



**BRIEFING PAPER**

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# Exiting the EU: Sectoral impact assessments

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## Summary

In December 2016 David Davis 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. The sectors covered were listed in a Government response to a report of the House of Lords EU External Affairs Sub-Committee. The 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 negotiations.

On 1 November 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 passed without division. The motion was tabled as a “motion for a return”. 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 noting that “it is not the case that 58 sectoral impact assessments exist”. He explained that there is a “wide mix of qualitative and quantitative analysis contained in a range of documents developed at different times since the referendum”. It would therefore take time to collate the information. He also stated that there might be confidential and commercially sensitive information in the analysis, and that advice to ministers must remain private.

Information was provided to the House of Commons Exiting the EU Committee and the House of Lords European Union Committees on 27 November. The Government consider the provision of the information to have met the requirements of the motion. However, information that was considered to be commercially or market sensitive, or potentially damaging to negotiations was not included. An urgent question was granted on 28 November where the Official Opposition and the Chair of the Select Committee expressed dissatisfaction. The Exiting the EU Committee is taking evidence from David Davis on 6 December 2017.

# 1. The impact 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.

Then DExEU Minister David Jones [replied](#) on 23 May 2017 to a [letter](#) of 11 April 2017 from Green Party MEP for the South West, 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.

The [Government response](#) to the EU External Affairs Sub-Committee report on *Brexit: trade in goods* lists 58 sectors covered by the Government's analysis.

A Commons Library Blog Post, [Brexit impact: 58 sectors assessed](#), lists the 58 sectors covered by the assessments, their current contribution to the UK economy and the number of people they employ.

## 1.2 Previous requests to the Government for the assessments

There have been a number of requests made to the Government to publish the assessment material, 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 had been that it did not want to reveal information which might harm its negotiating position in withdrawal and/or future relations negotiations. As 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".

A [Parliamentary Question](#) answered on 24 October 2017 asked the Minister at DExEU, "when he plans to publish the impact assessments of the UK leaving the EU". The response, from Robin Walker, was that:

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.

On 7 December 2016 the House passed a motion that the 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.<sup>1</sup>

The publication of the impact assessments was raised during a [debate held in the House of Lords](#) 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.<sup>2</sup>

### 1.3 Freedom of Information requests

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

In response to another [request](#) to release the information, the Government has 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 has also submitted a Freedom of Information request for the documents. He told the House during the debate on 1 November 2017 that he is appealing against 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.

There are clearly great public and parliamentary interest in examining these documents, as Brexit will have a greater impact on people economically and socially, and on the UK diplomatically, than any other decision taken in the past 50 years. The Government have failed to take that into account, and I shall submit a freedom of information request to ask them to set out how they took into account the public interest test versus concerns around damaging the UK's interests.<sup>3</sup>

### 1.4 Motion for a return

On 1 November 2017 at the end of an Opposition Day debate 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,

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<sup>1</sup> [HC Deb 7 December 2016](#)

<sup>2</sup> [HL Deb 19 October 2017 c713](#)

<sup>3</sup> [HC Deb 1 November 2017 c923](#)

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 Minister, 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":

In this case, the public interest is also the national interest. The key national interest here is to ensure the best possible outcome from our negotiations with the European Union... Furthermore, we must consider the importance of Ministers receiving unvarnished advice without the risks of it being published... If the motion were to pass, we would need to reflect on these various constraints and conflicting responsibilities when it comes to passing information to the Exiting the European Union Committee.<sup>4</sup>

David Davis [wrote](#) to Hilary Benn on 3 November 2017 to state that he was "putting in place arrangements to respond to and adhere with the motion". He explained, however, 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 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. He offered the date of 13 November to meet Mr Benn, noting that they were both away from Parliament in the week of 6 November.

In response to a Point of Order raised by Matthew Pennycook on 6 November, 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".<sup>5</sup>

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<sup>4</sup> HC Deb 1 November 2017 c887

<sup>5</sup> [HC Deb 6 November 2017 c1210](#)

On 7 November 2017 the Secretary of State for Exiting the EU made a [Written Statement](#) noting that “it is not the case that 58 sectoral impact assessments exist”.<sup>6</sup> He explained that there is a “wide mix of qualitative and quantitative analysis contained in a range of documents developed at different times since the referendum”. It would therefore take time to collate the information. 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](#) on the assessments. Matthew Pennycook asked how the “clear impression” that the information exists had been allowed to develop:

Can the Minister tell the House why, if the information that Members have repeatedly called for does not exist as a series of discrete impact assessments, a clear impression has been allowed to develop over many months that it does?

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?<sup>7</sup>

In response the Minister, Steve Baker, stated that it was never the Government’s purpose to “allow such an impression to develop”. He continued:

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.<sup>8</sup>

The Minister also told the House of Commons that the information would be provided to the Committee “in no more than three weeks”.<sup>9</sup>

## 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). He explained 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

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<sup>6</sup> [HC Deb 7 November 2017 c49WMS](#)

<sup>7</sup> [HC Deb 7 November 2017 c1334](#)

<sup>8</sup> *ibid*

<sup>9</sup> [ibid c1333](#)

(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.<sup>10</sup>

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".

The same information was also provided to the Scottish and Welsh Governments.

Hilary Benn has written back to David Davis expressing his concern noting 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 Chair invited the Secretary of State to appear before the Committee to discuss these matters.<sup>11</sup> He is due to appear on 6 December 2017.

The Chair of the House of Lords Select Committee on the European Union, Lord Jay of Ewelme, has also written to the Secretary of State asking whether there has been any overarching analysis of the documents "with a view to identifying their key themes and findings". If so, the Committee asked if that can be shared with the Committees and if not, they asked if such an analysis could be undertaken. He continued:

We shall in the meantime undertake our own analysis of the documents. We also note your statement that these are not discrete impact assessments. Is it your intention to produce such impact assessments, to inform your approach to negotiations on future trade, and to any implementing legislation?<sup>12</sup>

### 1.7 Response to the release of information

On 28 November the Speaker granted an Urgent Question to Keir Starmer, the Shadow Secretary of State for Exiting the EU, on the Sectoral Impact Assessments. Keir Starmer stated that the Secretary of State was "treating Parliament with contempt". He argued:

After your advice to us, Mr Speaker, the Government accepted that the motion was binding. It is simply not open to the Secretary of State to choose to ignore it and to pass to the Select Committee the documents he chooses. Whether he is in contempt of Parliament is a matter we will come to at some later date, but he is certainly treating Parliament with contempt.<sup>13</sup>

Keir Starmer further noted that before the motion was passed, "Ministers routinely claimed that these analyses were extensive and authoritative" and that their response to FoI requests had stated that the material was held by the Government. Finally, he expressed concern that "the sum of total documents generated by the Government's work on the impact on the economy of their approach to Brexit can be squeezed into two lever arch files".

<sup>10</sup> [Letter from Rt Hon David Davis MP to Rt Hon Hilary Benn MP and Lord Jay of Ewelme](#), 27 November 2017

<sup>11</sup> [Letter from Rt Hon Hilary Benn MP to Rt Hon David Davis MP](#), 28 November 2017

<sup>12</sup> [Letter from Lord Jay of Ewelme GCMG to Rt Hon David Davis MP](#), 29 November 2017

<sup>13</sup> [HC Deb 28 November 2017 c163](#)



The Chair of the Select Committee on Exiting the EU stated in the House that the release of information to his Committee “is 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.<sup>14</sup>

The Minister for Exiting the EU, Robin Walker, responded the points raised. He stated that the Chair of the Select Committee “wanted to receive all the documents first before he would give any assurances as to the way in which they would be treated. On that basis, we had to be clear that we had to protect commercially sensitive information”.<sup>15</sup> He also noted that the documents did not represent the sum of the Government’s analysis but the sectoral analyses, and that he believed the Select Committee members will find “there is a great deal of useful and valuable information here”. The Minister also noted that he has initiated discussions with the parliamentary authorities to make the information available “to all colleagues” through a reading room.

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<sup>14</sup> *Ibid*, c166

<sup>15</sup> *Ibid*, c163

## 2. Motion for a return

### 2.1 Power to call for papers

The 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 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.

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.<sup>16</sup>

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 Was the motion binding?

After the debate on 1 November, 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.

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<sup>16</sup> Erskine May, *Parliamentary Practice*, 24<sup>th</sup> Edition, p133

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.<sup>17</sup>

When asked by Sarah Wollaston what he would feel a “reasonable timeframe” would be 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”.<sup>18</sup> 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”.<sup>19</sup>

## 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 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.<sup>20</sup>

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<sup>17</sup> HC Deb 28 November 2017 c931

<sup>18</sup> *Ibid*, c932

<sup>19</sup> *Ibid*, c934

<sup>20</sup> *Ibid*, c175

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