



BRIEFING PAPER

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EU (Withdrawal) Bill: Financial provision and fees and charges

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1. Introduction

The *European Union (Withdrawal) Bill* (the EUW Bill) was published on 13 July 2017. The Bill cuts off the source of European Union law in the UK by repealing the *European Communities Act 1972* and removing the competence of European Union institutions to legislate for the UK.

The Bill had its [second reading debate](#) in the House of Commons on 7 and 11 September 2017. The [Programme Motion](#) passed at the end of the second reading debate provides for eight days in Committee of the Whole House.

The Department for Exiting the European Union (DEXEU) has published [Explanatory Notes](#) to the Bill, a series of [factsheets](#) on the Bill's provisions and a [Delegated Powers Memorandum](#) (DPM) addressed to the House of Lords Delegated Powers and Regulatory Reform Committee. It has also published a [European Convention on Human Rights Memorandum](#).

A large number of amendments have been tabled for the Committee stage. An up to date list of amendments can be found on Parliament's [bill pages](#) online.

The Commons Library produced a [briefing paper](#) to inform the Second Reading debate which sets out full details of the provisions of the Bill and extensive commentary on them.

The present briefing paper has been produced to inform the Committee of the Whole House debate on clause 12 and Schedule 4, which is scheduled to take place on day five (6 December 2017). The Commons Library briefing paper, [the European Union \(Withdrawal\) Bill: Devolution](#), covers clause 10 and Schedule 2, which are also due to be debated on day five.

2. Clause 12 and Schedule 4

2.1 Clause 12

Preparatory spending

Clause 12(2) allows Ministers, government departments and appropriate devolved authorities to carry out the spending required to prepare for anything that can be done through the Bill's delegated powers, before the provision is made. This means that all preparatory spending can be properly incurred after the Bill's Royal Assent. Without the clause some spending, for instance on preparing for a new body established by secondary legislation under the Act, may be not be allowed until the secondary legislation has been made.

Spending incurred as a result of the Bill

Clause 12(3)(a) provides that any spending incurred by Ministers, government departments, or relevant public authorities as a result of the Bill will be funded from money provided by Parliament. **Clause 12(4)** ensures that the same applies to any other provisions made under the Bill or any other enactment.

Some provisions in the Bill may lead to increased spending under other legislation. Where this is the case, **Clause 12(3)(b)** provides that the additional spending will be funded by Parliament. **Clause 12(4)** ensures that the same applies to any other provisions made under the Bill or any other enactment.

The provisions mean that any money provided will be subject to the usual rules about spending: any spending would require annual parliamentary approval through the current estimates or supply process, culminating in an Appropriations Act.¹

2.2 Schedule 4

Powers to charge fees or other charges

The EUW Bill enables functions to be given to the Government, UK bodies or devolved bodies. Functions may include those previously performed by the EU or may be new functions created to deal with deficiencies or breaches of international obligations, or to implement the withdrawal agreement. **Schedule 4**, which is given effect by **Clause 12(1)**, provides powers to Ministers and devolved authorities to introduce fees and charges for new functions post-exit through secondary legislation. It also provides that fees and charges for functions provided pre-exit can continue to be amended in the same way post-exit.

At this stage it isn't possible to say how the powers will be used. This will depend on the outcome of negotiations between the UK and EU and on policy decisions not yet taken. It is therefore not possible to

¹ For more on this process see the Scrutiny Unit's [Financial scrutiny uncovered](#) publication

estimate how much may be raised through the imposition of new or amended fees or charges.

New functions

Part 1 of Schedule 4 provides Ministers and devolved authorities with the power to introduce secondary legislation that imposes fees or charges where public authorities are taking on previous EU functions or new functions created to deal with deficiencies or breaches of international obligations, or to implement the withdrawal agreement (**Paragraph 1(1)**). The fees can be used to mitigate the burden on the general taxpayer of the new functions. The power could be used to create tax-like charges, which go beyond covering the cost of providing a service to firms or individuals. Tax-like charges would allow for cross-subsidisation – charging higher prices to some groups to lower prices for others – or to cover the wider functions and running costs of a public body, or to lower regulatory costs for enterprises.

Sub-paragraph 1(3) explains what may be done with the power, for example determining how the charge or fee is calculated, collected and spent. Ministers and devolved authorities can confer the power to public authorities.

Secondary legislation that creates fee or charges or confers power to public authorities will be subject to the affirmative procedure. The negative procedure would apply where the fees and charges are later amended.²

Paragraph 3 lays out the consent requirements for making fees and charges regulations. It says that Ministers can only set fees or charges or confer the power with the consent of the Treasury. Devolved authorities can use the power in accordance with their own procedures for managing public money. Devolved authorities can only set fees of charges for functions of a Minister or a body with cross-border functions with the consent of a Minister.

Paragraph 4 gives Ministers the power to establish additional circumstances where a devolved authority can set fees and charges and to remove the need for consent of a Minister. Ministers would exert these powers through secondary legislation, and the negative procedure would apply.

Continuing functions

Numerous fees and charges have been made using powers in the European Communities Act (ECA) and section 56 of the Finance Act 1973 in connection with EU obligations.³ **Part 2 of Schedule 4** ensures that where the service continues to be provided post-exit, those fees and charges can be amended or revoked in the same way as they were pre-exit through secondary legislation. The power does not allow

² See the [House of Commons Background Paper: Statutory Instruments](#) for more on how the procedures for secondary legislation work.

³ Pre-exit, section 56 of the Finance Act 1973 provided a specific power for fees or other charges, such as levies, connected to EU obligations.

charging for new things. The negative procedure would apply to any secondary legislation introduced.

Paragraph 6 gives the power to modify the relevant secondary legislation about existing fees or charges and **Sub-paragraph 6(2)** explains what may be done with the power, for example revoking the charge or altering the chargeable amounts.

The power applies to Ministers or devolved authorities who could have modified the fees and charges prior to exit day (**Paragraph 7**).

Paragraph 8 prevents the power from being used to impose or increase taxation. **Paragraph 9** says that Ministers needs Treasury consent to make certain kinds of provision, this is in line with [section 56](#) of the Finance Act 1973.

2.3 Tabled amendments relating to the 'divorce bill'

Some tabled amendments and new clauses, which could potentially be selected for day five, refer to the payment the UK may make to the EU when it leaves – an issue the media often refers to as the 'divorce bill'.⁴ Officially known as the 'financial settlement', the potential payment is being discussed in the first phase of Brexit negotiations. Any settlement is expected to form part of a wider withdrawal agreement. The Library briefing [Brexit: the exit bill](#) discusses the EU's and UK's positions on the financial settlement, and progress made in negotiations.

Broadly speaking, the related tabled amendments and new clauses aim to ensure that Parliament gets to approve any financial settlement.

Other potential votes related to the withdrawal agreement

Parliament is likely to get a vote on a final withdrawal agreement – including any financial settlement – through other legislation and motions outside of the EUW Bill. A new 'Withdrawal Agreement and Implementation Bill' (WAI Bill) will be introduced once the text of the withdrawal agreement has been finalised. The WAI Bill will implement the withdrawal agreement into UK law by primary legislation. Its passage will give Parliament an opportunity to debate, scrutinise and vote on how to implement the final agreement.⁵ The WAI Bill will be in addition to a promised parliamentary vote on a motion on the final withdrawal agreement. [Section 3.3](#) of the Library briefing [Brexit: the November negotiations](#) has more on the purpose of the different votes.

⁴ An up to date list of amendments can be found on Parliament's [bill pages](#) online. At the time of writing, N17, NC80 and amendment 54 relate to the 'divorce bill'.

⁵ [HC Deb 13 November 2017 c37](#)

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