations over the UK's future relationship with the EU. These bodies perform an important regulatory function for EU Member States and it will be necessary for arrangements to be made for their continuing operation on the day after Brexit.

81. Dr Virginia Acha, Executive Director for Research, Medical and Innovation, Association of the British Pharmaceutical Industry (ABPI), told us that the EMA was already working in cooperation with national regulators which contributed to the EMA network to provide the evaluation and review required. She was optimistic that:

the precedent is there for co-operation, and indeed there is already a precedent of countries that are not members of the European Union being able to work through that co-operation. We would like, wherever possible, to be able to continue within that global, regulatory agreed process and to keep that co-operation as part of the network in a bespoke way.<sup>57</sup>

82. The UK has delegated a number of other regulatory functions to EU agencies. The extent to which the UK wishes to continue to cooperate with these bodies or continue membership, duplicate their functions in the UK or dispense entirely or partially with the function that they perform will be matters for domestic political decision and negotiation with counterparties representing the EU.

**83. It will be essential to provide clarity as soon as possible, and certainly by the time the UK leaves the EU, about the Government's preferred option for the UK's future participation in EU regulatory bodies. If it is decided, however, not to seek to maintain membership of these bodies then the Government must set out the new arrangements it proposes to put in place to ensure that these functions are carried out in future.**

### ***Rights of EU citizens living in the UK and UK citizens living in the rest of the EU***

84. Several witnesses emphasised the importance of clarifying the status of UK citizens living in the UK.<sup>58</sup> The House of Lords Committee on the European Union has published a report on Brexit: Acquired Rights which examines the positions of EU nationals living in the UK and of UK nationals in the EU.<sup>59</sup> The Lords Committee looked, in particular, at the Polish, Romanian and French communities in the UK and noted the uncertainty and anxiety caused by the referendum result. That Committee argued that the Government was "under a moral obligation to provide certainty and legal clarity to all EU nationals working, living and studying in the UK, who contribute so significantly to the economic and cultural life of the UK."<sup>60</sup>

85. The Lords Committee similarly noted the anxiety of UK nationals in other EU states. We have received, as has the Lords Committee, powerful testimony from UK nationals across the EU raising questions about their residence rights and their rights to education, health and welfare.

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57 [Q163](#)

58 Fairbairn [Q303](#); Longworth [Q302](#)

59 [Brexit: acquired rights](#), Tenth Report of House of Lords Committee on the European Union, HL 82, Session 2016–17

60 [Ibid, para 47](#)

86. Clarifying the status of EU citizens in the UK is within the gift of the UK Government, and the Prime Minister indeed indicated on 19 December that she wished to provide reassurance to this group early in the negotiations.<sup>61</sup> Professor Barnard noted that “there is no quick-fix solution, because we have no record of how many EU nationals are living in the UK”.<sup>62</sup> The Home Secretary has already said that all those who are given leave to remain will need “some sort of documentation”.<sup>63</sup> This is a task that will be complex to administer and a matter to which we will return to take further evidence.

**87. It is clearly in everyone's interests to resolve the position of EU nationals currently in the UK and of UK nationals in other EU member states as quickly as possible so as to provide certainty and reassurance to the individuals, their families and the businesses and services that rely on them. We were struck by the fact that witnesses who were on either side of the referendum debate were unanimous, when asked, in expressing their opinion that EU nationals working in the UK should have their status assured. This must be an early priority for the negotiations.**

### *Northern Ireland*

88. The UK's only future land border with the EU will be between Northern Ireland and the Republic of Ireland. The UK's decision to leave the EU therefore raises a particular set of questions for Northern Ireland and for relations between the UK and the Republic of Ireland. The course of negotiations on the UK's exit may have an impact on future cross-border trade and economic activity, depending on the extent to which the current soft border arrangements and the Common Travel Area are able to continue after the UK exits the EU.

89. The UK and Irish Governments are also co-guarantors of the Good Friday Agreement, which refers to them both as “partners in the European Union”.<sup>64</sup> The Good Friday Agreement included provisions for both “North-South and East-West” cooperation. It also included recognition that people born in Northern Ireland are entitled to Irish citizenship. After the UK has left the EU, this provision would make Northern Ireland the only jurisdiction outside the EU whose citizens were entitled to EU citizenship.

90. We will examine the implications of Brexit for Northern Ireland further when we visit Derry~Londonderry in the coming weeks. However, we note the work on this subject carried out both before the referendum by our colleagues on the Northern Ireland Affairs Committee,<sup>65</sup> and, since the referendum, by the House of Lords European Union Committee.<sup>66</sup>

91. The Secretary of State gave evidence that maintaining an open border between the Republic of Ireland and Northern Ireland after the UK has exited the EU was a “high

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61 Official Report, 19 December 2016, [col. 1177](#)

62 [Q14](#)

63 Official Report, 5 December 2016, [col. 4](#)

64 The Belfast Agreement, Agreement reached in the multi-party negotiations (10 April 1998)

65 [Northern Ireland and the EU referendum](#), First Report of Northern Ireland Affairs Committee, HC 48, Session 2016–17

66 [Brexit: UK–Irish relations, Sixth Report of House of Lords European Union Committee](#), HL 76, Session 2016–17



priority".<sup>67</sup> He said he was optimistic that the EU would be helpful to the UK in this endeavour.<sup>68</sup> He suggested that, as to how this might be done, the Committee might look at the Norway–Sweden border:

They are both in the single market but straddle a customs union, and it is a very open border, with particular arrangements designed to make the border a free border.<sup>69</sup>

He also explained how a Common Travel Area might continue to work when the Republic of Ireland is in the EU and Northern Ireland is not.<sup>70</sup>

**92. It is essential that closer UK–Irish relations and stability in Northern Ireland and the Good Friday Agreement are not jeopardised by the UK's exit from the EU. The Executive and the Assembly in Northern Ireland should be duly involved at every stage in the process. In the light of current developments in Northern Ireland, a way will have to be found to make this happen.**

### ***Cooperation in Justice and Home Affairs and Common Foreign and Security Policy***

93. The House of Lords European Union Committee have published a report on Brexit: future UK–EU security and police cooperation.<sup>71</sup> That Committee noted that the UK and the EU-27 shared a “strong mutual interest” in maintaining police and security cooperation after the UK had exited from the EU.<sup>72</sup> However, it warned against any suggestion that this understanding of mutual self-interest might lead to a “false sense of optimism” about how negotiations in this area might proceed, raising questions about the extent to which the UK could continue to benefit from the same level of cooperation outside the EU:

There will in practice be limits to how closely the UK and EU-27 can work together if they are no longer accountable to, and subject to oversight and adjudication by, the same supranational EU institutions, notably the CJEU [Court of Justice of the EU].<sup>73</sup>

94. The Secretary of State has stated that, in respect of cooperation in Justice and Home Affairs matters, the UK Government wanted “as far as is possible, to replicate what we already have” after the UK leaves the EU.<sup>74</sup> We will take further evidence ourselves on this important area in the coming weeks, including around any legal implications.

95. The Foreign Secretary told the Foreign Affairs Committee in October that the EU-27 want the UK “to stick with them in a broad way when it comes to foreign policy questions”.<sup>75</sup> Withdrawal from the EU's Common Foreign and Security Policy mechanisms will have a range of implications for the conduct of UK foreign policy. Key questions include the

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67 [Q441](#)

68 [Q449](#)

69 [Q420](#)

70 [Q450](#)

71 [Brexit: future UK–EU security and police cooperation](#), Seventh Report of House of Lords European Union Committee, HL 77, Session 2016–17

72 [ibid, para 38](#)

73 [ibid](#)

74 Official Report, 1 December 2016, [col. 1650](#)

75 Foreign Affairs Committee, Oral evidence, 13 October 2016, [Q181](#)

status of UK participation in ongoing EU military and civilian operations, such as the naval missions in the Mediterranean and off the Horn of Africa, and the extent to which the UK will wish to align itself with EU sanctions against countries such as Russia.

96. Robin Niblett stressed that the UK's security was "intrinsically linked" to that of Europe and emphasised that it was in the UK's interests to ensure that security cooperation was maintained:

whether it is how Russia decides to test the boundaries of its new sphere of influence, whether it is terrorism and being able to fight something that does not see borders, or whether it is migration. We are at the front end of movements of people into Europe, and some of them will spill into our direction. Ultimately a weak Europe is a weak Britain.

We cannot be successful if our main neighbours are weak or destabilised. NATO and the EU are part of a spectrum. NATO is at the harder end; the EU is at the softer end.<sup>76</sup>

97. Stephen Booth told us that security cooperation was an important component of the UK's "relationship" with the EU-27 and he called on the Government to be constructive in this area:

the UK is entitled to say to the rest of Europe, "We pay 2 per cent towards NATO. We pay 0.7 per cent towards our aid budget. We are willing to continue and potentially use more of that for European ends, but let us move on from this discussion of cherry-picking because how many other countries around the table do that right now." That is not threatening behaviour; that is just stating the facts.<sup>77</sup>

98. The Secretary of State told the House of Commons in September that the Government aims "to maintain or even strengthen" UK–EU co-operation on security, financial crime and defence policy after leaving the EU.<sup>78</sup> We look forward to the Government setting out in its plan how it intends to achieve this.

**99. It will be essential to maintain cooperation with the other 27 member states on defence, foreign policy, security, financial crime and the fight against terrorism after the UK has left the EU. It is clearly in the UK's and EU-27's mutual interests to do so and the negotiations should ensure that it happens.**

## Conclusion

100. The Secretary of State, appearing before the House of Lords EU Committee in September described the negotiations as maybe "the most complicated negotiation of modern times".<sup>79</sup> We asked him whether a "quickie divorce" with the UK exiting the EU in six months might be feasible.

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76 [Q113](#)

77 [Q111](#)

78 HC Deb, 5 September 2016, [col 38](#)

79 House of Lords European Union Committee, Oral evidence from the Secretary of State for Exiting the EU, 12 September 2016, [Q14](#)

I take the view that the best outcome is a negotiated free access to markets outcome and, with it, a negotiated outcome on justice, home affairs and security. I do not think that they can be done in six months either.<sup>80</sup>

101. **The negotiations that the UK is about to embark upon will not be easy and they will certainly not be completed in six months. There will be an enormous amount of ground to be covered in what may be a period of as little as 18 months in order to provide time for any deal to be properly scrutinised by member states and their parliaments, the European Parliament and, of course, the UK parliament and the devolved national parliaments.**

102. **The Government has stated that it will be looking for the best deal that it can secure in respect of continued access to European markets without tariffs or other obstacles. It should look to secure a mutually beneficial relationship in other areas where the UK currently cooperates with other Member States and also seek a future relationship with the EU based on continuing close cooperation in Justice and Home Affairs, Security, Foreign Affairs and Defence Policy.**

103. **No one can predict how negotiations will unfold once Article 50 is triggered. However, as a bare minimum, by the time that the UK exits the EU, it is essential that clarity has been provided around:**

- **The institutional and financial consequences of leaving the EU including resolving all budget, pension and other liabilities and the status of EU agencies currently based in the UK;**
- **Border arrangements between Northern Ireland and the Republic of Ireland and a recognition of Northern Ireland's unique status with regard to the EU and confirmation of the institutional arrangements for north-south cooperation and east-west cooperation underpinning the Good Friday Agreement;**
- **the status of UK citizens living in the EU;**
- **the status of EU citizens living in the UK;**
- **the UK's ongoing relationship with EU regulatory bodies and agencies;**
- **the status of ongoing police and judicial cooperation; and**
- **the status of UK participation in ongoing Common Foreign and Security Policy missions;**
- **a clear framework for UK-EU trade; and**
- **clarity on location of former EU powers between UK and devolved governments.**

## 4 Negotiating the future relationship

104. The UK's ability to define its future relationship with the EU does not lie solely in its own hands. Both the process and content of negotiations will be matters for negotiation with EU partners and Member States, and the UK will only get what the other 27 are prepared to agree. Understanding the process of negotiations and the perspectives of the UK's negotiating partners will therefore be crucial in defining choices about the UK's future relationship with the EU.

### The views of other parties in the negotiations

105. Michel Barnier spoke publicly for the first time about the negotiations on 6 December. He said that the deal offered to the UK outside the EU would not, in his view, be as good as membership and that the UK would not be allowed to "cherry pick" what it wanted from its relationship with the EU. The four freedoms of the EU (of movement of goods, workers, services and capital) were indivisible. He also placed a priority on preserving the unity of the EU.<sup>81</sup>

106. The Secretary of State met with Guy Verhofstadt, the European Parliament's chief negotiator, on 22 November. It was reported that Mr Verhofstadt also confirmed that the "indivisibility" of the four freedoms would be a "red line" for him, but that he hoped that the end result "has to be a close partnership between EU and UK in the interests of citizens".<sup>82</sup>

107. Shanker Singham anticipated a certain amount of "political grandstanding" at the beginning of negotiations, but was hopeful that this would fade in the face of an understanding of mutual self interest in a constructive deal:

as you start the process of triggering Article 50 and the withdrawal agreement, commercial interests do start to assert themselves and drive the process, because the interests between the UK and the EU are simply too big.<sup>83</sup>

108. Robin Niblett, Director, Chatham House, was less sanguine. He told us that "political grandstanding" could be a feature throughout negotiations. He was concerned that:

EU leaders will judge the deal at some level as to whether the UK is coming out of this better than being inside or not. It is very simple. If you talk to any political leaders across Europe, as I have been doing over the last few months, there is no ill will. There is disappointment, and in some cases there is a sense of opportunity, even. However, the bottom line is that they will try to impose a political solution in which the UK is not better off in terms of the deal.<sup>84</sup>

81 European Commission, [First Press Conference with Michel Barnier](#), 6 December 2016

82 Politico, [Verhofstadt to Davis: 'Welcome to hell'](#), 22 November 2016

83 [Q88](#)

84 [Ibid](#)

109. The Secretary of State noted the fluidity of the political scene across Europe, explaining that there were expected to be 17 “electoral events” across Europe before the scheduled completion of the Article 50 negotiations. He told us that:

the water is changing; it is flowing past and altering, so the aims may be a bit different.<sup>85</sup>

110. He also noted the complexity of the picture in terms of the views of different Member States. The “Visegrád” countries (Poland, Hungary, Czech Republic and Slovakia) placed a high priority on security and migration; the Nordic countries and Spain emphasised the importance of free trade. However, he concluded that the interests of the EU 27 would not be served by weakening the UK as an economic and security partner:

At the end of the day, we are going to have to harness two things. One is economic self-interest and maybe security self-interest. The other is persuading them that it is in Europe's best interests to have a friend and a strong trading partner off their north-western shore.<sup>86</sup>

111. Professor Barnard, Professor of European Union Law, University of Cambridge, argued that commentators in the UK had so far underestimated the role of the European Parliament in agreeing to any negotiation. She suggested that the European Parliament was “flexing its muscles”, noting that it would have to give its consent to any Article 50 deal. She told us that the idea that the Article 50 deal would just be an inter-governmental deal “misunderstands both what article 50 prescribes and also the way the European Union works”.<sup>87</sup>

112. For the Secretary of State, the optimal UK approach lay in defining the UK's role as being a constructive neighbour and friend of the EU:

At the end of the day, this is a turning point in our history, in which we will have lots of opportunities to seize that will give Britain a better future, in my view. With a stronger economic future, we can be a better economic, security, cultural and diplomatic neighbour. That is more than just my view; it is part of the aim.<sup>88</sup>

## Negotiating the UK's future trade relationship with the EU

### *Introduction*

113. As a Member of the EU, the UK is currently a Member of the EU Customs Union; Members of the Customs Union are bound by a set of common external tariffs with third countries and enjoy tariff-free trade with other Customs Union Members. Membership of a Customs Union does not entail the complete removal of all border checks, although these can be made “light touch”.

114. The EU's Single Market involves the removal of internal regulatory barriers to the free movement of goods, services, capital and workers. This includes, as part of the EU's

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85 [Q513](#)

86 [Ibid](#)

87 [Q11](#)

88 [Q518](#)

“internal market”, the removal of internal frontiers, including any customs border. As noted above, the four freedoms of the Single Market have been deemed to be inseparable in order to ensure a level playing field for all participants, although the Single Market is not yet complete, notably in services. Free movement of workers is, in practice, interpreted in various ways throughout the EU. The UK is generally recognised as being at the “freer” end of the spectrum. The EU’s website itself says “Rights may differ somewhat for people who plan to be self-employed, students, and retired, or otherwise economically non-active people”.<sup>89</sup> These differences in rights cover a larger and increasing percentage of the EU’s population. This is a point which the UK Government may wish to highlight in negotiations. Single Market regulations govern areas including product standards, provisions relating to production processes, state aid, competition, public procurement and other fields. Any country can access the EU market in the sense of exporting goods there, but they may be subject to tariffs and other non-tariff barriers to trade.

115. Norway, as a Member of the European Economic Area, is not a Member of the EU, but is a Member of the Single Market. It is bound by the rules of the Single Market (and the jurisdiction of the European Court of Justice in decisions relating to the Single Market) but has only a consultative role in their agreement. It is also bound by provisions for free movement of workers and contributes to the EU budget. However, Norway is outside the Customs Union and is, therefore able to develop its own trade policy and agree bilateral trade deals with other countries.

116. Continued membership of the Single Market would probably entail continued payments into the EU budget and continued recognition of the jurisdiction of the European Court of Justice. Given the statements of Michel Barnier and Guy Verhofstadt (noted above) that the four freedoms of the EU were indivisible, it would also mean continued acceptance of the principle of free movement of workers. Short of membership, in general, the closer a new relationship would be to Single Market membership, the greater would be the level of regulatory compliance with the EU required.

117. In her speech to the Conservative Party Conference on 2 October, the Prime Minister said:

Let me be clear: We are not leaving the European Union only to give up control of immigration again. And we are not leaving only to return to the jurisdiction of the European Court of Justice.<sup>90</sup>

118. Turkey, by contrast, is a Member of the Customs Union<sup>91</sup> and therefore bound by the EU’s external tariffs in all but a small number of sectors. However, it is not bound by the rules of the Single Market or the jurisdiction of the European Court of Justice and provisions for free movement of workers are not applicable.

119. We have taken evidence from a number of individuals who have given us a picture of the concerns of business about the course of negotiations and the timescale for determining the UK’s future relationship with the EU. Some have given evidence on behalf of representative industry bodies and some on their own behalf. We have also met, informally, in Sunderland and Aberdeen, with a wider range of businessmen and women.

89 European Commission, [Free Movement – EU nationals](#), accessed 11 January 2017

90 The Independent, [Theresa May – her full Brexit speech to Conservative conference](#), 2 October 2016

91 Turkey is a Member of the Customs Union for industrial but not agricultural products.



We are grateful to all those who have made time to meet us, particularly on our visits. We have produced notes of our informal meetings which we publish as an Annex to this report.

120. Carolyn Fairbairn, Director General, Confederation of British Industry, outlined five principles that she believed should guide the Government during the negotiations:

The first is barrier-free access to the single market—both tariff and non-tariff barriers. The second is the access to skills and talent that our businesses need. The third is regulatory equivalence—the ability to trade under known and certain regulatory principles and laws within the European Union. The fourth is the best possible trade deals around the world [ ... ]. The last is protecting the economic and social benefits that we currently enjoy from European funding.<sup>92</sup>

121. By contrast, John Longworth, Co-Chair, Leave Means Leave (and a former Director General of the British Chambers of Commerce) wanted the Government to make it clear as soon as possible that it was “minded to leave the internal market and the customs union” and give business time to plan.<sup>93</sup> He argued for “crystallising” the benefits of Brexit in both taking the opportunity to agree new bilateral trade deals and in “deciding which particular European laws should be deregulated”.

122. However, the Secretary of State said to the House of Commons on 1 December that:

The major criterion [for negotiations] is that we get the best possible access for goods and services to the European market. [ ... ] We give very high priority to both tariff-free access and access without tariff barriers [ ... ] that may or may not include membership of the single market, but it is achievable by a number of different methods.<sup>94</sup>

**123. The Government will undoubtedly be undertaking economic assessments of the different options for market access and trade looking both at risks and opportunities. In the interests of transparency, these should be published alongside the Government's plan in so far as it does not compromise the Government's negotiating hand. The UK Government's negotiating plan should outline its position in relation to membership of the Single Market and the Customs Union.**

### ***Regulatory equivalence and access to EU markets***

124. John Longworth told us that Brexit represented an opportunity to reduce regulation, describing the potential for deregulation as a “tax cut for business”.<sup>95</sup> Although he did not identify any specific pieces of EU regulation that his Members would want to see repealed, Fergus McReynolds, Director of EU Affairs, EEF – The Manufacturers' Organisation, noted that EEF had called for a “comprehensive regulatory review”.<sup>96</sup> He added that there would be “a number of pieces of legislation that our members will still be bound by if we are to access the single market”, but a review would identify the potential for amending

92 [Q237](#)

93 [Q242](#)

94 Official Report, 1 December 2016, columns [1648](#) and [1665](#)

95 [Q242](#)

96 [Q141](#)

or repealing regulations “to make the business environment in the UK more attractive and competitive”.<sup>97</sup> We note that in 2013 the Coalition Government commissioned the Business Taskforce to identify EU regulations that needed abolition or reform.<sup>98</sup>

125. Frances O’Grady noted the TUC’s concern that Brexit should not see the compromising of workers’ rights and wages. She told us that “we do not want to see workers in Britain falling behind workers in other EU member states. We don’t want Britain to become the bargain basement capital of Europe”.<sup>99</sup>

126. Carolyn Fairbairn welcomed the proposal that the Great Repeal Bill would ensure that the day after Brexit the UK would still be compliant with EU regulations. However, she warned that:

There is a difference between those regulations translating into UK law and then being recognised by our European partners [ ... ]. There is a difference, because a number of the regulators of those laws sit in the European Union. We have a number of members saying to us, “We don’t know how we would trade that next day, whether our products would be legal or whether our health and safety certificates are valid. We just don’t know how we would trade.

127. Some of the businessmen we met in Sunderland echoed this. They were concerned whether certification of regulatory compliance that they currently obtained from UK authorities would still be recognised in Europe after Brexit and whether they would still be eligible for certification by EU bodies.

128. Dr Acha told us that, working in the pharmaceutical industry:

I have to make sure that the medicines that are available from day one have all the right regulatory support, the right supporting approvals, the right labels and the right patient information leaflets. This is all bound up in law, not just for the sake of doing it but because patients are depending on us to make sure that we have it right on day one.<sup>100</sup>

### **The Customs Union**

129. The decision on whether or not to leave the Customs Union involves weighing up the potential scope for agreeing new trade deals against any tariffs and bureaucratic and logistical costs accruing from the imposition of customs controls between the UK and the EU. These costs include the time taken to clear customs and comply with rules of origin requirements. Rules of origin ensure that the correct tariff is paid on goods that enter the EU from a country with which it trades on a preferential basis (such as Norway) but originate or contain materials from somewhere with which it does not (such as China); they work to ensure that tariffs applicable on exports from a country without preferential arrangements cannot be bypassed by exporting them via another state.

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97 [Ibid](#)

98 [Government puts business at helm of EU regulation review](#), Department for Business, Innovation and Skills and Prime Minister’s Office press release, 28 June 2013. For the findings of the Taskforce, see [Cut EU Red Tape: Report from the Business Taskforce](#), October 2013

99 [Q240](#)

100 [Q175](#)



130. Fergus McReynolds, told us that his organisation had surveyed its members since the referendum and found that:

There is some evidence of concerns on rules of origin calculations and understanding how they would have an impact on trade. There are also some concerns about the administrative burden of customs controls and understanding how we eliminate or reduce those as much as we can. I think it goes back to that complex supply chain. It isn't a single trade in one direction. Our members are importing components and parts, and they are part of a larger supply chain that exists across Europe and has grown up over the years of our membership of that, and their business models are integrated into that model of trade.<sup>101</sup>

131. However, some were more positive about the scope for agreeing new trade deals if the UK were to leave the Customs Union and questioned the extent to which exiting the Customs Union would place new significant costs on business. John Elliott, Executive Chairman of Ebac, a manufacturer of domestic dehumidifiers based in the North East, told us:

We export to France and the USA and what is tariffs and what is not is not a big deal. [ ... ] Tariffs, like currency changes, are a nuisance, not deal breakers. [ ... ] the UK exports more to the rest of the world where tariffs come into play and it is not a big deal. The ships are not held up for several days. Those times have moved on. We just have to be realistic. [ ... ] All we want is the same sort of terms as any other country that is not in the EU trading with the EU: the USA, Canada, Australia, Nigeria, South Africa. All of those countries trade with the EU and have tariffs that they can deal with.<sup>102</sup>

132. We heard contrasting evidence on the UK's economic prospects outside the EU. Shanker Singham, Director of Economic Policy and Prosperity Studies at the Legatum Institute, told us that there was a great deal that the Government could do to provide "comfort" to business in identifying how customs clearance would operate after exiting the EU (if the UK were not to remain within the Customs Union), pointing to the efficiency of expedited customs clearance mechanisms on the US–Canada border and between Australia and New Zealand as an example of what could be achieved.<sup>103</sup> Mr Singham also said that, following the failure of the Trans Pacific Partnership negotiations, there were opportunities to develop a "prosperity zone" with several "like-minded countries" committed to free trade, such as Australia, New Zealand and Singapore. He estimated that the reductions in trade distortions that might accrue could result in an expansion of "1 per cent year-on-year, in terms of global world product, [resulting in] a global economy 50 per cent bigger than it would otherwise be in 15 years".<sup>104</sup>

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101 [Q166](#)

102 [Q349](#)

103 [Q68](#)

104 [Qq83–84](#) and [Brexit can enrich not just Britain, but the world](#), Legatum Institute, 13 December 2016

133. Carolyn Fairbairn agreed on the potential for growth in business with China, whilst noting the particular challenges of accessing Chinese markets, and noted the recent “market access enhancement” in India. She also noted that progress by the EU in trade deals with these countries had been slow. However, she called for:

a note of realism here about the scales and the arithmetic, because 50 per cent of our trade is with the European Union. Gravity laws in trade are still applicable.<sup>105</sup> They can be proven globally. We need to understand and calibrate the pace of the ramping up of international deals if we do real damage to our European trade. Our members would say, “Let’s do both but let’s understand the calibration and how important our European markets will remain for us for many years to come.”<sup>106</sup>

Dr Robin Niblett noted the challenges in the future trading relationship with China, stating:

What will not happen is that I do not think the UK will have the same role as what Xi Jinping put in his Guildhall speech last year of Britain being the gateway to Europe.<sup>107</sup>

134. We were told in Sunderland, during our meetings with a range of businessmen and women about their concerns around the implications of Brexit. A number raised concerns about the future operation of their European supply chains: concerns raised included the possible burden and cost of customs procedures governing components that might cross borders on numerous occasions before a product was finished.

135. The Government has yet to decide on whether the UK will seek to remain in the EU Customs Union, but the Secretary of State has set out the options that he has identified for the UK’s future relationship with the Customs Union:

The four I had in mind, as I say, are not comprehensive, but cover four stages—a spectrum—and those are: inside the customs union; a partially-inside Turkish model; outside, but with a free trade agreement and a customs arrangement, as happens in some parts of the world; and completely outside.<sup>108</sup>

**136. A return to tariffs and other regulatory and bureaucratic impediments to trade would not be in the interests of UK businesses and therefore the Government should strive to ensure that this does not happen.**

**137. It will also be important for the Government to set out clearly its policy on membership of the Customs Union as part of its plan for the negotiations.**

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105 In 2015, UK exports to the EU were £230 billion (44 per cent of all UK exports). UK imports from the EU were £291 billion (53 per cent of all UK imports). [Statistics on UK–EU Trade](#), Briefing Paper 7851, House of Commons Library, January 2017, page 3

106 [Q261](#)

107 [Q109](#)

108 [Q418](#)

## Financial services

138. Although tariffs are not applied to trade in services, it is generally recognised that barriers to trade in services are higher than for goods due to non-tariff barriers. These arise as services markets are, in general, more heavily regulated and differences persist in areas such as recognition of professional qualifications. The UK's access to the Single Market in services is based on a framework which recognises the UK's regulatory regime.

139. In respect of financial services, a significant contributor to UK services exports, EU legislation gives UK banks, insurers and investment firms authorised by the Prudential Regulation Authority and Financial Conduct Authority the right to provide a range of financial services to customers and counterparties across the EU and the EEA, either cross-border or through branches, without the need for additional local authorisations. This arrangement is referred to as "passporting". If the UK were to leave the EU without either continued passporting access or, in certain areas, recognition of continued regulatory equivalence, companies may have to move functions or staff to other EU countries in order to be able to continue to sell certain services.

140. The EU's Single Market in services is seen as being some way behind the Single Market in goods. In evidence to the Treasury Committee before the referendum, Dr Niblett estimated that it was around 30 per cent complete.<sup>109</sup> Dr Niblett told us that, for the very reasons that the EU's progress in establishing a Single Market in services was limited, the obstacles to agreeing new trade deals outside the EU covering services would be significant:

There is a reason why the EU does not have an open services market despite claiming that it does. That is an area where the protectionists' interests are the most extreme and severe. What I would say is that, yes, the UK is a great services exporter—the largest per capita and second largest in the world. However, enlarging that by ourselves in big markets that are still in the process of opening up, in many cases, their goods markets, and have not yet got to the services markets, is ambitious. It is going to be difficult and not easy.<sup>110</sup>

141. Gary Campkin, Director for Policy and Strategy, TheCity UK, outlined the particular importance for financial services of ensuring that some form of transitional or "bridging" arrangements were put in place to enable business to continue operating until they knew what the new arrangements would be after the UK left the EU:

The key thing in a regulated industry is that you need to apply for regulatory permissions and permits, and that generally is about two-plus years. Why the bridge is important and why certainty is important to the extent possible is that it allows companies to continue operating under current conditions until the new set of circumstances are known, and then have time to adjust. That is the thing to focus in on. It is about bridging from where we are now into futurescape and providing certainty, so that those fingers do not press the [re-location] button.<sup>111</sup>

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

110 [Q86](#)

111 [Q209](#)

142. This echoed the views of Mark Carney, Governor of the Bank of England, who, in evidence to the Treasury Committee in November, noted the importance of a transitional period for businesses, particularly in the financial services sector, to adjust to new arrangements. Agreement that there would be some transitional period would ensure that business did not need to pre-empt the outcome of negotiations:

When there is a financial reform it takes a period of time: the Basel reforms phased in over eight years. The Vickers reforms phased in over four to six years. I will not go on about financial reforms, but the shortest transition period I have ever seen in a trade deal is two years, which was the Swiss–EU deal on insurance. Normally, it is in the range of four to seven years. If that is part of the agreement or the intent, and I would stress it would be in the interests of those remaining in the European Union, not least in the financial sector, to have some transition, then that really informs what businesses need to do today or six months from now because you transition and restructure during that restructuring window. You do not need to do it in advance in anticipation of what agreement the Government ends up striking.<sup>112</sup>

**143. Given the importance of the financial services industry to the UK economy in terms of jobs and tax revenues, the Government should seek to ensure continued access to EU markets in financial services for UK providers whether by way of a continuation of passporting or mutual recognition of regulatory equivalence or some other means. What will be important is that the industry has confidence that any new arrangements will enable them to carry on doing business. Both the UK and the EU-27 benefit from the presence in London of a world class financial services hub and ensuring that there is minimal disruption to services from Brexit will be important for broader European financial stability.**

### *Free movement of workers*

144. One of the four freedoms of the EU Single Market is the free movement of workers. As noted above, the Prime Minister has made clear that it is one of her priorities in leading negotiations for the UK's exit from the EU to ensure that “we will be able to decide for ourselves how we control immigration”.<sup>113</sup> The Secretary of State told us that:

we have to pay respect to the outcome of the referendum, and there has therefore got to be clear control by this Parliament.<sup>114</sup>

145. There is not absolute clarity over how free movement of workers is defined. Free movement of workers is more difficult in practice in some EU Member States than in others. Carolyn Fairbairn told us:

I would like to hope that there is scope for some negotiation about that, because I think that would make a lot of things possible.<sup>115</sup>

112 [Bank of England Inflation Report, HC828; Q34](#)

113 The Independent, [Theresa May – her full Brexit speech to Conservative conference](#), 2 October 2016

114 [Q494](#)

115 [Q326](#)

146. John Longworth said that free movement of workers contributed to low levels of skills in the UK economy driving low productivity:

one of the reasons why we have a low-productivity, low-wage economy is that we have an unlimited supply of cheap labour from the European Union. The fact is that, while that persists, we are unlikely to develop a high-wage, high-productivity economy, because there is no incentive for businesses to invest.<sup>116</sup>

147. Ross Smith, Director of Policy at North East England Chamber of Commerce, told us that:

if you are talking about the basic skills, that is not largely where we see the need to bring people into the region. It is higher-level skills required for our software development industry, our pharmaceuticals industry.<sup>117</sup>

148. He acknowledged that:

We need to increase the numbers of people with those skills in the region. Part of the answer to that is clearly training more within the region. Part of the answer to that is attracting more to come and study and to remain in the region from elsewhere in the UK.<sup>118</sup>

149. On our visit to Aberdeen, the businessmen and women we met there painted a picture of a local economy that was heavily reliant on EU migrant labour at many different levels including the care sector and health service, food processing and agriculture and hospitality and tourism, in part because of difficulties in recruiting locally. We were told of the important role played in particular by Spanish vets in local abattoirs and highly skilled EU and non-EU engineers in the subsea engineering industry.

150. Carolyn Fairbairn emphasised the importance of ensuring that any system for controlling EU migration recognised international companies' need to be able to move staff around easily. She told us that:

That is incredibly important, particularly in a service economy. The moving of skilled people around to work on projects—critical intra-company transfers—is something we need to protect, or we will be less attractive to those multinational companies.<sup>119</sup>

151. The Secretary of State told us that decisions around the levels of EU migration that would be permitted after the UK left the EU would not be a matter for discussion during the course of negotiations. The decisions would be made independently by the UK Government:

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116 [Q246](#)

117 [Q364](#)

118 [Q365](#)

119 [Q296](#)

I think that the operation of that decision after we have left the European Union will be in the national interest, and that will affect all levels of skills. The Government will come to a judgment as to what is necessary for universities, for business and for fruit picking.<sup>120</sup>

**152. In deciding on a new system for controlling EU migration, the Government will need to take full account of the importance of workers from the EU, including the highly skilled, and the ability to undertake intra-company transfers to a large number of sectors of the UK economy.**

### ***Inability to agree any trade deal with the EU: the WTO fall back***

153. If the UK were to leave the Single Market and the Customs Union and not agree a free trade agreement with the EU, its market access would be determined by its membership of the World Trade Organisation (WTO). Underpinning the WTO is the principle of non-discrimination and the “most favoured nation” provision. WTO members may not treat any member less favourably than any other except as part of a preferential trading agreement. Therefore, if it were to exit the EU without any formal trade agreement, the UK's exports to the EU could not face higher tariff rates than those applicable to other third countries.

154. The average tariff imposed by the EU on imports is only 3.5 per cent but the rates are higher in respect of particular products. EU external tariffs on dairy products are 36 per cent; on cars are 10 per cent; on food and drink are 20 per cent; and on clothing and textiles are between 10 per cent and 20 per cent.<sup>121</sup> By contrast there is no tariff on trade in civil aircraft, including complete parts.<sup>122</sup>

155. The UK is a member of the WTO in its own right but would need to establish its own schedules of tariffs and import quotas with the WTO. As a member of the Customs Union it currently operates under the schedules applied by the EU. The Secretary of State for International Trade has recently confirmed that it is the Government's intention to adopt the EU's schedules and import quotas.<sup>123</sup> Stephen Booth told us that, as long as the UK did not seek to set a higher rate for tariffs on imports than that set by the EU, the process of establishing tariff schedules at the WTO should be relatively straightforward.<sup>124</sup> Roberto Azevedo, Director General of the WTO, said of the UK's transition back to independent membership of the WTO “I will be working hard – I will work very intensely to ensure that this transition is fast and is smooth”.<sup>125</sup>

156. Stephen Booth emphasised that the EU also had an interest in ensuring a smooth transition to WTO rules in the event that the UK left without agreeing any trade deal. The EU market would be shrinking by 15–18 per cent and the EU would need to re-examine its WTO commitments as a result. There would be a negotiation involving the UK, the EU and other WTO members to resolve questions such as the share of existing EU-wide

120 [Q496](#)

121 [Q270](#)

122 HL Select Committee on the European Union, external affairs sub-committee, Oral evidence, 3 Nov 2016, [Q88](#)

123 Financial Times, [Liam Fox opens talks with WTO over terms of membership](#), 5 December 2016

124 [Q86](#)

125 Sky News, [Brexit will not cause UK trade 'disruption' – WTO boss](#), 26 October 2016



quotas to be divided between the UK and the EU-27.<sup>126</sup> The process of establishing the UK's long term offer to the WTO would therefore need to be done in co-operation with the EU:

That requires the UK to be very clear from the outset about what kind of deal it is seeking to get. That comes to the earlier question about certainty. We need to know from the Government before Article 50 is triggered what decisions it is going to take on the customs union and the single market. Those decisions have to be made at the outset rather than throughout the Article 50 process.<sup>127</sup>

157. Shanker Singham told us that, in the course of negotiating a future free trade deal with the EU, the UK could for a limited period and as part of a transition to a free trade deal, unilaterally apply zero tariffs on imports from the EU.<sup>128</sup>

### ***A transitional arrangement***

158. The process of exiting the EU will bring opportunities for many businesses, but for many it will bring risks. Several of our witnesses advocated some form of transition or adjustment period to enable businesses to plan for any change in trading arrangements that may occur in the wake of the UK exiting the EU.

159. Fergus McReynolds was concerned to minimise disruption to trading relationships and minimise the impact of exiting the EU on complex manufacturing supply chains:

for us what is key is to achieve an orderly and smooth exit from the EU. If that requires a transition period to allow us to answer and understand in a timely fashion where those impacts are and how they are best managed over time, that is something we would support.<sup>129</sup>

160. Shanker Singham noted the need for potential interim measures or transitional arrangements that would need to be put in place for particular sectors while the process of negotiating new arrangements with the EU was underway:

The things that are more difficult to deal with, which is where you would need your interim measures, are things like those specific areas within financial services where you need some equivalence measure or mechanism going forward, or in the digital single market. There are certain, very specific things that in two and a half years we have to know exactly what they are, and we have to have interim measures in place.<sup>130</sup>

161. The Prime Minister told the Liaison Committee that, for some, the concept of a “transitional arrangement” represented either a proxy for putting off actually leaving the EU or an expectation that two years would be insufficient to negotiate (or to negotiate and fully implement) a deal to leave and a further transitional period would be needed. However, she did acknowledge that

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126 [Institute for Government Brexit Brief: 10 things to know about the World Trade Organization \(WTO\)](#), accessed 11 January 2017

127 [Q73](#)

128 [Q69](#)

129 [Q146](#)

130 [Q117](#)



there will of course be a necessity for adjustment to those new arrangements, for implementation of some practical changes that may need to take place in relation to that. That is what business has been commenting on and arguing for when, as you say, they use the phrase about not having a cliff edge. They don't want to wake up one morning, having had a deal agreed the night before, and suddenly discover that they have to do everything in a different way. There is a practical aspect of how you ensure that people are able to adjust to the new relationship, which is not about trying to delay the point at which we leave and is not about trying to extend the period of negotiation.<sup>131</sup>

### ***Conclusion on UK's future relationship with the EU***

162. The Secretary of State has said that he wants to secure the best possible access for goods and services to the European market. The Prime Minister has made it clear that she places top priority on controlling the UK's borders and extricating the UK from the jurisdiction of the European Court of Justice. The pronouncements of the EU's chief negotiators on the indivisibility of the four freedoms seem to indicate that achieving all these objectives will be difficult.

163. A "cliff edge" change in circumstances could be extremely disruptive in some sectors to businesses both in the UK and in the EU 27, whether it be the need to adjust to new provisions for regulatory approval, new customs requirements, or the need to adjust to new costs or restrictions in employing EU workers. The risk of a cliff edge – ie the absence of transitional arrangements – might also push some businesses to preempt the result of negotiations and minimise the risks to their business. For some, this could involve re-locating out of the UK or investing elsewhere in future. A period of transition, or adjustment, is a factor in most trade agreements. The Government must make clear from the outset that a period of adjustment to any change in trading arrangements or access to EU markets for UK service industries will be sought as part of the negotiations.

164. If final agreement is not possible by the time that the UK leaves the EU, it would be in the interests of both sides of the negotiations for an outline framework, with appropriate transitional arrangements, for the UK's future relationship with the EU to be agreed in respect of access to the Single Market for goods and services and future trade policy.

165. In addition to the economic aspects of the relationship, it is essential that cooperation in defence, foreign policy, security and the fight against terrorism, which is of benefit to both the UK and the EU-27, is not lost when the UK exits the EU. If it is not possible to conclude an agreement on all areas of cooperation in Justice and Home Affairs and Common Foreign and Security Policy before the UK leaves the EU, transitional arrangements to ensure that mutually beneficial cooperation is not brought to an abrupt end by Brexit will be needed.

## The role of Parliament in approving the final deal

166. Section 20 of the Constitutional Reform and Governance Act 2010 (the “CRAG Act”) sets out the procedure for ratification of treaties by Parliament, putting on a statutory basis the convention previously known as the Ponsonby Rule. The CRAG Act 2010 therefore gives the House of Commons (although not the Lords) the opportunity to veto the ratification of Treaties. This is, however, different to giving Parliament a positive role in agreeing a new Treaty on exit from the EU.

167. The European Parliament will have a vote on any deal. The Prime Minister was asked in evidence to the Liaison Committee whether Parliament would also be given a vote on a final deal once it had been negotiated. She replied that Parliament “should have every opportunity to consider these matters”<sup>132</sup> but did not confirm whether a vote would be scheduled or not.

**168. Although the Constitutional Reform and Governance Act 2010 provides the House of Commons with powers to withhold ratification of Treaties, this is not a satisfactory way of dealing with such an important Treaty. We therefore call on the Government to make it clear now that Parliament will have a vote on the Treaty and that the timetable for this vote will allow for proper consideration of any deal that is negotiated.**

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132 Liaison Committee, Oral evidence from the Prime Minister, 20 December 2016, [Q93](#)

## Annex 1: Note of roundtable discussion, Sunderland, 8 December 2016

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With the Secretary of State having announced the previous day that the Government would publish a “plan” for Brexit, discussion began around what that plan should include and the opportunities and risks that leaving the EU presented for the region. Trades unions asked for early reassurance regarding employment rights and continued tariff-free access to Europe. They were concerned about a “Hard Brexit” and that the UK could be punished for the referendum result. It was important to get the best deal possible for the UK and if that necessitated a transitional arrangement then that was acceptable. The business representatives recognised that there would be no quick solution, but stressed that businesses needed to understand where the country was heading to create confidence for further investment in the UK. Where a company was internationally-owned, uncertainty was a particular problem.

Talent and skills were raised as a key concern given the aging workforce in the region. There needed to be a greater priority given to training and to connecting schools and the upcoming workforce with businesses in the North-East, while also maintaining access to talent from across Europe and the world. Reassurance should be given on the right to remain as a matter of urgency.

Brexit presented opportunities for the North-East region to make itself more attractive for trade and investment with the wider world. Some larger companies saw potential in exporting to a global market but were concerned about how long it would take to get there and what would fill the gap.

It was noted that the North East had received more in EU funding than it had ever received from Westminster. Those present questioned whether there would be sufficient funding for the poorest communities, like the North-East, once the UK left the EU.

A particular concern related to cases where certification of regulatory compliance was currently obtained from the UK authorities. Participants were unclear whether this certification would still be recognised in Europe after Brexit and whether they would still be eligible for certification by EU bodies. A number of participants represented digital and high-tech companies. For them, it was vital to maintain access to European technical standards and data sharing rules. The Single Market was considered a growing market for data software development. Brexit had created uncertainty for this market with questions being raised around whether companies would need to set up subsidiaries in Europe and whether this was viable for small start-ups.

For larger engineering and manufacturing companies, supply chains which cross European borders were raised as a concern. One example was given where the company's costs were 20 per cent labour and 80 per cent materials. 90 per cent of materials came from the EU. If tariffs were added to parts crossing European borders before the final product was produced in the UK, then margins could be squeezed to such an extent that it was no longer viable to continue in the UK. Access to the Single Market and to free movement of workers were top priorities, not only for ensuring access to skills in the UK but also to enable companies to send their workers to Europe for experience.

Those present from the automotive sector raised similar concerns about the impact of leaving the Single Market on supplies which cross borders tariff-free a number of times before reaching the customer. The sector operates on extremely small margins due to the currency market and the changes in the exchange rate since the referendum had hit those who had to import components. The prospect of additional costs through tariffs left businesses with two options: do more work in the final country or move to somewhere where they can work tariff-free.

Currency devaluation was raised as further impacting the supply chain, especially for those companies which import parts. If the value of sterling were to increase again, this would result in a double tariff for some companies.

It was suggested that some form of freedom of movement should continue which did not allow companies to bring in cheap labour from across Europe, to avoid the effect of downgrading wages in the UK. Participants pointed to a perception that jobs were being sold off to cheap labour from Europe. If free movement of workers were to continue, it should be at the same cost as local labour so that companies could make decisions based on skills rather than costs.

Generally, participants recognised the long-term opportunities created by trading with a larger, global market but feared a state of flux until those opportunities were realised, and would need something to fill the gap.

We also took formal oral evidence during our visit to Sunderland which is published on the Committee website.<sup>133</sup>

## Annex 2: Note of roundtable discussion, Aberdeen, 19 December 2016

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This roundtable included participants from further and higher education, businesses, agriculture, fisheries, energy, oil, tourism and the health sector. The discussion focused on issues around people and skills. It was highlighted that the available workforce in Aberdeen and North-East Scotland had already shrunk, and there was evidence of people leaving as no-one could provide reassurance about what would happen after Brexit. Some businesses had EU workers with over 10 years' experience in the UK and were worried that their expertise would be lost, creating challenges for recruitment in sectors such as health, social care and tourism.

The local economy was highly dependent upon EU migrants. For example:

- Some 70 per cent of workers in the fish processing industry were EU migrants; in some work places this was as high as 80 per cent.
- Abattoirs were very reliant on vets from overseas, including a large number of Spanish vets.
- The fruit industry was comprised almost entirely of Polish workers.
- Between a third and a half of workers in the tourism sector were from overseas.
- A significant proportion of health care workers were from the EU.
- A large number of foreign nationals, from both inside and outside the EU, worked in the subsea industry.

Some participants were concerned that the region did not have the infrastructure, education or training in place to build the local workforce, and would struggle to make jobs attractive.

For higher education, the uncertainty around EU research funding was a risk for retaining staff and students who wanted to work with foreign partners. Similar concerns were raised by the life sciences sector as scientific researchers tended to follow the funding.

The devolved powers on education further complicated the picture, The Scottish Government's budget currently pays for tuition fees. There were questions around whether tuition fees would need to apply to EU students once the UK leaves the EU and the impact that would have on student numbers. Some further education programmes were also funded by the EU, for instance through the European Social Fund.

The tourism sector wanted more clarity on the future of "Open Skies" and visas and were concerned with the costs and practicalities of changes to either. It was explained that the UK was already considered an expensive tourist destination and further barriers to travel to the UK were a key concern.

On the other hand, leaving the EU presented many opportunities for the fishing industry, which the Committee had heard in oral evidence that morning. There were worries within the industry that those opportunities would not be realised were the fish stocks in the UK's waters to be used as a bargaining chip in the negotiations.

It was noted that the agricultural sector had been driven by EU subsidies for the last 40 years. For example, 75 per cent of net farm income in Scotland comes in the form of support, especially for livestock. It was suggested that subsidies can stifle innovation as well as bringing down the price of food in the shops. In addition to subsidies, Europe was also a major market for agricultural exports, with 96 per cent of Scottish sheep exports going to Europe. It was believed that the high leave vote amongst farmers was due to a dislike of EU regulation.

The food and drink industry had a large trade deficit with the EU. Concerns were expressed about changes to the free movement of workers, as well as to trade and regulations. While recognising that there would be opportunities in the long-term, right now it was suggested that the industry was "looking down the barrel of a gun."

The oil and gas industries were concerned with the future regulation of the offshore environment, particularly the risks to safety and environmental regulations once the UK no longer has a seat at the table. For the offshore wind industry, the uncertainty surrounding Brexit was hindering investment. It was suggested that uncertainty in Scotland more generally was compounded by the re-emergence of the independence question.

We also took formal oral evidence during our visit to Aberdeen which is published on the Committee website.<sup>134</sup>

## Formal Minutes

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**Wednesday 11 January 2017**

Members present:

Hilary Benn, in the Chair

Alistair Burt	Mr Peter Lilley
Mr Alistair Carmichael	Karl McCartney
Maria Caulfield	Mr Pat McFadden
Joanna Cherry	Craig Mackinlay
Mark Durkan	Seema Malhotra
Jonathan Edwards	Dominic Raab
Peter Grant	Emma Reynolds
Michael Gove	Stephen Timms
Andrea Jenkyns	Mr John Whittingdale
Jeremy Lefroy	Sammy Wilson

Draft Report (*The process for exiting the European Union and the Government's negotiating objectives*), proposed by the Chair, brought up and read.

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

Paragraph 1 read.

Amendment proposed, in line 2, after "Union." to insert

"Whilst the majority of voters in England and Wales voted to leave, the majority of voters in Northern Ireland and Scotland voted to remain."—(*Jonathan Edwards*)

Question put, That the amendment be made.

The Committee divided.



**Ayes, 4**

Joanna Cherry  
Mark Durkan  
Jonathan Edwards  
Peter Grant

**Noes, 16**

Alistair Burt  
Mr Alistair Carmichael  
Maria Caulfield  
Michael Gove  
Andrea Jenkyns  
Jeremy Lefroy  
Mr Peter Lilley  
Karl McCartney  
Mr Pat McFadden  
Craig Mackinlay  
Seema Malhotra  
Dominic Raab  
Emma Reynolds  
Stephen Timms  
Mr John Whittingdale  
Sammy Wilson

Question accordingly negatived.

Paragraph agreed to.

Paragraphs 2 to 51 read and agreed to.

Paragraph 52 read.

Amendment proposed, to leave out from the start of the paragraph to “it” in line 2.—  
(*Jonathan Edwards*)

Question put, That the amendment be made.

The Committee divided.

**Ayes, 4**

Joanna Cherry  
Mark Durkan  
Jonathan Edwards  
Peter Grant

**Noes, 16**

Alistair Burt  
Mr Alistair Carmichael  
Maria Caulfield  
Michael Gove  
Andrea Jenkyns  
Jeremy Lefroy  
Mr Peter Lilley  
Karl McCartney  
Mr Pat McFadden  
Craig Mackinlay  
Seema Malhotra  
Dominic Raab  
Emma Reynolds  
Stephen Timms  
Mr John Whittingdale  
Sammy Wilson

Question accordingly negatived.

Paragraph agreed to.

Paragraphs 53 to 162 read and agreed to.

Paragraph 163 read.

Motion made, and Question put, That the paragraph stand part of the Report.

The Committee divided:

**Ayes, 11**

Alistair Burt  
Mr Alistair Carmichael  
Joanna Cherry  
Mark Durkan  
Jonathan Edwards  
Peter Grant  
Jeremy Lefroy  
Mr Pat McFadden  
Seema Malhotra  
Emma Reynolds  
Stephen Timms

**Noes, 9**

Maria Caulfield  
Michael Gove  
Andrea Jenkyns  
Mr Peter Lilley  
Karl McCartney  
Craig Mackinlay  
Dominic Raab  
Mr John Whittingdale  
Sammy Wilson

Paragraph accordingly agreed to.

Paragraphs 164 to 167 read and agreed to.

Paragraph 168 read.

Amendment proposed, at the end, to add

“It is clear that the final negotiated settlement will impact directly on the functions of the devolved institutions, and therefore the endorsement of the devolved parliaments should be sought for the final deal.”—(*Jonathan Edwards*)

Question put, That the amendment be made.

The Committee divided.

**Ayes, 5**

Mr Alistair Carmichael  
Joanna Cherry  
Mark Durkan  
Jonathan Edwards  
Peter Grant

**Noes, 15**

Alistair Burt  
Maria Caulfield  
Michael Gove  
Andrea Jenkyns  
Jeremy Lefroy  
Mr Peter Lilley  
Karl McCartney  
Mr Pat McFadden  
Craig Mackinlay  
Seema Malhotra  
Dominic Raab  
Emma Reynolds  
Stephen Timms  
Mr John Whittingdale  
Sammy Wilson

Question accordingly negated.

Paragraph agreed to.

Annexes agreed to.

*Resolved*, That the Report be the First Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available (*Standing Order No. 134*).

[Adjourned till Wednesday 18 January at 9.00 am

## Witnesses

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

### Wednesday 16 November 2016

*Question number*

**Professor Catherine Barnard**, Professor of European Union Law, University of Cambridge, **Sir Simon Fraser**, former Permanent Secretary, Foreign and Commonwealth Office, and **Dr Hannah White**, Director of Research, Institute for Government

[Q1–64](#)

### Wednesday 23 November 2016

**Dr Robin Niblett**, Director, Chatham House, **Stephen Booth**, Acting Director, Open Europe, **Shanker Singham**, Director of Economic Policy and Prosperity Studies, Legatum Institute

[Q65–123](#)

### Wednesday 30 November 2016

**Dr Virginia Acha**, Executive Director for Research, Medical & Innovation Association of the British Pharmaceutical Industry (ABPI), **Gary Campkin**, Director for Policy and Strategy, TheCityUK, and **Fergus McReynolds**, Director of EU Affairs, EEF, The Manufacturers' Organisation

[Q124–236](#)

### Wednesday 7 December 2016

**Carolyn Fairbairn**, Director General, Confederation of British Industry; **Frances O'Grady**, General Secretary, Trades Union Congress; and **John Longworth**, Co-Chair, Leave Means Leave

[Q237–345](#)

### Thursday 8 December 2016

**Richard Baker**, Head of Policy and Strategy, North East Local Enterprise Partnership, **John Elliott, MBE, DL**, Executive Chairman of Ebac and representative of Business for Britain in the north east, **Ross Smith**, Director of Policy at North East England Chamber of Commerce, and **Councillor Paul Watson**, Leader of Sunderland City Council

[Q346–402](#)

### Wednesday 14 December 2016

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

[Q403–526](#)

## Monday 19 December 2016

**Professor Michael Keating**, Chair in Scottish Politics, University of Aberdeen, **Andrew Walker**, Managing Partner, Johnston Carmichael, **Deirdre Michie**, Chief Executive, Oil and Gas UK, and **Suzanne Burr**, Business Manager, Thorpe Molloy Recruitment

[Q527–554](#)

**Michael Bates**, Development Officer, Scottish Seafood Association, **Bertie Armstrong**, Chief Executive Officer, Scottish Fishermen's Federation, and **Andrew Scott**, Chief Executive Officer, Scotrenewables

[Q555–598](#)