



**BRIEFING PAPER**

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# Ways and Means resolutions on the Taxation (Cross-Border Trade) Bill

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**Contents:**

1. Ways and Means resolutions
2. The Resolutions
3. The Taxation (Cross-Border Trade) Bill

HM TREASURY

# Contents

<b>Summary</b>	<b>3</b>
<b>1. Ways and Means resolutions</b>	<b>4</b>
1.1 Bills founded on Ways and Means resolutions	4
1.2 Examples of Bills founded on Ways and Means Resolutions	4
<b>2. The Resolutions</b>	<b>6</b>
<b>3. The Taxation (Cross-Border Trade) Bill</b>	<b>7</b>
3.1 Background	7
3.2 Current position	7
3.3 The Government's objectives	7
3.4 Why is legislation needed?	9
3.5 What the Bill is likely to contain	10
3.6 Irish border issues	12
3.7 Devolution issues	13
3.8 Further information	13

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## Summary

This paper has been prepared for the Ways and Means resolutions relating to the *Taxation (Cross-Border Trade) Bill*. These resolutions are before the House of Commons on Monday 20 November 2017.

### Ways and Means resolutions

It is the practice of the House of Commons that “any bill the main object of which is to impose a charge upon the people must be founded upon resolutions”.<sup>1</sup> That is, before such a Bill can be introduced, the House must have agreed a Ways and Means resolution. Other Bills which have been brought in on this basis are the *Sovereign Grant Bill* in 2011 and the *Stamp Duty Land Tax Bill* in 2014.

### The Taxation (Cross-Border Trade) Bill

The Government has announced its intention to bring in a customs bill – the *Taxation (Cross-Border Trade) Bill*. This will include measures relating to customs, VAT and excise.

The Government set out its approach to customs in a position paper, [Future customs arrangements](#), published in August. A [Customs White Paper](#) was published in October. The Government has already published a [Trade Bill](#) which contains provisions on areas closely related to those in this Bill.

Most law relating to customs is contained the EU’s Union Customs Code (UCC) and its delegated and implementing acts. The UCC is an EU Regulation which is directly applicable in the UK.

EU law also provides the framework for VAT and excise rules. The *Taxation (Cross-Border Trade) Bill* will allow the UK to operate a standalone customs, VAT and excise system after Brexit.

Legislation is needed regardless of whether the UK reaches an agreement with the EU on customs. The Bill will allow for the possibility of no deal being reached.

The Customs White Paper said that the Bill will include a number of delegated powers.

Customs are particularly relevant to trade across the Irish border. The Government has said it wishes to avoid physical border infrastructure, such as border posts. No agreement has yet been reached with the EU about how this can be achieved.

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<sup>1</sup> Erskine May, *Parliamentary Practice*, 24th edition, 2011, p774

# 1. Ways and Means resolutions

## 1.1 Bills founded on Ways and Means resolutions

Under the rules of financial procedure, the right of initiative lies with the Crown (Government) and requires the authorisation of the House of Commons, by resolution. A Ways and Means resolution authorises the raising of a tax or the imposition of a charge in relation to a Bill.<sup>2</sup>

Often a Ways and Means resolution is agreed along with the second reading of a bill: this happens when only certain provisions within a bill need the authorisation of the House. However, it is the practice of the House of Commons that “any bill the main object of which is to impose a charge upon the people must be founded upon resolutions”.<sup>3</sup> That is before such a Bill can be introduced, the House must have agreed a Ways and Means resolution.

Erskine May, the authoritative guide to parliamentary practice, sets out the requirements for a resolution on which a bill is founded:

When a bill is based on Ways and Means resolutions, all its substantive provisions, and not only those which impose taxation, must be covered by the resolutions on which it is brought in. A Money resolution required to authorize subsidiary expenditure provisions in such a bill may be among the resolutions on which the bill is founded, or may be taken after the second reading of the bill in the normal way. If any provisions of a bill are found to go beyond the resolutions on which the bill is founded, further resolutions must be passed before those provisions are considered in committee on the bill (see below), or the bill must be amended so as to conform to the resolutions to which the House has agreed.<sup>4</sup>

## 1.2 Examples of Bills founded on Ways and Means Resolutions

In the 2010-12 Session, the *Sovereign Grant Bill* was brought in on a Ways and Means Resolution. The Ways and Means motion was debated.<sup>5</sup> Once the resolution was agreed to, the Bill was ordered to be brought in and, after the Prince of Wales’ consent was signified, the Bill was presented.<sup>6</sup>

The same process was followed when the *HGV Road User Levy Bill 2012-13* and the *Stamp Duty Land Tax Bill 2014-15* were brought in on a Ways and Means Resolutions on 23 October 2012 and 4 December 2014, respectively.<sup>7</sup>

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<sup>2</sup> Robert Rogers and Rhodri Walters, *How Parliament Works*, Seventh Edition, 2015, p404

<sup>3</sup> Erskine May, *Parliamentary Practice*, 24th edition, 2011, p774

<sup>4</sup> Ibid, pp774-775

<sup>5</sup> [HC Deb 30 June 2011 cc1144-1178](#)

<sup>6</sup> Ibid c1178

<sup>7</sup> [HC Deb 23 October 2012 cc861-890](#) and [HC Deb 4 December 2014 cc450-476](#)

The Finance Bill is founded on Ways and Means resolutions but the procedure is different. A Finance Bill is usually preceded by a budget statement made by the Chancellor of the Exchequer. Following the budget statement, the House approves a motion relating to the Provisional Collection of Taxes. Debate then takes place on a motion entitled "Amendment of the Law". The remaining motions, on which the Finance Bill is founded, are taken at the end of the Budget debate.<sup>8</sup>

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<sup>8</sup> See for example, [HC Deb 8 March 2017 c822](#)

## 2. The Resolutions

The Ways and Means resolutions are reproduced below from the Order Paper. A number of amendments have been tabled.

### **FOUNDING RESOLUTIONS FOR THE TAXATION (CROSS-BORDER TRADE) BILL**

**Until 10.00pm (Standing Order Nos. 9(3) and 51(3))**

#### **Duties of customs (Ways and Means)**

##### **The Chancellor of the Exchequer**

That—

- (a) provision may be made imposing and regulating a duty of customs chargeable by reference to the importation of goods into the United Kingdom,
- (b) provision may be made conferring power to impose and regulate a duty of customs chargeable by reference to the export of goods from the United Kingdom,
- (c) other provision may be made in relation to any duty of customs in connection with the withdrawal of the United Kingdom from the European Union, and
- (d) provision may be made dealing with subordinate matters incidental to any provision within any of paragraphs (a) to (c).

#### **Value added tax and excise duty on goods (Ways and Means)**

**No separate debate (Standing Order No. 51(3))**

##### **The Chancellor of the Exchequer**

(1) That provision may be made—

- (a) amending the law relating to value added tax in connection with the withdrawal of the United Kingdom from the European Union,
  - (b) amending the law relating to any excise duty on goods in connection with that withdrawal, and
  - (c) dealing with subordinate matters incidental to any provision within paragraph (a) or (b).
- (2) This Resolution does not extend to the making of any amendment relating to value added tax so as to provide—
- (a) for a new description of supply or importation to qualify for a zero-rate or a reduced rate or for an exemption,
  - (b) for a refund of an amount of tax by reference to a particular description of supply or importation, or
  - (c) for a new relief applicable only in relation to a particular description of supply or importation.

## 3. The Taxation (Cross-Border Trade) Bill

### 3.1 Background

The Brexit White Paper, published in February 2017, said that the Government expected to bring forward a customs bill.<sup>9</sup> The Bill was announced in the 2017 Queen's Speech.

The Government set out its approach to customs in a position paper, [Future customs arrangements](#), published in August. A [Customs White Paper](#) (referred to as "the White Paper" hereafter) was published in October. The Government has already published a [Trade Bill](#) which contains provisions on areas closely related to those in this Bill.

The Treasury has published [Notes on resolutions for the Taxation \(Cross-Border Trade\) Bill](#).

### 3.2 Current position

As an EU Member State, the UK is a member of the EU Customs Union. The rules of the EU Customs Union are set out in EU law. Customs policy is an "exclusive competence" of the EU. Membership of the EU Customs Union means that trade between Member States is not subject to tariffs, quotas or customs processes (including customs declarations). Goods entering the EU from non-EU countries are subject to the EU's Common External Tariff. As the UK leaves the EU, it will also leave the EU Customs Union. The number of customs declaration could increase from the current 55 million to 255 million after the UK leaves the EU.<sup>10</sup>

The current legislative position is set out as follows in the White Paper:

Most of the law governing the administration of the EU Customs Union is contained in the Union Customs Code (UCC) and its delegated and implementing acts. As an EU Regulation, the UCC is directly applicable in the UK, meaning that it is automatically given legal effect in the UK. This is why there is only limited domestic legislation governing certain aspects of the current customs regime, which is primarily contained in the Customs and Excise Management Act 1979 (CEMA).

EU law provides the framework for VAT and excise rules across the EU. These rules are normally set by Directives, which are not directly applicable in the UK, and are implemented in the UK by domestic Acts of Parliament, such as, the VAT Act 1994 and the Tobacco Products Duty Act 1979.<sup>11</sup>

### 3.3 The Government's objectives

The Government wants a customs arrangement with the EU which facilitates the freest and most frictionless possible trade in goods and

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<sup>9</sup> HM Government, [The United Kingdom's exit from and a new partnership with the European Union](#), Cm 9417, February 2017, para 1.8

<sup>10</sup> Public Accounts Committee, [Brexit and the future of Customs](#), 14 November 2017, p3

<sup>11</sup> [The White Paper](#), paras 2.17-18

which avoids a hard border between Northern Ireland and the Republic of Ireland.<sup>12</sup> The Government's proposed approach to Irish border issues is set out in a position paper, [Northern Ireland and Ireland](#) (see section 3.6 below)

The Government's aim is to provide continuity with EU law in the area of customs, excise and VAT after Brexit, although in the longer term it may want to consult on changes.

### Transition agreement

The White Paper argues that it makes sense to agree "an interim implementation period" to allow UK and EU businesses time to adjust. Businesses should have to adjust only once to new customs arrangements.<sup>13</sup> The Government believes that "a model of close association with the EU customs union, for a time limited interim implementation period could achieve this."<sup>14</sup> The White Paper says:

The government is keen to explore with the EU a model for an interim implementation period which would ensure that businesses and people in the UK and the EU only have to adjust to a new customs relationship once. This could be delivered through a continued close association with the EU Customs Union after the UK has left the EU via a new and time-limited customs union between the UK and the EU Customs Union. This would be based on a shared external tariff and without customs processes and duties between the UK and the EU. The length of this period needs further consideration and will be linked to the speed at which the implementation of new arrangements could take place.<sup>15</sup>

### Two approaches to customs relations with the EU

The Future Partnership Paper and the White Paper put forward two possible approaches to the future customs relationship with the EU:

- A highly streamlined customs arrangement
- A new customs partnership

The Government has said that the latter is "an innovative and untested approach" and that the Customs Bill could not be drafted specifically to implement this outcome.<sup>16</sup>

### No deal

The Government aims to reach an agreement with the EU but the White Paper and Bill allow for the possibility of no deal being reached. The White Paper says:

While the UK hopes and expects to achieve a negotiated settlement that is in the interests of all parties, it is only prudent that the government prepares for every eventuality. In addition to providing for most negotiated outcomes, the Customs Bill will give the government the ability to operate a standalone customs

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<sup>12</sup> [The White Paper](#), p1

<sup>13</sup> [The White Paper](#), p1

<sup>14</sup> [The White Paper](#), p3

<sup>15</sup> [The White Paper](#), para 5.5

<sup>16</sup> [The White Paper](#), paras 5.18 and 5.19

regime and ensure that VAT and excise legislation operates effectively, if the UK were to leave the EU without a negotiated settlement. Leaving the EU without a negotiated settlement is not the government's preferred outcome, but it is essential that the UK is prepared for all possible outcomes on customs, VAT and excise arrangements.<sup>17</sup>

### 3.4 Why is legislation needed?

New domestic legislation is required because rules governing customs are mainly in EU law which is directly applicable in the UK. Legislation is required to create a new customs regime for the UK to allow the UK to charge customs duties on imports. This is the case regardless of whether a deal is reached with the EU. This new regime needs to be in place by 2019. The White Paper says:

The rules governing customs are mostly in EU law that is directly applicable in the UK, which means that domestic customs legislation has been largely unnecessary. Since current UK customs legislation is insufficient to create a standalone customs regime, leaving the EU will mean that the UK will require new domestic legislation.<sup>18</sup>

[...]

The authority to charge customs duty is currently contained in the European Communities Act 1972 (as amended), which will be repealed by the European Union (Withdrawal) Bill (EUWB). The EUWB will convert the body of existing EU law into domestic law and preserves the laws made in the UK to implement EU obligations. The powers in the EUWB to deal with deficiencies arising from withdrawal and to implement the withdrawal agreement cannot be used to impose or increase taxation, which includes customs duties, excise or VAT. Therefore, the UK will need new primary legislation, irrespective of any agreements reached between the UK and EU, to create a standalone customs regime, and to amend the VAT and excise regimes so that they can function effectively after the UK has left the EU.<sup>19</sup>

### The Government's approach to legislation

The Government has said that primary legislation will be used to set out a "framework" with secondary legislation used for rules on administration, collection and enforcement:

For VAT and excise it is usual practice for primary legislation to set out a 'framework', and for secondary legislation to be used to set out rules concerning administration, collection and enforcement. This is the approach that the government will also be taking to the new customs regime. This is also necessary to give the UK the flexibility to adapt the regimes in response to future developments, for example, negotiations with the EU, international agreements, or changes in trader behaviour and compliance.<sup>20</sup>

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<sup>17</sup> [The White Paper](#), p4

<sup>18</sup> [The White Paper](#), p3

<sup>19</sup> [The White Paper](#), para 3.1

<sup>20</sup> [The White Paper](#), para 3.3

### 3.5 What the Bill is likely to contain

According to the White Paper, the Bill will largely be based on the Union Customs Code. The administration of the VAT and excise regimes will remain similar to those in force today.

#### Customs

The White Paper said that the Bill would include the following provisions on customs:

The Bill will allow the government to create a standalone customs regime by ensuring that, among other things:

- The UK can charge customs duty on goods (including on goods imported from the EU).
- The UK can define how goods will be classified to establish the amount of customs duty due (known as the nomenclature).
- The UK can set and vary rates of customs duty, specify where goods are subject to quotas and where goods are relieved from duty.
- The UK can determine the additional territories forming part of a customs union with the UK.
- The UK can vary or suspend duty at import in certain circumstances.
- HMRC can request and collect tax-related information from declarants and store and share it as appropriate.
- The UK can establish a new UK tariff and set out additional tariff-related provisions, for example the tariff applicable to developing countries (unilateral preferences), and will have a new arm's length body to conduct trade remedies investigations.

[...]

It will allow the UK to accommodate the transition to a new regime by ensuring:

- Where appropriate, existing treatments of traders or goods (for example, existing authorisation or customs status granted as a result of EU law) can continue under UK law.
- Most tax-related negotiated outcomes and the smooth facilitation of trade can be accommodated.
- Appropriate mechanisms are in place to transition existing trade remedy measures, where they are relevant to UK companies.<sup>21</sup>

#### VAT and excise

With respect to VAT and excise, the White Paper says:

The Bill will allow the VAT and excise systems to continue to function whatever the outcome of the negotiations. So, for example, the Bill will give the government:

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<sup>21</sup> [The White Paper](#), paras 4.2 and 4.4

- The flexibility to give effect to an agreement with the EU on supplies or movements in progress on the day of EU exit and enable supplies or movements of goods and services by businesses and individuals to continue as freely as possible thereafter.
- The flexibility to deal with VAT on movements of goods and services between the UK and EU.
- The flexibility to allow HMRC to adapt IT systems, for example the Excise Movement and Control System, for UK internal excise duty suspended movements.
- The flexibility to vary the UK information sharing obligations to give effect to any new agreement about the continued exchange of information with EU Member States to tackle avoidance and evasion.<sup>22</sup>

## Delegated powers

The Bill will include a number of delegated powers. The Government argues that it is usual practice in tax matters to use secondary legislation for rules on administration, collection and enforcement while primary legislation establishes a framework. Without these delegated powers, the Government argues that it might not be possible to implement the outcome of the negotiations within parliamentary timescales.

The White Paper says the delegated powers will ensure that:

- The government has the flexibility to make future amendments regarding customs duty. This will allow the UK's customs regime to keep pace with future developments in trade, trader behaviour and international agreements. It will also allow the government to implement simplifications to the regime that it is not possible to implement immediately on EU exit.
- The Bill gives the government the flexibility to make appropriate amendments to primary legislation if this is required by the outcome of the negotiations with the EU and ensures that the government can use secondary legislation to implement negotiated agreements.<sup>23</sup>

## What the Bill will not contain

The White Paper set out a range of issues which will not be included in the Bill:

There are additional border activities undertaken as part of official controls which, while vital to the UK's trade, safety and security, are not directly related to the collection of customs duty. These include the regulation of cross-border movements of large sums of cash, tackling counterfeit goods, detecting firearms, explosives and narcotics, disclosure of information to other government departments for non-tax purposes and certain non-tax import and export controls, such as animal, public and plant health checks. The government will set out proposals in relation to these other areas in due course, working with devolved administrations as appropriate. These issues are not covered in the Customs Bill (although this legislation will contribute to the wider safety and

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<sup>22</sup> [The White Paper](#), para 4.6

<sup>23</sup> [The White Paper](#), para 4.9

security agenda, for example through providing powers for continued customs co-operation).<sup>24</sup>

### 3.6 Irish border issues

The Government wants a customs arrangement which avoids a hard border in between Northern Ireland and the Republic of Ireland.<sup>25</sup> The Government's proposed approach to Irish border issues is set out in a position paper, [Northern Ireland and Ireland](#).

This put forward nine principles and criteria to inform proposals for the land border, including aiming to avoid "physical border infrastructure" such as customs posts. These are set out in the box below.

#### **Box 1: UK Government's principles and criteria for trade across the Irish border**

- Recognise the crucial importance of avoiding a return to a hard border for the peace process in Northern Ireland. This must mean aiming to avoid any physical border infrastructure in either the United Kingdom or Ireland, for any purpose (including customs or agri-food checks).
- Respect the provisions of the Belfast ('Good Friday') Agreement in all its parts, with particular reference to: the three-stranded constitutional framework set out in the Agreement; the need to respect and treat equally the identity, ethos and aspirations of both communities; and the importance of promoting sustained economic growth in Northern Ireland.
- Recognise the unique nature of the land border, in particular: its history and geography; the cross-border movements of smaller traders, farmers and individuals; the need to protect everyday movement of goods; and the integrated nature of the agri-food industry.
- Prevent the creation of new barriers to doing business within the UK, including between Northern Ireland and Great Britain.
- Address other regulatory and customs-related barriers necessary to deliver as frictionless a land border as possible including waivers from security and safety declarations, and ensuring there is no requirement for product standards checks or intellectual property rights checks at the border.
- Address the transit of goods to and from Ireland to the rest of the European Union via the United Kingdom – in line with the European Commission's directives – through UK membership of the Common Transit Convention.
- Consider how best to protect the integrity of both the EU Customs Union, Single Market and trade policy, and the new independent UK customs regime, internal market and trade policy, in the context of finding flexible and imaginative solutions, while recognising that the solution will need to go beyond any previous precedents.
- Take account of the importance of trade between Ireland and the UK and aim to avoid economic harm to Ireland as an EU Member State.
- Agree at an early stage a time-limited interim period, linked to the speed at which the implementation of new arrangements could take place, that allows for a smooth and orderly transition.<sup>26</sup>

<sup>24</sup> [The White Paper](#), para 3.8

<sup>25</sup> [The White Paper](#), p1

<sup>26</sup> HM Government, [Northern Ireland and Ireland: Position Paper](#), August 2017, para 45

### 3.7 Devolution issues

The White Paper said that the Government would continue to engage closely with the devolved administrations.<sup>27</sup> It also said that the Government committed “to working with the devolved administrations on any implications for them as a consequence of this Bill and any changes to customs, VAT and excise practices.”<sup>28</sup>

### 3.8 Further information

Home Affairs Committee, [Home Office delivery of Brexit: customs operations](#), 16 November 2017

Public Accounts Committee, [Brexit and the future of Customs](#), 14 November 2017

National Audit Office, [The UK Border](#), 20 October 2017

National Audit Office, [The Customs Declarations Service](#), 13 July 2017

Institute for Government, [Implementing Brexit: Customs](#), 11 September 2017

Open Europe, [Nothing to declare: A plan for UK-EU trade outside the Customs Union](#), 27 March 2017

House of Commons Library: [Brexit: trade aspects](#), 9 October 2017

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<sup>27</sup> [The White Paper](#), p1

<sup>28</sup> [The White Paper](#), para 3.4

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