



BRIEFING PAPER

Number 08128, 9 March 2018

Exiting the EU: Sectoral assessments

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Contents:

1. The impact assessments
2. Motion for a return



Contents

Summary	3
1. The sectoral assessments	4
1.1 Background	4
1.2 Previous requests to the Government for the assessments	4
1.3 Freedom of Information requests	5
1.4 Motion for a return	6
1.5 Uncertainty over the form of the assessments	6
1.6 What was released?	8
1.7 Response to the release of information	9
1.8 EU Exit Analysis – Cross Whitehall Briefing	10
2. Motion for a return	13
2.1 Power to call for papers	13
2.2 Is a motion for a return binding?	13
2.3 Questions raised on contempt	14
2.4 The section motion for a return	16

Summary

In December 2016 David Davis, the Secretary of State for Exiting the EU, told the Exiting the EU Select Committee that the Government was “in the midst of carrying out about 57 sets of analyses” of the impact of Brexit on sectors which accounted for 85% of the UK economy.

These assessments became subject to Freedom of Information requests and interest from select committees but all attempts to access the information were turned down on the basis that publication would prejudice the interests of the UK overseas and the UK’s economic interests. The House of Commons had itself resolved in December 2016 that there should be no disclosure of material that could be reasonably judged to damage the UK in any withdrawal negotiations.

Then on 1 November 2017 the House of Commons resolved that the so-called “Brexit Impact Assessments” should be provided to the Exiting the EU Select Committee. The motion was tabled as a “motion for a return” by the Opposition. This device has not commonly been used by the House of Commons in modern times in such circumstances. Governments have used the device of a “motion for unopposed return” to publish information with the protection of Parliamentary privilege.

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

However, the Government agreed to comply with the resolution of the House and the documents were provided to the House of Commons Exiting the EU Committee (the Committee) and the House of Lords European Union Committees on 27 November 2017. The Secretary of State wrote to the Committee stating that the Department had “sought not to include commercially, market or negotiation sensitive information.”

The Secretary of State appeared before the Exiting the EU Committee on 6 December 2017 to answer questions about the sectoral reports. Following the evidence session, the Committee took a vote and agreed that he was not in contempt for misleading the House of Commons and had complied with the terms of the resolution. Subsequently the Committee resolved to publish the reports made available to it.

On 29 January 2018 a paper, entitled EU Exit Analysis — Cross Whitehall Briefing, was leaked to the online news and entertainment company BuzzFeed. The paper looked at three existing trade arrangements to frame the possible economic impact: an EEA type arrangement, an FTA type arrangement, and a WTO scenario. Steve Baker, Parliamentary Under Secretary, said that the BuzzFeed article was a “selective interpretation of a preliminary analysis”, and “an attempt to undermine our exit from the European Union”. The Opposition again tabled a motion for a return to have the analysis shared with Members and the Select Committees. Having resolved to publish the analysis, it was made available by the Committee on 8 March 2018, with one annex removed following a request from the Secretary of State.

1. The sectoral assessments

1.1 Background

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

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

The then Department for Exiting the EU Minister, the Rt Hon David Jones MP, [replied](#) on 23 May 2017 to a [letter](#) of 11 April 2017 from Green Party MEP, Molly Scott Cato, about the Government studies. Mr Jones said that since the EU referendum:

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

In addition, the [Government response](#) to the EU External Affairs Sub-Committee report on *Brexit: trade in goods* included an annex listing 58 sectors covered by the Government's analysis.

1.2 Previous requests to the Government for the assessments

A number of requests were submitted to the Government to publish these assessments, culminating in the motion for return tabled on an Opposition Day on 1 November 2017 (see below). The Government's argument for not publishing the studies was that it did not want to reveal information which might harm its negotiating position in withdrawal and/or future relations negotiations. David Davis [told](#) the Brexit Committee in December 2016, "We have got to be very careful about what we publish. I want to be as open as we can be, but we must be sure that we are not undermining our own position".

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

We are carrying out a programme of rigorous and extensive analytical work to contribute to our exit negotiations, define our future partnership and inform our understanding of how exit will affect our domestic policies and frameworks. It is not standard practice to provide an ongoing commentary on internal analytical work being carried out, but I assure the noble Baroness that it is being carried out.¹

¹ [HL Deb 19 October 2017 c713](#)

A [Parliamentary Question](#) answered on 24 October 2017 asked the Secretary of State for Exiting the EU “when he plans to publish the impact assessments of the UK leaving the EU”. The response, from the Parliamentary Under Secretary of State, Robin Walker, said:

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

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

Then on 7 December 2016 the House passed a motion:

That this House ... confirms that there should be no disclosure of material that could be reasonably judged to damage the UK in any negotiations to depart from the European Union after Article 50 has been triggered; and calls on the Prime Minister to commit to publishing the Government’s plan for leaving the EU before Article 50 is invoked.²

1.3 Freedom of Information requests

As well as the Parliamentary questions and debates, there were a number of other attempts to have the assessments published. For example, on 11 October 2017 David Lammy MP and Seema Malhotra MP sent a [letter](#) to Mr. Davis calling on him to publish the studies (attached with a list of 120 MPs who signed it).

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

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

These are the grounds on which I am appealing: the release of these reports would meet all the key public interest tests, demonstrating transparent and accountable Government decision-making processes; promote public understanding of the implications of Brexit; safeguard democratic processes, which would be severely damaged if the Government pursued a path that they knew was very damaging to the UK’s interests; and secure the best use of public resources.³

² [HC Deb 7 December 2016](#)

³ [HC Deb 1 November 2017 c923](#)

1.4 Motion for a return

On 1 November 2017, at the end of an Opposition Day debate on Exiting the EU: Sectoral Impact Assessments, the House of Commons resolved that the list of sectors covered by the Government's analysis should be laid before the House, and that the impact assessments arising from those analyses be provided to the Committee on Exiting the EU.

The House resolved, without division, that:

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

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

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

The issues raised by the use of this procedural device are considered in section 2 below.

1.5 Uncertainty over the form of the assessments

During the debate on 1 November, the Parliamentary Undersecretary of State at the Department for Exiting the EU, Robin Walker, told the House that "there has been some misunderstanding about what this sectoral analysis actually is. It is not a series of 58 economic impact assessments". He also noted that Ministers have a "clear obligation not to disclose information when to do so would not be in the public interest".⁴

David Davis [wrote](#) to Chair of the Select Committee, the Rt Hon Hilary Benn, on 3 November 2017 to state that he was "putting in place arrangements to respond to and adhere with the motion". However, he also explained that "it is not the case that 58 sectoral impact assessments exist":

Let me clarify exactly what this sectoral analysis is. It is a wide mix of qualitative and quantitative analysis, contained in a range of documents developed at different times since the referendum. It examines the nature of activity in sectors, how trade is conducted with the EU currently in these sectors and, in many cases, considers the alternatives after we leave as well as looking at existing precedents. This analysis ranges from the very high level overarching analysis to sometimes much more granular level analysis of certain product lines in specific sectors. Our analysis in

⁴ HC Deb 1 November 2017 c887

this area is constantly evolving and being updated based on our regular discussions with industry and our negotiations with the EU. But it is not, nor has it ever been, a series of discrete impact assessments examining the quantitative impact of Brexit on these sectors. It is important that this is understood from the start.

He went on to state that it would take time to collate and bring together this information in a way that is accessible and informative for the Committee. He also stated that it would be important for him to meet with Mr Benn to discuss how “consideration of the public interest” might be handled by the Committee.

In response to a Point of Order raised by Matthew Pennycook MP on 6 November 2017, the Speaker noted that the impact assessments should be provided to the Committee “very promptly indeed”. He went on, “Failing that, I expect Ministers to explain to the House before we rise tomorrow evening why they have not provided them and when they propose to do so”.⁵

On 7 November 2017 the Secretary of State for Exiting the EU made a [Written Statement](#) reiterating that there was a “wide mix of qualitative and quantitative analysis contained in a range of documents developed at different times since the referendum”. He also stated that there might be confidential and commercially sensitive information in the analysis, and that advice to ministers must remain private.

Also on 7 November, the Speaker granted an [Urgent Question](#) about the assessments. Matthew Pennycook MP asked how the “clear impression” that the information exists had been allowed to develop over many months:

In a response dated 29 September 2017 to a freedom of information request submitted by my hon. Friend the Member for Feltham and Heston (Seema Malhotra) requesting details about the analyses and their publication, the Department’s FOI Team stated:

“the Department for Exiting the European Union...holds the information you have requested”.

Yet in the Secretary of State’s letter to the Chair of the Select Committee, he implies that it will take time to collate and bring together the information because some of it is held by other Government Departments. Can the Minister confirm that the information given by his Department’s FOI Team on 29 September is correct and that the Department holds the information? If not, why was the Department’s FOI team permitted to state that the information is held? If the Department holds some of the information but not all of it, what is preventing the information that is available from being released to the Brexit Committee immediately?⁶

In response the other Parliamentary Under Secretary of State at the Department for Exiting the EU, Steve Baker, stated that it was never the Government’s purpose to “allow such an impression to develop”. He continued:

⁵ [HC Deb 6 November 2017 c1210](#)

⁶ [HC Deb 7 November 2017 c1334](#)

The Government hold a wide range of information across a wide range of documents. The information is provided by Departments and collated by my Department, but what it does not compromise, and has never compromised, is quantitative forecasts of impact on those sectors.⁷

On 7 November, the Minister also told the House of Commons that the information would be provided to the Committee “in no more than three weeks”.⁸

1.6 What was released?

On 27 November 2017 David Davis wrote to Hilary Benn and Lord Jay of Ewelme (Chair of the House of Lords EU Committee) explaining what information was being made available to the Committees:

The reports we are sharing with you today set out:

- (i) a description of each sector;
- (ii) the current EU regulatory regime;
- (iii) existing frameworks for how trade is facilitated between countries in this sector; and
- (iv) sector views.

They include relevant information from across government. The Government’s overall programme of analysis on EU exit is extremely broad...

We now consider the motion of 1 November to have been satisfied and hope you find the considerable amount of information provided here of assistance for the ongoing work of your Committees.⁹

He noted that the Government had been “clear” that it would not release any information “which might risk undermining our negotiations with the EU”. He went on to state that “Given we have received no assurances from the Committee regarding how any information passed will be used, we have sought not to include commercially, market and negotiation sensitive information”.

In total 39 sectoral reports were provided to the Committees and the Scottish and Welsh Governments.

The Committee Chair, Hilary Benn replied to David Davis expressing his concern that if information had not been included because of its sensitivity that “this is both contrary to the instruction given to the Government in that motion and to the clear expectations that I set out to you in our discussions. The Committee will therefore need to consider whether this is potentially a breach of privilege”. The Chair invited the Secretary of State to appear before the Committee to discuss these matters.¹⁰

⁷ *ibid*

⁸ [ibid c1333](#)

⁹ [Letter from Rt Hon David Davis MP to Rt Hon Hilary Benn MP and Lord Jay of Ewelme](#), 27 November 2017

¹⁰ [Letter from Rt Hon Hilary Benn MP to Rt Hon David Davis MP](#), 28 November 2017

Mr Benn also told the House that the release of information to his Committee was “not in keeping with the motion passed by the House of Commons”. He said:

Given that it is quite clear that the Select Committee has received edited documents – in other words, they do not contain everything that is in the possession of the Government – may I say to the Minister that that is not in keeping with the motion passed by the House of Commons? I also say to him that I made it very clear to the Secretary of State what procedure the Select Committee would use to consider the reports and, if I may put it like this, I do object to any suggestion that the Select Committee, or I as Chair, cannot be trusted to do our job.¹¹

The Parliamentary Under Secretary, Robin Walker, responded to the points raised. He stated that the Chair of the Select Committee had “wanted to receive all the documents first before he would give any assurances as to the way in which they would be treated”.¹² The Minister also noted that he had initiated discussions with the parliamentary authorities to make the information available “to all colleagues” through a reading room.

1.7 Response to the release of information

David Davis appeared before the Committee on 6 December 2017 to answer questions about the reports. The Committee queried how he could state that there was no detailed information to publish, even though he had talked previously about the 58 studies existing “in excruciating detail”.

The Committee voted on whether Mr Davis was in contempt of Parliament by misleading it; ten Conservative MPs and one DUP MP voted against while eight opposition MPs voted in favour.

Accordingly, the Committee agreed the following resolution:

That, in view of the statement that no impact assessments have been undertaken, the Committee considers that the Government’s response to the resolution of the House of 1 November has complied with the terms of that resolution.

Following that, clarification was sought from the Secretary of State as to whether there was any specific material in the documents that had been provided that he would prefer the Committee not to publish on the grounds that it was commercially, market or negotiation-sensitive information,¹³ The Secretary of State’s letter of 27 November listing what information the Government was sharing with the Committee said that it had “sought not to include commercially, market and negotiation sensitive information.”

During its meeting on 13 December, the Committee resolved that it would write to the Secretary of State to inform him that the Committee was minded to publish the reports arising from the sectoral analyses but with the Sector Views sections redacted.

¹¹ HC Deb 28 November 2017 c166

¹² *Ibid*, c163

¹³ - [Letter from Rt Hon Hilary Benn MP to Rt Hon David Davis MP](#) 6 December 2017

The [Secretary of State replied to the Committee Chair on 19 December](#) confirming that “there was no specific material that he would wish not to be made public on the grounds that it was commercially, market or negotiation sensitive”. However, he drew the Committee's attention to a small number of corrections or revisions that should be made to the statistics in the reports. On 20 December the Committee agreed to proceed with publication of 39 reports which are now available on its webpage.¹⁴

Speaking about the number of reports a DExEU spokesperson said:

Our analysis is not, nor has it ever been, a series of impact assessments examining the quantitative impact of the UK's EU exit on the 58 sectors. As our analysis does not exist in the form Parliament requested, we took time to bring together information in a way that met Parliament's specific ask. We are undertaking a comprehensive programme of analytical work. These reports are a part of that. They are not exhaustive, nor are they the final say on any of these issues. Ministers have a specific responsibility, which Parliament has endorsed, not to release information that would undermine our negotiating position.¹⁵

1.8 EU Exit Analysis – Cross Whitehall Briefing

On 29 January 2018 a paper, entitled *EU Exit Analysis — Cross Whitehall Briefing* and dated January 2018, was leaked to the online news and entertainment company [BuzzFeed](#). The paper looked at three existing trade arrangements to frame the possible economic impact: an EEA type arrangement, an FTA type arrangement, and a WTO scenario. It acknowledged the risk to London's status as a leading financial centre posed by Brexit and found that all UK regions would be negatively affected, with the north-east of England, the West Midlands and Northern Ireland facing the biggest impacts.

On the day after the BuzzFeed publication, and in response to an Urgent Question, Steve Baker, Parliamentary Under Secretary, said that the BuzzFeed article was a “selective interpretation of a preliminary analysis”, and “an attempt to undermine our exit from the European Union”:

As I have told the House before, the Government are undertaking a wide range of analysis on our exit from the EU. The next stage of that analysis, summarised in a draft paper presented to Ministers this month, has been a cross-Whitehall effort to support our negotiating priorities. It has not been led by my Department, and it is not yet anywhere near being approved by Ministers. Even the ministerial team in my Department has only just been consulted on the paper, in recent days, and we have made it clear that it requires significant further work. In fact, I saw this report myself only this morning. The analysis to which I believe this article refers is a preliminary attempt to improve on the flawed analysis around the EU referendum. It is there to test ideas and to design a viable framework for the analysis of our exit from the EU.

¹⁴ [Department for Exiting the EU Sectorial analyses](#)

¹⁵ The Independent [Brexit: Government analysis published after long battle](#) 21 December 2017

At this early stage, it only considers off-the-shelf trade arrangements that currently exist; we have been clear that these are not what we are seeking in the negotiations.¹⁶

Keir Starmer, the Shadow Secretary of State for Exiting the EU replied:

Here we go again: Brexit impact assessments, take two. For the past year, we have called on the Government to publish Brexit impact assessments. It is a simple argument: on decisions of this significance, Parliament is entitled to know the likely impact of the Government's approach to Brexit and thus to hold the Government to account. The Government have repeatedly refused our requests.

Last year the Secretary of State initially insisted that these reports existed in "excruciating detail", but were so sensitive that nobody else could see them. After this House passed a binding Humble Address, the Secretary of State changed tack, telling the Brexit Select Committee just last month that no "economic forecast of outcome" had ever existed. Yet last night we learn that an analysis has been produced after all.

This is now piling absurdity upon absurdity, and there are some pretty obvious questions. When was this new analysis commissioned? In particular, was it before or after the Secretary of State gave evidence to the Brexit Select Committee last month on this issue? Is this the only report that has been prepared on the Brexit scenarios? If not, what other analysis has been done? Does this new analysis model the Government's Brexit approach? If not, why not? If so, will it lead to changes in Government policy? Finally, and most importantly, will the Secretary of State publish this now—not in nine months, but now, so that we can hold the Government properly to account?¹⁷

Consistent with the principle established in November 2017, on the 31 January 2018, the Opposition Day motion on the Government's EU Exit Analysis included an humble Address that called on the Government to release the analysis. The Government did not oppose the motion. For the Government, Robin Walker said:

We will provide the analysis to the Exiting the European Union Committee and to all Members on a strictly confidential basis. This means that we will provide a hard copy of the analysis to the Chair of the Committee. A confidential reading room will be available to all Members and peers to see a copy of the analysis, once those arrangements can be made. This will be under the same terms as previous arrangements in similar circumstances, under this and previous Governments.¹⁸

However, ~~he~~ it was keen to explain what the analysis referred to and that it would remain negotiation-sensitive:

The document is preliminary, unfinished and has only very recently been presented to Ministers in any form at all. It contains a large number of caveats, and sets out on every single page that this is "draft analytical thinking with preliminary results".

The analysis has not been led by my Department or, for that matter, by any single Department. This next stage of analysis has been a cross-Whitehall effort to support our negotiating priorities.

¹⁶ [HC Deb 30 January 2018 c679](#)

¹⁷ *Ibid*

¹⁸ [HC Deb 31 January 2018 c834](#)

12 Exiting the EU: Sectoral assessments

It is not yet anywhere near being approved by Ministers, and it has only been brought together in a draft paper for them to review this month. Even the ministerial team in my Department have only just been consulted on this particular paper in recent days, and have made it clear that it requires significant further work. It does not yet reflect this Government's policy approaches and does not represent an accurate reflection of the expected outcome of the negotiations.

It would not be right to describe the figures as Government numbers, as they have not had formal Government approval or sign-off as most analysis or policy would. The primary purpose of analysis at this stage was a preliminary attempt to improve on the much criticised analysis published around the time of the EU referendum. It is there to test ideas and to design a viable framework for the analysis of our exit from the European Union.¹⁹

However, Hilary Benn disputed the content of the analysis:

We are told that the analysis is preliminary. Nineteen months after the referendum, how on earth can it still be preliminary—really? We are told that the people who are meant to be in charge had not seen it until two nights ago, when it is about to be shown in a locked room to members of the Cabinet. We are told, as has been said, that it does not include modelling of the Government's preferred option. Why on earth not? The answer is a simple one: the Government do not know what their preferred option consists of. Therefore, they cannot model it.²⁰

The analysis was passed to the Committee and was shared in confidence with all Members of the House. On 26 February Hilary Benn informed the House:

The Brexit Committee has decided that it is minded to publish the Government's EU exit analysis, but it has asked the Secretary of State whether he would wish any specific details to be redacted on the basis that they would either be sensitive to the negotiations, market sensitive or commercially confidential. As a Committee, we have always argued in favour of as much transparency as possible in the process, without damaging our negotiating position. If we are going to be able to do that, we need as much information as possible.²¹

Having considered both the Department's [response](#) and the significant public interest in the impact of Brexit on the British economy, the Committee decided on 7 March 2018 to publish the analysis. The document was made available on the Committee's webpage on 8 March with a single annex removed on the grounds of on-going negotiation sensitivity.²²

¹⁹ *Ibid*

²⁰ *Ibid*, c 853

²¹ [HC Deb 26 February 2018 c632](#)

²² [EU Exit Analysis Cross Whitehall Briefing](#) published 8 March 2018

2. Motion for a return

2.1 Power to call for papers

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

Each House has the power to call for the production of papers by means of a motion for a return. A return from the Privy Council or from Departments headed by a Secretary of State is called for by means of an humble Address to the Sovereign.²³

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

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

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

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

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

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

2.2 Is a motion for a return binding?

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

That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the list of sectors analysed under the instruction of Her Majesty's Ministers, and

²³ Erskine May, *Parliamentary Practice*, 24th Edition, p133

referred to in the Answer of 26 June 2017 to Question 239, be laid before this House and that the impact assessments arising from those analyses be provided to the Committee on Exiting the European Union.

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

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

I say what I do, as colleagues on both sides of the House and on both sides of the argument will recognise, on the strength of an understanding of advice received in relation to precedent grounded in “Erskine May”. When I am asked, as I think I was by the right hon. and learned gentleman, about contempt or breach of privilege, what I would say is that, if anybody wishes to make an accusation of a breach of privilege or a contempt of the House, it must be done in writing to the Speaker. If I receive such a representation in writing, I will consider it and apply my best endeavours, and take advice, in reaching a view and reporting it to the House.²⁴

When asked by Sarah Wollaston MP what would be a “reasonable timeframe” for the Government to respond, Mr Speaker stated that “one should reflect in a sober and considered fashion”, “but if the hon. Lady is asking me whether I envisage this being something that needs to be deliberated on over a period of several days, the answer is no”.²⁵ The Speaker later stated that the Government’s announcement that they would respond to motions passed on Opposition Days within 12 weeks was “in the specific context of earlier Opposition day debates, the motions for which were not binding”.²⁶

2.3 Questions raised on contempt

Immediately following the Urgent Question on 28 November, following the release of information to the Exiting the EU Select Committee, Keir Starmer and others raised points of order on the issue of contempt of Parliament. The Speaker advised the House that Members wishing to raise a matter of privilege must do so in the usual way; that is, to do so in writing. He noted that:

...a Member wishing to allege a contempt should, in the first instance, raise it not in a point of order, nor indeed in the media, but by writing to me as soon as practicable after the Member has notice of the alleged contempt or breach of privilege. I then decide whether or not the matter should have precedence...

Beyond that formal statement, and in the hope that this is helpful to Members in all parts of the House, I would emphasise that we all heard what the Chair of the Brexit Select Committee had to

²⁴ HC Deb 28 November 2017 c931

²⁵ *Ibid*, c932

²⁶ *Ibid*, c934

say. He indicated that the Committee had made a public statement and requested an urgent audience with the Secretary of State, and that information from the right hon. Member for Leeds Central (Hilary Benn) was extremely important. The Minister responded, indicating a willingness on the part of the Secretary of State to meet, and to do so soon. May I very politely say to the Minister, who is always a most courteous fellow, that he was wise to make that statement? When it is suggested that that meeting should be soon, it means soon; it does not mean weeks hence. It means very soon indeed. Nothing—no commitment, no other diarised engagement—is more important than respecting the House, and in this case, the Committee of the House that has ownership of this matter, and to which the papers were to be provided. That is where the matter rests. As and when matters evolve, if a further representation alleging contempt is made to me, I will consider it very promptly and come back to the House. I hope that the House knows me well enough to know that I will do my duty.²⁷

Addressing the House on 14 December 2017, the Speaker said several members had alleged contempt by David Davis and other ministers over the impact assessments, and that he had discussed the matter with the Clerk of the Commons.

Mr Speaker said:

Several Members have sought precedence to raise an alleged contempt in relation to the accounts that Ministers have given over the past 15 months of the sectoral analysis and assessment work undertaken by Departments in preparation for Brexit. I have carefully considered the representations made to me, as well as discussing the issue and the practice of the House with the Clerk of the House. I have to judge only whether to give precedence to a motion on the Floor of the House. Ministers could, with advantage, have been considerably clearer in their statements, particularly in challenging lines of questioning in Select Committees that were based on a genuine misconception. However, from the evidence I have seen to date, I have concluded that the test which I am bound to apply—that there is an arguable case that there has on this matter been a contempt of the House—has not been met in this case.

He reproached the Secretary of State, but noted that the Exiting the European Union Select Committee had the week previously voted not to seek a contempt motion against him:

While it was most regrettable that the secretary of state – a point I made to him privately but I now state publicly – unilaterally excised some material from the paper which he provided, and that it took so long to provide the papers, I also feel bound to pay due attention to the formally recorded view of the committee that the secretary of state had complied with the order of 1 November.²⁸

²⁷ *Ibid*, c175

²⁸ [HC Deb 14 December 2017 c 605](#)

2.4 The section motion for a return

A further motion relating to the leaked impact assessment was made on 31 January 2017:

That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the EU exit analysis which was referred to in his response to an Urgent Question in the House on 30 January by the Parliamentary Under-Secretary of State for Exiting the European Union be provided to the Exiting the European Union Committee and made available to all Members on a confidential basis as a matter of urgency.²⁹

On a point of order, Mr. Starmer asked the Speaker whether the motion, as with the previous motion, was considered to be binding on the Government and what would be a reasonable period of time for it to comply with the motion.

Mr Speaker replied:

The answer is twofold. First, yes, the motion is binding. I think that the Government are clear about that, and the Minister has indicated the intention of the Government to comply with it. Secondly, if memory serves me correctly, the motion refers to “a matter of urgency.” Therefore, the expectation must be that the report that is the subject of the debate will be released, published or made available to those persons mentioned in the motion as a matter of urgency.³⁰

²⁹ [HC Deb 31 December 2017 c 876](#)

³⁰ *Ibid*

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