What if there's no Brexit deal?

Contents:
1. How could no deal happen?
2. Preparations for no deal
3. Constitutional implications in the UK
4. Governance
5. Economic impact
6. Trade
7. Customs
8. Northern Ireland and the Irish border
9. Free movement of people, healthcare, social security and pensions
10. Food and Farming
11. Fisheries
12. Energy
13. Transport
14. Higher education, science and research
15. Internal security
16. External relations
## Contents

Summary | 6
--- | ---
1. **How could no deal happen?** | 11
1.1 Timing is crucial | 11
1.2 Scenarios for a no-deal Brexit | 11
1.3 Are any scenarios more or less likely than others? | 13
1.4 ‘Bare bones’, side- and mini-deals? | 14
2. **Preparations for no deal** | 18
2.1 UK Government preparations | 18
   Departmental preparations | 19
   The Government steps up ‘no deal’ preparations | 24
   ‘Technical notices’ on no deal preparations | 26
   ‘No deal’ preparations are accelerated | 28
   Brexit legislation | 30
2.2 European Union preparations | 33
   European Parliament report | 34
   Commission Brexit Preparedness Group | 34
   Amending EU legislation to take account of Brexit | 34
   Brexit impact assessment | 35
   European Commission steps up no-deal planning | 36
3. **Constitutional implications in the UK** | 37
3.1 Parliament’s role in the absence of a deal | 37
   How did this statutory role play out? | 37
   A further role for Parliament? | 38
3.2 What happens to EU law in the UK in the absence of a transition period? | 38
4. **Governance** | 40
4.1 Current governance of the UK-EU relationship | 40
4.2 Governance if there is no Withdrawal Agreement | 43
5. **Economic impact** | 45
5.1 No deal WTO scenario over long term | 45
5.2 Short-term impact of ‘no deal’ | 47
   Bank of England’s short-term economic analysis | 49
   Other studies | 50
5.3 Factors that could influence the magnitude of the economic impact | 51
5.4 The financial settlement | 52
5.5 Funding from the EU | 58
   Structural Funds | 58
   Direct funding from the European Commission | 59
   Agricultural funding | 59
6. **Trade** | 61
6.1 Trading under WTO rules | 61
6.2 Would WTO rules allow for continuation of current UK-EU trade arrangements? | 62
6.3 UK trade with the EU | 64
   Trade in goods | 64
   Non-tariff barriers | 65
   Rules of origin | 66
   Trade in services | 66
   Financial Services | 70
6.4 Pursuing an independent trade policy

New UK legislation
Trading with third countries
‘Rollover’ of existing EU trade agreements
New trade deals

7. Customs

7.1 Increased customs controls
7.2 The Taxation (Cross-Border Trade) Act 2018
7.3 Concerns about management of borders
7.4 HM Revenue and Customs preparedness

8. Northern Ireland and the Irish border

8.1 Customs checks
8.2 Regulatory checks
8.3 Impact on trade and the economy
8.4 Movement of people
8.5 Security concerns
8.6 Energy
8.7 Other areas
8.8 Proposal to mitigate ‘no deal’

9. Free movement of people, healthcare, social security and pensions

9.1 Mutual recognition of professional qualifications
9.2 Reciprocal healthcare
Medicines regulation and supply
9.3 Workers’ Rights
Current state of UK and EU employment law
EU employment rights if there is no deal
9.4 Social security
9.5 Pensions
State Pensions
Private pensions

10. Food and Farming

10.1 Overview
10.2 Farm support schemes
10.3 Regulatory issues: technical notices
Organic food
Genetically Modified Organisms (GMOs)
Fertilisers
Food labelling
Animals and animal product imports and exports
Plant imports and exports
Geographical protections
Pesticides
10.4 Food supply
Supply chain disruption
Price impacts
10.5 Agri-food sector concerns

11. Fisheries

11.1 Priorities for fisheries
11.2 Fisheries and no deal
Quotas and access to fishing grounds
Tariffs and trade
Summary

Article 50 of the Treaty on European Union provides for an EU Member State to leave the EU with or without a withdrawal agreement or 'deal'.

The EU and UK aimed to reach agreement by October 2018 on the UK’s terms of withdrawal and on the framework for future relations. Avoiding a hard border between Ireland and Northern Ireland proved the most difficult issue to resolve. The negotiators reached political agreement and published the text of the negotiated **Withdrawal Agreement** on 14 November. The solution to the Irish border issue was a temporary ‘backstop’ arrangement that would enter into force only if a future relations agreement was not available at the end of the transition/implementation period. The November agreement was endorsed by all EU Member States on 25 November 2018.

The November 2018 text of the Withdrawal Agreement and the Political Declaration on the framework for future EU-UK relations did not appear to have sufficient UK parliamentary support from MPs to pass the ‘meaningful vote’ in December 2018, and the Prime Minister therefore postponed the vote until January 2019. The EU insisted it would not renegotiate the Withdrawal Agreement, creating an impasse and a greater possibility of there being no deal.

On 14 January 2019 the Prime Minister **sought** and received **assurances** from the EU on the intention of the negotiators that the backstop, if implemented, should be temporary and a solution of last resort. But these assurances did not sway enough MPs, and in the re-scheduled ‘meaningful vote’ on 15 January 2019, the Government was defeated by a majority of 230, with MPs voting 432 to 202 against the negotiated deal. The Prime Minister made a statement in accordance with the **European Union (Withdrawal) Act** on how the Government would proceed and survived a motion of no confidence in the Government. Theresa May called on MPs across Parliament to talk to the Government about how to resolve the impasse. She continued to rule out extending Article 50 or holding another referendum. The EU continued to refuse to amend the provisions on the backstop. After a vote on 29 January in which an amendment tabled by Sir Graham Brady was passed, the Prime Minister returned to the EU to seek negotiations on legally-binding alternatives to the backstop. To date there has been no agreement on any alternatives.

If there is no UK request or no EU agreement to extend the negotiations, or if either the UK Parliament or the European Parliament or the other 27 EU Member States do not endorse the negotiated Withdrawal Agreement or any negotiated amendments to it, the EU Treaties will cease to apply to the UK from 30 March 2019.

Both sides in the negotiations agree that ‘no deal’ is not what they want, but some Brexit supporters would prefer it to a ‘soft’ Brexit which does not end free movement, payments to the EU, membership of the Single Market and customs union, continued adherence to EU rules and the jurisdiction of the Court of Justice of the EU.

‘No deal’ could also occur at the end of the 21-month transition period if there is no detailed agreement on the future EU-UK relationship or if such an agreement is not in force.
EU preparations for no deal
In the absence of what the European Commission described as “functional solutions” to the Irish border issue, the EU stepped up preparations for a no-deal scenario in March 2019. These are ongoing, and the Commission has been drafting amendments to EU legislation to take account of the UK’s exit in areas such as shipping, tariff obligations, energy, customs, aviation, health and safety, transport and citizenship.

UK preparations for no deal
The UK Government has insisted that preparations for no deal are part of its overall Brexit preparation strategy. The Prime Minister’s Statement on the Cabinet away day at Chequers in July 2018 included a pledge to step up preparedness for all possible outcomes to the negotiations, including no deal, and the Prime Minister has assured Parliament that it was preparing for ‘no deal’ as well as for other scenarios.

European Union (Withdrawal) Act
Secondary legislation is being laid under the European Union (Withdrawal) Act 2018 that will preserve EU law in domestic law or convert it into UK law on exit day. If the UK leaves the EU without a deal, most EU law will still apply in the UK as domestic law (‘retained EU law’ or EU-based UK law). But there will be no automatic reciprocity with EU Member States. As of early February around 400 Brexit-related SIs had been laid under the EU (Withdrawal) Act out of an estimated total of around 600.

The Commons European Statutory Instruments Committee and the Lords Secondary Legislation Scrutiny Committee sift proposed negative instruments and may recommend that a proposed negative should be upgraded to the affirmative procedure.

Government guidance on preparing for no deal
The Government believes a no-deal scenario could be managed in an “orderly” fashion (although this view is not necessarily shared by other stakeholders). After the postponement of the ‘meaningful vote’ on the negotiated Withdrawal Agreement, the Government said on 18 December that it would implement plans for a no-deal Brexit in full and tell businesses and citizens to prepare for the risk of leaving the EU without an agreement.

No deal in practice
What would ‘no deal’ look like in practice? ‘No deal’ would mean no transition (implementation) period and no framework for future relations – let alone a full future relationship agreement. The impact is still unknown overall, but in some areas it is easier to estimate the practical consequences and costs than in others.

The economy
It is difficult to pinpoint the economic impact of ‘no deal’ with certainty. Many economists expect the pound to fall in value in the event of ‘no deal’. This would mean the price of imports would rise, pushing up inflation. However, in such a scenario, UK exports would become cheaper internationally, potentially mitigating some of the disruptive effects on trading with the EU. It is difficult to accurately assess the potential economic costs and benefits.

Trade and customs
With no withdrawal agreement or framework for future relations, trade between the two economies would be conducted under the terms of the World Trade Organisation. Tariffs
on UK exports to the EU and vice versa are expected to be low, averaging around 3%, but for some goods they would be higher. *Tariffs would be low, averaging around 3%, but for some goods they would be higher.*

At the moment of leaving the EU customs union without a deal, the border between the UK and the EU would become a customs border. This is likely to mean more customs controls and probably increased costs and delays for business. It has been estimated, for example, that delays caused by customs checks of trucks from the EU could cause a 17-mile queue at the port of Dover.

**A hard border between Ireland and Northern Ireland**

The EU and the UK Government share a commitment to avoiding a hard border between Ireland and Northern Ireland, but they have yet to work out how best to avoid checks and physical infrastructure at the border. Technology, ongoing regulatory alignment and a customs agreement were all suggested as possible solutions. The November agreement contains the ‘backstop’ arrangement, whereby if there is no workable solution to the hard border situation, Northern Ireland would stay in the customs union and much of the Single Market on a temporary basis, pending a suitable long-term solution.

There are some concerns that infrastructure on the border to enable checks on goods would become a target for dissident republicans. However, some commentators believe that border checks would not inspire a new wave of dissident activity, and that any infrastructure and checks can be done away from the border, which would lessen their impact. The majority of people in Northern Ireland are opposed to any form of North-South border checks.

**Free movement**

Free movement of people rights, whereby any EU national can work in, live in or provide services in any EU Member State providing they meet certain conditions, is a key citizens’ right that will be affected by a no-deal Brexit.

The Government intends to implement a ‘settled status’ regime for EU nationals in the UK, whether there is a withdrawal agreement or not, and has said the EU Settlement Scheme will open fully by 30 March 2019. EU citizens with ‘settled status’ or ‘pre-settled status’ to stay in the UK will be able to access healthcare, pensions and other benefits and services in the UK.


**Food supply**

Half of the UK’s food and drink supply comes from within the UK, with 30% from the EU and 20% from the rest of the world. Potential disruption to food supplies immediately after a no-deal Brexit has been given regular media coverage. The retail sector is concerned about the practicalities of stockpiling food although the Government has issued reassurances there will be adequate food supply.
Agriculture and fisheries
Trading arrangements - tariffs and standards – would be the main issue. With no alternative arrangement, the UK as a third country would be subject to tariffs, checks, registrations, certifications etc for commodities, food and feed, plant and animal-based products.

Agriculture could also be impacted by the ‘no deal’ effects of other policies such as immigration (for seasonal, agri-food workers and vets).

Brexit means the UK will become an independent coastal state with responsibility for managing fisheries in the UK’s Exclusive Economic Zone of 200 miles. It will not be bound by the Common Fisheries Policy and could deny access to EU Member States’ vessels (and vice versa). But under international law States are required to minimise economic dislocation to other States whose nationals have habitually fished in a zone.

Energy
The UK and EU energy sectors are integrated through trade, legislation and inter-connection of energy supply, although EU Member States are ultimately responsible for their domestic energy supply to citizens. Aspects of the UK energy sector, such as Euratom and the Internal Energy Market (IEM), will probably be affected similarly by a deal or no-deal Brexit. The UK will leave Euratom when it leaves the EU; the Government is open to leaving the IEM and has begun preparations for leaving, but the future relations White Paper suggested a preference for future energy integration. ‘No deal’ could mean a less integrated relationship than the UK would like and not enough time to prepare for alternatives.

Internal security
The UK currently participates in around 40 EU measures that support and enhance internal security and police and judicial cooperation in criminal matters. Both the UK and the EU have emphasised the importance of maintaining cooperation in the field of security, law enforcement and criminal justice, but the Home Secretary said security should not be linked to the other aspects of the negotiations, and that the UK’s proposals are unconditional.

Family law
Government guidance states that the main EU measures in this area – Brussels IIa and the Maintenance Regulations – are covered by various Hague Conventions to which the UK is already party. Where this is the case, the EU rules would be repealed and the relevant Hague Convention would apply. In some areas there is no relevant Hague Convention to fall back on. Regarding divorce jurisdiction, the Brussels IIa rules would be repealed, but the different bases for divorce jurisdiction in Article 3 of Brussels IIa would be replicated in domestic law in England, Scotland and Wales. An alternative basis of sole domicile of either party would also be available for determining jurisdiction. In child maintenance cases, the Government intends to revert to the position that applied before the EU Maintenance Regulation. The jurisdiction grounds would depend on the type of maintenance sought and in which part of the UK the case was brought.

Transport
For the International Air Transport Association (IATA), the aviation deadline is earlier than the Brexit deadline of 29 March 2019. The Government believed it might be possible to agree a ‘bare bones’ aviation agreement in the event of a no-deal scenario and the EU has
agreed two regulations that will facilitate on a temporary basis continued flights between the EU and UK if there is no deal.

Research and higher education
The UK currently does disproportionately well in securing EU research funding and UK Universities are the top performers in receiving EU funds based on scientific excellence. The higher education sector and research bodies are concerned about the impact of a no-deal Brexit on access to EU research funding and collaboration in EU projects, recruitment and retention of EU staff, access to the Erasmus+ programme and the possible consequences for EU students coming to study in the UK.
1. How could no deal happen?

Article 50 of the Treaty on European Union (TEU) provides for an EU Member State to leave the EU with or without a withdrawal agreement - or ‘deal’ - within a two-year timeframe starting from the formal notification of withdrawal by the leaving State. The two-year negotiating period can be extended if the other EU Member States agree to a UK request for an extension.

1.1 Timing is crucial

The UK Government delivered a letter notifying the European Council of its intention to leave the EU on 29 March 2017, which started the clock ticking under the Article 50 process. The EU and the UK aimed to complete negotiations on the UK’s ‘orderly’ withdrawal from the EU by October 2018. Theresa May told the Liaison Committee on 18 July that the aim was still to have “sufficient detail of this agreed by October”.

The then Secretary of State for Exiting the EU, Dominic Raab, told the Lords EU Committee on 29 August he was “confident” a deal was “within our sights”, that he was still aiming for the October deadline but there was a measure of leeway. He confirmed that the 20% of matters not agreed included data transfers, police and judicial cooperation and collaboration, and governance issues; the contours and principles were agreed but not the technical details. A solution to the Irish border was the main outstanding issue. The UK and EU agreed to “continuous” negotiations on Brexit “to energise the final phase of the diplomacy and to reach a deal that is in both sides’ interests”.1

Agreement in November 2018 allowed just enough time for the UK and European Parliaments (the EP said it needed three months) to consider and vote on a withdrawal agreement, and for the 27 other EU Member States (EU27) to ‘ratify’ it in the Council of the European Union before exit day on 29 March 2019 (11 pm UK time).

1.2 Scenarios for a no-deal Brexit

Leaving the EU without a withdrawal agreement – ‘no deal’ - cannot be ruled out. Terms used to describe a ‘no deal’ outcome to the negotiations include ‘cliff edge’ Brexit,2 ‘hard Brexit’3 and the UK ‘crashing out’ of the EU.

No deal could be the result of various scenarios:

- The EU and UK do not agree on the terms of a withdrawal agreement (WA) and/or a framework for future relations because of lack of time and/or because there are intractable

---

1 Dominic Raab, speech 23 August 2018
2 Described in the Lords EU Committee report Brexit: deal or no deal, 7 December 2017, “as overnight between 29 and 30 March 2019 they would have to adjust to radically different terms of trade, while citizens would face profound uncertainty over issues such as residence, property and other rights, child custody decisions, or health insurance”.
3 Although ‘hard Brexit’ now seems to mean something short of no deal.
disagreements and no willingness to compromise – the talks break down. A negotiated text of a withdrawal agreement and political declaration on the framework for future relations was agreed in mid-November 2018 and endorsed by EU Member States on 25 November with one significant amendment (Article 132 - setting a maximum extension of the transition period “for up to one or two years”). This fulfilled part of the Article 50 requirement, but the UK Parliament’s rejection of the WA to date means it might not be ‘concluded’.

- There is agreement in principle on the substance of a withdrawal agreement but more time is needed and the other EU Member States refuse to extend negotiations. The EU has said it is not prepared to renegotiate the agreement on offer. Commission President Jean Claude Juncker has said “it is the best deal possible and the only deal possible”. The December European Council (Article 50) Conclusions stated: “The Union stands by this agreement and intends to proceed with its ratification. It is not open for renegotiation”. The EU was willing to offer reassurances on the backstop, saying initially said it “stood ready to examine whether any further assurance can be provided” on the backstop, but this assurance was later removed. The Conclusions do note, however: “The European Council also underlines that, if the backstop were nevertheless to be triggered, it would apply temporarily, unless and until it is superseded by a subsequent agreement that ensures that a hard border is avoided”.

- There is agreement in principle on the substance of a withdrawal agreement but more time is needed for certain details. The Prime Minister has said she does not intend to ask for an extension and the EU has said it will not renegotiate the November 2018 agreement – although it has indicated that a short extension might be possible if needed to secure UK agreement for the WA. The Prime Minister has continued to seek EU confirmation that the backstop cannot become permanent, but this has not been forthcoming.

---

4 Article 50: “the Union shall negotiate and conclude an agreement” with the leaving State. The agreement has been negotiated but not concluded.

5 EurActiv, Juncker warns May: ‘No room’ to renegotiate Brexit deal, 11 December 2018

6 The Select Committee on Exiting the EU recommended in its Third Report of March 2018 that the Government should be prepared to seek a limited extension to the two-year article 50 period if substantive aspects of the future relationship are not agreed, or if Parliament votes against the withdrawal agreement, or if there is no deal, but acknowledged that the EU might not grant such a request.

7 Trade Secretary Liam Fox said that asking for an extension would be a “complete betrayal” of Brexit voters (Politico, 27 July 2018). However, in October 2018 he suggested an extension of the transition period to secure a better future relations agreement would be acceptable.
- The UK Parliament rejects the negotiated withdrawal agreement and framework for future relations in the vote under Section 13 of the EU (Withdrawal) Act. The unlikelihood of the WA being passed by Parliament prompted the Prime Minister to postpone the December 2018 vote until January 2019.8 In the vote held on 15 January the Government was defeated by a majority of 230 (MPs voted 432 to 202 against the WA). The Prime Minister intends to renegotiate the backstop provisions and return to the Commons for another vote. She said that if the Government had not brought a revised deal back to the Commons by 13 February, there would be a statement and another amendable motion would be tabled for debate the next day.

- The European Parliament rejects the negotiated withdrawal agreement and framework for future relations. The EP is continuing with the ratification process under Article 50 and is in the process of examining the text. It aims to vote on the WA in plenary in March 2019.

- The Council does not endorse the WA by an enhanced qualified majority (20 of the 27 Member States, representing 65% of the EU population).

- A withdrawal agreement is concluded and enters into force, but at the end of the implementation/transition period there is no agreement on future EU-UK relations; or there is an agreement, but it has not been implemented in the UK because the bill to implement it has not been passed, or it has not been ratified in the EU Member States and has not entered into force provisionally.

1.3 Are any scenarios more or less likely than others?

It would appear less likely that the EU27 Member State governments or the European Parliament (EP) would unexpectedly vote against an agreement drawn up by the EU and UK negotiators. The EP, which has a power of veto over the final deal, has been kept fully informed of developments in the negotiations and its resolutions on Brexit have been taken into account so as not to jeopardise final agreement. The EU27 governments have maintained solidarity in their position on the negotiations, so surprises, either in the adoption of a final text or in allowing an extension of negotiations, are unlikely. Less clear, however, is whether the EP would approve any amendments to the WA that the EU might be persuaded to endorse to ‘help’ the UK Parliament approve it, such as changes to the backstop provisions.

---

8 Opposition leader Jeremy Corbyn said the postponement of the vote was “a completely cynical manoeuvre to run down the clock and offer MPs the choice of the devil or the deep blue sea”: i news, Jeremy Corbyn demands Theresa May recalls parliament to give MPs Brexit ‘meaningful vote’, 28 December 2018.
Earlier reports that Spain could veto a withdrawal agreement because of its sovereignty claim on Gibraltar are unfounded, since no EU Member State has a veto power, \(^9\) although Spain could, of course, contribute to a blocking minority against an agreement (and could veto a future relations agreement if unanimity is required for its approval).

Some scenarios might provide a more or a less favourable environment for a no-deal departure than others (i.e. a ‘smooth’ no deal scenario or a ‘disruptive’ no deal), depending on the good will of the parties and the political mood. But the consensus among the negotiators and most stake-holders continues to be that any no-deal outcome should be avoided.

In early August 2018 the Governor of the Bank of England, Mark Carney, described the possibility of no deal as “uncomfortably high”. \(^10\) The Government insisted no deal was “unlikely” \(^11\) but also said it was taking a “responsible” approach \(^12\) and making “sensible preparations”, so that even a no-deal scenario could be managed in an “orderly” fashion. \(^13\) After postponing the ‘meaningful vote’ and trying unsuccessfully to get legal assurances from the EU that the Irish ‘backstop’ could not become permanent, the Government stepped up its ‘no deal’ contingency planning. Its ‘no deal’ guidance, which had referred to the “unlikely event” of a no-deal Brexit, has been edited, according to reports, \(^14\) to remove the word “unlikely”. The government is engaged in ongoing negotiations regarding the Irish ‘backstop’.

1.4 ‘Bare bones’, side- and mini-deals?

‘No deal’ would mean no withdrawal agreement, and this would mean no transition (implementation) period in which to adapt to being outside the EU and to finalise and ratify a future relationship agreement.

Professor Derek Wyatt and Hugo Leith of Brick Court Chambers told the Foreign Affairs Committee in March 2017 that a ‘no deal’ outcome next March did not necessarily mean the end of negotiations, suggesting that a negotiation outside the Article 50 process could take place:

The economic and political shock for the UK and the EU could lead to renewed attempts to deal with outstanding issues. The

---

\(^9\) The EU27 ‘ratification’ of the withdrawal agreement and declaration on a framework for future relations will be by an enhanced qualified majority vote: 20 of the EU27 States representing 65% of the EU27 population.

\(^10\) BBC Today Programme, 3 August 2018.

\(^11\) See Theresa May, the Chequers statement, 6 July 2018, and Dominic Raab, UK government’s preparations for a ‘no deal’ scenario, updated 24 August 2018.

\(^12\) Ibid.

\(^13\) See, e.g., BBC News, No 10 deny plan for Army role in ‘no deal’ Brexit, 30 July 2018.

position might be recovered, and a belated withdrawal agreement which included transitional arrangements might be put in place.\textsuperscript{15}

It might be possible to agree a “bare-bones” deal covering key issues of mutual concern, as David Davis suggested to the Lords EU Committee in October 2017:

in the event that we did not get a full deal, the interest of both sides on, say, counterterrorism co-operation, justice co-operation or data exchange co-operation is so great that I find it hard to believe that we will not get some fundamental deal there.\textsuperscript{16}

Or there might be an assortment of last-minute unilateral (EU) and/or bilateral (UK-EU27) ‘parachute’ agreements or side-deals to minimise disruption in certain areas. Philip Rycroft (DExEU) suggested the European Commission would want to avoid “unnecessary disruption” to business between the EU and UK and would therefore want to be pragmatic even in the event of ‘no deal’. This assumption was part of the Government’s thinking but could not be guaranteed. Dominic Raab told the Exiting the EU Committee on 5 September 2018 that there could be “no deal deals” in some areas if negotiations break down: the UK and EU could coordinate what they do without a legally binding agreement; sign Memorandums of Understanding (MoUs); or there could be more formal agreements.\textsuperscript{17}

House of Commons Leader Andrea Leadsom told the BBC’s Today Programme on 20 December that if Parliament rejected the negotiated deal, “then we have to look at what the alternatives are — and a managed no-deal, where we collaborate with the EU27, friends and neighbours — would be an alternative solution that the European Union might well find is also in their interests”. Her managed ‘no deal’ would be “a more minimalist approach that enables us to leave with some kind of deal and implementation period that avoids the cliff edge and uncertainty for businesses and travellers and so on”.\textsuperscript{18}

It is unclear whether the EU side would agree to this kind of arrangement if crisis point were reached, but the EU’s current position is that there would be no side-deals. Michel Barnier said on 3 September that the EU would not engage in any kind of “managed no-deal Brexit” if negotiations break down. He told the Exiting the EU Committee there would be no further discussions or negotiations, no “side-deals”, no “mini-deals”, the discussions would stop.\textsuperscript{19}

Anand Menon of ‘UK in a Changing Europe’ was pessimistic about any such no-deal mitigation scenarios:

\textsuperscript{15} FCA, Ninth Report of Session 2016–17, Article 50 negotiations: Implications of ‘no deal’, 12 March 2017
\textsuperscript{17} Reported in The Guardian, 5 September 2018.
\textsuperscript{18} BBC News, Andrea Leadsom and Amber Rudd suggest rival Brexit ‘Plan Bs’, 20 December 2018.
\textsuperscript{19} House of Commons Exiting the EU Committee, Oral evidence, 4 September 2018.
Given the political capital expended by both the UK and the EU on reaching an agreement within the Article 50 timeframe, a no deal outcome of any kind is likely to generate considerable acrimony. In particular, there will be a lot of finger-pointing about who is to blame.

This matters on a number of levels. Most immediately, it will complicate any moves to secure emergency deals on critical systems such as air travel, medicines or fissile materials, especially if politicians on either side seek to use such issues to teach the other a lesson or force compromises elsewhere. Mitigations in the form of agreements with the EU would be particular to each sector, meaning the impact of no deal could vary considerably, with certain sectors more vulnerable than others. The difficulty is that we cannot know at this point just how many of these emergency agreements it would be possible to reach in a relatively short period of time and in a confrontational political atmosphere.

Moreover, a breakdown of the negotiations would colour the pursuit of any wider efforts to restart the UK-EU relationship, in terms of the attitudes of both sides and the lack of a clear basis upon which to work. No withdrawal agreement means no political declaration on the future relationship, and it would be wise to assume that the general level of trust and willingness to compromise would be small.20

In a speech on 13 December 2018 the UK’s former Permanent Representative to the EU, Sir Ivan Rogers, also sought to dispel the idea that the EU would happily agree to mini-deals with the UK to mitigate the effects of a no-deal Brexit:

The reality is that if the deal on the table falls apart because we have said “no”, there will not be some smooth rapid suite of mini side deals – from aviation to fisheries, from road haulage to data, from derivatives to customs and veterinary checks, from medicines to financial services, as the EU affably sits down with this Prime Minister or another one.

The 27 will legislate and institute unilaterally temporary arrangements which assure continuity where they need it, and cause us asymmetric difficulties where they can. And a UK Government, which knows the efficacy of most of its contingency planning depends, to a greater or lesser degree on others’ actions out of its control, will then have to react – no doubt with a mixture of inevitable compliance and bellicose retaliation.

There is no EU offer of side or mini-deals and the European Commission has called for continued solidarity among the EU27, but it has proposed some EU regulations that will facilitate, on a temporary basis, EU-UK flights if there is no deal. Reports in January suggest some EU27 States might be willing to agree to more such temporary measures. Michel Barnier has also suggested that if there is flexibility on the UK side, there could be some on the EU side too, especially with regard to the future relationship agreement. He told the EU’s Economic and Social Committee on 23 January:

Given the red lines set out by the British government, the political declaration currently envisages a free trade agreement with ambitious customs cooperation. If the UK’s red lines were to change in the days or weeks to come, the Union would

20 UK in a changing Europe, Cost of no deal revisited, 3 September 2018
immediately be prepared to look at other – more ambitious - models for the relationship, each of them based on a balance between rights and obligations. We are therefore prepared to rework the content and the level of ambition of the political declaration if the UK shifts its red lines. My feeling today is that we need to leave the British Parliament the time – which is short – to have this debate and take its decision. We must remain calm, resolute, open and always respectful of the debate in the British Parliament.

So there could still be a period of undeterminable length in which the UK and the EU are without any agreements on withdrawal (or post-transition relations), and possibly little good will among the EU27 towards the UK.
2. Preparations for no deal

2.1 UK Government preparations

The return of “no deal is better than a bad deal”

In her [Lancaster House speech](https://www.gov.uk/government/speeches/theresa-mays-lancaster-house-speech) in January 2017 the Prime Minister, Theresa May, was “clear that no deal for Britain is better than a bad deal for Britain”. By the time of her [Florence speech](https://www.gov.uk/government/speeches/theresa-mays-florence-speech) in September 2017, she firmly supported a negotiated withdrawal and the option of walking away from a bad deal was not mentioned. Both sides in the negotiations agreed that an orderly, negotiated withdrawal was preferable and in both their interests. Agreement on phase one of the negotiations in December 2017 appeared to enhance prospects for a mutually acceptable negotiated withdrawal. The mutual benefits of a good Brexit deal were reiterated in the Prime Minister’s [Chequers Statement](https://www.gov.uk/government/speeches/theresa-mays-chevron-statement) in July 2018 and the ensuing [White Paper on future relations](https://www.gov.uk/government/policies/uk-government-white-paper-on-future-relations). As of February 2019, both sides remain clear that a deal is preferable while there is an increasing acknowledgment that ‘no deal’ is, in the absence of a deal, the default position.

But then the prospect of a no-deal outcome to the negotiations returned to the Brexit rhetoric in both the UK and the EU, with each side accusing the other of being inflexible and contributing to the possibility of a breakdown in the negotiations and a no-deal scenario. Theresa May said in her [statement](https://www.gov.uk/government/speeches/theresa-mays-statement-on-chequers-agreement) on the Chequers agreement on 9 July 2018 that unless the EU changed its negotiating position, there was a “serious risk it could lead to no deal” and this would be a “disorderly no deal”. Michael Gove [said](https://www.bbc.co.uk/news/uk/39207111) on the Andrew Marr Show on 8 July that the UK was being “generous”, and that if the EU did not reciprocate, “we may have to come to the conclusion that we need to walk away without a deal” and “be in a position to walk away in March 2019”. The new Foreign Secretary, Jeremy Hunt, warned that without a “change in approach from the EU negotiators”, there is now a “very real risk of a Brexit no deal by accident”.

The Prime Minister stood by her Lancaster House evaluation; she told the Liaison Committee on 18 July:

> You ask me about the fact that I have said that no deal is better than a bad deal. I stand by that. I think that that is right. I think a bad deal—for example, some have suggested that we would be prepared to pay “any price” for something—would not be a good deal for the United Kingdom.

Michel Barnier insisted the EU is prepared to be flexible if the UK Government gives way on its ‘red lines’.

---

23. BBC News, *Brexit: Jeremy Hunt warns EU of ‘no deal by accident’*, 23 July 2018
24. Michel Barnier: *speech* 23 April 2018; *speech*, Institute of International and European Affairs, 6 July 2018
The former Brexit Secretary Dominic Raab was reported to be “insouciant” about a no-deal Brexit. He maintained there would be “opportunities” from a no-deal outcome (including immediate regulatory freedom, independent trade and immigration policies, and “a swifter end” to payments into the EU budget). Brexit supporter Jacob Rees-Mogg MP was reported to have said that no deal would be preferable to the Government’s Chequers proposal. But Business Secretary Greg Clark told the French newspaper Le Figaro on 24 July that no deal “would be bad for all countries and all citizens of the European Union. And that would impoverish everyone”. Opposition leader Jeremy Corbyn said that “No deal is a bad deal and would represent a historic failure”. The Liberal Democrat leader Vince Cable said a no-deal Brexit could be “potentially catastrophic”.

‘No deal’ became a distinct possibility when it became clear that the UK Parliament did not support the Withdrawal Agreement agreed in November 2018. The backstop provision to prevent a hard border returning to the island of Ireland was the main objection. Theresa May, defending the negotiated Withdrawal Agreement before the Commons on 26 November, said “There is no deal that comes without a backstop, and without a backstop there is no deal”.

On 4 December she said:

Do not let anyone here think there is a better deal to be won by shouting louder. Do not imagine that, if we vote this down, a different deal is going to miraculously appear. The alternative is uncertainty and risk—the risk that Brexit could be stopped; the risk we could crash out with no deal.

Nevertheless, after the amendment by Sir Graham Brady, Chair of the 1922 Committee was passed on 29 January, the Prime Minister agreed to return to the EU to seek to replace the backstop with “alternative arrangements” (see section 3.1 for further detail on this). At the time of writing, it is not clear what these arrangements might be or whether the EU will agree to them.

**Departmental preparations**

In its report published on 12 March 2017 on Article 50 negotiations: Implications of ‘no deal’, the Commons Foreign Affairs Committee recommended:

> The Government should require each Department to produce a ‘no deal’ plan, outlining the likely consequences in their areas of remit and setting out proposals to mitigate potential risks. Such preparation would strengthen the Government’s negotiating hand

---

25 Politico, UK Cabinet chaos triggers countdown to Brexit explosion, 9 July 2018
26 Dominic Raab, speech on Brexit no deal planning, 23 August 2018
27 See The Times, Jacob Rees-Mogg says Chequers Brexit deal may be worse than no deal, 7 July 2018.
28 Politico, 5 July 2018
29 The Guardian, ‘Catastrophic’ no-deal Brexit a real possibility, says Vince Cable, 11 June 2018
30 HC Deb, 4 December 2018, c764
31 Ninth Report of Session 2016-17
by providing credibility to its position that it would be prepared to walk away from a bad deal.

In June 2018 an Institute for Government (IfG) report summarised what preparations the Government would need to make for different Brexit scenarios:

Some areas are not dependent on future negotiations, such as the settlement scheme to provide status to EU nationals after Brexit, meaning officials do not have to cope with multiple scenarios. But these are the exception. For others the uncertainty means that departments have to work on multiple plans in parallel. HM Revenue and Customs (HMRC), for example, needs to be ready for post-Brexit customs if there’s no deal in March 2019 or if talks end in failure come December 2020, as well as having plans for the Government’s two options for a possible future relationship. Each of the four plans, with their different constraints and requirements, would be, at best, extremely ambitious if they were the only scenario the department was working to.32

Has the Government implemented “multiple plans in parallel” to prepare for all kinds of Brexit? Philip Rycroft, DExEU Permanent Secretary, told the Exiting the EU Committee on 4 September 2018 that Brexit planning, including for no deal, had been taking place across Departments for two years.

New Cabinet sub-committee

Damian Green, then First Secretary of State and Minister for the Cabinet Office, announced in October 2017 the creation of a new Brexit-focused Cabinet sub-Committee - the European Union Exit and Trade sub-Committee (Domestic Preparedness, Legislation and Devolution) to oversee domestic policy preparations and implementation of Brexit; and changes to the existing EU Exit and Trade (Strategy and Negotiations) sub-Committee (an extension of the EU Exit and Trade (Negotiations) sub-Committee), to oversee the Brexit and future relations negotiations. The new sub-committees would “sit alongside” the EU Exit and Trade Committee and the EU Exit and Trade (International Trade) sub-Committee which would continue as before.

Brexit workstreams

On 30 April 2018 in a letter to Meg Hillier, Chair of the Public Accounts Committee, DExEU published Departmental summaries of EU Exit workstreams, setting out the areas of work being undertaken (“policy areas requiring particular focus, the current number of workstreams for which each department is responsible, and some specific examples”). The National Audit Office, which has been reporting on the Government’s Brexit delivery, noted that DExEU’s “delivery plan guidance required departments to formulate delivery plans to support a preferred negotiation (or ‘day one deal’) or a ‘no deal’ outcome for each EU Exit work stream”.33 The DExEU summaries do not specifically

32 IfG, Preparing Brexit. How ready is Whitehall? Summary. Joe Owen, Lewis Lloyd and Jill Rutter, 10 June 2018
33 NAO, Implementing the UK’s exit from the European Union. The Department for International Trade, HC 713 Session 2017–2019, 25 January 2018
indicate any no-deal planning, but this could be read into the “contingency outcomes” referred to in five instances.

Philip Rycroft assured the Exiting the EU Committee on 4 September that political divisions in the Government were not holding up any Brexit planning workstreams.

**Machinery of government changes**

On 24 July the Prime Minister announced changes to the machinery of Government in the light of Brexit. DExEU would continue to lead on domestic preparations “in both a deal and a no deal scenario, all of the necessary legislation, and preparations for the negotiations to implement the detail of the Future Framework”. DExEU would recruit new staff and Cabinet Office officials coordinating work on preparedness would move to DExEU, “while maintaining close ties with both departments”. Theresa May herself would lead the negotiations with the EU, with the Exiting the EU Secretary deputising and supported by the Cabinet Office, whose Europe Unit, headed by Oliver Robbins, would “have overall responsibility for the preparation and conduct of the negotiations”. Philip Rycroft told the Exiting the EU Committee on 4 September that the changes would enable DExEU to focus on what comes after Brexit.

**More staff**

Former Brexit Secretary Dominic Raab said in his speech on 23 August 2018 that the Government was increasing staffing inside and outside Whitehall: “The UK government now has 7,000 people working on Brexit preparations and funding is in place for another 9,000”, and “in relation to frontline services, such as the UK’s Border Force, we are currently recruiting an extra 300 staff in time for our exit, with plans in the pipeline to recruit 1,000 more staff, so they are ready to deal with any increase in work”.

Philip Rycroft said DExEU was under no budget restraints with regard to staffing and resources for Brexit planning.34

**‘No deal’ funding**

Chancellor Phillip Hammond had set out the Government’s ‘no deal’ funding strategy in evidence to the Treasury Committee on 11 October 2017:

> [...] we do have planning for all scenarios, including a no-deal scenario. I am committed to funding Departments for the work they need to do in preparation, and we have already allocated £250 million to Departments from the reserve. But there will be points of decision where it will be necessary to make go or no go decisions around future programme spending to be ready on day one. I am clear that we have to be prepared for a no-deal scenario, unless and until we have clear evidence that that is not where we will end up. At the moment, although we of course hope for a different outcome, we cannot be certain of it.

I am not proposing to allocate funds to Departments in advance of the need to spend. We should look in each area at the last

---

34 Commons Exiting the EU Committee, *Oral evidence*, 4 September 2018
What if there’s no Brexit deal?

point at which spending can begin to ensure that we are ready for day one of a no-deal scenario. That is when we should start spending hard-earned taxpayers’ money. Every pound we spend on contingent preparations for a hard customs border is a pound that we can’t spend on the NHS, social care, education or deficit reduction. I don’t believe that we should be in the business of making potentially nugatory expenditure until the very last moment, when we need to do so. We will be ready—we will spend the money in a timely fashion to ensure that we are ready—but we will not spend it earlier than necessary just to make some demonstration point.

Asked whether the Treasury had “done a broader assessment of how much it would have to spend in the event of a no-deal scenario, and how much money could not be spent on other things”, and whether the Treasury was “expecting to have to reopen the 2015 Departmental spending reviews”, Mr Hammond replied:

On the last point, no, because the money that is required to be expended against the contingency of a no-deal scenario will come from the reserve, so we will not reopen departmental spending settlements. In terms of quantum, it is a moveable feast. Obviously, one can plan for the most extreme scenario. Let me give you an example: it is theoretically conceivable that, in a no-deal scenario, no air traffic will move between the UK and the European Union on 29 March 2019. However, I don’t think anybody seriously believes that that is where we will get to.

There are a range of outcomes, and at a point in time we will need to determine what a realistic worst-case scenario that we need to plan and invest for is. On that specific point, it is very clear that mutual self-interest means that, even if talks break down and there is no deal, there will be a strong compulsion on both sides to reach agreement on an air traffic services arrangement.

In the November 2017 budget the Chancellor also made an additional £3 billion of funding available for departments and the devolved administrations over the next two years to implement plans for various exit scenarios, including ‘no deal’. There was a subsequent increase by £0.5bn in the 2018 Budget.

The Prime Minister summarised funding for a deal or no-deal Brexit in evidence to the Liaison Committee on 18 July 2018:

The Treasury set aside, over a period of two years, the sum of £3 billion for preparatory work. That was allocated at the spring statement. My right hon. Friend the Chancellor of the Exchequer explained the allocation for 2018-19 among Departments. As you might imagine, DEFRA is the Department that has £310 million allocated to it for that year. HM Revenue and Customs has £260 million, the Home Office has £395 million. The other big amounts include £185 to BEIS, and then, obviously, other Departments have some allocated. Those sums are for work they are doing in preparing for the outcomes, and of course those outcomes are a deal or no deal.

IT systems

New IT systems will be needed to replace databases currently shared with the EU. Many of them are in the Department for Environment, Food and Rural Affairs (DEFRA), HM Revenues and Customs (HMRC),
the Department for Business, Energy and Industrial Strategy (BEIS), Department for International Trade (DIT) and the Home Office. The UK will also be disconnected from various IT systems that cannot be replicated domestically because of their inherent cross-border basis, such as the VAT Information Exchange System (VIES), which is a core component of the system that allows goods to move within the EU without VAT liability being checked at the border.35

The technical publication The Register commented on DEFRA systems that could be at risk:

Key programmes at risk of delays or failure were the department’s import controls systems, the database replacement for the Registration, Evaluation, Authorisation and Restriction of Chemicals, the export health certificates, catch certificate for marine caught fish for human consumption, and the system for veterinary medicines.36

The Government is also relying on future technology-based solutions to the Irish border customs issues, despite these having been declared a partial solution at best by the EU.

In a report published in April 201837 the Public Accounts Committee (PAC) was critical of the Brexit preparations of the Department for Business, Energy and Industrial Strategy (BEIS) and was particularly concerned about the lack of IT procurement that would be necessary in the event of no deal:

We doubt the realism of the Department’s plans to deliver the numerous IT systems required to support the implementation of its Brexit work streams, especially when it has yet to start procurement. The Department needs to build upwards of 12 new digital systems, such as a database to register trademarks. We took evidence in January 2018, before publication of the Draft Withdrawal Agreement proposing a transition period to December 2020. Extraordinarily, the Department had not yet started to procure any of these systems despite them being required by March 2019 in the event of a no deal scenario. They may still be required if negotiations should break down. The Department said it hoped to begin procurement in the next few months and that it was confident that it could acquire and test the systems by March 2019. Given the government’s generally poor track record in delivering IT projects, we are extremely sceptical that the Department will be able to deliver these systems in time.

In its response in May 2018 to the Foreign Affairs Committee report on the implications of no deal, the Government said it was continuing “to implement plans to ensure that we are ready for the UK’s exit from the

35  Developing new databases can be a lengthy process; an internal Cabinet Office report in 2015 leaked to Computer Weekly found that “the average time for a new digital service to reach public use – either fully live or in beta – was two years. The completed exemplars ranged from 1.2 years to three years in duration.

“ComputerWeekly.com, So you want new IT systems for Brexit? Leaked GDS report shows it’s already too late, 15 August 2017

36  The Register, Defra to MPs: There’s no way Brexit IT can be as crap as rural payments, 8 March 2018

EU, including procuring new systems, recruiting new staff and committing financial resources where necessary”. 38

But some reports suggested civil servants were preparing ‘manual workarounds’ in case the technology failed or was not available. The Commons Science and Technology Committee launched an inquiry into the state of the digital government strategy, which included consideration of the post-Brexit digital skills that would be needed; see for example, written evidence submitted by GlobalData Public Sector in October 2018, and Deloitte, September 2018.

The Government steps up ‘no deal’ preparations

Boris Johnson, in his resignation letter on 9 July 2018, said the Government had “postponed crucial decisions – including the preparations for no deal” in favour of pursuing what he called a “semi-Brexit”. Others in the EU,39 the UK Government,40 opposition politicians41 and industry42 thought more preparations were necessary. The Financial Times (20 July) reported on no-deal preparations by businesses across the UK, stating that “[a]s part of the preparations, some 250,000 small businesses will be asked to start making customs declarations, in a dry run for a hard Brexit”, and:

UK businesses are already spending heavily on their preparations. Adam Marshall, head of the British Chambers of Commerce, said companies have been thinking through the potential impact of changes to cross-border trade, staffing, contracts, VAT and intellectual property.

Overall, the Government said it was being “responsible” about contingency planning.43 For example, in his response to the European Scrutiny Committee special report (14 June) David Davis said the Government was “on course to deliver a functioning border in a ‘no deal’ scenario that enables trade to flow, the Government to collect revenues, and the UK to have a secure border”. DExEU Minister Lord Callanan insisted on 23 July the Government was preparing for a range of Brexit scenarios, from ‘orderly’ withdrawal to ‘no deal’ - but not by recommending the stockpiling of processed food, as reported in The Sun on 10 July and several other newspapers.44 DExEU Minister Chris Heaton-Harris told the Commons on 19 July:

40 The statement on the Chequers agreement on 6 July said: “It remains our firm view that it is in the best interests of both sides to reach agreement on a good and sustainable future relationship. But we also concluded that it was responsible to continue preparations for a range of potential outcomes, including the possibility of ‘no deal’. Given the short period remaining before the necessary conclusion of negotiations this autumn, we agreed preparations should be stepped up”.
42 See, for example, CBI, CBI survey: How businesses are preparing for Brexit, 2018.
44 See also Financial Times, British food stores ridicule Brexit stockpiling plans, 26 July 2018.
Departments’ plans are well developed and designed to respond to all scenarios, including the unlikely possibility that we leave the EU without a deal. Some contingency plans have already become evident and more will become public over the coming weeks.

He also said 300 extra staff had already been recruited to police UK borders and that there was “an ongoing programme to recruit a whole load more”.

Dominic Raab said after his first meeting with the EU negotiator Michel Barnier on 26 July that the UK Government, like any “responsible government”, was planning for no-deal, but conceded it needed to step up its plans. He also told the Committee on Exiting the EU on 24 July (Q2472) that in the event of no deal, although there would be “uncertainty” in the short term, the UK would “still be able to thrive” in the long term.

Philip Rycroft outlined staff numbers to the Exiting the EU Committee on 4 September, saying DExEU had high quality staff with a “diverse range of experience and talent”.

In a speech on 23 August on planning for the “unlikely event” of no agreement, Mr Raab said he would seek discussions with the EU over coordinated action to mitigate the effects of a no-deal Brexit (the Bank of England and European Central Bank are currently in talks). He also dismissed media rumours of stockpiling, shortages and a vindictive EU:

So let me reassure you all that, contrary to one of the wilder claims, you will still be able to enjoy a BLT after Brexit.

And there are no plans to deploy the army to maintain food supplies.

I think it’s also worth saying that most of the worst case scenarios, being bandied around, imply that the EU would resist all and any mutual cooperation with the UK.

In reality, I find it difficult to imagine that our EU partners would not want to cooperate with us even in that scenario in key areas like this, given the obvious mutual benefits involved.

The Commons is updated on negotiations and no-deal preparations

Agreement is reached in most areas

On 4 September 2018 Dominic Raab updated the Commons on the progress of Brexit negotiations and the Government’s ‘no deal’ contingency planning. He said the negotiators had “injected some additional pace and intensity into the negotiations, as we reach the final phases” and that the “vast majority of the Withdrawal Agreement” had been agreed. Progress had been made on the outstanding issues to do with the protection of data and information, the treatment of ongoing police and judicial cooperation in criminal matters, and ongoing EU judicial and administrative procedures after exit.

---

45 EUObserver, UK Brexit minister warns of ‘no-deal’ preparations, 23 July 2018
Northern Ireland issues still unresolved
Northern Ireland was still a major sticking point. They had continued to “work to complete a backstop” but he reiterated that the EU proposals were “unacceptable, because they would create a customs border down the Irish Sea”. He was determined to avoid a hard border but would “not permit a customs border down the Irish Sea, which would put at risk the constitutional and economic integrity of the United Kingdom, and of course, this can be done without compromising the EU’s core principles”.

Bilateral meetings
Mr Raab outlined the 60 or more bilateral meetings ministers had had with their EU counterparts since the publication of the Brexit future relations White Paper on 12 July, saying the proposals had “received a wide range of positive and constructive feedback” and:

Equally, just as we have presented our proposals in a spirit of compromise, so too they have proved challenging in some respects for some in the EU.

But, our friends across Europe are engaging seriously with our proposals on the substance.

He acknowledged that there were “some risks to a ‘no deal’ scenario” but said the Government’s approach demonstrated that it was “taking the action to avoid, to minimise and to mitigate these potential risks so we are equipped to manage any short-term disruption”.

‘Opportunities’ provided by a no-deal Brexit
Mr Raab again pointed to “some countervailing opportunities” that a no-deal scenario would bring”.

- The UK could lower tariffs and negotiate and bring into effect new free trade deals straight away;
- The “immediate recovery of full legislative and regulatory control, including over immigration policy”;
- A “swifter end to our financial contributions to the EU”, while being “mindful” of legal obligations.

‘Technical notices’ on no deal preparations
On 18 July 2018 the Prime Minister told the Liaison Committee that over the course of the summer the Government would be releasing around 70 ‘technical notices’ for British businesses and citizens - “those that need to know that information” - setting out how the public and business could prepare for the consequences of a no-deal Brexit.

The Committee Chair, Dr Sarah Wollaston, tried to press the Prime Minister on the extent of advanced preparations for these possible consequences:

Q93 Chair: […] there is still that growing possibility, I feel, that we could end up with a no-deal scenario; and my question was will you be laying out for the public what the consequences of that will be, very clearly?

The Prime Minister: If we are in a no-deal scenario then we will lay out the consequences for the public.
Q94 Chair: You won’t do it in advance.

The Prime Minister: What we are doing at the moment is working for a deal, and that is the basis on which the Chequers agreement was made; it is the basis on which the White Paper is made; it is the basis on which we started discussions with the European Union. At this point what we are doing is saying we will ensure, as we step up our no-deal preparations, that those technical notices are issued over August and September so that those who need to have that information have that information.

Chair: You have made that clear.

The Prime Minister: With due respect, I think what you are asking me to do is to do something else, which is to set out the argument for no deal versus the argument for a deal, rather than actually saying we are working for a deal, and we will make sure that those who know—

Q95 Chair: Prime Minister, with respect, I am asking you to set out for the public—because I think sometimes the public don’t realise the scale of the issues that we would be facing, and the costs and the absolute necessity that we start planning now, because time is getting so short. So I guess my request to you is will you agree to publish this so that the public can see what the consequences are, and what you are planning for?

The Prime Minister: What we will be doing is ensuring that more information is available on the preparations the Government are making for no deal, that we publish the technical notices so that those who need to make the preparations for no deal are able to do so.

Q96 Chair: You have made that clear, Prime Minister. My concern was for the wider public understanding of what the consequences are.

The first public information alerts - or ‘technical notices’ or ‘guidance’ - were published on 23 August on the DExEU website. Their publication was interpreted by many as a sign that the Government was taking no-deal preparation more seriously, by others as an indication that the Government was panicking as the deadline for agreeing a deal approached. Philip Rycroft told the Exiting the EU Committee on 4 September that the Notices were drawn up by individual departments but managed by DExEU, and that there had been close consultation with the devolved administrations. He would not answer a question from Hilary Benn about when the Government would notify businesses about the likelihood of a deal not being reached or whether DExEU had given any consideration to possible litigation or judicial review concerning the impact on commercial operations of not knowing about ‘no deal’ in advance of it actually happening.

The Exiting the European Union Committee’s Chair, Hilary Benn MP, commented on the Government’s no deal plans on the Committee website:

Ministers have left their No Deal planning very late in the day. A lot of questions remain to be answered, and they seem to be relying on continued co-operation with the EU without any indication of what would happen if this was not forthcoming.
A failure to reach agreement with the EU will also mean no transition period so all this uncertainty could be just seven months away.

These papers tell us three things. First, they confirm that No Deal - far from being better than a bad deal - would be very damaging economically. Businesses that export to the EU would face the cost and bureaucracy of customs, safety and security and rules of origin declarations for the first time, and in certain sectors, tariffs.

Secondly, there is no guarantee for British citizens living in other EU countries about the future of their pension payments.

Thirdly, there is still no clarity on how the return of a hard border in Northern Ireland will be avoided, and ministers have simply told businesses to seek advice from the Irish Government. This is an extraordinary abdication of responsibility.

Having wasted two years, these papers show exactly why No Deal is unacceptable and why ministers must now ensure that an agreement is reached with the EU which provides a transition period and protects jobs, trade and investment.

In January 2019 there were 94 guidance notices on the DExEU website.

‘No deal’ preparations are accelerated

More money

In mid-December 2018 the Government said it would implement its no-deal plans “in full”. The Cabinet had agreed that the point had now been reached “where we need to ramp up these preparations” and the rest of the no deal plans would be set in motion. In its latest guidance notes, the Government said that for two years it had been “implementing a significant programme of work to ensure that the UK is prepared to leave the EU on March 29 2019”,46 adding:

It has always been the case that as we get nearer to that date, preparations for a no deal scenario would have to be accelerated. We must ensure plans are in place should they need to be relied upon.

There would be an extra £2bn of spending on planning for a no-deal Brexit.47 On 18 December the Chief Secretary to the Treasury, Elizabeth Truss, set out funding allocated to Government Departments for financial year 2019-20. This included £480m of preparation funding for the Home Office, £410m for DEFRA, £375m for HMRC, £190m for the Department for Business, Innovation and Skills, and £128m for the Department for International Trade.

On 21 December the Government updated its overview of government preparations for a 'no deal' scenario, summarising the funding as follows:

The government has taken its responsibilities to prepare the UK for all scenarios very seriously. The Budget 2018 confirmed an additional £500 million of funding for 2019/20, meaning the Government will have invested over £4 billion in preparing for EU exit since 2016.

46 Guidance, Producing and labelling food if there’s no Brexit deal, updated 19 December 2018

47 BBC News, Brexit: Cabinet ‘ramps up’ no-deal planning, 18 December 2018
Troops on standby

On 18 December Defence Secretary Gavin Williamson told the Commons (c 665) the Government would “ensure that 3,500 service personnel, including regulars and reserves, are held in readiness to support any Department with contingency needs” (in the event of a no-deal Brexit).

Information for businesses

The Government called on businesses to implement ‘no deal’ action plans, said it would send 80,000 emails to businesses and business groups advising on contingency planning48 and letters to 140,000 firms updating them on what they should do.49 But the Business, Energy and Industrial Strategy Committee noted in its report published on 10 December 2018:

Businesses emphasised that although they can prepare in crisis management terms for a no deal exit, they cannot mitigate against all the risks.90 They have been forward buying, stockpiling and duplicating licenses, but warned that over the last year it has become clear that a no deal Brexit would be far more complex than they had anticipated - as some problems are solved, new ones are discovered.91 The overarching message was that it is difficult to quantify just how damaging it would be, but that this scenario would seriously undermine these sectors’ ability to provide competitively for their consumers and to use the UK as a base for serving European and global markets.50

Brexit Secretary Stephen Barclay said that securing a deal was still an “overall priority” but that preparing for ‘no deal’ would be “an operational priority within government”.51

The updated preparations overview (21 December 2018) summarised the Government’s actions as follows:

Since the publication of technical notices, we have taken further steps to ensure people and firms are ready, including:

- Publishing more than 100 pages of guidance for businesses on processes and procedures at the border in a no deal scenario.
- Contacting 145,000 businesses who trade with the EU, telling them to start getting ready for no deal customs procedures.
- Advising hundreds of ports, traders, pharmaceutical firms and other organisations that use the border about potential disruption so they can get their supply chains ready.
- Publishing a paper on citizens’ rights, giving people clarity on their future.

48 Financial Times, British business slams government plans for no-deal Brexit, 19 December 2018
49 BBC News op cit
50 Business, Energy and Industrial Strategy Committee, 16th Report - The response from business to the Withdrawal Agreement and Political Declaration, Chapter 4A no-deal Brexit
51 BBC News, ibid
It also outlined other ‘no deal’ preparations, including staffing, infrastructure and policy; the Government had:

- Ensured there are more than 10,000 civil servants working on Brexit and a further 5,000 in the pipeline, which will allow us to accelerate our preparation as necessary.
- Some departments, such as Defra, which are responsible for a sizeable proportion of the Government’s EU exit work, have rapidly increased their capacity to meet the challenge, recruiting 1300 members of staff in 2017 to 18 to work on exit. Border Force is recruiting 600 frontline officers to provide resilience and readiness ahead of EU exit and is separately recruiting up to a further 1000 staff to ensure flexibility for all scenarios and sufficient resources for existing operations.
- Confirmed that existing organisations will grow and take on new responsibilities. For instance, the Competition and Markets Authority will take on an additional role as the UK’s state aid regulator and the Information Commissioner’s Office will support businesses on new data sharing arrangements.
- Procured or developed a number of new systems to build everything from a new market surveillance system to improving the capabilities of our Export Health Certificates system.
- Signed international safeguards agreements with the International Atomic Energy Agency, as well as bilateral Nuclear Co-operation Agreements, and Air Services Agreements. We will continue to work with third countries and international partners to seek continuity of the effects of international agreements which the Government participates in as a result of, or relevant to, its membership of the EU.
- Set out our approach to bringing EU financial services legislation into domestic law in time for exit on 29 March 2019.
- Guaranteed certain EU-funded projects in a no deal scenario, including the full 2014-20 Multiannual Financial Framework allocation for structural and investment funds; the payment of awards where UK organisations successfully bid directly to the European Commission on a competitive basis until the end of 2020; any Rural Development Programme projects contracted before the end of 2020 for their full lifetime.

Local Government

In reply to a question about local government planning for ‘no deal’, Secretary of State for Housing, Communities and Local Government James Brokenshire said on 21 December 2018 his Department was “working closely with the 38 Local Resilience Forums, and with councils in England to ensure they are fully prepared”. He added that the EU Exit Local Government Delivery Board, which he chaired, provided “an opportunity for national and local government to discuss Brexit preparations, review transition and implementation progress, address any issues or concerns that councils may have and discuss opportunities arising from Brexit”.

Brexit legislation

The Government’s reply to the Foreign Affairs Committee report referred to the European Union (Withdrawal) Bill then going through Parliament and to other Brexit-related legislation “to prepare for all exit scenarios” (the Nuclear Safeguards Act, Sanctions and Anti-Money Laundering Act, Haulage Permits and Trailer Registration Act, Taxation Act).
The European Union (Withdrawal) Act (EUWA) received Royal Assent on 26 June 2018. Several hundred SIs will be made under the EUWA by February 2019 to provide for a temporary continuation of EU provisions in the UK, with or without a withdrawal agreement. The aim is to ensure there are no (or few) sudden shocks or holes in the statute book on Brexit day.

Under the Act a European Statutory Instruments Committee (ESIC) has been set up in the Commons to check whether the choice of procedure to adopt certain Brexit-related SIs is appropriate. The degree of Parliament’s involvement depends on the type of procedure used. The proposed negative instruments can be found on the Government’s EU Withdrawal Act 2018 statutory instruments website, together with Explanatory Notes on each draft SI.

The Commons European Scrutiny Committee published a report on EU’s no deal preparations: Brexit: EU contingency planning in a ‘no deal’ scenario, 23 January 2019. The Committee concluded:

4.32 Despite the fact that the senior figures in the Government, not least the Prime Minister herself, have stated repeatedly that “no deal” with the EU would be better than a “bad deal”, it has been clear for some time that the necessary preparations to avoid the disruption of the abrupt departure from the Single Market and Customs Union, to the extent that it could ever be fully avoided, are unlikely to be fully in place. The Government only recently contracted three ferry companies to compensate for “severe congestion” at Dover and the Channel Tunnel leading to a “significant reduction in capacity at ports on the short straits”, which without intervention would “cause delivery of critical goods to be delayed and cause significant wider disruption to the UK economy”. The National Audit Office has also warned crucial ‘no deal’ preparations are unlikely to be finalised in time by the Department for Transport, HM Revenue and Customs, and the Department for Environment, Food and Rural Affairs.

4.33 The crux of the matter is, however, that many elements of the likely disruption could never be avoided unilaterally by the UK. Where they concern cross-border trade, transport or cooperation, this is by definition not within the gift of the Government.

4.34 The European Commission’s recent Communications on the EU’s preparations for a ‘no deal’ Brexit are therefore a stark reminder of the consequences, especially at ports, on 30 March. Despite the UK’s requests, and in some cases unilateral action, in many areas the EU is planning no contingency measures at all to avoid trade and transport disruption. Instead the UK will abruptly go from ‘EU member’ to ‘third country’, without anything resembling the transition period and separation provisions contained in the draft Withdrawal Agreement. The EU has said it intends to impose tariffs, import VAT and excise duty, as well as regulatory controls, at the border from ‘day one’.

---

52 For information on the EU (Withdrawal) Bill, see Parliament’s Brexit: research and analysis website, Brexit: legislation.
53 Philip Rycroft, oral evidence to Exiting the EU Committee, 4 September 2018
Although to what extent it will force Ireland to do so at the land border remains unclear, the French, Dutch and Belgian Governments have all said they will be required to enforce EU ‘third country’ rules against UK goods from 30 March 2019 if there is no transition. […]

4.36 The consequences of ‘no deal’ for British food and drink exports, particularly meat products, could be especially serious. The EU has not yet listed the UK as a safe ‘country of origin’ for such products, without which a trade ban would automatically take effect on 30 March (although the Commission has committed to doing so). In any event, these exports will face some of the highest tariffs the EU still maintains, and the imposition of border controls for sanitary checks will reduce the competitiveness of those products further (as well as potentially affecting the viability of some exports where freshness of the goods could be jeopardised by delays at the border). 36

4.37 The Government’s continued and persistent failure to provide timely and comprehensive analysis to Parliament of the EU’s approach to ‘no deal’ is extremely worrying. It is an approach that was exemplified by the inadequate sectoral ‘impact assessments’ published at the behest of the Exiting the EU Committee in late 2017; the lack of any public communication on the implications of ‘no deal’ until August 2018; and again by the Department’s Explanatory Memorandum on the European Commission’s previous ‘no deal’ Communication of 13 November 2018, which was shorn of any substantive analysis of the implications of the EU’s ‘no deal’ preparation as described in that document. 37 The latest Government Memorandum, received on 17 January 2019, constitutes somewhat of an improvement but still glosses over many of the practical realities of the EU’s contingency measures being proposed: the clear deterioration in trading arrangements for UK businesses dealing with EU customers or suppliers; the new ‘cliff edge’ they contingency measures create when they expire or are withdrawn early; and the unilateral demand the UK continue adhering to EU law in the fields of aviation, road transport and competition.

4.38 Moreover, the Government’s lack of candour about its Brexit preparations and the areas where unilateral action will be insufficient is disappointing. A number of crucial Bills have not received Royal Assent, and many of the Statutory Instruments that need to be made under the 2018 Withdrawal Act are yet to make it onto the Statute Book. It is noteworthy in this respect that even at this late stage, the Government’s Explanatory Memorandum can only offer assurances that Departments are working to “make sure that the preparations for exit from, […] the EU are on track”. This falls far short of a guarantee that such preparations, where the UK can make them unilaterally, will be completed by the end of March.

4.39 The clear difficulty the Government has had in preparing properly for a ‘no deal’ exit is important not only because it affects how Parliament views the different options open to it as the deadline of 29 March 2019 approaches. The issues identified in the ‘no deal’ notices issued by both the Government and the European Commission will not disappear the day after the UK leaves the EU. Geographic proximity and the volume of trade flows practically dictate that new treaties will at some stage be needed to give form to the UK’s post-Brexit cooperation
with the European Union. Our assessment of the Commission’s contingency measures, narrow in scope and limited in duration, merely reinforce the point that there would be a vast range of long-term issues that would remain unresolved in a ‘no deal’ scenario. As we have pointed out in many of our Reports since June 2016, these include arrangements on customs and trade, VAT and excise, cross-border transport, food safety and animal health, ‘equivalence’ in financial services, data protection, home affairs and security, and of course the Northern Irish border.

4.40 We repeat in this regard that the disruption of a ‘no deal’ Brexit would obviously not fall solely on the UK side. EU businesses would also be affected across a range of economic sectors, and as we have noted the budget of the European Union would face a significant shortfall (given that it is unclear how the Government would approach the financial commitments vis-à-vis the budget that it has recognised in the absence of the formalised financial settlement contained in Part Five of the Withdrawal Agreement). As such, both sides would have an interest in returning to the negotiating table sooner rather than later to develop a joint approach to the UK’s withdrawal from the EU. We consider it likely that, even in a ‘no deal’ scenario, the EU reiterate its key demands in the negotiations so far: a legally-agreed way of keeping the Irish border open (whatever actions are or are not taken at the border in the immediate aftermath of ‘no deal’), the resolution of the UK’s financial obligations to the EU budget for expenditure agreed during its membership, and the status of EU and UK citizens resident in each other’s territories.

The constitutional implications of a no-deal Brexit are discussed in detail in section 3 below.

2.2 European Union preparations

According to Michel Barnier in July 2018 there was agreement on 80% of the UK’s withdrawal terms. Matters still to be agreed included the protection of ‘geographical indications’, solutions for UK territories (e.g. the UK’s Sovereign Bases in Cyprus, and Gibraltar, on which bilateral negotiations between the UK and Spain are ongoing) and the border between Ireland and Northern Ireland. According to one estimate, only 5-6% more text had been agreed since March, when 80% agreement was first announced. In the absence of what the European Commission described as “functional solutions” to the Irish border issue in particular, the EU stepped up emergency ‘parachute’ planning for the UK leaving the EU without a withdrawal agreement on 29 March 2019. The Commission, the EU Presidency (Austria) and other Member States also considered how the UK exit date could be extended if more time was needed to prepare. The Financial Times commented that any EU unilateral contingency provisions “would be tailored to the bloc’s interests and would remain in force only until the EU develops the

“The ‘no deal’ is not our objective. By the way, you do not need a negotiator for no deal. We are negotiating to avoid the ‘no deal’, but it still cannot be excluded.”

Michel Barnier, speech at European American Chamber of Commerce, 10 July 2018

54 On 10 July and on 2 August
55 EUobserver, ‘Dealbreaker’ issues multiply in Brexit talks, 30 August 2018
56 See Independent, Brexit talks should be extended if no deal agreed, EU Council chair says, 5 July 2018.
What if there’s no Brexit deal?

infrastructure to enforce rules for a no-deal Brexit that could last for years”.57

From 15 November 2018 Council Working Party (Article 50) preparedness seminars for the EU27 discussed preparations in different policy areas. At the time of writing, there had been 12 of these.

On 19 December 2018 the European Commission adopted a package of 14 short-term contingency measures which aim to mitigate the worst effects of a no-deal Brexit. The package included measures on flying rights, air safety certificates, derivatives contracts, time-limits for customs declarations and hydrofluorocarbon quotas. As the Financial Times noted (19 December 2018), “No special contingency measures are outlined for medicines, data flows, veterinary checks, fisheries or non-financial services, even though these will ultimately probably need to be addressed by the union in a hard-exit scenario”.

European Parliament report
In May 2018 the EP’s Constitutional Affairs Committee published an in-depth analysis of the institutional, budgetary and policy implications of a ‘hard Brexit’ for the EU (The Institutional Consequences of a ‘Hard Brexit’). The study looked at how UK withdrawal without a withdrawal agreement, transition arrangements or framework for future relations would affect each EU institution, the EU budget for the current Multiannual Financial Framework and EU policies in the areas of trade, security and justice. It provided “guidelines for the EU to be prepared in case such scenario were to materialise”.

Commission Brexit Preparedness Group
At the end of 2017 the Commission established a Brexit Preparedness Group composed of around a dozen civil servants and headed by Pascal Leardini. On the Brexit Preparedness website the Group posts ‘preparedness notices’, legislative initiatives and other relevant activities. The notices “aim at preparing citizens and stakeholders for the withdrawal of the United Kingdom” and “set out the consequences in a range of policy areas”. At the time of writing there were 84 preparedness notices. The website provides further information on EU preparedness for no deal:

In addition, EU decentralised agencies have published information in relation to the UK’s withdrawal from the EU, for example the Community Plant Variety Office, the European Chemicals Agency, the European Medicines Agency and the European Union Intellectual Property Office. Furthermore, the three European Supervisory Authorities (the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority) and the Single Supervisory Mechanism have issued opinions and guidance.

Amending EU legislation to take account of Brexit
The Commission has been drafting amendments to EU legislation to take account of the UK’s exit in areas such as shipping, tariff

57 Financial Times, Brussels steps up emergency planning for no-deal Brexit, 28 June 2018
obligations, energy, customs, aviation, health and safety, transport, citizenship\textsuperscript{58} and the “adaptation of hundreds of databases and IT systems managed by the Commission and national capitals”.\textsuperscript{59}

On 12 June Commission Secretary-General Martin Selmayr presented the EP’s Brexit Steering Group with a list of amendments to laws and regulations in a document entitled \textit{Pending and planned legislative proposals for the purposes of Brexit preparedness} (as of 12 June 2018).

Commission official Pascal Leardini told the EP Committee on Constitutional Affairs (AFCO) on 2 July that the Commission would soon complete its identification of the legal acts needing adaptation. The acts would be “either preparedness acts, that serve to fill gaps in the legislation, or contingency measures to remedy negative impacts in the cliff-edge situation”. They would take effect in the event of a no-deal scenario, “including the unwanted but still possible cliff edge”. Politico reported:

> In addition to the practical contingency planning, Leardini said that officials are racing to develop legislation to close potential legal gaps. Some matters, he said, will require legislative acts and others like customs changes can be achieved via so-called delegated acts (legally binding acts that enable the Commission to supplement or amend nonessential parts of EU legislative acts).

Leardini said his group has also issued 66 preparatory notes to private stakeholders, urging them to be ready for a potentially disorderly Brexit. These, he argued, are “purely informative and not speculative.”

But Leardini said the Commission had “not done an overall impact assessment of what happens if there's no deal because there are too many variables”.\textsuperscript{60}

**Brexit impact assessment**

On 19 July 2018 the Commission published a Communication (COM(2018) 556 final), \textit{Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019}, in which it set out the main consequences of a no-deal outcome:

\begin{quote}
\textbf{Box 1: Commission position on main consequences of UK withdrawal on 30 March 2019 without a withdrawal agreement}

\begin{itemize}
  \item The United Kingdom will be a third country and Union law ceases to apply to and in the United Kingdom.
  \item Citizens: There would be no specific arrangement in place for EU citizens in the United Kingdom, or for UK citizens in the European Union.
  \item Border issues: The European Union must apply its regulation and tariffs at borders with the United Kingdom as a third country, including checks and controls for customs, sanitary and phytosanitary standards and verification of compliance with EU norms. Transport between the United Kingdom and the European Union would be severely impacted. Customs, sanitary and phytosanitary controls at borders could cause significant delays, e.g. in road transport, and difficulties for ports.
\end{itemize}
\end{quote}

\textsuperscript{58} MLex, 2 July 2018  
\textsuperscript{59} Politico, 3 July 2018  
\textsuperscript{60} Adam Fleming Tweet, 2 July 2018
What if there’s no Brexit deal?

- Trade and regulatory issues: The United Kingdom becomes a third country whose relations with the European Union would be governed by general international public law, including rules of the World Trade Organisation. In particular, in heavily regulated sectors, this would represent a significant drawback compared to the current level of market integration.
- Negotiations with the United Kingdom: Depending on the circumstances leading to the withdrawal without an agreement, the EU may wish to enter into negotiations with the United Kingdom as a third country.
- EU funding: UK entities would cease to be eligible as Union entities for the purpose of receiving EU grants and participating in EU procurement procedures. Unless otherwise provided for by the legal provisions in force, candidates or tenderers from the United Kingdom could be rejected.

The Financial Times reported on 1 August that the EU was willing to “offer Britain a vague blueprint for future ties with the bloc — if it helps Theresa May avoid a “no deal” outcome and win parliamentary backing for a withdrawal treaty”. On 29 August Michel Barnier said the EU was “prepared to offer Britain a partnership such as there never has been with any other third country”.  

The Commission asked the other 27 EU Member States (the EU27) to accelerate their contingency planning for a no-deal Brexit, “warning of queues of freight at ports as well as implications for the pharmaceutical, financial services and aviation sectors”. Several other EU States have been preparing contingency measures. A summary of EU27 planning is outlined in the Appendix to this paper.

European Commission steps up no-deal planning
On 19 December 2018 the Commission published proposals for a “managed no-deal” exit, with 14 legislative contingency proposals to avoid the worst effects of a cliff-edge Brexit. But it does not offer the UK any side- or mini-deals that some thought would be available. By 29 January 2019 there were 23 proposed measures on the Commission’s Brexit preparedness website, which it describes as “specific, limited and targeted atremedying the negative impact of a disorderly withdrawal or at enabling the necessary adaptation of the legislation”.

61 Politico, Michel Barnier: EU will offer UK unprecedented deal, 29 August 2018
62 The Times (Ireland), 14 July 2018
3. Constitutional implications in the UK

3.1 Parliament’s role in the absence of a deal

The European Union (Withdrawal) Act 2018 (EUWA) set out a process to give Parliament a say in the event that the Government either does not reach an exit deal with the EU’s negotiators, or if a deal is then rejected by the House of Commons. The Government would then have to set out its contingency plans in a written statement and allow the House of Commons to debate the implications of that plan.

Because of changes made to the Standing Orders of the House on 4 December 2018 (under a Business of the House Order), MPs would be able to propose “amendments” to a “neutral” Government motion during this Commons debate. This would allow MPs to seek directly (but politically rather than legally) to influence the Government’s next steps.

How did this statutory role play out?

In the event, the Commons did in fact decline to approve the Prime Minister’s exit deal on 15 January 2019. The Prime Minister went on to make two written statements (on 21 January and 24 January). The House then debated a motion about the ‘plan B’ statements on 29 January.

The outcome of that debate was a resolution saying that the Commons had “considered” the statements. The resolution also included two of the amendments MPs had proposed to the original motion.

The Spelman amendment “rejecting” no deal

Firstly, an amendment from Caroline Spelman was approved by 318 votes to 310. That amendment:

… rejects the United Kingdom leaving the European Union without a Withdrawal Agreement and a Framework for the Future Relationship.

In and of itself, this has no legal effect. It does not, for example, revoke the UK’s notification under Article 50 in the absence of a deal. Neither does it ask or require the Government to do anything in relation to extending Article 50 beyond 29 March 2019. The legal default remains: the UK leaves the EU without a deal on 29 March 2019 at 11pm GMT.

What the vote on this amendment might do, however, is indicate the Government’s prospects of success, were it to make a second attempt at getting Commons approval for a deal.

The Brady amendment “requiring” the backstop to be replaced

The second amendment (in the name of Graham Brady) was approved by 317 votes to 301. Its terms were to:

63 s. 13(4-13) EUWA
64 The House of Lords also must debate a motion “taking note” of any such statements (s. 13(6)(b) EUWA)
65 HC Deb 29 January 2019, cc668-791
What if there’s no Brexit deal?

… require[] the Northern Ireland backstop to be replaced with alternative arrangements to avoid a hard border; support[] leaving the European Union with a deal and [that its supporters] would therefore support the Withdrawal Agreement subject to this change.

As with the Spelman amendment, this has no legal effect. It serves simply as a political instruction to the UK Government. Any change to the terms of the Withdrawal Agreement’s Protocol concerning the Irish border would – in any case – require the EU’s agreement.

Equally, this political direction does not legally prevent the Government from making a second attempt to pass a deal **even in the absence of changes to the backstop.**

**A further role for Parliament?**

In strict statutory terms, Parliament’s role in debating the Prime Minister’s contingency plans is now concluded. Section 13 of the **EUV Act** (and its duty to make statements and hold debates) only becomes “operative” again if and when the Government makes a second attempt to secure an approval resolution.

In political terms, however, a continuing role is expected for Parliament in the coming weeks. The Prime Minister **said the following** at the despatch box during the debate on 29 January:

>We will bring a revised deal back to this House for a second meaningful vote as soon as we possibly can. While we will want the House to support that deal, if it did not, we would—just as before—table an amendable motion for debate the next day. Furthermore, if we have not brought a revised deal back to this House by Wednesday 13 February, we will make a statement and, again, table an amendable motion for debate the next day. So the House will have a further opportunity to revisit this question of leaving without a deal.**

There is therefore a two-pronged expectation: that a new deal will be brought forward following further negotiations with the EU, failing which a similar process to the 29 January debate will be undertaken again, but on a non-statutory basis, on 14 February.

**3.2 What happens to EU law in the UK in the absence of a transition period?**

The UK has already legislated to seek to provide “legal continuity” as and when it leaves the EU. The **European Union (Withdrawal) Act 2018** both repeals the **European Communities Act 1972** (“on exit day”) and makes arrangements to “transpose” much, but not all, of EU law as it exists on exit day, into domestic law. The Act also makes arrangements to allow the UK’s Governments (plural) to make “corrections” to domestic law (including retained EU law) to make sure that it functions properly in light of the UK no longer being an EU Member State.

**EUVWA** operates ‘agnostically’ as to the existence or otherwise of a deal. It is intended to provide legal continuity regardless of the outcome of
the Brexit negotiations. In practice, however, the manner in which legal continuity is achieved, and on what timescale, will depend on whether (and what type of) agreement is ratified. The Withdrawal Agreement of November 2018 expected that a transition/implementation period would be part of any final agreement. Such a period was expected to operate until the end of December 2020.

During that transition period, EU law (including the jurisdiction of the Court of Justice of the EU - CJEU) would continue to have full force and effect. The UK would therefore be expected to provide domestic means of implementing EU law that comes into effect between exit day and the end of transition in its *Withdrawal Agreement and Implementation Bill*.67

The key difference in a ‘no deal’ scenario is that no transition period would apply. The ‘default’ provisions of *EUWA* would come into effect from 29 March 2019 at 11pm GMT. This would mean there would be no obligation, either in international law or domestic law, to ‘track’ or ‘shadow’ changes in EU law from that point onwards.

---

67 The Government White Paper, *Legislating for the Withdrawal Agreement between the United Kingdom and the European Union*, Cm 9674, 24 July 2018, explains that a transition agreement will be delivered by legislating to delay the repeal of (parts of) the *European Communities Act* to a point after exit day.
4. Governance

The European Union involves complex governance processes, as set out below. In the event of no deal, the UK will be outside those processes and there will be no agreement on how future relations between the UK and the EU should be managed, including how disputes should be resolved.

In order to appreciate the implications of a governance vacuum, it is necessary to understand the current arrangements.

4.1 Current governance of the UK-EU relationship

In discussing the governance of both the current UK-EU relationship and the future UK-EU relationship, a clear definition of the concept is helpful. While there are various ways to explain ‘governance’, the Commission’s definition (echoing the terminology of the Council’s negotiating guidelines) is a useful starting point. It suggests that governance of any international agreement is made up of three components:

1. Ongoing Management/Supervision
2. Dispute Settlement
3. Enforcement after dispute settlement

As an EU Member State, all three components of governance of the UK-EU relationship are currently dealt with via EU mechanisms.

**Ongoing management and supervision** of the EU Treaties, or the Member States’ compliance with those, is carried out by several different institutions. There are various ‘managerial’ bodies in the EU, with tasks ranging from ‘big picture’ management to ‘day to day’ management.

The European Council, formally given legal personality in the Treaty of Lisbon, is the ‘big picture’ management institution. As the body where the EU Heads of State or Government meet at least bi-annually, it sets the direction of travel that it wishes other EU institutions to pursue. It is also the body that can formally re-open Treaty negotiations.

However, day to day ‘management’ as well as supervision of EU law falls to the European Commission. Unlike most other international organisations, which do not have powers to produce ‘secondary’ legislation, the EU has legislative abilities that are either initiated or (in the case of tertiary legislation) exercised by the Commission. It behaves like an executive in charge of ‘management’ in this sense, though its activities are steered by the political sign-posting of the European Council. Its supervision powers are more specific and can give rise to the ‘infringement proceedings’ set out in Article 258 of the Treaty on the Functioning of the EU (TFEU). Under this procedure, the Commission
can take action against any Member State it believes is not complying with EU law.

Supervision of compliance with the EU Treaties works in other directions, however. The Member States can also take action against each other (Article 259 TFEU) and the EU institutions (Article 263 TFEU), and the EU institutions can also accuse each other of *ultra vires* action (Article 263 TFEU). Consequently, rather than speaking of a single ‘supervisor’, the EU has a complex and multi-structural system of ‘observing’ compliance with, and the functioning of, the Treaties, which is led (but not exclusively) by the Commission.

**Dispute settlement** in the EU is first of all dealt with via the aforementioned infringement proceedings. If Member States are unresponsive to a Commission administrative action that sets out how they are perceived as not complying with their EU obligations, the Commission can take its case to the CJEU, which then issues a binding judgment either in favour of the Commission or the Member State.

However, early in the EU’s existence, it was realised that the EU legal system would not only give rise to disputes between Member States and the EU, but also to disputes originating with individuals and companies who were either benefitting from or suffering from their Member States not having complied with EU law. Such complaints may arise between such private parties and their Member State, or even between two private parties affected by an EU law provision. The Treaties have to date remained silent on the dispute settlement mechanism applicable to private parties with complaints rooted in the EU Treaties; it is clear only that they do not (generally) have standing before the CJEU. Questions of dispute settlement stemming from EU law arose in national courts, however, and when the CJEU was asked how to address these disputes, the CJEU filled this gap in the Treaties with several seminal judgments.

First, it established in *Van Gend en Loos* that private parties could rely directly on EU law provisions before domestic courts where those EU provisions met certain criteria: they were clear, precise and unconditional.68 Second, it established in *Costa* that EU law was ‘supreme’ over domestic law, and so where a national court observed a clash between domestic and EU law, EU law took precedence.69 Third, it eventually found in *Von Colson* that even if EU law is not clear, precise and unconditional, domestic courts (under the duty of ‘sincere cooperation’ as set out in Article 4(3)TEU) must do everything within their power to interpret a national law *in light of* any EU law that a Member State was meant to comply with.70

The consequence of this case law is that since 1963 there have been two concurrent streams of ‘dispute resolution’ within the EU. The first is at the ‘macro’ level and involves disputes between the Member States and the EU institutions; these are resolved by the Commission through administrative processes or by the CJEU if those administrative processes

---

68 Case 26/62 *Van Gen den Loos* ECLI:EU:C:1963:1
69 Case 6/64 *Costa v ENEL* ECLI:EU:C:1964:66
70 Case 14/83 *von Colson and Kamann* ECLI:EU:C:1984:153
fail. The second is at the ‘micro’ level and involves private parties making a claim in a domestic court, which applies CJEU-developed principles to ensure that they attain their EU law rights.

**Enforcement following dispute settlement** is not EU-level enforcement; the judgment issued in private party complaints about a failure to comply with EU law is a purely domestic judgment and is enforced via whatever enforcement systems the Member States themselves have in place. The EU has no competence to dictate what those are.

The EU (like most international organisations) has very limited enforcement powers with regard to failures to comply with CJEU judgments. If Member States are persistently unwilling to comply with a CJEU judgment, under Article 260(2) TFEU the Commission can bring a further case to the CJEU regarding non-compliance, and the CJEU can impose a ‘lump sum’ or ‘penalty payment’ if it finds for the Commission, with the CJEU itself determining the amount of penalty payment or lump sum (or both) that is appropriate in a given case (albeit with Commission input, as set out in its applications under Article 260 TFEU).71

Many other international agreements have enforcement mechanisms, such as an ability to suspend rights or ‘concessions’ gained under a treaty in response to persistent harmful non-compliance with treaty obligations. The EU model does not, however; the consequences of this appear to be that there is no EU-level enforcement option that ‘excludes’ a Member State from aspects of EU law as a punishment and source of pressure for its own non-compliance. This has been considered in the past; the 1984 Spinelli Draft Treaty endorsed by the European Parliament included a sanctions mechanism that included the suspension of rights for “serious and persistent violations of treaty provisions”. The proposal was not adopted, however, and has not since been revisited.

Does this mean that a Member State cannot be ‘excluded’ from EU law against its wishes, even if it continuously fails to comply with its Treaty obligations? The argument has been made that public international law permits ‘sanctions’ options beyond those set out in Article 258-260 TFEU – suspension of rights on a temporary basis seems impossible, but expelling a Member State is accounted for in a general principle of international law, namely *pacta sunt servanda*. Article 60 of the *Vienna Convention on the Law of Treaties* (VCLT) permits the parties of a treaty to terminate the operation of a treaty vis-à-vis another signatory that has committed a ‘material breach’ of treaty provisions. A ‘material breach’ is defined as covering a “violation of a provision essential to the accomplishment of the object or purpose of the treaty”, which appears to be a similar trigger condition as that applicable to the infringement proceedings under EU law. Logically, therefore, a first ‘material breach’

---

71 Case C-304/02 Commission v France
of the EU treaties should be dealt with under the infringement proceedings.72

However, various international lawyers have argued persuasively that where the EU’s own enforcement mechanisms do not work (and so there is consistent breaching of obligations), Article 60 of the VCLT covers a scenario that is not set out in the Treaties, and thus should apply. The alternative would be the Member States effectively being forced to tolerate a regime that consistently fails to comply with promises it has made under the Treaty, and still being obliged to extend the benefits of EU law to that regime.73 As a final resort, Article 60 of the VCLT appears to permit ‘expulsion’ of sorts from the EU – but not before any complaining Member State or EU institution has taken recourse to Article 258-260 TFEU.

4.2 Governance if there is no Withdrawal Agreement

Withdrawal from the EU will mean the end of most of the architecture described above. The relevant institutions will no longer have the jurisdiction to provide oversight/management, dispute settlement or enforcement functions unless the UK and the EU specifically agree this in any agreement on a future relationship.

Without such an agreement, and without an agreed Withdrawal Agreement that sets out its own governance structure (as discussed in this Commons Briefing Paper), there would be very little structure to the governance of the relationship between the EU and the UK. The framework of interactions would resemble that of the UK and any other third country: it would require diplomatic presence not only in the EU27, but presumably also in the EU seat, Brussels. Management and supervision of the overall relationship would need to take place via a newly established UK ‘mission’ to the EU – but it is inconceivable that diplomacy alone would govern the relationship for any length of time, given the significant connections between the UK and the EU in economic, political and social terms.

There are of course aspects of a no-deal EU-UK relationship that will be governed by existing international organisations and treaties that both the EU and the UK have ratified, each accompanied by their own dispute settlement and enforcement mechanisms. EU-UK trade, for instance, would fall under the WTO’s remit, and disputes would be settled under the WTO’s Dispute Settlement Understanding, which has

exclusive jurisdiction over WTO-related disputes (implications for trade are discussed in section 6 below).

Where the UK and the EU have ongoing ‘relationships’ in areas not explicitly covered by existing treaties, in the absence of an overarching deal with the EU, the parties would have to establish treaty infrastructure underpinning those relationships themselves. This would inevitably involve establishing governance mechanisms for the relationship as set out in these new treaties. These may take the standard form set out by the Commission in its slides on governance, of having a joint committee, with representatives from both the EU and the UK, having supervision/management functions and ‘first stage’ dispute settlement functions, with second-level dispute settlement functions falling to binding arbitration.

Alternatively, any new treaty may include a jurisdictional clause that allows any disputes about its interpretation or application to be referred to the International Court of Justice at request of either party. A new court could also be established by any UK-EU treaties.

Raphael Hogarth of the Institute for Government suggests that in the future relationship, the UK and the EU may pursue novel or hybrid dispute settlement and enforcement setups. This is equally true for a no-deal relationship, but the key difference is that extensive governance structures tend to accompany international agreements that encourage or maintain close cooperation between countries. Agreements surrounding a no-deal Brexit may not necessarily be characterised as such. Any suggestion that a particular governance model or hybrid is likely to appear post-Brexit in the event of no deal would be purely speculative; the most that can be noted is that new governance structures would have to be adopted post-haste to take the place of the elaborate framework set up by the EU, and to manage the intertwined nature of UK-EU relations that on exit day will need careful unravelling, even without a deal.
5. Economic impact

The economic impact of the UK leaving the EU with no deal – without a withdrawal agreement, transition period, framework for a future trade deal or ‘mini-deals’ in certain areas – is difficult to pinpoint with certainty, not least because there is no relevant precedent for a major developed economy leaving a large trading bloc, especially one as integrated as the EU’s Single Market and Customs Union. However, economic analysis and estimates can broadly highlight some of the likely consequences for the economy both in the near and long term.

5.1 No deal WTO scenario over long term

‘No deal’ would mean trade between the UK and EU economies being conducted under the terms of the World Trade Organisation (WTO). See section 6 for further information on trade.

Generally speaking, previous economic modelling exercises from the Government and others show that the higher the cost of trading with the EU (via tariffs and non-tariff barriers), the larger the negative impact on the UK economy. In other words, a scenario where the UK trades with the EU on WTO rules is likely to result in UK GDP being lower in the long term than a scenario where there are fewer barriers to UK-EU trade, such as in a comprehensive free trade agreement.

These ‘losses’ could be mitigated by improved UK growth prospects from trade deals with other non-EU countries and from other policy areas (such as growth-enhancing changes to UK regulation). However, the vast majority of economic studies in this area show that these potential benefits of leaving the EU with no deal do not make up for the higher trade barriers with the EU (given its importance to the UK).74

Government’s long-term economic analysis

One such study is the Government’s analysis of the long-term impact of Brexit on the economy, published 28 November 2018.75 It compares how big the economy is estimated to be – as measured by GDP – in five different future trading scenarios relative to a ‘baseline’ scenario of the UK staying in the EU. This is not a forecast as such as it does not look at all the factors that affect GDP, just those related to Brexit.

The five scenarios are:

- **Government’s proposed deal (‘Chequers‘)** – based on the Government’s July 2018 White Paper and its preferred option. In this scenario the UK is essentially in a customs union with the EU. Barriers to trade with the EU are fairly limited.

- **‘Chequers minus’** – similar to the ‘Chequers proposal’ but incorporating greater trade barriers with the EU. Many commentators argue this is more in line with the parameters of

---

74 Institute for Government, *Understanding the economic impact of Brexit*, October 2018 and OBR Discussion paper No.3, *Brexit and the OBR’s forecasts*, October 2018

75 HM Government, *EU Exit: Long-term economic analysis*, 28 November 2018
the Political Declaration and therefore a more realistic outcome of a future UK-EU trade deal.

- **EEA (European Economic Area)** – where the UK is a member of the EEA inside the Single Market (including free movement of people) but not in a customs union with the EU.

- **Free Trade Agreement (FTA)** – a scenario where the UK and EU sign a free trade agreement. It is assumed there are no tariffs on goods and non-tariff barriers are equal to those in an average trade deal with the EU.

- **No deal** – the future UK-EU trade relationship is based on World Trade Organisation (WTO) rules, rather than a bilateral trade deal.

The Government does not use the terms ‘Chequers’ or ‘Chequers Minus’, instead referring to a ‘White Paper’ scenario. The Government assessed all five scenarios listed above with two different migration assumptions, neither of which is Government policy:

- **No change to rules** – this assumes the current projected flow of EEA workers with no policy changes.

- **Zero net migration from EEA** – assumes that there is no net migration of workers from EEA countries.

Each of these scenarios is compared with a ‘baseline’ scenario of the UK remaining in the EU. **The main outcome of the analysis is that the higher the barriers to UK-EU trade, the lower GDP is.** This is in line with other studies examining the potential impact of Brexit on the economy.

![UK long-term GDP impacts under different scenarios](image-url)

The results show that of the five Brexit scenarios modelled, the Chequers outcome leads to the smallest long-term negative impact on GDP, compared with staying in the EU.

Under the more restrictive migration scenario, ‘Chequers Minus’ results in GDP being 3.9% lower – this figure has been used by some economists and commentators as the scenario closest to what is contained in the UK-EU Political Declaration.
The biggest single influence on GDP comes from non-tariff barriers to trade. This includes regulatory and administrative requirements that make it more difficult for businesses to export and import goods and services.

The analysis also suggested that under all the scenarios the government budget deficit would be larger compared with staying in the EU in the long term. The deficit is expected to rise the most in scenarios that introduce the greatest UK-EU trade friction, ranging from an additional 3.1% of GDP in 2035/36 under a no-deal scenario with zero net migration of EEA workers to only a very slight (less than 0.1%) increase under a Chequers deal with no change to migration rules.

The Government’s analysis is broadly in line with other studies that estimate the long-term economic impact of Brexit. For more information on the Government’s analysis and comparisons with other studies please see the Library briefing paper, Brexit deal: Economic analyses.

In summary, a ‘no deal’ scenario with no transition or future trade framework would, in the view of a large majority of economists, result in the UK economy growing more slowly than with other scenarios over the longer term.

### 5.2 Short-term impact of ‘no deal’

This section highlights some of the possible short-term economic consequences of ‘no deal’ and looks at the factors that may play a role in determining their impact.

Most research that has been conducted on the economic effects of Brexit have concentrated on the long-term implications rather than the short-term. This is because, somewhat counterintuitively, it can be easier to estimate the long-term impact.

Long-term analysis usually involves comparing different assumptions about an economy that is in its ‘steady state’; the ups and downs of the business cycle are not covered. Short-term forecasts are the kind that

---

76 Institute for Government, Understanding the economic impact of Brexit, October 2018 and OBR Discussion paper No.3, Brexit and the OBR’s forecasts, October 2018

77 Library briefing paper 8451, Brexit deal: Economic analyses, 4 December 2018
you see on a more regular basis, for example from the Bank of England and the Office for Budget Responsibility (OBR) at Budget time. The purpose behind them is to try and predict what will happen to the economy based on recent economic performance and expected future economic and policy developments.

Forecasting short-term developments is easier when there are smooth economic conditions. Predicting how a sudden change – such as in a no-deal scenario – would affect the economy is very tricky. The high degree of uncertainty surrounding a no-deal Brexit adds to the difficulty. For example, we do not know the precise circumstances that would lead to no deal and how financial markets, businesses and consumers, among others, would react. However, there are some general points that can be discussed and analysed.

If the UK leaves the EU without any transitional arrangements or a framework for a trade agreement, the way trade between the UK and EU is conducted would change overnight. The UK would become a third country with regards to the EU. This is expected to result in the imposition of tariffs on UK exports to the EU and on EU imports to the UK. On average these tariffs are low, averaging around 3%, but for some goods, such as many agricultural products, they are higher.

A potentially more disruptive consequence would be non-tariff barriers. These include additional administrative paperwork, customs procedures and checks (for example, relating to rules of origin), technical requirements and regulatory standards. For example, EU food safety law requires all meat products imported from countries outside the Single Market to be traceable to businesses that have been individually approved by the European Commission’s Food and Veterinary Office. In a no deal scenario, those approvals would not exist and therefore - barring any unilateral, and most likely temporary, derogation from that legislation for British products - UK lamb, beef and poultry exports could be refused entry into the EU from March 2019 onwards. The UK would also no longer be party to the trade agreements the EU has negotiated (see section 6.3 for information on trade with non-EU countries), unless bilateral agreements are reached between the UK and these countries.

The impact of a no-deal scenario stretches beyond those who import and export goods and services. From the transportation to the financial services sectors, ‘no deal’ would have implications for businesses.

Many economists expect the pound to fall in value in the event of ‘no deal’. If this did happen, the price of imports would rise, pushing up inflation (as it did following the EU referendum). In turn, the purchasing power of businesses and consumers would be squeezed. UK exports

---

78 On the assumption that the UK would not change its Most Favoured Nation (MFN) tariffs under WTO rules.
79 WTO, European Union tariff profile [accessed 17 August 2018]
80 See article 12 of the Official Controls Regulation (Regulation 854/2004). The legislation allows this requirement to be waived for a specific country, but this requires a proposal by the European Commission and the approval of a qualified majority of Member States. That derogation can also be limited in time.
would become cheaper internationally, potentially moderating some of the effects of disruption to trading with the EU (depending on the extent to which they rely on imported goods and services, as these would have become more expensive). In this scenario there is a risk that confidence could fall with investments being deferred or scrapped and consumers cutting back on their spending.81

Bank of England’s short-term economic analysis
In response to a request from the Commons Treasury Select Committee, the Bank of England published analysis of different short-term scenarios relating to Brexit.82 This analysis, EU withdrawal scenarios and monetary and financial stability, was published on 28 November 2018.83 The report assesses how leaving the EU could affect the Bank’s ability to deliver on its objectives for monetary policy and for UK financial stability.

The Bank’s analysis looks at two broad Brexit scenarios involving: (i) a deal and (ii) no-deal and how these might affect the economy over the next five years (up to the end of 2023). Each of these scenarios themselves have two different variations within them.

Under the two “deal” scenarios:

- In the “close relationship” scenario GDP would be 1¼% higher by end-2023 compared to current Bank forecasts.
- In the “less close relationship” scenario GDP would be ¾% lower by end-2023 compared to current Bank forecasts.

Under the two ‘no-deal’ scenarios:

- In the “disruptive no-deal Brexit” scenario GDP would be 4¾% lower by end-2023 compared to current Bank forecasts.
- In the “disorderly no-deal Brexit” scenario GDP would be 7¾% lower by end-2023 compared to current Bank forecasts.

GDP and some other economic indicators are estimated for each quarter up to the end of 2023 for all four scenarios. The estimated paths for GDP are summarised in the chart below, produced by the Bank.84

---

81 UK in a Changing Europe, Cost of No Deal, July 2017
82 Treasury Committee, Letter from Mark Carney, Governor, Bank of England to the Chair on Brexit Analysis, 16 October 2018
83 Bank of England, EU withdrawal scenarios and monetary and financial stability, 28 November 2018
84 Ibid
What if there's no Brexit deal?

The Bank’s analysis states that the worst case scenario of a disorderly no-deal would mean GDP falling by 8% at its lowest point, a greater decline than during the financial crisis. In addition, unemployment would peak at 7.5%, inflation would peak at 6.5% and sterling would fall by 25%.

Some economic commentators have questioned some of the assumptions the Bank used in this disorderly no-deal scenario.\(^85\) Criticism has focused on the assumption that interest rates would rise mechanically to 5.5% to combat the expected rise in inflation, despite a deep recession.\(^86\) The Bank in its defence notes that, given its role as in setting monetary policy and ensuring financial stability, it has a duty to look at a worst case scenario.\(^87\)

Other studies

The National Institute for Economic and Social Research (NIESR) think tank published research in late November 2018 which provided estimates for 2023 that could be broadly compared.\(^88\) Estimates for a ‘deal’ scenario are broadly comparable between NIESR and the Bank of England. But under their respective orderly ‘no-deal’ scenarios, the Bank’s estimates show a larger negative impact on GDP than the NIESR’s.\(^89\)

The OBR has warned about the possible disruption a no-deal scenario would cause, although it noted the high level of uncertainty:

… a disorderly exit is not impossible and it could have a severe short-term impact on demand and supply in the economy and on the public finances. UK asset prices could fall sharply which, together with heightened uncertainty, would cause households and businesses to rein in their spending. A fall in the pound would

---

\(^85\) For example, Andrew Lilico, CAPX, "The Bank of England’s Brexit forecasts aren’t just wrong. They’re absurd", 29 November 2018

\(^86\) For example: The Times, "Bank of England is being drawn into politics, says Andrew Sentance", 6 December 2018

\(^87\) Treasury Committee, Oral evidence: The UK’s economic relationship with the European Union, HC 473, 4 December 2018

\(^88\) NIESR, The Economic Effects of the Government’s Proposed Brexit Deal, 26 November 2018. This study was funded by the campaign group People’s Vote.

\(^89\) Arno Hantzsche (NIESR), Twitter, 3.55pm 29 November 2018
also raise domestic prices, squeezing households’ real incomes and spending. And there could be temporary constraints on supply if, for instance, a lack of customs preparedness led to significant delays at the border. It is next to impossible to calibrate this sort of scenario with confidence because of the lack of precedent.90

UK in Changing Europe, in a September 2018 report on a no-deal Brexit, noted that due to potential disruption, “a severe recession, while not inevitable, is clearly a possibility”.91 However, the report stressed the uncertainty in such a scenario and noted how modern advanced economies can weather disruptions:

Again, however, note that the measured impact on GDP may be less than is suggested by the above discussion. One remarkable aspect of modern economies, at least in developed countries with strong institutions, is how resilient they are to short-term disruptions, whether the result of war, natural disaster or interruptions to trade flows.92

5.3 Factors that could influence the magnitude of the economic impact

Certain issues may influence the degree to which the economy is affected by a no-deal departure from the EU. A few are summarised in this section.

Preparedness

The more prepared the Government, businesses and the wider public are for no deal, the greater opportunity there will be for steps to be taken to limit the economic disruption caused. As noted in section 2.1 of this paper, the Government, like the EU, has published guidance to businesses and consumers on how to prepare for a no-deal Brexit. It has also stepped up its plans for a no-deal Brexit, including additional funding for government departments.93

However, due to the inherent bilateral nature of trade, the extent to which the UK can unilaterally prepare for disruption is limited. It has, for example, no control over how customs officials in France, the Netherlands and Belgium would treat UK imports in a no-deal scenario, and any delays in clearing freight moving from the UK to the EU27 could also disrupt traffic in the other direction. The Government’s no-deal planning also relies to some extent on the EU acting unilaterally to avoid disruption, but this cannot be guaranteed.

Timing

How long before Brexit day will it be known that ‘no deal’ will happen? At least in principle, the longer there is to prepare for it, the more that can be done to plan for and adjust to such an outcome.

90 OBR Discussion paper No.3, Brexit and the OBR’s forecasts, October 2018, p98, para 5.15
91 UK in a Changing Europe, Cost of No Deal Revisited, 3 September 2018
92 Ibid.
93 HM Treasury, More than £2 billion Brexit preparation funding awarded to departments for a successful EU exit, 20 December 2018
In December 2017, the House of Lords EU Committee stated that the later a no-deal outcome is known, the more damaging it is likely to be:

It is clear that the later ‘no deal’ emerges as the outcome of the negotiations, the more damaging its effects will be. To hold out the prospect of a ‘no deal’ outcome until the eleventh hour, and even to suggest that the clock could be ‘stopped’ to allow negotiations to continue beyond that point, even when there is no obvious legal mechanism to do so, would be irresponsible. For one thing, it guarantees that uncertainty for business and citizens will continue, and even increase, as ‘Brexit day’ approaches.\(^\text{94}\)

**How long ‘no deal’ lasts**

Even in the event of a no-deal outcome, some form of deal may be agreed subsequently, even if it takes the form of a basic functional ‘bare bones’ deal. Even in the absence of a Withdrawal Agreement there may be some ‘mini deals’ ahead of the UK’s exit from the EU – for example in relation to air traffic rights – to avoid some of the most immediate disruption to transport and trade links.

There may be economic pressures for talks following no deal. Possible economic effects in the UK have been described above, but EU Member States could also be impacted to a lesser degree, particularly in Ireland.\(^\text{95}\)

**5.4 The financial settlement**

The November 2018 Withdrawal Agreement sets out how the UK and EU will settle their outstanding financial obligations to each other. The matter was discussed during the first phase of exit negotiations under the heading of the ‘financial settlement’. The political agreement reached on the settlement was set out in the Joint Report between the UK and the European Commission.

The financial settlement was labelled in the media as the UK’s ‘exit bill’ or ‘divorce bill’. It is estimated that the settlement will cost the UK £39 billion by the time its final payment has been made, potentially in the mid-2060s. The Library briefing Brexit: the exit bill provides further details about what has been agreed and how the negotiations proceeded.

**What has been agreed?**

The agreement reached on the financial settlement stipulated that the UK would participate in the EU Budget as if it were still a Member State during the transition period (from March 2019 until 31 December 2020) and contribute afterwards towards existing financial commitments that remain outstanding at that point, including the pension liabilities of EU staff. The settlement also provides that:

- the UK will over time wind up its financial involvement with the European Investment Bank (EIB) but remain liable for a share of

---

\(^\text{94}\) House of Lords EU Committee, *Brexit: deal or no deal*, 7 December 2017, para 59

any contingent liabilities that crystallise in relation to EIB lending that took place before 30 March 2019;96

• the UK will continue to participate in the European Development Fund, which is legally separate from the EU budget, until the current round ends at the end of 2020.97

What is the legal status of the financial settlement?
The terms of the settlement will only become legally binding once the WA is ratified by the EU (by votes in the EP and Council) and the UK. If there is no withdrawal agreement, the political agreement reached on the financial settlement will not be legally binding.

What happens to the financial settlement if there is no deal?
There is uncertainty about what happens to the outstanding UK-EU financial obligations if there is no deal. It is likely that politics and the appetite for an ongoing EU-UK relationship will largely dictate the extent to which the two parties honour the agreement reached over the financial settlement.

What have the UK Government and EU said?
The UK Government recognises that it would have outstanding financial commitments to the EU if it were to leave without a deal and not honouring these could see the UK being regarded as an unreliable partner.98,99 Ministers have suggested that an alternative arrangement would have to be negotiated, which might not necessarily follow the precise terms set out in the financial settlement.100

The EU believes that a no-deal Brexit should not affect the agreed principle that the UK and EU will honour their financial commitments.101 They expect an alternative financial settlement to be agreed “in a future international agreement” between the UK and EU.102

The EU proposes that the UK continues to participate in EU Budget 2019
The European Commission has developed a series of contingency measures to prepare for the possibility of the UK leaving the EU without a Withdrawal Agreement. One of its proposals for no deal focuses on the 2019 EU Budget and would, if brought into force, provide for the

---

96 National Audit Office, Exiting the EU: The financial settlement, 20 April 2018, para 2.28
97 See also the European Scrutiny Committee’s Report of 25 April 2017.
98 HC Deb. 3 December 2018 c570
99 Treasury Committee, Oral evidence: Budget 2018, HC 1606, Q290-292
100 ibid; House of Lords Committee on the EU, Oral evidence: Scrutiny of Brexit Negotiations, 29 August 2018, Q7
101 This is reflected, for instance, in the introduction to withdrawal agreement agreed by the 27 Member States and the United Kingdom government.
102 European Commission, Proposal for a Council Regulation on measures concerning the implementation and financing of the general budget of the Union in 2019 in relation to the withdrawal of the United Kingdom from the Union.
UK to pay into the 2019 EU Budget and for UK beneficiaries to continue receiving EU funding.\(^{103}\)

As already discussed, the EU expect an alternative financial settlement to be agreed “in a future international agreement” between the UK and EU. The proposal for the 2019 EU Budget is therefore seen as a way of minimising disruption and facilitating a financial settlement between the EU and UK.

The proposal addresses what the Commission sees as a “legal vacuum” that would be created in the event of no deal: in the absence of the EU’s contingency plan there would be no legal arrangement for the UK making payments to the EU Budget and for UK beneficiaries remaining eligible for EU funding.

The Commission’s proposed contingency framework would allow for the UK to continue to benefit from EU funding,\(^{104}\) subject to the condition that the UK contributes to the 2019 EU Budget. The UK would be required to confirm by 19 April 2019 that it is prepared to contribute to the 2019 EU Budget and would have to make its first payment by 30 April 2019. The UK will also have to confirm that it will continue to accept controls and audits of EU funding.

**Implications for the different components of the settlement**

The financial settlement brings together a range of financial items, not just those that arise from the UK’s participation in the EU Budget. For instance, it sets out how the UK’s financial relationship with the European Investment Bank (EIB) will be wound up and how the UK will continue to contribute to the European Development Fund. Below we consider what ‘no deal’ may mean for some of the significant individual items included in the financial settlement, in the absence of any negotiated agreement.

**Legal arguments about EU Budget items**

The Lords EU Financial Affairs Sub-Committee considered the UK’s legal liability for items related to the EU Budget if there is no withdrawal agreement in early 2017.\(^{105}\) Legal expert witnesses to the Committee had different opinions on the legal status of these items. However, the Committee concluded that under EU law, without a withdrawal agreement Article 50 TEU allows the UK to leave without being liable for outstanding financial obligations.\(^{106}\) The Committee also concluded that individual EU Member States may seek to bring a case against the UK for outstanding payments under public international law, but also that “international law is slow to litigate and hard to enforce. In

---

103 ibid

104 There would be some restrictions to the funding UK beneficiaries would be eligible for. Restrictions could apply in relation to security or actions involving the European Investment Bank or the European Investment Fund.

105 House of Lords EU Committee, *Brexit and the EU Budget*, 4 March 2017

106 ibid., paras 135-137 and para 159
addition, it is questionable whether an international court or tribunal could have jurisdiction”.107

The Lords Committee said that the political and economic consequences of the UK leaving without making any payment “are likely to be profound”.108

The Institute for Government has also suggested that if the UK refused to make any payments to the EU, then redress may be sought through the International Court of Justice or the Permanent Court of Arbitration.109

In December 2018, the Attorney General set out the legal arguments surrounding the UK’s financial commitments if there is no ratified WA. He also offered his view on these arguments and addressed the wider political considerations:

The position on money is this. The view of the Government, and my view, is that we would have obligations to pay a certain amount of money were we to leave the European Union without a deal. The House of Lords European Union Committee concluded that there would be no obligation under EU law. That is a stronger argument—not necessarily an incontestable one—as to our obligations under EU law, but the Committee also concluded that we might have obligations under public international law, and with that I agree. There is an argument that we would not have an obligation under public international law, but it is an argument unlikely to be accepted by any international tribunal.

My view is therefore that we would owe a presently unquantifiable sum were we to leave the European Union without a deal. It is impossible at this stage to say how much. It is true that the European Union is not a member state and is not a state, and therefore it is unable to take the case to the International Court of Justice. It might therefore be difficult to enforce the public international law obligation that existed. However, I ask the House to reflect on the fact that if this country, acknowledging that such obligations probably exist or do exist, did not pay them, it would be likely to cause the deepest resentment, just as it would to any of us who were unpaid a debt. If we leave a club, we pay the bar bill. If we do not pay the bill, we are not likely to get a lot of consideration from the other side.110

Under the financial settlement, the UK would continue to be eligible to receive EU funding from the 2019 and 2020 EU Budgets as if it were still a Member State. Section 5.6 on EU funding discusses the impact of ‘no deal’ on this funding.

European Investment Bank

Under the European Investment Bank (EIB) Statute, the shareholders are the EU Member States,111 so it is likely that the UK will cease to be a member of the EIB, whether there is a ratified WA not. The financial

107  ibid
108  ibid
109  Institute for Government, The EU divorce bill, March 2018
110  HC Deb. 3 December 2018 c570
111  EIB, Statute and other Treaty provisions, 1 July 2013
settlement explains how the UK’s financial involvement in the EIB will be wound up. It sets out:

- the schedule for the gradual return of €3.5 billion of paid in capital to the UK;
- that the UK will provide a guarantee to the EIB equal to its callable capital (up to €39 billion) – an amount the UK currently agrees to provide if required. The UK will also provide a guarantee equal to the amount of paid in capital returned to it. The guarantees will decrease as EIB loans associated with it mature.

The UK has paid in €3.5 billion to the EIB, which the Bank leverages for its operations. It has also agreed that it will pay in up to a total of €39.2 billion if necessary (all Member States have made similar guarantees of varying sizes, in line with the size of their economies). If the UK ceased to be a shareholder, it would probably want to receive its €3.5 billion back immediately and stop bearing its share of the liabilities of the Bank’s outstanding loans, which would have a severe impact on the Bank’s operations. For its part, the EIB would probably want to keep this money, at least in the short term. Given that there is no clear process in the Bank’s Statute to deal with this situation, further negotiation and possibly legal action would be the likely result.

In July 2017, the UK’s position paper on the privileges and immunities enjoyed by EU institutions highlighted that the EIB uses its position as an EU agency to operate in the UK (and has lent considerable amounts to UK-based operations, such as the Northern Powerhouse Investment Fund). Without a deal, its ability to do so would cease, which calls into question whether these operations could continue to receive funding. It seems likely that a subsequent negotiation would have to take place between the UK and EIB to settle the matter.

**UK participation in the European Development Fund**

The European Development Fund (EDF) is the EU’s main instrument for providing overseas development assistance to countries in Africa, the Caribbean and the Pacific. For historical reasons, it is separate from the general EU Budget in a legal and accounting sense. The EDF is broken down over time into ‘EDF funds’. The UK’s spending through the EDF contributes towards its commitment to spend 0.7% of gross national income (GNI) on overseas aid.\(^{112}\)

The financial settlement says that the UK will remain part of, and will contribute to, the EDF until the close of the 11th EDF fund in December 2020. The UK also has a share of the EDF’s Investment Facility. This funding will be returned to the UK as the investments end.

Each EDF fund is set out in a separate treaty – called an ‘internal agreement’ – outside the EU Treaties.\(^{113}\) Strictly speaking, the EDF internal agreements are not subject to the Article 50 process, so if there is no deal and the EU Treaties cease to apply in the UK after 29 March

---

112 For information on the UK’s aid target, see Commons Briefing Paper 3714, *The 0.7% aid target: June 2016 update*, 20 June 2016.

113 European Scrutiny Committee, Documents considered by the Committee on 25 April 2017, *28 European Development Funds*
2019, the EDF internal agreements will not cease. This suggests that in the event of ‘no deal’ the UK’s legal obligation to make contributions to the EDF would persist in a legal sense, unless the UK can end its involvement in the internal agreements some other way.

Whatever happens, it is unlikely that the UK’s total spending on overseas aid will decrease. In 2016, £1.5 billion of the £13.4 billion spent by the UK on overseas aid went through the EDF. Continuation to meet the statutory target for UK overseas aid of 0.7% of GNI would necessitate channelling any spending no longer going through the EDF to other overseas aid programmes. It is reasonable to anticipate that about 10% of the UK’s 2019-20 aid budget will potentially be available for reallocation in the event of a no-deal Brexit. The UK is also considering seeking participation in the EU’s development programme from 2021 onwards – the Neighbourhood, Development and International Cooperation Instrument – although the legal parameters for any such involvement are yet to be decided by the EU.

Politics and future EU-UK relations

Politics and the appetite for an ongoing EU-UK relationship are likely to dictate the extent to which financial commitments are settled if there is no deal.

The UK Government has said that after Brexit it would like to participate as a third country in some EU programmes and agencies, such as the next research and innovation programme (Horizon 2020 is the current programme) and the European Defence Fund. If there is no deal it seems unlikely that the EU would allow the UK to participate in any of its programmes unless a financial settlement outside the Withdrawal Agreement can be agreed.

There are other areas where the UK and EU would favour an ongoing relationship and, in the event of ‘no deal’, coming to an agreement on the financial settlement could help to facilitate such co-operation.

Reaching an agreement would also help to minimise disruption to the EU Budget. The UK is a net contributor to the EU Budget: it pays more into the EU Budget than it receives in EU funding. The EU Budget could be significantly disrupted if UK payments to the EU ceased following a no deal exit. This is particularly important for the final two years of the current EU budget plan – 2019 and 2020 – as the UK’s involvement was expected.

The Lords Committee concluded that “the political and economic consequences of the UK leaving the EU without responding to claims under the EU budget are likely to be profound”.

114 House of Lords Library Briefing, Brexit: Overseas Development Assistance, 6 February 2018
115 The European Scrutiny Committee reported on the UK’s post-Brexit involvement in EU development programmes on 12 September 2018.
116 The Government White Paper on the future relationship between the UK and the EU proposes continued UK participation in several EU programmes and agencies.
117 House of Lords EU Committee, Brexit and the EU Budget, HL Paper 125, 4 March 2017, paras 135-137
5.5 Funding from the EU

The situation regarding EU funding in the event of ‘no deal’ is uncertain, largely because the EU Treaties governing the administration of this funding were not written to take account of the possibility of an EU Member State leaving the Union. The consequences of the UK leaving without a deal are therefore unclear, and will likely only be resolved by further negotiation or possibly legal action.

The House of Lords EU Committee examined this issue in their report on Brexit and the EU Budget. They concluded that there may be different legal situations as regards ongoing funding from the different EU schemes, but that in general:

The legal rights of UK-based persons to continue to receive EU funding post-Brexit are uncertain, and the Government, in undertaking to meet outstanding obligations (such as CAP payments) from domestic funds, implies that it does not expect the EU to meet them.\(^\text{118}\)

It appears, then, that the most likely outcome is that funding from the EU would stop at the point when the UK leaves, particularly if the UK made no further financial contributions to the EU. The UK Government has made some commitments around replacing this funding domestically, summarised in their no-deal guidance notice for EU-funded programmes.

Structural Funds

The main Structural Funds providing money to the UK are the European Regional Development Fund (ERDF) and the European Social Fund (ESF). Along with some smaller funds, these are set to provide a total of €17.2 billion to the UK over the period from 2014 to 2020; much of this has already been paid out, but there will still be some that will not have been paid if the UK leaves the EU in March 2019.

The ERDF and ESF operate by providing money to Managing Authorities (MAs) within EU Member States, which then distribute it according to operational programmes agreed with the European Commission. In England, Government departments act as the MAs,\(^\text{119}\) while the Scottish and Welsh Governments and the Northern Ireland Executive perform this role in their respective countries.

If there were no deal, it is very likely that the EU would stop paying out money to the MAs. The UK Government has guaranteed all funding to organisations that secure funding from the EU up to the end of 2020, so even in the event of ‘no deal’ they would continue to receive this money.\(^\text{120}\)

---

\(^\text{118}\) House of Lords European Union Committee, *Brexit and the EU budget*, 4 March 2017, HL Paper 125 2016017, paragraph 149

\(^\text{119}\) The departments in question are MHCLG (for the ERDF), DWP (for the ESF), and Defra and its subsidiaries for the EAFRD and EMFF.

\(^\text{120}\) HM Treasury, *Funding from EU programmes guaranteed until the end of 2020*, 24 July 2018
Direct funding from the European Commission

Some EU funding comes directly to the UK from the European Commission, generally for specific projects – research funding under the Horizon 2020 programme is one such example. In the event of ‘no deal’, this funding would be terminated – the EU made this clear in an announcement on its Research & Innovation Participant Portal website (emphasis added):

For British applicants: Please note that until the UK leaves the EU, EU law continues to apply to and within the UK, when it comes to rights and obligations; this includes the eligibility of UK legal entities to fully participate and receive funding in Horizon 2020 actions. **Please be aware however that the eligibility criteria must be complied with for the entire duration of the grant.**

If the United Kingdom withdraws from the EU during the grant period without concluding an agreement with the EU ensuring in particular that British applicants continue to be eligible, you will **cease to be eligible to receive EU funding** (while continuing, where possible, to participate) **or be required to leave the project** on the basis of Article 50 of the grant agreement.121,122

The UK Government has promised to underwrite the payment of all Horizon 2020 awards to UK entities, even if such projects continue after the UK has left the EU; this will still be the case if there is no deal,123 and this guarantee also applies to all other directly-funded programmes up to the end of 2020.124 This does not, however, help researchers based in other EU countries who have partnered with organisations in the UK, and who might have to break that partnership.

Agricultural funding

The UK receives a large amount of support for its agricultural sector under the EU’s Common Agricultural Policy (CAP). This is mainly delivered through the European Agricultural Fund for Rural Development (part of the Structural Funds mentioned above) and the European Agricultural Guarantee Fund (EAGF), which is set to provide a total of €22.5 billion to the UK between 2014 and 2020. Defra reports that £3.4 billion in CAP payments was paid out to farmers in the UK in 2017 alone.125

Under any Brexit scenario this funding will stop as CAP membership is not available to non-EU member states. The Government has published an Agriculture Bill with measures for farm support after Brexit this funding will stop. In their 2017 manifesto, the Conservative Party pledged to maintain CAP funding at the same level in cash terms until the end of the parliament (expected to be in 2022);126 later Government announcements have confirmed this pledge. Farmers would therefore

---

121 European Commission, Research & Innovation Participant Portal, 6 October 2017
122 The Article 50 referred to here is not the same one that the UK invoked to leave the EU; it is the article in the Grant Agreement signed by beneficiaries that allows either party to the agreement to terminate it.
123 BEIS, UK Participation in Horizon 2020, March 2018
124 HM Treasury, Funding from EU programmes guaranteed until the end of 2020, 24 July 2018
125 Defra, UK CAP Payments, retrieved 28 June 2018
126 Conservative Party manifesto, page 26, 18 May 2017
continue to receive funding up to this point; it is less clear how much funding would be available afterwards.

For more detail, see section 10 on food and farming.
6. Trade

The UK is currently party to over a thousand international agreements with third countries as a member of the EU. These cover trade, regulatory and policy co-operation in a range of areas, including fisheries, agriculture, the nuclear sector and transport (including aviation agreements). How many of these are pertinent to the UK is as yet unclear. There is little information available on what the Government’s intentions are regarding continuity of arrangements covered by the EU’s non-trade agreements. But leaving the EU without a deal would mean a radical change in UK trade relationships with the EU and the rest of the world.

6.1 Trading under WTO rules

Trading under the WTO rules is the ‘default’ option, which would mean that the tariffs on trade in goods apply to trade between the UK and the EU and between the UK and the rest of the world (see also section 5.1). The UK is a founding member of the WTO in its own right, but as an EU Member State it is in practice represented in the WTO by the European Commission. After Brexit the UK will no longer be represented by the EU and will be a fully independent member of the WTO. The UK will need to update the terms of its WTO membership, for example by establishing its own ‘schedule’ of trade commitments at the WTO. This process is not expected to be straightforward.

The WTO represents a rules-based trading system, based on multiple multilateral agreements between Member States. Its General Agreement on Trade and Tariffs (GATT) governs how tariffs are applied and addresses non-tariff barriers (quotas, rules of origin and various other legal or bureaucratic trade restrictions). The leading principle of non-discrimination requires WTO members not to treat any member less advantageously than any other: grant one country preferential treatment, and the same must be done for everyone else. There are exceptions for free trade areas and customs unions like the EU, preference schemes for developing countries, and anti-dumping duties (which are not determined on a non-discrimination basis). Beyond these, the tariff and treatment that applies to the ‘most-favoured nation’ (MFN) must similarly apply to all.

Based on the application of the MFN principle of the WTO, the EU would have to apply the same tariff to imports from the UK as to imports from any other nation that has no preferential trade agreement

---

127 For further information on the EU’s trade and other agreements, see House of Commons Briefing Paper 8370, UK adoption of EU external agreements after Brexit, 24 July 2018, and House of Commons International Trade Select Committee report on Continuing Application of EU trade agreements after Brexit, 28 February 2018.
128 The UK in a Changing Europe, Cost of No Deal, 20 July 2017
129 The UK will almost certainly have to establish its independent position at the WTO, irrespective of whether there is a deal with the EU.
with the EU in the event of no-deal. The same would apply to all other countries importing goods from the UK.

If the UK would choose to apply zero tariffs to the EU unilaterally in order to keep barriers to imports from the EU low as before, it would have to apply the same zero tariff to imports from all other WTO members, with consequences to domestic industries like agriculture. Moreover, the EU would not be able to reciprocate, unless it was happy to give imports from all other WTO members tariff free access to its market.

Without a deal the UK’s trade in services with the rest of the world would be governed by the WTO General Agreement on Trade in Services (GATS). The MFN principle applies to trade in services in the same way it applies to trade in goods, albeit with more options for exceptional treatment. Members can tailor their commitments under GATS in line with their national policy and schedule their commitments to a handful of sectors or choose to provide market access in a wide range of services.

It should be noted that there are not many countries who trade under the WTO rules and only those. Most have bilateral or regional FTAs and facilitation agreements which cover other aspects than tariffs and focus on minimising the burden of regulatory barriers such as customs procedures. As these agreements have impact on trade flows and volumes, WTO tariffs are only a part of the picture.

According to the BBC report Reality Check, the EU (and the UK) trades with 24 countries and territories under WTO rules alone with respect to tariffs on goods. These include the US, China, Russia, Brazil, Argentina, Australia, New Zealand and Saudi Arabia. However, the Institute for Government notes that this trade is facilitated by various bilateral agreements: on customs co-operation, data exchange, product standards and more.\footnote{BBC News, Reality Check: Does the UK trade with ‘the rest of world’ on WTO rules? 6 November 2017; Institute for Government, Do other countries trade with the EU on ‘WTO-only’ terms?, 22 June 2017}

Leaving the EU, and the customs union in particular, would allow the UK to pursue its own trade interests and forge its own free trade agreements. What will trade look like after a no-deal Brexit? The next sections look at the UK in relation to the EU and the rest of the world.

6.2 Would WTO rules allow for continuation of current UK-EU trade arrangements?

Article XXIV of the GATT sets out rules for bilateral and plurilateral (between several countries) trade agreements. It allows countries to form a customs union (CU) or of a free trade area (FTA) by allowing exceptions to the Most Favoured Nation rule. Article XXIV (5) allows countries to adopt an interim agreement necessary for the formation of a customs union or a free-trade area. This is a recognition of the fact
that a CU or an FTA cannot be concluded rapidly and might need gradual implementation. 132

An interim agreement can apply for a “reasonable length of time”, allowing countries to build up to full implementation. WTO members have agreed a so called ‘Understanding’ to Article XXIV, which clarifies that the “reasonable length of time” referred to in paragraph 5(c) of Article XXIV should be read as 10 years, a time limit that could be exceeded only in exceptional cases.

Some advocates of leaving the EU without a deal have referred to this GATT provision and claimed that it would allow the UK to continue its tariff free trade with the EU for a certain number of years. However, trade and WTO law experts say that this is a misinterpretation of GATT Article XXIV.5, as it does not offer any automatic continuation of the status quo to the UK should it leave the EU without a deal and would not give room for unilateral action on the part of the UK as it refers to “an interim agreement” which by definition involves at least two parties (the UK and the EU) agreeing. Furthermore, the provision is designed for forming a CU or an FTA, not leaving one.

Former WTO official, Peter Ungphakorn, explains on the UK Trade Forum blog that for the UK to present an interim agreement to the WTO, it would have to overcome those three hurdles. They are:

- The UK would have to reach agreement with the EU. The UK could not do this unilaterally. So this isn’t exactly “no deal”.
- That agreement would have to include a plan and timetable for achieving the final agreement. And it would have to have a sufficient amount of detail, including what the final agreement would look like, because …
- … the WTO membership could demand changes, if they weren’t convinced that the plan could be achieved within about 10 years. The UK and EU would have to accept those changes or scrap the agreement. (This doesn’t apply to free trade agreements that are not interim.)

Theoretically, an interim agreement could be used if the UK had started to negotiate a trade deal with the EU, for example, a Canada style FTA. Both parties might agree to register an interim agreement with the WTO under Article XXIV which would then apply pending the negotiations. But such an interim agreement needs to have a “plan and schedule” towards an end-state (GATT Article XXIV.5(c)) and has to be agreed by the UK and the EU. The UK and EU could alternatively avoid this route altogether and quickly conclude an interim basic FTA that eliminates tariffs and then notify it to the WTO as a fully-fledged agreement to remain in force until a replacement is agreed. 133

133 See also Commons Library Insight, No-deal Brexit and WTO: Article 24 explained, 4 February 2019.
6.3 UK trade with the EU

As an EU Member State, the UK is part of the EU Single Market and customs union. The EU, taken as a whole, is the UK’s largest trading partner. In 2017 UK exports to the EU were £274 billion (44% of all UK exports). UK imports from the EU were £341 billion (53% of all UK imports). Services accounted for 40% of the UK’s exports to the EU in 2017.

All the trade within the Single Market takes place (up to the point of exit) without paying tariffs or facing quota restrictions on goods. The Single Market also aims to eliminate non-tariff barriers such as differing technical specifications and labelling requirements.

With regard to trade in services, the Single Market provides the freedom to establish and run a company in any Member State. This is facilitated by mutual recognition of professional qualifications, freedom of movement of people and capital, and harmonisation of various rules.

No deal in March 2019 means the UK will be a third country to the EU for the purposes of trade. From exit day onwards, its relations with the EU will be governed by general public international law and both the UK and EU will start trading on the basis of WTO rules. The EU will be obliged to treat the UK no more favourably than any other country that has no preferential trade agreement with the block.

Under the WTO the UK would no longer be obliged to follow the rules applied by the EU. There would be no requirement to implement EU legislation, although UK businesses would still have to comply with EU rules in order to export to the Single Market.

Trade in goods

The EU customs union sets the Common Customs Tariff (CCT): all members of the customs union apply the same set of tariffs on goods imported from outside the EU. UK exports to the EU would face the EU’s CCT and imports into the UK from the EU would face whatever tariffs the UK decided to impose. All exports from outside the EU are subject to the Rules of Origin (RoO) checks, even if they come from a country which has a trade agreement with the EU. This ensures that a correct tariff is applied and goods do not enter the EU customs union illegally via a low tariff country. As exporters from a third country, UK companies will immediately face such checks on all goods exported to the EU.

Trading under WTO rules means that the maximum tariff that can be applied to goods coming from the UK is the MFN rate. The EU’s MFN tariffs have generally fallen over time. In 2015 the EU’s average tariff was 2.6% for non-agricultural products. This is an average figure; tariffs on some individual products are higher. The EU tariff on cars, for

134 Commons Library Briefing Paper 7851, Statistics on UK-EU trade, 31 July 2018
135 Joe Owen, Alex Stojanovic, Jill Rutter, Trade after Brexit, Institute for Government, December 2017, p46
136 World Trade Organization, WTO Tariff Profiles 2017, p 82. Trade-weighted average
example, is 10%. While the EU tariffs are low on average, they are still substantial for some sectors, particularly agriculture. The average EU tariff on sugar and confectionery, beverages and tobacco, is around 20%. This could be potentially economically disruptive, as it would increase the cost of the UK products in the EU. However, the MFN principle would prevent the EU from levying discriminatory or punitive tariffs on goods from the UK, or vice versa.

Non-tariff barriers
As a third country the UK could face various non-tariff barriers to trade, including administrative and bureaucratic delays at customs, technical barriers to trade, import licensing, standards and rules of origin.

A Commission Brexit ‘preparedness notice’ for a no-deal scenario indicates, for example, that imports from the UK entering its territory may be subject to customs controls. Businesses will have to submit customs declarations and may be required to provide guarantees to cover potential customs debts.

Manufacturers or importers established in the UK will no longer be considered as EU economic operators. A former EU distributor will become an exporter and will have to comply with a new set of conformity assessments.

UK industrial products are currently subject to the standards and requirements of EU product legislation on general product safety, public health, environmental safety or energy efficiency requirements, for example. However, a no-deal Brexit may introduce new bureaucratic requirements to prove compliance.

The import of certain goods from the UK and the export of such goods to the UK will become subject to import/export licensing. The EU imposes such restrictions on goods going to and coming from third countries to protect health and safety and the environment. This affects goods such as waste, hazardous chemicals, genetically-modified organisms, live animals, products of animal origin, and some plants and plant products, such as wood packaging. The existing licences issued by the UK authorities will cease to be valid.

The licensing requirements will also apply to controlled goods, such as firearms and dual-use items that can be used for both civil and military purposes.

---

137 Ibid
138 European Commission, Notice to Stakeholders, Withdrawal of the United Kingdom and EU Rules in the Field of Customs and Direct Taxation, 30 January 2018
139 European Commission, Notice to Stakeholders, Withdrawal of the United Kingdom and EU Rules in the Field of Industrial products, 22 January 2018
140 European Commission, Notice to Stakeholders, Withdrawal of the UK and EU Rules in the Field of Import/Export Licences for Certain Goods, 25 January 2018
141 Such items range from raw materials like chemicals to components and complete systems like lasers, as well as software and technology. Government Guidance, Exporting controlled goods if there’s no Brexit deal, 23 August 2018.
The Government’s ‘technical notice’ Trading with the EU if there’s no Brexit deal and VAT for businesses if there’s no Brexit deal clarify that the obligations for businesses that trade with the EU would be broadly the same as those that apply to companies currently trading with countries outside the EU. Businesses would have to register as UK economic operators, submit customs declarations on imports and exports, and might have to pay tariffs or fulfil other administrative requirements. Importers of goods from the EU would have to correctly classify these goods in order to apply the right UK import tariff.

**Rules of origin**
The EU has preferential trade arrangements with a range of other countries. UK inputs (materials or processing operations) currently count as ‘EU content’ for the purpose of determining if imports benefit from preferential tariffs the EU has agreed with those countries. As of the withdrawal date, in the absence of any other arrangement, goods originating in the UK that are incorporated in EU goods exported to third countries will no longer qualify as ‘EU content’. EU exporters will no longer be able to cumulate the UK share in the product and may thus miss out on the benefits of preferential tariffs.

**Trade in services**
Without an agreement, the UK’s trade in services with the EU will be governed by the WTO General Agreement on Trade in Services (GATS). Within the EU Single Market, economic operators are free to establish and run a business in any Member State and can also provide services from their ‘home’ Member State in any other Member State. Professional qualifications acquired in one Member State are recognised across the Single Market. Freedom of movement of people and capital, harmonised rules on VAT, intellectual property rights and data protection all reduce the barriers to providing services across the EU. Many Single Market for Services measures are facilitated by the so-called Services Directive. This Directive aims to remove the legal and administrative barriers to cross-border service provision. It does this using various mechanisms, including:

- abolishing “discriminatory requirements” placed on people establishing businesses in other countries, including residency requirements or nationality requirements;
- removing other “burdensome requirements”, such as complex authorisation schemes, economic needs tests, or business size and health checks;

---

142 Government Guidance, Trading with the EU if there’s no Brexit deal and VAT for businesses if there’s no Brexit deal, 23 August 2018
143 Government Guidance, Classifying your goods in the UK Trade Tariff if there’s no Brexit deal, 23 August 2018
144 European Commission, Notice to Stakeholders, Withdrawal of the United Kingdom and EU Rules in the Field of Customs and External Trade, Preferential Origin of Goods, 4 June 2018
• requiring Member States to establish a Single Point of Contact so businesses can access all relevant information easily.\textsuperscript{145}

The Directive also removes a range of barriers to consumers accessing services in other EU countries or accessing services provided by non-UK EU companies in the UK.\textsuperscript{146} Under a no-deal scenario, these provisions would cease to apply to UK operators in EU Member States.

There is a view among researchers that the WTO has made less progress in service liberalisation than the EU’s single market for services has to offer. GATS constitutes a broad framework for the liberalisation of trade in services rather than setting compulsory rules.\textsuperscript{147} According to researchers at the London School of Economics (LSE), “since the WTO has made far less progress than the EU in liberalising trade in services, [no deal] would mean reduced access to EU markets for UK service producers”.\textsuperscript{148} Emerging work at the OECD suggests that, on average, EU barriers to services sector trade with third countries are four times greater than those which apply inside the Single Market.\textsuperscript{149}

The Confederation of British Industry (CBI) has noted that if no deal is agreed, the WTO rules would not guarantee the same level of access to the EU market for services industries as there is now. The single market for services provides for “positive integration” measures (e.g. mutual standards), which GATS is lacking. This concerns harmonisation of rules or the mutual recognition of rules by default. A CBI report said:

The barriers services businesses could potentially face include nationality requirements for service providers, requirements for businesses to have a minimum number of locally-resident staff for different roles, restrictions on the number of establishments and foreign ownership, and authorisation requirements that are subject to economic needs assessments.

[...]

Companies in some of our most successful exporting sectors would be unable to export specific types of services to the EU at all. Those industries include airlines, broadcasters, and a range of financial, professional and business service providers.\textsuperscript{150}

According to a study by UK in a Changing Europe, in a no-deal scenario

UK service exporters would also suffer from the loss of passporting rights for financial services, as well as access for other service providers (legal and accountancy services, etc.).\textsuperscript{151}

\textsuperscript{145} European Commission, Services Directive: quick guide
\textsuperscript{146} European Commission, Services Directive in practice
\textsuperscript{147} Prof. Dr. Friedemann Kainer, The consequences of Brexit on Services and establishment: Different Scenarios for Exit and Future Cooperation, Analysis for the European Parliament Internal Market and Consumer Protection Committee, June 2017
\textsuperscript{148} S. Dhingra and T. Sampson, Brexit and the UK economy, LSE Centre for Economic Performance, May 2017, p4
\textsuperscript{149} ‘A goods-only Brexit deal puts UK services sector jobs at risk’, Financial Times, 5 July 2018, UK Trade Policy Observatory Analytical Studies of Brexit Conference Brochure, 3 July 2018
\textsuperscript{150} CBI 5 Steps To Protect Services Post-Brexit, 8 March 2018, p14, 18
\textsuperscript{151} The UK in a Changing Europe, Cost of No Deal, 20 July 2017
Case study: professional and business services sector

Profile of the sector

The professional and business services sector includes industries that provide specialist, knowledge-intensive services to businesses. It includes legal services, accountancy, advertising, architectural services, engineering and management consultancy. It is a large sector and one in which the UK has a high international reputation.

The professional and business services sector:

- includes 645,000 businesses, 24% of all businesses in the UK in 2017;
- employed 4.1 million people, 14% of employment in Great Britain in 2016.
- generated economic output (in terms of Gross Value Added) of £198 billion, 11% of the UK’s economic output in 2017.

The professional and business services industry provides essential services to all parts of the economy. Employees are typically highly skilled professionals. Businesses in this sector range from very large firms operating throughout the world and providing a range of services (such as the ‘Big Four’ accountancy firms or the ‘magic circle’ law firms), to small and medium sized enterprises that support a specific kind of business in one region of the UK.

Service industries in the EU

Professional and business services businesses are subject to the EU’s Single Market for Services, which is not as far reaching as the Single Market for Goods. The core principles of the Single Market for Services are:

- the freedom to establish and run a company in any Member State;
- the freedom to provide services across Member State borders;
- mutual recognition of professional qualifications (qualified service professionals are recognised as such throughout the EU without having to re-qualify).

The Single Market for Services also allows freedom of movement of people and capital, and harmonises rules in VAT, intellectual property and data protection, all of which reduce the barriers to providing professional and businesses services in other EU Member States.

---

152 The Industry is defined as the following Standard Industrial Classification codes: 69, 70, 71, 72, 73, 74, 77, 78, 82.
155 ONS, Quarterly National Accounts Q1 2018, Low Level Aggregates Table, June 2018
156 Department for Exiting the EU Select Committee, HM Government Sectoral Brexit Impact Assessments: Professional and business services, December 2017, p3
157 European Commission, Single Market for Services, webpage accessed 30 July 2018
158 European Commission, Slides on Internal EU27 preparatory discussions on the framework for the future relationship: Services, 6 February 2018
Section 6.2 above provides further information on the Single Market for Services.

**Impact of no deal: regulatory frameworks**

In the event of a no-deal Brexit, UK professional and business services companies operating only in the UK are unlikely to see any major direct impact. These services are largely regulated on a domestic basis, so EU-wide rules have only a limited impact.159

In areas where the regulatory framework is harmonised by EU Directives, a no-deal Brexit is also unlikely to have any immediate impact. For example, statutory audit is specified under the Audit Directive [2006/43/EC] and UK regulations will remain unchanged in many respects for some time after withdrawal, whether or not a deal is reached. Any divergence would probably happen over several years.160

However, a no deal scenario could have an immediate impact on UK companies operating or seeking to operate in the EU, and on EU companies operating or seeking to operate in the UK. Without a deal, these businesses would be viewed as third-country businesses, which means that EU Directives would not automatically apply to them. What rules do apply would depend on the company law in each Member State, so it is possible that some Member States would allow UK businesses to provide services as now, but this is not guaranteed.161

The government guidance on Accounting and audit if there’s no Brexit deal clarifies the effects of no deal for audit, accounting and corporate reporting.

**Mutual recognition of qualifications**

Another important area for the professional and business services sector in which ‘no deal’ could have a major impact is the mutual recognition of professional qualifications in the EU and the UK. It is possible that UK professionals working in the EU would no longer be recognised as having valid professional qualifications; this would depend on the Member States’ existing rules on the recognition of qualifications awarded by third countries.162

The European Commission has said that with no deal the UK’s third country status would mean:163

> The recognition of professional qualifications of United Kingdom nationals in an EU-27 Member State will be governed by the national policies and rules of that Member State, irrespective of whether the qualifications of the United Kingdom national were validated in accordance with EU rules.164

---

159 Exiting the EU Committee, HM Government Sectoral Brexit Impact Assessments: Professional and business services, December 2017, p9
160 Ibid, p11
161 European Company Law Experts, The consequences of Brexit for companies and company law, Section 5: Third Country firms: the post-Brexit regime, May 2017
162 Government guidance Providing services including those of a qualified professional if there’s no Brexit deal, 12 October 2018
163 European Commission, Notice to stakeholders - Withdrawal of the United Kingdom and EU rules in the field of regulated professions and the recognition of professional qualifications, June 2018, p3
obtained in the United Kingdom, in another third country or in an EU-27 Member State.

The Commission also notes that this would apply to non-UK EU citizens in the UK (whose status would depend on the sector-by-sector rules in the UK regarding third country qualifications), and those EU citizens holding professional qualifications awarded in the UK but working in other EU countries.\footnote{Ibid, p4}

See section 9.1 below for more information on free movement and recognition of qualifications.

Financial Services
UK dominance in Europe

The UK’s financial services sector is the largest in Europe and is deeply connected with it. An estimated 10\% of its revenues come directly from the EU, making it the third most-reliant sector on the EU market on that measure, after oil and gas at around 40\% and manufacturing at around 20\%.\footnote{See Library briefing, Importance of trade with the EU for UK industries, August 2017}

All the main European banks and insurance companies operate in London, as UK companies do in Europe, under a system of ‘passports’. Any company authorised in any EU Member State can operate in any other EU Member State under its passport. It is the sudden loss of this passport without other arrangements in place that is the biggest potential problem arising out of ‘no deal’.

A PwC study concluded that the loss of mutual market access in financial services would be detrimental to both sides, although it would hurt the UK more. It estimated that no access would make the UK economy 1.3\% smaller by 2030, and 0.3\% smaller for the EU27.\footnote{PwC, Impact of loss of mutual market access in financial services across the EU27 and UK, February 2018, p4} The impact of no deal on financial services alone was estimated by the Government at around -9\% of economic activity in the long run.\footnote{HM Government, EU Exit: Long-term economic analysis, November 2018, p58}

The Government’s no-deal notices and guidance for financial services are collated here. Key information from these notices and other sources is summarised below.

What happens if there is no deal?

HM Treasury’s\footnote{HM Treasury’s Approach to financial services legislation under the European Union (Withdrawal) Act (published 9 August 2018) explained what would happen if there is no deal (paras 1.17 – 1.20). As a third country, UK-based financial services would lose their automatic access to the EU. The Government said:

In the unlikely scenario that the UK leaves the EU without a deal, the UK would be outside the EU’s framework for financial services. The UK’s position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.} Approach to financial services legislation under the European Union (Withdrawal) Act (published 9 August 2018) explained what would happen if there is no deal (paras 1.17 – 1.20). As a third country, UK-based financial services would lose their automatic access to the EU. The Government said:

In the unlikely scenario that the UK leaves the EU without a deal, the UK would be outside the EU’s framework for financial services. The UK’s position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.

---

\footnote{Ibid, p4}
\footnote{See Library briefing, Importance of trade with the EU for UK industries, August 2017}
\footnote{PwC, Impact of loss of mutual market access in financial services across the EU27 and UK, February 2018, p4}
\footnote{HM Government, EU Exit: Long-term economic analysis, November 2018, p58}
In light of this, our approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle, the UK would also need to default to treating EU Member States largely as it does other third countries, although there are instances where we would need to diverge from this approach, including to provide for a smooth transition to the new circumstances. The principles that would lead to deviations from this approach are set out below.

In some areas, correcting deficiencies to reflect this environment would be relatively straightforward. The UK’s world-leading financial sector is overseen by HM Treasury and underpinned by a strong legislative framework with world-class regulators (the Bank of England/Prudential Regulation Authority and Financial Conduct Authority). This means that the responsibilities of EU bodies could be re-assigned efficiently and effectively, providing firms, funds and their customers with confidence after exit.

In this scenario, EU financial services firms operating in the UK would broadly become subject to the same supervisory regime that the UK already applies to other third countries – a regime that is shaped by the highly global, cross-border nature of financial services and the UK’s robust regulatory framework as set out in legislation, including in the Financial Services and Markets Act 2000 (FSMA), the Banking Act 2009 and the Bank of England Act 1998. This existing UK financial services legislative framework provides powers for extensive cooperation with global regulatory bodies. When the UK is no longer an EU Member State, and so the EU obligation of reciprocal cooperation no longer applies, this existing framework could be relied upon to ensure this important cooperation continues in this scenario.

The European Union (Withdrawal) Act 2018 transfers EU law, including that relating to Financial Services, to the UK statute book on exit day.

In the event of no deal, the Government will create temporary permissions and recognition regimes (explained below) to allow EU firms to continue their activities in the UK for a time-limited period. Firms wishing to continue doing business in the UK in the longer term will be able to use this period to obtain full authorisation (or recognition) from UK regulators without disruption to their business.  

Regulation

In the event of no deal, regulatory functions carried out at an EU level will be transferred to UK bodies responsible for regulating financial services. The Government said:

In leaving the EU without a deal, many functions currently carried out at an EU level would cease to apply to the UK and would need to be provided for in the UK’s regulatory regime. HM Treasury’s onshoring work involves allocating these EU functions to the appropriate UK bodies. In this scenario, HM Treasury proposes to follow the model outlined in FSMA and allocate functions to UK regulators in a way which is consistent with the responsibilities already conferred on them by Parliament, thus providing certainty and continuity for firms.

Further information about how HM Treasury proposes to allocate responsibilities between HM Treasury and the financial services regulators in this scenario can be found in the draft Financial Regulators’

What if there’s no Brexit deal?


Additionally, HM Treasury has confirmed that in this scenario it intends to transfer supervisory powers to the FCA to regulate credit ratings agencies and trade repositories currently supervised at the European level by the European Securities and Markets Authority (ESMA), and it intends to give functions and powers in relation to non-UK central counterparties and non-UK central securities depositories, also currently exercised by ESMA, to the Bank of England.169

Regulation 2 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 tells us which UK regulator EU functions are assigned to:

1. the “appropriate regulator” in relation to—
   - the EU Regulations specified in Part 1 of the Schedule, is the FCA;
   - the EU Regulations specified in Part 2 of the Schedule, is the PRA;
   - the EU Regulations specified in Part 3 of the Schedule, is the Bank of England;
   - the EU Regulations specified in Part 4 of the Schedule, is both the FCA and the PRA;
   - the EU Regulations specified in Part 5 of the Schedule, is both the FCA and the Bank of England;
   - the EU Regulation specified in Part 6 of the Schedule, is the Payment Systems Regulator;
   - EU-derived provisions, means whichever of the FCA, the PRA or the Bank of England made the provisions.

The SI's Schedule lists the precise EU powers and responsibilities that are transferred to these UK regulators.

HM Treasury’s full programme of secondary legislation under the EU (Withdrawal) Act 2018 to ensure that the UK continues to have a functioning financial services regulatory regime in all exit scenarios can be found here.

EEA firms in the UK – a new Temporary Permissions Regime (TPR)

In December 2017, the Government announced its intention to introduce a Temporary Permissions Regime (TPR) which would allow EEA firms to continue operating in the UK for a time-limited period after the UK has left the EU without a deal.

This temporary regime would be bolstered by the main regulators (the Financial Conduct Authority and Bank of England) being given the power to implement changes to their rulebooks to permit it to become effective in support of whatever legislation is passed.

169 HM Treasury's Approach to financial services legislation under the European Union (Withdrawal) Act, 9 August 2018, paras 1.24 – 1.26
The TPR will **allow** EEA firms currently passporting into the UK to continue operating in the UK for up to three years after exit. During that time, these firms can apply for full authorisation from UK regulators.

The government has published in draft the **legislation that will deliver the TPR**. The Financial Conduct Authority (FCA) has published its **approach to implementing the TPR** and the Prudential Regulation Authority (PRA) has set out its **expectations for the TPR**. The FCA and PRA are the key regulators in the sector.

**Financial stability risks related to derivatives**

The derivatives market has been identified by the Governor of the Bank of England as the ‘big issue’ for the UK and EU to solve post Brexit day. Derivatives are financial contracts used to manage risk (they are also used to speculate). For example, an interest rate swap is a derivative that allows a firm to fix the interest rate it pays on a variable loan.

Speaking to the **Treasury Committee** in July 2018 the Governor outlined the problem, saying that so-called ‘life-cycle events’ in derivative contracts such as rolling open positions or exercising options could no longer be executed:

> The crucial point here is that on the day of leaving, the contract can still be serviced; however, life-cycle events will start to accumulate and, arguably, they will accumulate quite rapidly in the event of a cliff-edge Brexit because one would reasonably expect the volatility in markets to go up. How big is that potential risk? We have done the due diligence on that. For a mid-size firm there are about 1,000 life-cycle events a month. For a large derivative counterparty, there are up to 250,000 a week. If you think about it in the world of derivatives hedging underlying positions, with the inability to conduct these life-cycle events and an environment where there is volatility, the risk—the inability to dynamically hedge—increases with time, and you see a financial stability risk developing fairly quickly, in our opinion. We shared that opinion publicly through the FSR and directly with our counterparts in the EU.  

He drew attention to how this problem affects cross-border clearing houses. A central counterparty (CCP) clearing house is a financial institution that facilitates the settling (i.e. clearance) of financial contracts such as derivatives. The clearing house stands between two clearing firms (also known as member firms or participants). Its purpose is to reduce the risk and consequences of participants defaulting on their obligations. Thus, CCPs make these transactions cheaper and safer for traders.

The Governor was warning that the consequences of ‘no deal’ for outstanding derivatives contracts cleared via UK CCPs would be financially destabilising, more so for the EU but also for the UK. There is an analysis of all these risks in the Bank of England’s **Financial Stability Report** (June 2018):

---

170 For a more thorough examination of the derivatives market post Brexit see ISDA; *Contractual Continuity in OTC Derivatives Challenges with Transfers*, July 2018.

171 Treasury Committee, oral evidence: Bank of England Financial Stability Reports, HC 681
EEA clearing members and their clients currently rely heavily on CCPs based in the UK. The ECB estimates that UK CCPs clear approximately 90% of euro-denominated interest rate swaps used by euro-area customers. (p12)

The Governor explained that the EU had not come up with an equivalent temporary recognition regime for UK CCPs:

… as it stands at present, the large, UK-based clearing houses would no longer be authorised clearing houses by the EU following the Brexit date. Therefore, the actions of European counterparties that had cleared in those clearing houses would be ultra vires; they would not be authorised to use those clearing houses. Those clearing houses would know that in advance and so the European counterparties would have to close out those positions in advance. The question is how rapidly that could be done. The orders of magnitude are much higher—it is a notional £60 trillion-plus of exposure—than they are in the uncleared space. That process, which the Bank of England oversees as the regulator of these clearing houses, would have to begin prior to the Brexit date.

I want to make two final points. First, the UK Government have signalled their intention and developed statutory instruments, which they will lay before Parliament as soon as is practical. Given the timing of the summer recess, that is likely to be in the fall, but it will be done in a timely way. Those statutory instruments will solve the UK side of this issue—both authorisation of EU CCPs and authorisation of the EU counterparties. The European Union has not yet indicated a solution to this.

Since that speech, the EU announced they would do the same as the UK – give temporary authorisations to UK CCPs in the event of no deal. The EC said in November 2018 that they will continue to recognise for some time this systemically important area of UK financial services, central clearing. The European Securities and Markets Authority (ESMA) explained here (23 November 2018):

The European Securities and Markets Authority (ESMA) is publishing this Public Statement to address the risks of a no-deal Brexit scenario in the area of central clearing. The ESMA Board of Supervisors supports the continued access to UK CCPs to limit the risk of disruption in central clearing and to avoid negatively impacting EU financial market stability.

They further published this statement (19 December 2018) clarifying their plans for recognising UK CPPs in the event of no deal. Whether arrangements for financial services would be more than bare minimum to safeguard financial stability would be a matter for negotiations.

The combination of the ‘no passport’ issue and the derivatives issue is particularly troublesome for the insurance industry. The Association of British Insurers (ABI) indicated that coordination between the UK and EU to avoid a ‘cliff edge’ would be ‘imperative’. A briefing from the ABI set out the problem:

1. When the UK leaves the Single Market, UK-based providers will no longer be able to rely on ‘passports’ and the right of establishment to service existing cross-border financial contracts throughout the European Economic Area (EEA). There will also be an identical impact on EEA providers who will be unable to service
existing financial contracts with UK-based parties. This issue is often referred to as the contract continuity problem.

2. This will, for example, impact general insurance, long-term life insurance, pension schemes, medium and long-dated derivatives contracts, revolving credit facilities, and may also affect general customer terms of business, prime brokerage and custody arrangements.

3. The extent of this issue is significant and will affect both UK and EEA consumers. According to the Bank of England, approximately six million UK insurance policyholders, 30 million EEA insurance policyholders, and around £26tn of outstanding uncleared derivatives contracts could potentially be affected. The issue will also affect contracts relating to segregated mandate business under the Markets in Financial Instruments Directive (MiFID) II. In particular, failure to find a solution to derivatives contracts could potentially lead to significant financial stability risks.

4. Honouring existing obligations to customers is a key priority for the industry in the UK and the EU, and it is continuing to do all it can to address the issue. However, while service providers are preparing to take steps to mitigate the impact of the loss of passporting rights, it is highly unlikely that this will be adequate to fully address the contract continuity issue by March 2019.

5. As a result, it is imperative that action by service providers is coupled with action from policymakers and regulators in the UK and EU to mitigate this ‘cliff edge risk’. The International Monetary Fund (IMF) flagged in its Article IV statement that a resolution would be “most efficiently achieved through coordinated EU and UK legislation”.

- It is critical that the UK and EU implement the transitional period that was agreed at a political level at the European Council meeting in March 2018. Furthermore, it is also important for UK and EU regulators to issue commitments about the future treatment of these contracts to act as a regulatory ‘back stop’ in the event that the transitional period fails to materialise.

- Any UK/EU solution should also be underpinned by ongoing supervisory cooperation between UK and EU regulators. The new European Central Bank (ECB) and the Bank of England (BoE) technical working group on risk management, announced on 27 April 2018, would be an ideal forum to discuss solutions to this issue.

- The early announcement of grandfathering arrangements, either for a time-limited period or potentially until maturity, would allow for contract continuity which will deliver the best results for UK and EEA customers, as well as European competitiveness more broadly.172

**Temporary Recognition Regime (TRR)**

As explained above, the UK will establish a temporary recognition regime (TRR) for EU-based central counterparties (CCPs). This regime will allow these CCPs to continue to provide clearing services to UK firms for a period of up to three years while those CCPs apply for

---

172 TheCityUK/ABI briefing, June 2018
recognition in the UK. The Bank of England has published further details on the approach to recognising non-UK CCPs.

Public procurement

Becoming a third country could mean no mutual rights of access to public procurement markets in the UK and the EU – although many contracts may in practice still be open. In such a scenario the EU rules on public procurement would no longer apply and EU Member States’ authorities would have to apply the same rules to a potential UK supplier as to any other business based in a third country with which the EU did not have an agreement on procurement.¹⁷³

This ‘cliff-edge’ and possible exclusion of UK bidders from procurement procedures in the EU can be largely avoided by joining the General Procurement Agreement of the WTO (GPA). The UK is currently a party to the GPA by virtue of its EU membership, but the Government has submitted an application to re-join as an independent party.¹⁷⁴ This would ensure continued UK access to the EU27 procurement market for most tenders above certain thresholds. The GPA would not give the UK the same full access to EU procurement markets that it currently enjoys, however.¹⁷⁵

Commenting on the differences in scope between the EU Procurement directives and the GPA, Professor Sue Arrowsmith of the University of Nottingham states that some of them are of limited importance for the UK:

The scope of procurement covered for the EU/UK under the GPA is narrower than the scope of covered procurement under the EU procurement directives in relation to a few utility sectors, coverage of private utilities, the defence sector, some services, (possibly) concessions, and certain private contracts subsidised by government. The GPA also does not include below-threshold procurement. However, some of these differences are of limited importance in the UK context. Further, the procurement that does fall into the gaps between the directives and GPA, at least above the directives’ thresholds, could easily be added to the GPA UK if desired.¹⁷⁶

For further information on the UK and the GPA, see the Commons Library briefing Brexit: Public Procurement. See also National Audit Office, Report by the Comptroller and Auditor General, Department for Business, Energy & Industrial Strategy, Competition and Markets Authority, Exiting the EU: Consumer protection, competition and state aid, HC 1384 Session 2017–2019, 6 July 2018.

¹⁷³ European Commission, Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Public Procurement, 18 January 2018
¹⁷⁴ International Centre for Trade and Development, EU, UK Debate Next Steps as Key October Summit Approaches, 26 July 2018
¹⁷⁵ Institute for Government Explainers, Public procurement
¹⁷⁶ Prof Sue Arrowsmith, Consequences of Brexit in the area of public procurement, a study for the European Parliament Committee on Internal Market and Consumer Protection, April 2017
Consumer protection
BEIS has contingency plans if the UK loses access to EU-wide market surveillance and enforcement systems, but it will have a considerable task to implement them in the event of a no-deal scenario.

- To support its market surveillance capability, the UK currently relies on an EU-wide rapid alert system to identify unsafe products. BEIS sought a ministerial direction in March 2018 to spend £2.4 million on a replacement system. This was behind schedule but, following the direction, BEIS reports being on track to deliver a minimum capability by March 2019 in a no-deal scenario (paragraphs 2.19 to 2.21).

- National Trading Standards has identified product safety checks on imported goods as an issue that may be affected by EU Exit if provision is not made for the free movement of goods in a future UK–EU economic relationship. The borders in Kent could be some of the most affected by Brexit because the vast majority of goods imported through there are from the EU and not currently subject to product safety checks. Kent Trading Standards has estimated the impact on its workforce of different scenarios, including no deal, and has escalated this to their funding providers. There is no requirement in law that product safety checks must be carried out at the border and, to date, no changes have been made to the infrastructure at Dover to expand capacity for product safety checks (paragraph 2.24).

- Trading Standards services and the CMA are planning to work bilaterally with EU Member States on enforcement, as they currently do with non-EU countries, if there is no deal. Appropriate protocols already exist, but outside EU structures the authorities expect cross-border enforcement to take longer and be more expensive, and the UK authorities cannot mandate another country to cooperate (paragraphs 2.22 to 2.23).

6.4 Pursuing an independent trade policy
New UK legislation
The Government has introduced the Trade Bill177 and the Taxation (Cross-border Trade) Bill, the latter becoming an Act of Parliament in September 2018.178 Both aim to prevent disruption in trading arrangements and allow the UK to continue its existing trade policy as far as possible immediately after Brexit. The Trade Bill has provisions for the transitioning of EU trade agreements. The customs legislation under The Taxation (Cross-border Trade) Act 2018 will mostly follow the EU’s Union Customs Code. Neither the Trade Bill nor the Taxation (Cross-border Trade) Act

---

177 The Trade Bill passed its third reading in the House of Commons in July 2018 and is currently being considered by the House of Lords (committee stage).

178 The Taxation (Cross-border Trade) Act received Royal Assent on 13 September 2018.
2018 are intended to deal with future trade agreements with the EU or other countries.

In a no-deal scenario there would be significant time constraints in an otherwise ongoing process in which the UK is developing the principles of its trade policy.

**Trading with third countries**

The UK is a member of the World Trade Organization (WTO) in its own right. However, as noted above, on leaving the EU it will need to update the terms of its WTO membership.\(^\text{179}\)

**WTO schedules**

In order to re-establish its autonomy from the EU in the WTO, the UK must take several procedural steps. In particular, it must agree ‘schedules’ for goods and services. These country-specific commitments refer to maximum tariff levels and tariff rate quotas (TRQs - quantitative restrictions on imports) on goods and levels of agricultural subsidies.\(^\text{180}\)

The Department for International Trade has stated that the Government plans to replicate as far as possible its current commitments after Brexit.\(^\text{181}\) The Commission and the UK have mutually agreed to apportion the UK’s TRQs based on recent years’ trade flows.\(^\text{182}\) On 24 July 2018, the UK notified its draft schedule for goods commitments to the WTO. Several major agricultural exporters, including the US, Argentina, Australia, Brazil, Canada and Thailand, have questioned the proposed Tariff Rate Quota apportionment between the EU and the UK, and some have expressed formal reservations about the proposal.\(^\text{183}\) Liam Fox notified Parliament on 25 October that the UK would open formal negotiations which would lead to the approval of schedules.\(^\text{184}\)

For services schedules the UK must comply with the GATS obligations and specify its commitments for each particular service sector, detailing the levels of market access and treatment under national laws.\(^\text{185}\) Services schedules include unamendable lists of exemptions which allow the extension of more favourable treatment to particular trading partners in particular service sectors for a limited period of time.\(^\text{186}\)

---


\(^\text{180}\) WTO, ‘Members’ commitments’


\(^\text{182}\) European Commission Proposal on the apportionment between the United Kingdom and the EU27 of tariff rate quotas included in the World Trade Organisation schedule of the Union, COM(2018)321 final, 22 May 2018

\(^\text{183}\) IEG Policy, *UK to enter into negotiations with WTO partners on Goods Schedule after TRQ objections*, 25 October 2019

\(^\text{184}\) HCWS1034, 25 October 2018

\(^\text{185}\) House of Lords European Union Committee, *Brexit: the options for trade*, 13 December 2016, HL 72, chapter 6

are made by the end of this period, the UK’s services schedule will be considered certified.\footnote{WTO, United Kingdom submits draft post-Brexit services commitments to WTO, 3 December 2018}

It is widely accepted that the UK can trade under WTO rules without certified goods and services schedules in place.\footnote{The EU, for example, updated its schedules in 2016, twelve years after its enlargement from 15 to 25 member states, and again in 2017, to reflect its expansion to 28 member states; Comment: UK trade can survive on ‘uncertified’ schedules after Brexit, MLex, 2 August 2018} The Government has said:

\begin{quote}
Should the goods and services schedules be uncertified as we leave the EU, we do not anticipate there to be any problems – it is not uncommon for WTO members to operate on uncertified schedules for periods of time.\footnote{For the Government’s position see Department for International Trade, Trade White Paper: Preparing for our future UK trade policy – Government Response, January 2018}
\end{quote}

**Public Procurement and third countries**

The UK is currently part of the WTO Agreement on Government Procurement (GPA) through its EU membership. Under the GPA, many large public sector procurement opportunities must be opened up to suppliers in countries which are parties to the Agreement.

The Government formally requested to re-join the GPA under terms similar to the EU’s. On 27 November 2019, signatories to the GPA agreed in principle to the UK’s offer but an official decision is expected in February 2019.\footnote{WTO, Parties to government procurement pact approve UK’s terms of participation post-Brexit, 27 November 2018} Re-joining the GPA would ensure that the UK maintains a similar level of access to the government procurement markets of (non-EU) third countries as before Brexit. The GPA does not, however, cover the enhanced terms of access which the EU has negotiated for operators of its Member States under its free trade agreements with third countries like Canada and Japan.\footnote{The EU-Japan Economic Partnership Agreement will enter into force on 1 February 2019} This would become a matter for the UK’s future bilateral trade treaties with these countries.

**‘Rollover’ of existing EU trade agreements**

As part of an orderly withdrawal, the Government would like the transitional adoption or ‘rollover’ of all the EU’s trade agreements and other preferential trade arrangements with third countries. The Government published a Technical Note in February 2018 on continued application of EU international trade and other agreements during the envisaged transition/implementation phase by agreement of all the parties concerned. This would enable trade arrangements with third countries that the UK is currently party to as an EU Member State to be replicated in UK-third-country agreements when the UK leaves. This would not preclude a fuller revision of these agreements in the longer term to create a more bespoke trading arrangement.
The EU agrees to rollover in principle

At the March 2018 European Council, the EU agreed to notify other parties to international agreements that the UK is to be treated as a Member State during the transition period for the purposes of these agreements. However, this remains a request and it is possible that the third countries concerned may not agree.

On 11 January 2019 the Council of EU adopted a decision on the signing of the WA which provides for the signing of the WA once the procedures required for its conclusion (i.e. ratification by the House of Commons and by the European Parliament and Council of EU) are completed. It referred to the envisaged transition period and stated that the Commission should therefore notify the other parties to the EU's international agreements that the UK “is to be treated as a Member State for the purposes of those agreements during the transition period”.

The Government’s bilateral engagement

The Government said in January 2018 that it had engaged with 70 countries covered by over 40 EU international trade agreements and had received a positive reaction to its objective of ensuring continuity in these trading relationships.

An International Trade Committee (ITC) report on Continuing Application of EU trade agreements after Brexit published in February 2018 warned of trade with 70 nations “falling off a cliff edge” if the Government did not act quickly to roll over the EU’s trade deals. It said there was an urgent need for clarity “over the number, type, scope, extent and importance of the EU’s trade-related agreements” and warned that substantive amendments to the rolled-over agreements were almost certain to be required. The Government told the ITC in May that it was working bilaterally with partner countries to “to ensure continuity of effect for our international agreements beyond the Implementation Period”. Commons Briefing Paper 8370, The UK adoption of the EU’s external agreements after Brexit, 24 July 2018, provides a more in-depth account of the issues.

Liam Fox told the ITC on 11 July 2018 that agreements in principle had been reached with third countries about continuing trading arrangements, but that many countries were waiting to see if there would be a transition period first, with a view to using the extra time to negotiate a more bespoke agreement (rather than simply rolling over the existing arrangements). It was the Government’s intention to have those agreements in place before Brexit. But Trade minister George Hollingbery told the ITC on 4 September that it is “not an absolute
given” that all the EU trade agreements would be “transitioned” before exit day.195

**Government Guidance**

The Government published a technical notice covering arrangements in the event of no deal on 12 October 2018, “Existing free trade agreements if there’s no Brexit deal”. It refers to “around 40 free trade agreements with over 70 countries” that the UK participates in as a member of the EU, accounting for around 12% of the UK’s total trade, according to 2017 ONS data. It states that the Government is “currently working with partner countries to prepare for a range of possible scenarios to maintain existing trading relationships”. It states that during any implementation (i.e. transition) period “arrangements would be put in place with partner countries so that the UK is treated as an EU member state for the purposes of international agreements, including trade agreements”. However, in the event of a ‘no deal’, there will be no implementation period, and in this scenario “the government will seek to bring into force bilateral UK-third country agreements from exit day, or as soon as possible thereafter”. It states that new agreements will replicate existing EU agreements and the same preferential effects with third countries as far as possible, whilst making the technical changes needed to ensure the agreements operate in a bilateral context. Reaching agreements with partner countries “will depend on our ongoing discussions with them”.

The notice states that should the necessary arrangements not be in place by exit day to maintain particular preferences, then in a no deal scenario trade would take place on a ‘Most Favoured Nation’ (MFN) basis otherwise known as ‘World Trade Organization (WTO) Terms’, until such a new arrangement has been implemented. It explains that the principle of MFN treatment under WTO rules means that the same rate of duty, on the same good, must be charged to all WTO members equally subject to certain exceptions (such as if a free trade agreement is in place), and that for services WTO members are required to grant treatment that is no less favourable to that granted to services and service suppliers of any other WTO member. The notice also refers to the process of regularising the terms of UK membership at the WTO membership, including establishment of independent UK schedules, currently contained within the EU schedules (see section 6.3 of this paper).

In addition to seeking continuity for existing free trade agreements, the notice refers to powers in the Taxation (Cross-border Trade) Act 2018 which enable the UK to put in place a UK unilateral trade preference scheme for developing countries as the UK leaves the EU. It states that in the first instance, it is intended that this will provide the same level of access as provided by the current EU trade preference scheme. This will

---

195 Mlex, Trade agreement rollovers after Brexit ‘not a given,’ minister says, 4 September 2018
What if there’s no Brexit deal?

maintain tariff free access for Least Developed Countries and continue to offer tariff reductions to around 25 other developing countries.

In terms of the implications for users of current EU free trade agreements, the notice warns that while the Government’s intention is that the effects of new bilateral agreements will be identical to, or substantially the same as, the EU agreements they replace, “there may be practical changes to how they make use of preferences under these new agreements.” For example, UK and EU content will be considered distinct, and each new agreement will individually specify what origin designations may be used to qualify for preferences. The notice states that the Government “will aim to limit these changes as far as possible, but the final form of new agreements and any resulting changes will depend on ongoing discussions with our trading partners”. In this regard, it refers to a requirement in the Trade Bill that the government will publish a report before these new free trade agreements are ratified on any significant changes to the new trade-related provisions.

The notice states that traders will pay the applied MFN tariff where no arrangements have been agreed to ensure continuity of existing trade preferences with third countries, and that the Government “will determine and publish a new UK MFN tariff schedule before we leave the EU”. The notice provides a link to the UK Government’s Tariff Look Up tool where information on current tariff rates are available.  

By December 2018, The UK’s trade consultations with several South African states, as well as with Switzerland, had materialised in preliminary agreements to continue existing trade relationships as far as possible after Brexit. Both proposals are explained in the boxes below.

**Box 2: Proposed UK-SADC agreement**

On 28 August 2018, coinciding with a visit to South Africa, the Prime Minister announced that a new UK-Southern African Economic Partnership would be ready as soon as the current EU-Southern African Development economic partnership (covering the same six countries: Botswana, Lesotho, Namibia, South Africa, Eswatini/Swaziland and Mozambique) ceases to apply to the UK.

UK Trade Minister George Hollingbery and Botswanan trade minister (representing the five Southern African Customs Union countries and Mozambique) issued a joint statement on 29 August, which referred to the importance of a UK-EU agreement on a post-Brexit transition period and continued cumulation between the UK, EU and all parties to the agreement in ensuring continuity to trade. It stated:

We take note of the progress achieved regarding the UK and EU’s agreement on a time-limited implementation period between the EU and UK following the UK’s departure from the EU, and in particular the intention for the UK to be treated, for the purposes of EU international agreements, as an EU Member State for the duration of the implementation period between the EU and UK. The SACU (Southern African Customs Union) and Mozambique Trade Ministers indicated that they look forward to receiving formal confirmation of the same via the proposed notification, and to continuing to receive regular updates on progress from the UK on the EU-UK negotiations under Article 50 of the Treaty of the European Union on the UK’s withdrawal from the EU. SACU and Mozambique emphasise the importance of continued cumulation between all the parties in promoting continuity and to avoid disruption in trade, and urge both the UK and

---

196 Government Guidance, Existing free trade agreements if there’s no Brexit deal, 12 October 2018

197 The first five countries making up the Southern African Customs Union.
the EU to recognise the importance of cumulation in the discussions on a post-Brexit EU-UK arrangement.

In his oral evidence to the ITC on 28 November Mr Hollingbery stated that he was “disappointed to say that we have not signed that deal.” A deal was “just a little bit away” and the focus of discussions were at that moment “nothing to do with trade”. There had been nine rounds of discussions and negotiations, with agreement on the vast majority of issues.

UK trade arrangements with EFTA and Turkey

The UK’s trade with EFTA countries and Turkey represents a significant 6.2% share of its external trade. Concluding agreements with these countries would require more substantial renegotiation, as their relationship with the EU is based on extensive acceptance of the EU’s regulatory and customs regimes. EFTA Members Iceland, Liechtenstein and Norway participate in the Single Market through the EEA Agreement and Switzerland participates in aspects of the Single Market through a series of bilateral agreements. Turkey is in a partial customs union with the EU.

In evidence in January 2018 to the ITC, Dr Holger Hestermeyer (Shell Reader in International Dispute Resolution at King’s College London) said the UK would need to negotiate new agreements with these countries which would “differ substantially from the current arrangements”.

Of these countries, the Government has established a ‘trade policy dialogue’ with Norway and a Trade Working Group with Turkey.198

In January 2019, the Government sent a list of signed and nearly finalised international agreements to Parliamentary Committee chairs (see below). The list included a UK-Norway and Iceland trade agreement which the Government said it intended to finalise shortly. The Government said that the agreement would seek to preserve elements of the current trading relationship with Norway and Iceland “where possible”, and that as the UK would be leaving the Single Market, the aim would be “to ensure replacement arrangements on trade with the EEA EFTA States that do not impact upon their EEA obligations”.

In a letter to the Chair of the Commons International Trade Committee on 4 February 2019, Dr Fox said that achieving continuity for some agreements “will be challenging in a no deal scenario”, giving the example of Turkey which has a high degree of alignment with the EU.199

UK-Swiss trade agreement

On 14 December 2018, the Government announced that the UK and Swiss Governments (Swiss Federal Council) had approved the transition of UK-Swiss trade arrangements to apply when the transition period provided for in the Withdrawal Agreement with the EU comes to an end or on 29 March 2019 if the UK leaves the EU without a deal. The Government said that this was the first existing agreement transition to

199 See Letter from Dr Liam Fox, Secretary of State for International Trade, to the Chair of the International Trade Committee, 4 February 2019.
have been agreed as part of its preparations to ensure trade continuity for when the UK leaves the EU.

It said the agreement would replicate the existing EU-Switzerland arrangements “as far as possible” and had now been initialled by both countries, and that once the agreement is signed, both the UK and Switzerland will seek parliamentary approval for the agreement.

A statement on the Swiss Federal Council website said that it had “approved the text of a trade agreement with the UK which could serve as a basis for future economic and trade relations” guaranteeing, “as far as possible, the continuation of the economic and commercial rights and obligations arising from the agreements between Switzerland and the EU”, and providing for exploratory discussions aimed at developing these bilateral relations in the future.

It said that if the transition period comes into effect between the UK and EU on 29 March 2019, the text of the agreement between Switzerland and the UK would serve “as a basis for economic and trade relations between Switzerland and the UK after the transition period expires on 31 December 2020 (or at a later date agreed between the UK and the EU), until such time as new trade agreements can be concluded between the parties”.

However, it said that if the UK leaves the EU “in a disorderly manner” on 29 March without a transition period then the text of the agreement would make it possible to replicate in substance the vast majority of trade agreements that currently regulate relations between Switzerland and the UK. It said the agreement could be signed and ready to be applied from the date the UK leaves the EU, provided the relevant parliamentary committees in Switzerland, which will be consulted early next year, approve the agreement.

**Box 3: UK-Swiss trade agreement**

On 14 December 2018, the UK government and the Swiss Federal Council agreed a text of a trade agreement, which will replicate the existing EU-Switzerland arrangements as far as possible and will come into effect after the end of the transition period. In a no-deal scenario, the text would make it possible to “replicate in substance” the majority of current agreements that regulate mutual trade.

According to Borderlex trade news service, the transition deal covers three agreements:

1. the 1972 bilateral FTA which liberalises tariffs on goods trade;
2. the 2002 Agreement on Agriculture for trade in processed foods and
3. the 2002 Mutual Recognition Agreement of conformity assessment procedures in a variety of industrial sectors such as machinery, medical devices, electrical equipment, construction products, lifts and biocidal products.

Many areas including government procurement and SPS measures are not covered.²⁰⁰

²⁰⁰ Borderlex, UK and Switzerland agree to roll over three key EU agreements, 14 December 2018.
The UK has a trade surplus with Switzerland exporting goods and services worth £19.04 billion in 2017. British exports to Switzerland have grown by 41.1% in the last 5 years. For Switzerland, the UK was its sixth-largest export market and its eighth-largest supplier in 2017.

Transitioning tariff rate quotas, rules of origin and cumulation

As highlighted in the ITC report, it will not be possible to simply replicate the terms of some of the EU’s trade agreements, as they include arrangements for tariff rate quotas (TRQs) and rules of origin requirements which would need amending to make them more specific to the UK. TRQs involve allowing imports of a fixed quantity of certain goods at a lower tariff rate, with a higher tariff applied to anything above this. A UK-specific free trade agreement may require a new TRQ calculation, although the UK’s exit would also create problems for the EU, as it would most likely want to recalculate its TRQs with third countries to take into account the UK no longer being part of the calculations. TRQs are also an issue in establishing separate UK and EU27 schedules at the WTO post-Brexit, with a number of third countries objecting to the proposals made by the UK and the EU. These proposals are discussed in section “WTO Schedules” above.

Trade agreements also involve rules of origin (RoO), whereby the origin of goods must be proven for them to qualify for preferential treatment in respect of customs duties. The application of origination status can be widened by means of provisions for ‘cumulation’, whereby components or inputs from outside a country can be treated as originating from there for the purpose of RoO.

The ITC report cited evidence from Mike Hawes of the Society of Motor Manufacturers and Traders, who explained that “most free trade agreements tend to have a minimum [domestic content] threshold of 55% to 60%” for automotive goods. Therefore, he said, merely copying and pasting the EU-South Korea free trade agreement, for example, would not benefit the UK “because we would not qualify for the preferential trading arrangements… unless you could agree cumulation with the European context, which is what we currently enjoy”.

The ITC report refers to the suggestion made by several witnesses and submissions to its inquiry that “diagonal” cumulation arrangements should be established allowing inputs from any of the three parties concerned (the UK, the EU and the third country in a trade agreement) to count as originating content.

One route to this would be for the UK separately to join the Regional Convention on Pan-Euro-Mediterranean Rules of Origin (the PEM Convention), to which it is currently party as a member of the EU. This allows for diagonal cumulation between all signatories, provided there are trade agreements in place between all the contracting parties concerned. However, as the UK Trade Policy Observatory pointed out in its evidence to the inquiry, “the EU can be quite difficult in in agreeing
to diagonal cumulation” and typically only does so if all countries involved have free trade agreements among themselves”.

The Government has acknowledged in its no-deal guidance “Existing free trade agreements if there’s no Brexit deal” that changes in the application of the rules of origin are possible. Businesses are made aware, for example, that UK and EU content in products will be considered distinct and each new agreement will specify which origin designations will qualify for preferences. It states further:

We will aim to limit these changes as far as possible, but the final form of new agreements and any resulting changes will depend on ongoing discussions with our trading partners. The Trade Bill contains a reporting requirement stating that the government will publish a report before these new free trade agreements are ratified on any significant changes to the new trade-related provisions.201

Impact of ‘no deal’ on rollover

As of November 2017, EU bilateral and multilateral trade agreements covered 88 countries and accounted for 13% of UK trade.202 The UK will no longer be part of those arrangements in the case of no deal. A transition period would give the Government time to work on bespoke agreements, but ‘no deal’ would mean no transition period. The threat of ‘no deal’ presents the Government with considerable time pressure and it is uncertain if countries would agree to a temporary bilateral rollover of the agreements, as they would be cautious of missing out on an opportunity to renegotiate preferred terms in case the no deal scenario becomes a reality. Asked on the Andrew Marr programme on 2 September 2018 whether the new trade deals replicating the trading arrangements with third countries would be in place for Brexit day, Liam Fox said:

That remains our aim. Of course a lot of countries are waiting to see exactly what [the UK] relationship will be with the European Union. But not one of those countries have said to us that they don’t want to get a trade agreement with the UK.

Responding to Andrew Marr’s follow up question as to whether it would still be possible to get all these deals ready for the minute after the UK leaves the EU, Fox said: “It’s possible but it’s ultimately dependent on both parties agreeing”.

In his oral evidence to the ITC on 28 November 2018, Mr Hollingbery said that the Government was “still extremely optimistic” that we will transition most of these agreements in time if there was no deal with the EU in place for Brexit day although he could “not pretend” that “we have one on the books yet” and could “not guarantee that all of them will be absolutely on time”. He said there were “lots that are reasonably well progressed”, and some where “very substantial progress” had been made or which were “very close to final initialling

201 Government Guidance, Existing free trade agreements if there’s no Brexit deal, 12 October 2018
202 This figure did not take into account newly signed agreements such as EU-Japan partnership. The Government’s Impact Assessment for the Trade Bill, November 2017.
or even signature in some cases”. There were also some “where we have not made very much progress for all sorts of reasons”.

He also referred to complexities in the discussions with third countries, given that some had been negotiating on the basis of there being a transition period, rather than needing a deal in place from March 2019 in the event of there being no UK-EU deal. But the focus had changed “some months ago . . . to emphasising to key partners in our discussions that no deal was a real possibility”. However, Mr Hollingbery said there were some countries for which “it is difficult to imagine how you could enter into an agreement to transition a deal if you did not have agreement with the EU”

Mr Hollingbery also referred to ratification issues in some countries (for example South Korea) that could prevent agreements coming into force in time, although the Government was working on the “ability to provisionally ratify in these agreements as we write them up, so that, if provisional application is possible in a partner country, that will be written into the agreement”.

On 18 January 2019, the Financial Times reported on a leaked Department of International Trade memo that said that most of the EU’s international trade deals would lapse without a transition period after 29 March, as rollover deals would not be ready in time. A government official was reported as saying: “Almost none of them are ready to go now and none will be ready to go by March.”

Speaking to the Marr programme on 20 January 2019, Dr Fox said he was confident that the UK could replicate the five most important trade deals with non-EU countries in time for 29 March 2019. He said that there were 34 EU trade deals in operation and requiring replication. Adding mutual recognition deals with Australia and New Zealand mutual recognition would bring the figure up to 36. Overall Dr Fox said that these agreements “represent about 11.6% of our total trade” but “the bottom 21 of them represent about point eight of 1%”. Dr Fox said:

The top five of those represent about three quarters of that total and we’re confident that we will be able to get those agreements over the line.

Dr Fox said that a number of countries were unwilling to put preparations in for no deal”, while a couple of others were in the process of elections or had “no effective government” making it difficult to negotiate replacement deals.

In reply to an oral question on 24 January 2019, Mr Hollingbery told the House of Commons that he believed “we will have the majority of agreements rolled over, and it is absolutely our objective to have them all rolled over”.

The Institute for Government has suggested the Government prioritise agreements which should be in place before leaving the EU as part of its no-deal planning:

‘No deal’ planning has to assume that those arrangements will not be in place. That means the UK needs to prepare a priority list of countries and agreements, renegotiated and re-ratified by 29
March 2019 – and it needs to warn business of the consequences if those agreements are not in place. The Government claims it is making good progress on third country agreements, but it needs to be much more transparent to give business confidence this is really happening.203

If the Government is successful in agreeing new rolled-over treaties with third countries to replace EU agreements, then it may be able to implement these irrespective of whether it reaches a deal with the EU on withdrawal and future relations. But a failure to agree on the future relationship is likely to complicate matters where third countries are awaiting confirmation of the UK’s future relationship with the EU before concluding new agreements with the UK.

**Government update on international agreements signed**

On 25 January 2019, Brexit Secretary Steve Barclay wrote to the Chair of the Exiting the EU Committee and other Committee chairs attaching a list of bilateral agreements the Government has so far signed with third countries to replace existing EU international agreements, and those that it expects to sign in the near future. In terms of trade-related agreements actually signed, these were:

- Agreement with Australia on trade in wine
- Agreement with New Zealand on trade in live animals and animal products
- Mutual recognition agreement on conformity assessment with New Zealand
- Mutual recognition agreement on conformity assessment with Australia

Trade agreements that the UK expects to sign shortly were listed as follows:

- Economic Partnership Agreement with the Eastern and Southern African States204
- Free Trade Agreement with Denmark in respect of the Faroe Islands
- Association Agreement with Chile
- Economic Partnership with Cariforum States205
- Trade Agreement with Switzerland
- Trade and Partnership Agreement with Palestinian Liberation Organisation on behalf of the Palestinian Authority.

The document also listed agreements where the text is expected to be finalise shortly. These included mutual recognition agreements with the USA, agreements with the USA on trade in wine and distilled-

---

203 Institute for Government, How the Government plans to roll over third country agreements, 19 July 2018
204 Comoros, Madagascar, Mauritius, the Seychelles, Zambia and Zimbabwe
205 Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, St Vincent and the Grenadines, St Kitts and Nevis, Suriname and Trinidad and Tobago.
spirits/spirit drinks, an agreement with Mexico on distilled spirits/spirit drinks, and trade agreements with Israel, Canada, Norway and Iceland, the Pacific States\textsuperscript{206}, and the South African Customs Union and Mozambique. The list does not include agreements with important UK trading partners such as Japan, South Korea and Singapore.

Signature of the agreement with \textbf{Chile} was announced by the Government on 30 January 2019. The signature of the agreement with the \textbf{Eastern and Southern Africa} States was announced on 31 January, and the one with the \textbf{Faroe Islands} the next day.

\textbf{Rules of Origin}

No deal could also make it difficult to apply diagonal cumulation arrangements in relation to rules of origin (RoO), creating difficulties for the UK in meeting the current RoO requirements in EU trade agreements with third countries if it attempted to replicate these in UK-specific trade agreements. Given the complex supply chains with components coming from across the EU in sectors such as the car industry, this could require the threshold for domestic content in RoO to be revised significantly downwards.

However, the Government has indicated that it will seek agreement with third countries for EU content to count as UK content in rolled over agreements with third countries. This approach has been agreed in the three agreements so far signed.

\textbf{Possible continuity of aspects of Mixed Agreements}

Around a quarter of the EU’s international agreements have been classified as mixed agreements because they cover competences shared by the EU and Member States. This means that they have been ratified separately by individual EU Member States as well as approved at EU level. It is possible that some aspects of these agreements could continue to apply in the event of the UK leaving the EU without a deal, but there is some debate about this. While EU-exclusive competence agreements will cease to apply to the UK once it leaves the EU, some legal experts have suggested that aspects of mixed agreements could continue to apply. However, the EU has stated that all agreements will cease to apply.\textsuperscript{207}

\textbf{New trade deals}

In addition to its work on existing EU trade agreements, the Government is exploring options for new free trade agreements (FTAs) after leaving the EU:

We have established working groups and high level dialogues with a range of key trade partners, including the United States, Australia, China, the Gulf Cooperation Council (GCC), India, Japan and New Zealand.\textsuperscript{208}
In July 2018 the Department for International Trade announced consultations on the UK’s first bilateral trade agreements with Australia, New Zealand and the USA, as well as potentially joining the Trans-Pacific Partnership.

But trade negotiations are time-consuming and complex, and while it is an EU Member State the UK cannot officially negotiate and sign future trade deals. Even the legality of holding preliminary consultations on future deals has been debated, although the Government has been conducting bilateral discussion, as outlined above. The draft withdrawal agreement allows the UK to negotiate and sign new trade agreements during the transition period, but not to implement them until after transition. But with no deal and no transition period, formal negotiations and/or the conclusion of new agreements could not happen until after March 2019, meaning new trade agreements with third countries would not be in place.

Australia’s Trade Minister Simon Birmingham told the Australian ABC TV network on 18 November 2018 that Australia had put measures in place to deal with any Brexit outcome. He said that negotiations were already underway on a new free-trade agreement between Australia and the EU and that Australia had established a trade working group with the UK. Australia has also been replicating text from some of its market access agreements with the EU, in readiness to deploy them for the UK. Mr Birmingham said: “We could bring those into effect with the UK quite quickly should there be an abrupt, perhaps no-deal Brexit. . . . We are ready for pretty much any possibility that arises”.

209 The Trade Bill, Commons Library Briefing Paper, chapter 2.2
7. Customs

7.1 Increased customs controls

The effects of ‘no deal’ are expected to be most tangible at the UK border. At the moment of leaving the EU customs union without a deal, the border between the UK and the EU would become a customs border. This will mean increased customs controls, potentially involving increased costs and delays for business.\(^{210}\)

The port of Dover processes up to 10,000 incoming and outgoing freight vehicles a day. Currently, 99% of those originate in the EU and are processed in around two minutes. Customs checks on non-EU trucks take on average 20 minutes. An additional two-minute delay per freight vehicle in the ferry terminal would cause a 17-mile queue at Dover. The ports lack the physical space to accommodate the goods waiting to be processed. This written Evidence from the Port of Dover to the Commons Public Accounts Committee illustrates the urgent need for contingency measures for no deal.\(^{211}\) Also, manufacturers who make use of complex cross-border supply chains and “just-in-time” delivery of parts might be forced to make adjustments.\(^{212}\)

Disruption to trade because of uncertainty around customs procedures in the case of no deal is possible. But having contingency plans ready is essential on both the UK and the EU side of the border.\(^{213}\) These concern investment in infrastructure, IT systems and manpower.

The NAO states in its report on UK Border preparedness that the precise impact of leaving without a deal would depend on whether the UK and EU could reach any agreements on issues such as travel, data-sharing and customs arrangements before March 2019.

**Official no-deal guidance**

HMRC has published a Partnership pack for businesses to prepare them for changes at the UK border after a ‘no deal’ EU exit covering aspects as changes to customs procedures for imports and exports, VAT, excise and regulatory changes. The Government’s no deal guidance to businesses that trade with the EU states that HMRC approach will be to “minimise delays and additional burdens for legitimate trade”.\(^{214}\)

Under a Transitional Simplified Procedure, available for at least one year, HMRC will allow imports from the EU through border crossing points.

---

\(^{210}\) In a no-deal scenario EU legislation on imported goods and exported goods will apply as of the withdrawal date. This includes the levying of duties and taxes and the respect of the formalities and controls required by the current EU legal framework; see European Commission, *Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission’s Contingency Action Plan*, 19 December 2018, p7

\(^{211}\) Port of Dover – written evidence to the Public Accounts Committee, 23 October 2017

\(^{212}\) UK in a changing Europe, *Cost of no deal*, 20 July 2017

\(^{213}\) For local governments preparations in the event of a no-deal Brexit see Kent County Council, *Brexit Preparedness – Kent County Council Update*, 13 December 2018

\(^{214}\) Government Guidance, *Trading with the EU if there’s no Brexit deal*, 22 August 2018. See also other guidance notices on importing and exporting.
without additional checks. More than 145,000 UK businesses trading with the EU are invited to register for this procedure, which will remove the need to submit customs declarations and pay customs duties at the border but will allow companies to defer the full declaration till after the goods have entered the UK.

UK exports to the EU will be impacted by procedures on the EU side of the border. As part of its broad contingency planning, the Commission has asked Member States to take all necessary steps to be able to apply the Union Customs Code and VAT legislation to UK imports and exports, meaning that the UK will be treated as a non-member state with respect to customs controls. In order to mitigate disruption of goods transport, the Commission has proposed that UK road haulage operators are temporarily (till 31 December 2019) allowed to carry goods into the Union, provided the UK reciprocates.215

7.2 The Taxation (Cross-Border Trade) Act 2018

The Taxation (Cross-Border Trade) Act 2018 provides for a range of negotiation outcomes, including a contingency scenario for a no-deal outcome. The Act covers the implementation of customs, VAT and excise regimes, and sets out the steps the Government would take to minimise disruption for businesses and travellers. It also follows that the operational arrangements for future international agreements on trade and provision for customs import and export duties would have a significant operational impact on the work of HMRC.216

7.3 Concerns about management of borders

The main issues and challenges for the management of the border after Brexit were highlighted in a report by the National Audit Office in October 2017, which noted that “the number of decisions that have to be made over whether to permit people and goods to cross the border could increase significantly (potentially 230% and 360% respectively)“.217 The Public Accounts Committee (PAC), which is monitoring HMRC’s operational preparedness for a no deal scenario, expressed concerns at the end of 2017 about the Government’s earlier assessment that risks to border activity would remain unchanged immediately post-Brexit:

Government departments are assuming that the risks to managing the border will not change immediately when the UK leaves the EU, and that border checks will therefore be the same after March 2019 as they were before.[..]

215 European Commission, Brexit: European Commission implements “no-deal” Contingency Action Plan in specific sectors, 19 December 2018
216 Explanatory Notes, Taxation (Cross Border Trade) Bill, 20 November 2017, para 9 et seq.
Particularly in the event of a no-deal scenario, the border could be exposed to risks on day 1 of the UK’s departure. Officials are relying too much on there being a transitional period in order to have the time to develop the new systems and infrastructure that may be required.\[218\]

The National Audit Office says in its report on border preparedness (24 October 2018) that the effectiveness of the government departments border planning, including for a no-deal, has been largely affected by ongoing uncertainty and delays in negotiations with the EU. The report states further:

There is a high delivery risk attached to government departments’ border programmes for ‘day one of no deal’ due to their scale, complexity and urgency.

The report notes that “in the event of ‘day one of no deal’ the government has accepted that the border will be ‘less than optimal’.”\[219\]

To manage potential disruption at the border after leaving the EU without a deal, government departments are engaged in civil contingency planning under the leadership the Cabinet Office’s Civil Contingency Secretariat.\[220\]

### 7.4 HM Revenue and Customs preparedness

A cross-government Border Planning Group (BPG) led by HMRC’s Chief Executive, Jon Thompson, was established in early 2017 and tasked with the co-ordination of Brexit-related border challenges. In October 2017, the Treasury confirmed that this group had been allocated a budget of £2.5 million for the year 2017-18.\[221\]

According to the Treasury:

The Border Planning Group has reviewed all border locations (ports, airports and the Channel Tunnel) to understand the implications at these locations of controls and checks; and concluded that there are a number of locations, especially ‘Roll On - Roll Off’ ports (for example, Dover), where significant extra controls and checks would be difficult to accommodate without affecting the flow of traffic and people.\[222\]

The BPG also co-ordinates work with organisations such as local authorities and non-governmental organisations responsible for managing or enabling the border (port and airport operators, carriers, agents and others). Plans are being developed on a location by location, port by port basis.\[223\]

As for ‘no deal’ planning, Jon Thompson explained to the PAC:

---

\[218\] Public Accounts Committee, Brexit and the UK border, 8 December 2017, HC 558, paras 1-3
\[219\] National Audit Office, The UK border: preparedness for EU exit, 24 October 2018, HC 1619, p7 et seq.
\[220\] National Audit Office, The UK border: preparedness for EU exit, 24 October 2018, HC 1619, p7 et seq.
\[221\] WPQ 107596 12 October 2017
\[222\] HM Treasury, Government response to the Committee of Public Accounts on the Fourth to the Eleventh reports from Session 2017-19, Cm 9575, March 2018, paras 1.2-1.3 and 3.2-3.3
\[223\] Ibid
If, when we get to October, we will exit the European Union in March 2019 and go on to WTO rules, the Government will have to make some choices about what objectives take primacy at the border. A choice will need to be made between the free flow of trade, the security of the United Kingdom and the raising of revenue. I think it is fair to say that you will not get an optimal system in April 2019 across those three objectives. You will have to prioritise…

In response, the PAC wrote to HMRC stating:

We have previously reported that the Border Planning Group’s assumption that the risks to border activity remained unchanged immediately post-Brexit is a risky approach, and this remains a concern. We are also not convinced that HMRC is sufficiently prepared for the different possible Brexit outcomes, for example, in terms of the potential new infrastructure that might be needed at ports.

The PAC had previously noted that the new Customs Declaration Service, which the HMRC started planning and implementing before the EU Referendum, was at risk of not being fully operational by the planned date of January 2019. In July 2018 the BPG told the PAC that work had been done on risk mitigation and that an upgrade of the current customs declaration system CHIEF was being tested. Following the NAO report of 24 October 2018 that 11 out of 12 critical IT systems at the border are at risk of not being ready for a no-deal scenario, the PAC has asked the HMRC to provide more information on contingency arrangements.

Regarding recruitment of new personnel at HMRC and Border Force, Jon Thompson reported in July:

I have been reasonably clear that, in these various scenarios, we will need somewhere between 4,000 and 5,000 additional staff. We recruited 1,113 by the end of May. […] We will continue to recruit en route to the 4,000 to 5,000. Of those the estimation is that 3,000 people need to be trained—2,500 HMRC colleagues and 500 Border Force. […]

 Asked if an optimal staffing solution would be found by April 2019, Jon Thompson said:

The answer is, it is not. It will not be optimal, but from 2019, in the scenario that you are exploring of day one, no deal, we would continue to mature the system through 2019 and 2020—get more people and so on and so forth. We believe you would have a functioning border, but it would not be an optimal situation.

---

224 PAC, HMRC’s performance: progress review, 30 April 2018, HC 972, Q55
225 Letter from Meg Hillier, Chair of the Public Accounts Committee to Jon Thompson, HMRC Chief Executive, 6 June 2018
226 PAC, Brexit and the future of Customs, 14 November 2017, HC 401, para 4
227 PAC, Customs Declaration Service: Progress Review, 11 July 2018, HC 1398, Q 25-26
228 Letter on from Meg Hillier, Chair of the Public Accounts Committee to Jon Thompson, HMRC Chief Executive, Brexit and the UK Border: Progress Review, 5 December 2018
229 PAC, Customs Declaration Service: Progress Review, 11 July 2018, HC 1398, Q79, 82, 84
HMRC has assessed the ongoing administrative burden to businesses which are currently trading with the EU but, in a no-deal scenario, would have to submit customs import declarations and pay import duties before goods would be released into free circulation. It is estimated that between 145 000 and 250 000 businesses would have to submit declarations for the first time. The HMRC impact assessment for the movement of goods if the UK leaves the EU without a detail (4 December 2018) explains the costs of the extra administrative burden in more detail.

The Treasury has acknowledged “the practical difficulties to accommodate significant extra controls and checks without affecting the flow of traffic and people”, and said that therefore:

... the Government is taking a pragmatic approach to border controls to ensure the flow of traffic at the border, and to implement controls and checks as they can be accommodated. 230

The National Audit Office assesses in its report on border preparedness of 24 October 2018 that government departments’ border programmes are at risk of not being ready for ‘day one of no deal’ due to their scale, complex interdependencies and urgency. For example, the progress of several key system projects depends on HMRC’s CDS/ CHIEF systems being ready in time for March 2019. Infrastructure to enable the tracking of goods and physically examining goods cannot be built before March 2019. In addition, businesses do not have enough time to prepare for a ‘no deal’ scenario. Also, the most complex issues relating to the border remain to be resolved. This refers to decisions on customs arrangements in Northern Ireland as well as HMRC having to design and implement a system for smooth operation of RORO ferry ports and Eurotunnel. 231

The PAC inquiry on Brexit and the UK Border is ongoing.

Common Transit Convention

To minimise disruption in transit procedures, the UK has successfully negotiated re-joining the Common Transit Convention (CTC) in its own right soon after leaving the EU. This would enable the UK to remain in the EU’s common transit procedures with EFTA Members as well as Macedonia, Serbia and Turkey. The CTC allows exporters to avoid customs checks until goods reach their destination country, so goods travelling to and from the UK and passing through the EU and into third countries would avoid paying EU duties. 232

Case study: impact on the automotive sector

Profile of the sector

Automotive production in the UK is a high profile and successful industry typical of many ‘just in time’ manufacturing sectors. It is part of

230 HM Treasury, Government response to the Committee of Public Accounts on the Fourth to the Eleventh reports from Session 2017-19, Cm 9575, March 2018, paras 1.2-1.3 and 3.2-3.3
231 National Audit Office, The UK border: preparedness for EU exit, 24 October 2018, HC 1619, p7 et seq.
232 HM Treasury, UK to remain in Common Transit Convention after Brexit, 17 December 2018
an international supply chain and its manufacturing plants operate a low-stock, high-volume model that requires constant component delivery. The sector has relatively high levels of productivity, high investment and many high-skilled workers.

The sector in the UK is dominated by foreign-owned manufacturers based at large, high value plants mostly in the Midlands and the North East.  

The sector: 

- employed 162,000 people, 1% of total employment in Great Britain in 2016;
- generated economic output (in terms of Gross Value Added) of £16.6 billion, 0.8% of the UK’s economic output in 2017;
- is 20% more productive than the overall manufacturing industry and 35% more productive than the average for the UK economy;
- exported vehicles worth £44 billion in 2017; this was 13% of UK goods exports and 54% of vehicle exports were to the EU.

The sector is highly integrated with complex supply chains involved in the production of almost all the components of motor vehicles. The Automotive Council (a high-level forum composed of industry leaders and Ministers) estimates that “44% of parts used to make UK cars come from UK suppliers”. The Financial Times suggests that even this figure may overestimate the proportion of UK-made components:

Of [the] 30,000 components in modern vehicles, each one may contain 30 sub-components and have passed through 15 countries during the course of its production... With many of the parts going into Tier One components coming from overseas, it is therefore highly likely that the true UK make-up of vehicle components is far lower than 44%...

The importance of supply chains to this industry means that the impact of a no-deal Brexit could be significant. The main possible impacts can be divided into (i) the impact of tariffs, (ii) the impact of non-tariff barriers to trade, and (iii) the changing regulatory regime.

---

234 The industry is defined as Standard Industrial Classification code 29.
235 ONS, Business register and employment survey, 2017, via NOMIS database
236 ONS, *Quarterly National Accounts Q1 2018, Low Level Aggregates Table*, June 2018
237 ONS, *Labour productivity Q1 2018, Data: Breakdown of contributions, whole economy and sectors*. Data are current price, output per hour, automotive sector = Transport and equipment manufacturing
238 Society of Motor Manufacturers and Technicians (SMMT), *Motor industry facts 2018*, pp7,9,10
239 Automotive Council, *Rise in amount of British parts used in British car production*, 20 June 2017
240 Financial Times, *Brexit triggers a great car parts race for the UK auto industry*, 30 July 2017
Tariffs
While the UK is in the EU’s customs union, no tariffs are charged on cars and automotive components (or any manufactured goods) that are imported from or exported to the EU. In a no deal scenario, it is assumed that EU-UK trade would be arranged under WTO rules governing trade between trade partners with no FTA.

This would mean the imposition of tariffs on trade in goods between the UK and the EU. UK exports to the EU would face the EU’s tariffs and imports into the UK from the EU would face whatever tariffs the UK decided to impose. The average tariffs imposed by the EU on the import of cars is 9.8%, and the average tariff for motor vehicle parts is 3.8%.

If tariffs are imposed on car exports to the EU or component imports from the EU, then the cost of manufacturing cars in the UK would increase. Honda, a major car manufacturer with plants in the UK, commented to the Business, Energy and Industrial Strategy (BEIS) Select Committee that the imposition of tariffs “would make UK manufactured vehicles ‘uncompetitive’.” The BEIS Select Committee concluded that:

…it is difficult to see how it would make economic sense for multinational volume manufacturers – the bulk of the UK automotive sector – to base production in the UK in a no deal or WTO tariff scenario.

Section 6.2 above provides further information on tariff issues in a no-deal scenario.

Non-tariff barriers
Non-tariff barriers are practical, administrative or physical obstacles that make trade more difficult. The automotive sector in the UK could experience non-tariff barriers in the form of “delays at the new UK-EU border and…additional administrative requirements” in the event of a no deal Brexit.

The ‘just in time’ model that the automotive industry operates means that stock is delivered to the assembly line as it is needed. Only a very limited number of spare parts are stockpiled – manufacturers tend not keep more parts than are needed for the immediate future. Delays in the delivery of stock could prevent cars from being manufactured at the pace required to maximise efficiency and retain competitiveness.

Honda commented to the BEIS Select Committee that “a 15-minute delay could add around £850,000 per year in costs” to annual production at their Swindon factory.

241 The Government has said that it intends to replicate the EU’s tariff structure as far as possible, at least in the short term (HCWS316 Written Statement 5 December 2016).
242 WTO, Tariff Download Facility (WTO Most Favoured Nation average applied tariffs)
244 Ibid.
245 Ibid. Section 3
246 Ibid.
**Regulatory standards**

Differing regulations that determine how a manufactured good is produced or tested are a type of non-tariff barrier. All cars sold or registered in the EU are subject to strict safety and other regulations. New cars must be issued with a Certificate of Conformity to prove that they meet EU regulations. Certificates of Conformity can only be provided by a ‘type-approval authority’ in an EU Member State. In the UK the type-approval authority is the Vehicle Certification Agency (VCA).[^247]

If there is no deal and the UK immediately assumes third country status in relation to the EU, the European Commission has said the VCA will lose its status as a type-approval authority.[^248] Manufacturers would have to seek approval from a type-approval authority in another EU country, which could be costly and may add to the time taken to gain approval. The Society of Motor Manufacturers and Technicians commented to the BEIS Select Committee that the type-approval authorities in other EU Member States might lack the capacity to provide certification for UK manufactured vehicles in addition those manufactured in their own country.[^249]

[^248]: European Commission, *Brexit preparedness notices: Type Approvals (automotive vehicles)*, February 2018, p2
8. Northern Ireland and the Irish border

Many of the possible effects of ‘no deal’ on the Irish border and trade with Ireland are the same as those that would arise from UK - EU trade in general and at other ports/entry points for goods traffic.

But there are two unique characteristics that make the Irish border more complex. The first is the nature of that border - it is the only land border the UK shares with the EU. The border is currently “invisible and seamless across its 310 mile/500 km length”. The second is the history of violence and conflict in the region, which was largely brought to an end with the signing of the 1998 Belfast/Good Friday Agreement. This means there are particular sensitivities about the erecting of border infrastructure and implementing checks on goods crossing the border. This is why the UK government has committed to “no new physical infrastructure at the border and no new checks or controls at the border”.

The EU and the UK Government share a commitment to avoiding a hard border between Ireland and Northern Ireland. Although the two sides have yet to reach an agreement on how best to avoid checks and infrastructure at the border, the types of solutions suggested, which include the use of technology, some degree of regulatory alignment and some sort of customs agreement, are likely to be absent in a no-deal scenario.

8.1 Customs checks

If the UK implements a new customs regime under WTO rules, what checks at the Northern-Irish border would it be required to conduct and could it waive some or all of them? The EU has consistently said that checks would be required on the Irish border if the UK leaves the Single Market and customs union. Michel Barnier said in February 2018, that such checks would be “unavoidable”.

It has been reported that the Irish Prime Minister, Leo Varadkar, suggested in July 2018 that even with ‘no deal’, checks and infrastructure at the border would not be required. The Irish Times reported:

> Mr Varadkar said that such a “doomsday scenario” would mean that the “commitments of others” would be relied upon to prevent a hard border. […] “Also, president Juncker and my EU

---

250 Gibraltar shares a land border with Spain but is a British Overseas Territory, and the UK’s Sovereign Base Areas in Cyprus have no customs posts or frontier barriers, the UK government has committed to maintaining this status and the EU has largely agreed to ensuring this happens. See CBP 8269 pp 81-5 for more detail.

251 HM Government Northern Ireland and Ireland- Position Paper, 16 August 2017

252 See, for example, the Secretary of State for Northern Ireland, Karen Bradley’s evidence to the European Scrutiny Committee, EU Withdrawal, 16 May 2018, HC 763, Q326.

253 BBC News, ‘Michel Barnier: Irish border checks ‘unavoidable’’, 9 February 2018
colleagues have on many occasions said that they wouldn’t require us to put in place a physical infrastructure and customs checks on the Border between Northern Ireland and Ireland,” he said.\textsuperscript{254}

However, the Irish Revenue Commissioners subsequently confirmed that they were making preparations for “full customs checks” on UK-Irish trade “in case no deal is reached on Brexit.”\textsuperscript{255}

The Prime Minister’s EU Advisor Oliver Robbins, in oral evidence to the Exiting the EU Select Committee on 24 July, acknowledged the European Commission’s position that checks and controls would be necessary (Q2451) and said that if it came to that situation, there would be a “strong debate between the two sides as to what was necessary there”, that both sides would “have to reflect on their responsibilities and make the appropriate measures and preparations”.

Seamus Leheny, Northern Ireland Policy Manager at the Freight Transport Association, has written about the possible effects of customs checks on goods traffic crossing the Northern Irish border:

Commercial goods vehicle traffic across the Irish border was estimated at 4,677,772 vehicle movements for the year 2016, according to analysis of TII data by Irish Revenue & Customs. This works out at a staggering 12,788 commercial vehicle movements daily across the border.

It’s also worth highlighting that compared to 2014, commercial vehicle traffic across the Irish border has increased by 21.4%. This clearly demonstrates that both economies, north and south, continue to become more reliant on one another as our supply chains become more entwined.

Even if customs checks were to be imposed on cross border traffic at the minimum 1% level, then, we would see around 128 physical inspections of goods vehicles daily. The impact of such checks would be additional costs for transport operators, delays and missed schedules.\textsuperscript{256}

He also describes how the logistics of goods transport adds further complexities:

Many cross-border freight movements are consolidated loads: for example you could have one lorry carrying forty different consignments, each one unique with different points of origin and destination. This could mean a check on one pallet of goods on a truck could have consequences for dozens of other businesses.\textsuperscript{257}

The reason most trade experts believe the UK will need to impose customs checks on goods coming into Northern Ireland is because of the MFN principle, which applies to all WTO agreements (see section \textbf{6.1} above).\textsuperscript{258} Countries can side-step this principle if they sign free

\textsuperscript{254} Irish Times, \textit{EU calms Varadkar’s fears of physical Border checks after Brexit}, 19 July 2018.

\textsuperscript{255} Irish Times, \textit{Revenue preparing for full customs checks post-Brexit}, 6 September 2018

\textsuperscript{256} UK in a Changing Europe, \textit{Making Northern Ireland a bridge between the UK and the EU}, Seamus Leheny (Freight Transport Association), 18 June 2018

\textsuperscript{257} UK in a Changing Europe, ibid

\textsuperscript{258} See WTO, \textit{Principles of the trading system}
trade agreements with each other or form customs unions, as the WTO permits those as ‘exceptions’ to the MFN rule.

One proposal to avoid infrastructure and checks on the Irish border in a no-deal scenario is for the UK to waive checks on goods as they enter Northern Ireland. However, if there is no deal, there is also no UK trade agreement with the EU, so many trade experts have argued that if the UK applied no customs tariffs or checks to EU goods coming across the Irish border, MFN requirements mean it would have to do the same for all goods coming in from other nations. Aoife O’Donoghue, Professor of International Law at the University of Durham, told Channel 4 News:

> If the UK chooses not to impose any tariffs on goods coming across the [Irish] border… that would mean that the UK is giving the EU (because Ireland is the EU in this context) complete open access. So its most favoured nation tariff is zero. That means it would have to give a zero tariff access to every single country in the WTO.\(^259\)

Dr Lorand Bartels, an international trade academic, gave evidence to the European Scrutiny Committee (ESC), and was asked what would happen if the UK did waive all customs and regulatory checks at the Northern Irish border. He suggested that while this would be a problem legally, the UK might receive a waiver from the WTO:

> I can only speak about what that would mean legally. It would be something of a problem, essentially. The reason is that it would be granting the EU preferences that would not be shared with other WTO members. I do not think, I should say, that the WTO should in reality present this as a major problem. First of all, I have to insist as a WTO lawyer that WTO rules are binding and are law.

> However, the reality is that it takes a long time to enforce them. It requires countries to complain. They might not see any value in complaining. More importantly, though, it would be appropriate to ask for a waiver of the WTO to cover this sort of situation, and there is a very good chance, given the circumstances of the Northern Irish border, that that waiver would be forthcoming. It is a technical problem but one that is relatively easily solved. Again, I do not know what this actually means on the ground.\(^260\)

Federico Fabbrini, Professor of European law at Dublin City University, has suggested that the EU could use a previously unused provision in the General Agreement on Tariffs and Trade (GATT) to remove the need for customs checks (but not regulatory checks) in Northern Ireland:

> In the event of a hard Brexit, therefore, contingency plans would need to be put in place from the EU side to deal with the sudden emergence of a customs border between Ireland and Northern Ireland. […] [A]n option that the EU could consider … would be to trigger Article XXIV(3) GATT, which introduces the so-called “frontier traffic exception” from the MFN principle. Under this never-used clause of the GATT, ordinary WTO customs rules “shall not be construed to prevent: a) advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic”. Pursuant to this reading, the EU could declare the

\(^{259}\) Channel 4 News, *Fact check: What are the options for the Irish border after Brexit?* 29 November 2017

\(^{260}\) European Scrutiny Committee *Oral evidence: EU Withdrawal*, HC 763, 27 June 2018, Q539
entire territory of Northern Ireland to be a frontier zone to the EU customs union; thereby removing the need for customs controls (at least on the EU side) but not the need to SPS checks. Clearly this solution would not be problem-free, as it would create a loophole in the impermeability of the EU external customs border, which could be exploited for illegal purposes. Nevertheless, it should remain in the armory of the EU to deal with a thorny issue.\textsuperscript{261}

The ESC also asked Dr Bartels about this exception. He thought it could not be extended to the whole of Northern Ireland, as that was not its original intention:

The frontier travel exception is another one [exception] but it does not take you very far. The discussions on the frontier traffic exception at the time that the rule was drafted made it fairly clear that, where we were talking about situations where you had had a border running through a city, the traffic that counts as frontier traffic is about goods that are produced and consumed within a small distance of that border. The figure that was given by the United States, which drafted this provision, was 15km either side of the border. Essentially what we are talking about is market traffic.

[...] It is not designed to cover whole territories. It is really just for market traffic on the border in those sorts of special circumstances. It is not really anything more than that. With all due respect to my colleague, what he has said has been somewhat misunderstood and too much reliance has been placed on it.

[...] Quite clearly, the frontier traffic exception is of no particular use here except, if you really wanted to push it, to actual frontier traffic that extends in a very, very small zone either side of that frontier.\textsuperscript{262}

David Collins, Professor of International Economic Law at City University, London, also told the ESC that this exemption could not cover the whole territory of Northern Ireland, but he did say it could help alleviate some issues for local goods traffic, explaining: “this is the basis for the discussion in some circles about having a two-tier checking system, one for local traffic and then another for larger traffic that might have an international destination”.\textsuperscript{263}

Sabine Weyand, the EU Commission’s Deputy Chief Negotiator, told the Exiting the EU Committee in September, that such a border zone would not satisfy EU concerns about the integrity of the single market:

You referred to the exemption from MFN provisions in the WTO. Now this refers to tariff issues. Indeed you can create an economic zone 20 km around the border or wherever, but that does not address the issue we face on the island of Ireland.

Here we are talking very practically about—imagine—an import of shrimps from an Asian country where they treat shrimps with antibiotics, which are prohibited in the EU because they can lead to blindness. Now this shipment arrives in Liverpool and is


\textsuperscript{262} European Scrutiny Committee \textit{Oral evidence: EU Withdrawal}, HC 763, 27 June 2018, Q532

\textsuperscript{263} Ibid
destined for the market in Northern Ireland and also the EU27. At what moment and how do we check that there are no residues of prohibited antibiotics? A 20 km zone does not address this issue. That is one example.

The second example is bicycles imported from China on which the EU levies anti-dumping duties. Maybe the UK in the future decides not to have such anti-dumping duties because you want to have your own system on this, so how can we ensure that bicycles, arriving in Liverpool again or somewhere else, do not end up undermining the anti-dumping duties that the EU is levying? How can we avoid that this becomes an entry point into the single market? Again, WTO rules on exemptions, of 20 km, do not address this issue.

The third issue—and a very important one—is VAT. How can we ensure that VAT is levied correctly? That is a major source of revenue for all our member states and is also a major source of fraud in the EU but also in the UK. Therefore, we will need to have a system where we can protect the integrity of the single market and the customs union, in a situation where we do not have a hard border between Ireland and Northern Ireland.

It is on these very precise and concrete issues that we need to find a solution.264

In the same evidence session, Michel Barnier said that not only were checks unavoidable, but there was no neat distinction between customs and regulatory checks:

In the light of your Government's decision to leave both the single market and the customs union, it is obvious that we need to find ways and means to set in place a number of checks on goods entering Ireland. Without any checks, that would be a breach in the single market and customs union. Without checks, we cannot guarantee the safety of goods entering into the European Union and circulating in it, and vice versa obviously for the British market, as far as you are concerned, because the external border of your market would be there now.

In the joint report of December and then in a letter from Theresa May in March, the British Government committed itself to respecting the integrity of the single market and the customs union and the place occupied therein by Ireland. On the ground, ladies and gentlemen, it is impossible—this is nothing new—to distinguish between customs checks and other regulatory checks. The two kinds of checks are intrinsically linked in the technical physical organisation of what happens when things are checked on that border for the single market.265

The Prime Minister, in her evidence to the Liaison Committee in July 2018, suggested that the Government would not automatically impose border controls and checks if there were no deal:

Q4 Hilary Benn: Can you confirm that no deal would mean a hard border in Northern Ireland? It’s a very simple question. If there is no deal, there will be a hard border.

The Prime Minister: There isn’t the sort of simple answer to that that you are looking for, if I may say so.

264 Exiting the EU Committee, Oral evidence, ‘The progress of the UK’s negotiations on EU withdrawal’, HC 372, 3 September 2018, Q2546.

265 Ibid Q2537.
Q5 Hilary Benn: Really?

The Prime Minister: Obviously, if we were looking at the question of no deal, the United Kingdom would need to consider what action we would take in those circumstances, and the Irish Government and the European Commission would need to consider what action they would take in those circumstances.

Q6 Hilary Benn: But you have put a huge amount of effort, including in your White Paper, into coming up with a proposal to avoid a hard border—presumably because, as you said to the House of Commons on 9 July, “The friction-free movement of goods is the only way to avoid a hard border between Northern Ireland and Ireland”. Therefore, if there is no deal, there can’t be friction-free movement of goods, and therefore there would be a hard border, wouldn’t there?

The Prime Minister: If there is no deal, there will be decisions for the United Kingdom Government to take about the action that it takes at its borders. The European Commission is very clear that if there is no agreement in relation to customs arrangements, there will have to be checks at the border, but, as I say, when you come to a circumstance—whatever the circumstances were—we would obviously need to look at the situation in which that deal was being put in place, the arrangements in which that lack of a deal was being put into place, and so forth.

Q7 Hilary Benn: But we are talking about no deal. You have just acknowledged that the Commission has said that checks would have to be put in place on the European side. Therefore there would be a hard border, and that would be the consequence of no deal. I suppose the question is, why would that be worth it? You have often said, “We’re prepared to contemplate no deal,” although you do not want that outcome. Why would that be a price worth paying for Northern Ireland?

The Prime Minister: If I can just recap on what I said, in my first answer in relation to this, I said that if we were in a no-deal situation we would obviously have to consider what action we were taking, not just in relation to the Northern Ireland border but more generally; the European Commission would have to consider what action it was taking with its responsibilities for customs, and indeed individual Governments would have to consider the action that they were taking in those circumstances.

As you know, the proposals that the European Commission have put forward so far have been based on the assumption that, if you do not have that frictionless trade, there is that border in place. What I am saying is if we were in the circumstances of no deal, all the parties concerned would have to consider what action they would take.

8.2 Regulatory checks

With or without a deal, the Government intends to leave the Single Market. The Single Market, as well as removing tariffs and quotas on goods trade between Member States, also removes non-tariff barriers to trade, such as differing technical specifications and labelling requirements (see section 6.2 above).

The Northern Ireland Affairs Committee report on the land border between Northern Ireland and Ireland describes how this regime allows
goods to pass across the border currently and the possible effects of the UK leaving the Single Market:

To facilitate the free movement of goods, the Single Market operates under the principle of “mutual recognition”. This means that any good lawfully produced in one member state can be sold in any other. To make this work, the EU has adopted harmonised regulatory standards which ensure that all member states observe, at a minimum, the same product standards. We heard that mutual recognition is “more than just having similar rules”, it relies on judicial enforcement and keeping national legislation in each member state constantly in alignment. When the UK leaves the Single Market, it will no longer be bound by the Single Market’s regulatory standards for goods or accept the powers of the EU institutions, which means UK and EU goods could cease to benefit from mutual recognition in each other’s markets. Regulatory differences can create barriers to trade because the greater the variance in regulations the more checks are required on goods traded between countries. For example, if the UK were to diverge from EU prohibitions on genetically modified food or chlorine-washed chicken it would become necessary to ensure that these goods do not cross the border into the EU via Ireland.266

The debate over what would happen to goods traffic crossing the border in a no-deal scenario centres on whether the UK would be treated as a third country by the EU or not. While the UK would not be part of the Single Market, it would have in place all the EU regulatory requirements. But because it would not be legally obliged to maintain those requirements, the EU is likely to insist on checks to ensure compliance. The EU’s preparedness notices assume that the UK will be treated as a third country. The new requirements for businesses seeking to export to the EU, particularly on health and food safety, are extensive.

According to the Institute for Government (IfG), “[c]ustoms checks account for less than half of the border formalities” and regulatory checks are more “onerous” than customs checks.267 The European Commission has produced a slide showing that most checks and controls on goods entering and exiting the EU are not related to customs duties. Live animals, food and other agricultural products, are amongst the most regulated goods and therefore have the most rigorous regime of checks and controls. Regulatory checks would have a heavy impact on Irish border traffic because of the large volume of trade in these products across the border.

The Environment, Food and Rural Affairs Select Committee, in their report Brexit: Trade in food, looked at the volume of trade in these goods across the Irish border and the potential impact of a harder border:

---

266 Northern Irish Affairs Select Committee, 2nd Report - The land border between Northern Ireland and Ireland, HC 329, 16 March 2018, para 43

267 Institute for Government, ‘The Irish border after Brexit’, Tim Durrant & Alex Stojanovic, June 2018
The trade in live cattle and sheep, and beef and lamb across the Northern Ireland/Republic of Ireland border takes place on a daily basis, with approximately 390,000 live lambs crossing the border annually. The Livestock and Meat Commission for Northern Ireland told us that the Northern Ireland sheep industry was particularly exposed to the effects of more complicated border arrangements, with approximately 45% of all lambs born in Northern Ireland exported to the Republic of Ireland each year. In 2016, the value of this live trade was approximately £31.5 million.

The dairy industries in Northern Ireland and the Republic of Ireland act as one through the supply chain, and dairy products cross the border several times between the farm gate and the consumer. Republic of Ireland dairy co-operatives own approximately 60% of the processing capacity in Northern Ireland. Exports to the Republic of Ireland were approximately 15% of total sales of the Northern Ireland dairy industry in 2015.

Witnesses told us that it was essential that two-way access between Northern Ireland and the Republic of Ireland remained “without tariffs and free from burdensome non-tariff administrative measures”. Dairy UK said that a hard border would be the least desirable option for the dairy industry.268

The report also describes the regime for third countries to export live animals and animal products to the EU:

Any consignment of animals or animal products from third countries to the EU, may only enter the EU at a designated border inspection post (BIP). All such consignments of imported animal food products are subject to a documentary, identity and possibly physical examination at the first point of entry into the EU, and all consignments must pay a hygiene inspection charge depending upon the type and amount of the commodity being examined. These charges are harmonised, laid down in EU legislation and quite independent of any customs dues payable.

[…] There are no control points at the land border between the Republic of Ireland and Northern Ireland.269

In the event of no deal, if the EU insists on such checks, and in the absence of border inspection posts, it is unclear how such products could enter Ireland from Northern Ireland.

Seamus Leheny explains in more detail the checks on animal products, and the requirements if there were no special agreement between the UK and the EU to bypass them:

Customs checks on things like tariffs is only the tip of the iceberg in terms of checks, and there is potentially an even bigger problem facing supply chain logistics on the Island of Ireland. Council Directive 97/78/EC of 18 December 1997 states that food products of animal origin, including meat, entering the EU shall be subjected to veterinary checks. There are three elements to these checks:

1 – Documentary Checks: Verifying the veterinary certificates and documents accompanying the consignment.
2 – Identity Checks: Check to ensure products in vehicle match those described in documents. This will mean physical inspection of vehicle to check seal numbers.

3 – Physical Check: Here the consignment is physically inspected, and this can include examining the packaging, checking temperatures, sending samples for to a lab analysis, or even smelling or tasting a product.

The EU stipulates the frequency of checks as follows:

<table>
<thead>
<tr>
<th>Non-EU Import Checks</th>
<th>Product</th>
<th>Official that undertakes inspection</th>
<th>Frequency of Checks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Documentary Checks</td>
</tr>
<tr>
<td>Beef, Lamb, Pork</td>
<td>Official Veterinarian</td>
<td>100%</td>
<td>ID Checks</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Veterinary checks must take place at the physical point where goods enter the EU so without some special agreement, veterinary checks and the associated infrastructure would have to be put into place at the Irish Border in order to protect the integrity of the European food supply chain. This would result in every such load having to stop to lodge documents, ID checks and potentially a physical inspection.

The UK may also have to reciprocate such checks for goods entering Northern Ireland and Great Britain as potential future trade partners will want to limit the UK market from the supply of similar EU products that they wish to sell us instead.270

Professor David Collins, however, believes that WTO agreements to which the EU are a party would prevent such a regime of checks being imposed on UK exports. He wrote in The Spectator in August 2018:

> While EU leaders like to threaten us with hints that our exports would be unsellable in the EU, the fact is that non-tariff barriers such as arbitrary health and safety inspections and borders would be prohibited under the WTO’s Sanitary and Phyto-sanitary (SPS) and Technical Barriers to Trade (TBT) agreements. The UK intends to retain conformity with EU regulations following Brexit, at least for the time being, meaning that the existing low levels of health and safety risks to the public in UK products will not change in the days after Brexit. There would, as a result, be no grounds for the EU to exclude our goods from its markets.

> The WTO’s new Trade Facilitation Agreement obliges the EU to maintain borders which are as frictionless as possible, using modern technologies such as pre-arrival processing of documents and electronic payments. Discrimination against foreign products through all sorts of internal regulations is forbidden. These rules are enforced by a well-respected international tribunal which has a high rate of compliance and cannot be overruled by the European Court of Justice.271

---

270  UK in a Changing Europe, Making Northern Ireland a bridge between the UK and the EU, Seamus Leheny, Freight Transport Association, 18 June 2018.

271  The Spectator, Why a no-deal Brexit is nothing to fear, 4 August 2018.
Professor Collins’ view is not shared by the majority of trade experts. Financial journalist Therese Raphael disagrees that regulatory goods checks are prohibited by WTO agreements: “Prohibited is a strong word. In fact, the WTO tells members to enter into consultations, but it doesn't force them to recognize another's standards”. She also disputes Collins’ representation of what the WTO Trade Facilitation Agreement requires:

Similarly, the WTO’s Trade Facilitation Agreement aims at frictionless borders, but the idea that it could be used to prevent border infrastructure in Ireland after a no-deal Brexit is fanciful. Every developed country has signed up to it, including some famously non-porous borders, which tells you something about its teeth.

While EU members may individually want to recognize British goods as compliant, the EU’s Customs Code imposes more onerous procedures and checks on third-party goods than those member states are subjected to. For example, U.K. exporters would have to complete, among other forms, a Single Administrative Document, with 54 parts, for each declaration. They would lose access to the New Computerized Transit System, the IT system that facilitates trade.

This isn’t the EU deciding to be obstreperous or imposing new barriers; it’s a legal thing -- or, as Stojanovic put it in a conversation, it’s literally a case of “computer says no.” The U.K. will be treated like any other outside country.

The U.K. government could take the EU to a dispute resolution body to complain that its standards haven’t been automatically recognized. But good luck with that; the EU would fight any attack on its single market rights vigorously and it would all take a very long time to resolve.

Dmitry Grozoubinski, a former WTO negotiator for Australia, supports this view and has said:

The SPS and TBT agreements call for technical regulations to be evidence based, to serve a policy objective and to minimally distort trade. They do NOT prevent, for example, the EU from requiring certification by an EU authority (which, absent an agreement, UKs won’t be).

Peter Ungphakorn, a former senior information officer with the WTO Secretariat, looked specifically at what the WTO’s Trade Facilitation Agreement says about checks on goods:

Basically, the Trade Facilitation Agreement is irrelevant to the question of whether the UK and EU can check each other’s goods. […]

The agreement is important. The main purpose is to slash the costs of trading by cutting red tape when goods cross borders. So it calls for streamlined procedures, paperwork handled electronically and as simply as possible, and so on. It also breaks new ground by allowing developing countries to promise to reform their procedures on condition they receive aid to implement it.

---

Bloomberg, Computer Says No’ to Jacob Rees-Mogg on Brexit, 9 August 2018

Bloomberg, ibid
Because customs and other procedures in developing countries tend to be slow and cumbersome, it’s these countries that stand to gain the most from implementing the agreement.

But it would be wrong to say the agreement is targeted at only or even mainly developing countries. Far from it. There are important provisions that developed countries like the EU and UK have to respect or face legal challenges.

It’s just that the provisions dealing with electronic paperwork and streamlined procedures don’t fall into that category. They are written in a way that only requires countries to do their best to comply. And what “doing their best” means is left up to them. 274

But Dr Bartels’ view (which he acknowledges is not shared by all his colleagues or the EU) is that the UK’s current alignment with the EU’s regulations on goods could mean checks are not technically required straight away post-Brexit:

If on Brexit day the regulations that the UK has are considered by law and in fact the EU to be no more burdensome than necessary to achieve the EU’s objectives, and that is because they are the same as the EU’s regulations, I cannot see how that changes on Brexit day plus one. Down the track, things change, of course, and there are other aspects to this. One has to also look at the rules on checking for regulatory compliance and that depends on trust and there are slightly different rules that apply to that.

Just in terms of the underlying standards, yes, that is my view. I should say that it is an unpopular view, in Brussels and elsewhere and among my colleagues, but that is my view. 275

However, he also thought the EU would still probably impose regulatory checks on goods coming into the EU in the event of no deal, saying “you cannot stop that. It is the EU’s border. It is going to protect it”. 276

There is no clarity at present as to exactly how goods traffic across the border will be managed in the event of no deal. The UK Government’s own guidance on what would happen has little or no detail at present on regulatory/ sanitary and phytosanitary checks, although it is expected to publish more information in the coming weeks. Currently, there is one section on trading across the Irish border in the technical note on ‘Trading with the EU if there’s no Brexit deal’, which reads:

The Irish government have indicated they would need to discuss arrangements in the event of no deal with the European Commission and EU member states. We would recommend that, if you trade across the land border, you should consider whether you will need advice from the Irish government about preparations you need to make. 277

VAT would also need to be collected on goods travelling from Northern Ireland to the Republic Ireland, and vice-versa, in the event of a no deal scenario. There is already a VAT border between Ireland and Northern Ireland.

274 How does the Trade Facilitation Agreement really affect Brexit? Peter Ungphakorn, 16 August 2018.
275 European Scrutiny Committee Oral evidence: EU Withdrawal, HC 763, 27 June 2018, Q544.
276 Ibid, Q540
277 HMRC, Guidance: Trading with the EU if there’s no Brexit deal, published 23 August 2018.
Ireland, as VAT and Excise are not fully harmonised across the EU, meaning that both territories apply different levels of VAT to different goods. However, the need for infrastructure at the border has been abolished, by the introduction of an EU common regulatory framework under which businesses can sell goods with 0% VAT on the understanding that it will be paid by the recipient business. This arrangement relies on the VAT Information Exchange System (VIES) via which information on cross-border movements of goods is transmitted between the EU’s national tax authorities. In contrast, customs officials at the EU’s external border have a duty to ensure that the correct Value Added Tax (VAT) is paid on imports.\(^{278}\) The Government also accepted, in its technical note on the “temporary customs arrangement”, that “to avoid a hard border between Northern Ireland and Ireland, the application of common cross-border processes and procedures for VAT and Excise would be necessary”.\(^{279}\)

### 8.3 Impact on trade and the economy

The latest HMRC regional trade statistics show that Northern Ireland exported £2.8 billion worth of goods and services to Ireland - around 33% of the region’s exports - and imported £2.1 billion of goods and services from Ireland - 28% of its imports.\(^{280}\) According to the IfG, agri-food accounts for close to 40% of Northern Irish exports to Ireland.\(^{281}\)

The organisation InterTradeIreland\(^{282}\) commissioned the Economic and Social Research Institute (ESRI), an Irish think tank, to conduct analysis of the impact of Brexit on the Irish border. ESRI looked at several different scenarios, including one where trade between Ireland and the UK would be based on WTO rules. The resulting imposition of tariffs and non-tariff barriers in this scenario could result in Irish trade to Great Britain falling by 12%, British trade to Ireland falling by 6%, Irish trade to Northern Ireland falling by 14%, and Northern Irish trade to Ireland falling by 19% - resulting in a total reduction in cross-border trade of 16%.\(^{283}\)

However, they also modelled a scenario where, as well as these trade barriers being imposed, there was a 10% fall in the value of the pound sterling (this is similar to the fall in the pound immediately after the EU referendum). Most economists believe there will be a significant drop in the value of the pound if the UK leaves the EU with no deal. The fall in sterling in ESRI’s analysis would, for British and Northern Irish trade, partly mitigate the effects of the trade barriers being imposed, but it

---

\(^{278}\) See European Scrutiny Committee report on reform of EU VAT legislation, 28 March 2018, which also covers the implications of the reintroduction of VAT as an import tax on UK-EU trade in goods for Northern Ireland in particular.


\(^{280}\) HMRC, Regional Trade Statistics, Q1 2018, released 7 June 2018 [accessed 29 August 2018]

\(^{281}\) IfG, The Irish border after Brexit, Tim Durrant & Alex Stojanovic, June 2018.

\(^{282}\) InterTradeIreland are a cross-border trade and business development body funded by both the Irish and Northern-Irish governments. For more information see their website.

\(^{283}\) InterTradeIreland, Potential Impact of WTO Tariffs on Cross-Border Trade, 23 March 2018, Table 4, p 13.
would worsen the outcome for Irish exports to Britain and Northern Ireland.

In this scenario Irish trade to Great Britain would fall by 20%, British trade to Ireland would remain broadly similar (at +0.3%), Irish trade to Northern Ireland would fall 21%, and Northern Irish trade to Ireland would fall 11% - so there would be a total fall in cross-border trade of 17%.

The study also looked at trade of different categories of goods. It predicts that the volume of trade in agri-foods in particular would see large falls. In a no-deal scenario they foresee that trade in meat and fish from Ireland to Northern Ireland could fall by 65%, while from Northern Ireland to Ireland it could fall 26%. Figures for dairy products were a fall of 66% and 52% respectively. A few categories of goods could see some increases in trade volumes from Northern Ireland to Ireland; for example, machinery and electrical goods might rise 6%.

If the Government were to unilaterally waive customs and regulatory controls for goods entering the UK via the land border with Ireland, there would be a potential loss of revenue from the non-collection of import duties, VAT and excise. Jon Thompson, Chief Executive of HMRC, discussed this issue with the House of Lords EU External Affairs Sub-Committee. He talked of the ‘trilemma’ that faced the government for all of the UK’s external borders:

Ministers would need to make a decision about the free flow of trade, the security of the United Kingdom and the raising of revenue, because those are the current three objectives at the border. In the scenario you are setting out [no deal], some choice may have to be made between those three objectives in the run-up to April 2019.

Mel Stride, financial secretary to the Treasury, acknowledged this trade off to the same Committee. Mr Stride emphasised to the Sub-Committee that there were already checks in place at the moment in Northern Ireland away from the border to prevent excise fraud, and this capacity could be used in the event of no deal:

People assume that in Ireland there are no checks or interventions going on with goods going across, but of course there are. There is a substantial amount of trafficking, fuel laundering and tobacco smuggling. There are interceptions inland in Northern Ireland, so it is not the case that we would not have the ability to function in that particular environment, but there would clearly be some very significant restrictions.

---

284 InterTradeIreland, ibid.
285 The scenario with WTO rules trade and a pound sterling depreciation of 10%.
286 InterTradeIreland, ‘Potential Impact of WTO Tariffs on Cross-Border Trade’, 23 March 2018, Table 7, p18
288 Ibid, Q114.
289 Ibid.
The Financial Times reporting on the Committee’s evidence session said, “the revenue losses have the potential to be large if the UK does not collect taxes at the border”.  

8.4 Movement of people

The movement of people across the Irish border has remained a relatively uncontentious part of the negotiations and poses fewer issues compared to the movement of goods. This is largely because of the Common Travel Area (CTA) between Ireland and the UK. The CTA allows British and Irish nationals to travel freely within the CTA without being subject to passport controls. The CTA is based on bilateral agreements and domestic legislation in the UK and Ireland that should be largely unaffected by Brexit. Both sides in the negotiations have agreed articles relating to the CTA in the draft Withdrawal Agreement.

Another factor that makes the movement of people simpler in any Brexit scenario is that both Ireland and the UK are outside the Schengen Area.

Bernard Ryan, Professor of immigration law at the University of Leicester, told the Lords EU Committee that the continuation of CTA arrangements post-Brexit would be compatible with EU law:

There is no apparent legal reason why the Republic of Ireland should not retain the benefit of Protocols 19 and 20 [Treaty on the Functioning of the European Union] after Brexit, so as to permit bilateral co-operation with the United Kingdom outside the Schengen Zone.

In theory, a no-deal Brexit should not imperil such co-operation. For more information on the CTA see Library Briefing Paper: The Common Travel Area, and the special status of Irish nationals in UK law.

However, the CTA only applies to Irish and UK citizens. Arrangements for non-CTA nationals are more complex. Although there are minimal immigration checks for journeys started within the CTA, non-CTA nationals must have the relevant immigration permission for the country they are seeking to enter.

There is also the issue of frontier workers - EU citizens who live in one Member State and work in another. The Irish journalist Tony Connelly, in his book on Brexit and Ireland, explains how Brexit could affect their status:

For those who are neither Irish nor British citizens, and who live and work on different sides of the Irish border, the prospects are particularly uncertain. Unlike citizens of Ireland and the UK, they are not protected by the provisions of the Common Travel Area. Under EU rules, such people are regarded as ‘frontier workers’. That means they enjoy certain rights, such as access to medical services-including the right to a medical card-on the side of the

---

291 The Schengen Area eliminates internal border checks on the movement of people between the 26 countries that have joined the zone.
292 Lords EU Committee, Brexit: UK-Irish relations, 12 December 2016, HL Paper 76 2016-17, written evidence of Professor Bernard Ryan (BUI0008)
border where they work. There are similar rights regarding social-welfare and pension payments.

When Britain leaves the EU, those rights will fall. That would mean, for example, Lithuanian lorry drivers or mushroom harvesters who live in the North and work in the South (or vice versa) will no longer be regarded as frontier workers protected by EU rights. It is understood, however, that their particular situation will be looked at during the two-year withdrawal negotiations.293

The draft Withdrawal Agreement protects the rights of frontier workers, allowing EU and UK citizens to exercise their rights up to the end of the transition period (see Articles 9, and 22-24). It also allows frontier workers to exit and enter the UK and Ireland for work without requiring a visa,294 although it does require workers to have either a passport or official identification card to cross borders. But if there is no deal, none of these provisions will be in force, meaning that frontier workers could find themselves in a legal limbo.

8.5 Security concerns

The UK Government’s position paper on the Irish border states that “the invisible and open border between Northern Ireland and Ireland is, as the Irish Government has said, arguably ‘the most tangible symbol of the peace process’”. The paper also notes that the Belfast (‘Good Friday’) Agreement included a specific commitment to “the removal of security installations”.295

George Hamilton, Chief Constable of the Police Service of Northern Ireland (PSNI), said in an interview with the Guardian in February that any infrastructure on the border would become a target for dissident republicans:

“Our assessment is that they would be a target because it would be representative of the state and in their minds fair game for attack. I would assume that that assessment is shared by senior politicians and officials who are negotiating Brexit.

“While I am chief constable I do not want to enter the political debate over Brexit but I still think it’s fair to comment on some of its implications and scenarios. And a hard border from a policing perspective would not be a good outcome because it would create a focus and a target.”

He said fixed frontier customs and security posts would expose PSNI officers to greater danger than they already face from anti-peace process republican paramilitaries.

“Anything that makes the police presence predictable in places where terrorists are active of course raises the threat and increases the harm to my officers. We deal with risk every day and we are good at it but unfortunately the terrorists only have to be lucky once and get a result with catastrophic consequences. I think it

293 T Connelly, ‘Brexit and Ireland: The Dangers, the Opportunities, and the Inside Story of the Irish response’, 2017, p 260
294 They may be required to apply for a document proving their frontier worker status (see Article 24 of the Agreement).
295 DExEU, position paper Northern Ireland and Ireland, 16 August 2017
Mr Hamilton thought hard border installations “could have a negative political impact” in Ireland and Northern Ireland, “re-emphasising the context and the causes of the conflict” and so creating tensions and challenges that the Good Friday Agreement had helped to dispel. Determined dissident republicans, he said, might regard such infrastructure on the northern side of the border “as a representation of the UK state”. He thought he might need more policing resources:

Asked if his force’s strength of 6,700 officers could properly police the 300-mile Irish border, Hamilton said that unless there were extra numbers recruited resources would have to be taken away from other areas of policing.

“There would be an increased demand due to a hard border and a pull of resources towards that which means either an uplift in police funding or else we would have to have reduced levels of service in other areas.”

In a May 2018 paper on the Irish border, the think-tank Policy Exchange argued that concerns about Brexit affecting peace in Northern Ireland were overblown:

The weak arguments that Brexit somehow endangers peace or undermines the Good Friday agreement have been allowed to take hold. Neither argument bears much examination, but importantly they have received minimal examination – and have been repeated unthinkingly in the British media. Sinn Fein’s Gerry Adams and Colm Eastwood, leader of the nationalist SDLP, have both stated that no general breakdown in peace is likely. Adams instead stresses the dangers to human rights from Brexit although few lawyers appear to agree with him.

The real danger is not any general return to the Troubles but rather that border infrastructure can be attacked, and officials attempting to protect or replace it may be put at risk. It is this risk which motivates the UK Government to promise a border with no infrastructure at all. Of course, the huge attention drawn to the border issue in the media makes it almost inevitable that dissident republicans would attempt some attack. This may however be a short-term danger. Once Brexit is complete, with no-one stopped at the border and with no visible infrastructure, any danger is likely to subside.296

Suzanne Breen, a Northern Irish journalist, argues in the Belfast Telegraph that even if infrastructure were put in place, while it might serve as a reminder of previous partition, the security threat is much reduced from the past:

There are many legitimate concerns around Brexit and its effects on both sides of the border. But claiming it’s a ticking time bomb for the peace process is quite simply scaremongering.

The customs checkpoints which existed along the border for almost half a decade after partition played no part in violence erupting here in 1969.

296 Policy Exchange, Getting Over the Line: Solutions to the Irish border: Why the UK (including Northern Ireland) can leave the Customs Union, avoid a hard border – and preserve the Good Friday agreement. Graham Gudgin and Ray Basset, 9 May 2018.
That IRA campaign was firmly rooted in the denial of civil rights - jobs, housing and political equality. A return to the border as we knew it from the 1970s onwards - with British soldiers in watchtowers on the hillsides above checkpoints - is not on the cards.

Of course, the introduction of any infrastructure will serve as a reminder - and perhaps an uncomfortable one for some - that partition and the border still do exist. But the youth of Ballymurphy or the Bogside will not go out to kill or be killed because of customs controls.

And who exactly are expected to wage any new armed campaign anyway? The Provisionals’ war is over. Dissident republicans are having some success in recruiting young people in working-class nationalist areas, but I guarantee that none of those joining up are citing Brexit and the possibility of customs posts as their reasons. 297

The IfG summarised the findings of a May 2018 study from Queen’s University Belfast on Northern Irish attitudes to border checks:

‘There is substantial and intense opposition to possible North-South border checks [of the kind that would be required if the UK were to become a third country with no special arrangements] between Northern Ireland and the Republic of Ireland and to East-West border checks between Northern Ireland and Great Britain.’

The report found that around 60% of people surveyed would support peaceful protests against checks on the border. It also noted that there is little support for violence against border infrastructure, with ‘only 5% of the population as a whole... fairly or very supportive of vandalising border technology’. But the authors found that in focus group discussions, ‘there are strong expectations that protests against either North-South or East-West border checks would quickly deteriorate into violence.’ 298

8.6 Energy

There has been an all-island electricity market on the island of Ireland since 2007. Although Northern Ireland is a net exporter of electricity (i.e. it exports more than it imports), it still relies on electricity imports from Ireland when there is insufficient local electricity generation capacity.

The Financial Times reported in July that ‘no deal’ could have a significant impact on the energy market in Northern Ireland, and the Government had drawn up emergency plans that could mean electricity generators being requisitioned to provide power for the region:

Thousands of electricity generators would have to be requisitioned at short notice and put on barges in the Irish Sea to help keep the lights on in Northern Ireland in the event of the hardest no-deal Brexit, according to one paper drawn up by Whitehall officials.

297 Belfast Telegraph, ‘Suzanne Breen: Brexit scaremongering chorus grows’, 27 April 2018
298 IfG, ‘The Irish border after Brexit’, Tim Durrant & Alex Stojanovic, June 2018
What if there’s no Brexit deal?

That could involve bringing back equipment from far-flung countries such as Afghanistan – where the UK is still part of Nato-led operations – said people familiar with the paper’s contents.  

However, the Single Electricity Market (SEM) is based on bilateral agreement between the UK and Ireland, so according to ESRI, “should the UK leave the EU, the previous bilateral agreements would remain in force”. But some experts say the SEM is, in turn, reliant on the EU’s own Internal Energy Market (IEM – see section 12.1 below), so there could be consequences for the UK. Robert McCormick, general manager of the System Operator for Northern Ireland (SONI) which operates the electricity system in Northern Ireland, told the House of Lords EU Committee that “If GB is not part of the IEM, onward trading [from Northern Ireland] with Europe will be extremely difficult (if not impossible)”.  

Other experts giving evidence to the Committee thought the SEM should be able to function even if the UK was no longer in the IEM. If a no-deal scenario did result in disruption of energy supplies across the border, there would be significant impacts on both Ireland and Northern Ireland. A European Parliament report in November 2017 described Ireland’s dependency on UK gas supplies:

> Gas supplies are of crucial importance to Ireland because gas plays a central role in electricity generation. Because of this, any interruption to supply could have very serious consequences. Nearly all of the gas used in Ireland comes through the interconnectors with the UK.

The Government’s position paper on Northern Ireland and Ireland states “the continued ability to trade gas between Great Britain and the island of Ireland is also critical for security of supply and efficient market operation”.  

The UK is a net importer of gas from Europe, so it in turn relies on gas imports from mainland Europe, which could also be threatened by a no-deal scenario. If there is no deal, tariffs on energy supplies would probably not be imposed by either side. The EP report (see above) stated that “for WTO members the EU has no tariff on electricity or gas imports” but also warned:

> Gas and electricity markets are complex service markets, not simple commodities markets, and the EU is in the process of

---

299 Financial Times, *Hard Brexit: the eye-catching contingency plans to stop NI power blackouts*, 11 July 2018
300 Economic and Social Research Institute, *Scoping the Possible Economic Implications of Brexit on Ireland*, November 2015
301 Lords EU Committee, *Brexit: energy security*, HL Paper 63, 29 January 2018, para 142
302 Ibid, see paras 141-147
303 European Parliament, Policy Dept A: Economic and Scientific Policy, *The impact of Brexit on the EU energy system*, November 2017
304 DExEU, *position paper: Northern Ireland and Ireland*, 16 August 2017
305 EP report, November 2017
streamlining the interface between national market designs to create a single energy market.  

### 8.7 Other areas

There are other areas of cross-border cooperation that would be affected by ‘no deal’. The UK and EU Brexit negotiators have conducted a joint ‘mapping exercise’ to identify cross-border policy areas that could be affected by Brexit and have reportedly found 142 of them. These 142 areas are all a subset of the six areas of North-South economic cooperation identified in the Good Friday Agreement: transport, agriculture, education, health, environment and tourism.

The December 2017 Joint Report says the mapping exercise:

> shows that North-South cooperation relies to a significant extent on a common European Union legal and policy framework. Therefore, the United Kingdom’s departure from the European Union gives rise to substantial challenges to the maintenance and development of North-South cooperation.  

In evidence to the Lords EU Committee, Dominic Raab was asked if he would share the conclusions of the exercise. He replied that the “exercise has been going well”, but that he would “need to get a final readout of the timeframes”. This suggests it is still work in progress.

There is more detail on the effect of no deal on transport across the Irish border in section 12.5.

### 8.8 Proposal to mitigate ‘no deal’

There have been suggestions in the media and in Parliament that Article 24 of the WTO Treaty would allow the UK to continue to trade with Europe on zero tariffs while it negotiated a free trade arrangement.

But trade law experts have dismissed the view that this Article offers an easy solution to UK trade with the EU in the case of ‘no deal’.

The Prime Minister has said:

> The question of GATT 24 is perhaps not quite as simple as some may have understood it to be. […] expectation that it is simply possible to leave with no deal and immediately go into that situation does not actually reflect accurately the situation that the United Kingdom would find ourselves in.

The issues are discussed in a House of Commons Library Insight piece, [No-deal Brexit and WTO: Article 24 explained](https://researchbriefings.parliament.uk/ResearchBriefing/summary/WH00567), 4 February 2019.
What if there's no Brexit deal?
9. Free movement of people, healthcare, social security and pensions

A significant number of ‘citizens’ rights’ will be affected by Brexit. The primary one is the free movement of persons’ rights, whereby currently any EU national can work in, live in or provide services in any EU Member State, providing they meet the conditions set out in the EU Treaties and Directive 2004/38/EC (the ‘Citizenship Directive’). These primary ‘residency’ rights are complemented by a variety of further rights, co-ordinating social security coverage for mobile EU nationals and enabling them to access healthcare, education and so on.

This section will address the primary ‘residency’ rights and how they would be affected by a ‘no deal’ Brexit. Secondary rights stemming from the primary free movement of persons rights are discussed in the subsequent sections. The following sections look at three situations for EU nationals living in the UK:

• Residence prior to 29 March 2019;
• Residence between 30 March 2019 and the new immigration system (implementation date to be confirmed); and
• Residence under the new immigration system.

This briefing will then look at UK nationals living in the EU27 and the impact of no-deal on their residency rights.

EU nationals living in the UK prior to 29 March 2019

In the event of a no-deal the UK Government has committed to extending the settled status scheme to eligible EU nationals living in the UK prior to the 29 March 2019. The rights afforded to EU nationals under no-deal settled status will follow an ‘approach based on the Withdrawal Agreement’.

This means that for the most part the rights of EU nationals living in the EU prior to Brexit will be the same regardless of the type of Brexit. As Professor Steve Peers comments, the no-deal settled status protections ‘would not be an international law obligation, so the UK government would be free to change the details at some later date,’ although he notes that the government does not currently intend to do so.

However, there are some notable differences between settled status under a no-deal as compared to settled status under the Withdrawal Agreement:

309 See, e.g. The Department for Exiting the European Union, ‘Citizens’ rights – EU citizens in the UK and UK nationals in the EU’ policy paper, published 6 December 2018
311 ‘Staring into the Abyss: citizens’ rights after a no deal brexit’, Professor Steve Peers EU Law Analysis, 6 December 2018
Settled status will only be available for EU citizens and eligible family members resident in the UK prior to 29 March 2019. Under the Withdrawal Agreement’s transition period, EU citizens and eligible family members who would arrive during the transition period would also be eligible for settled status. This means that the cut-off ‘residency date’ for settled status is much sooner in a no-deal;

- Reduced family reunion rights for EU nationals with settled status under a no deal; and
- Reduced appeal rights for refused settled status applicants

The EU Treaties themselves will no longer be binding on the UK at this time, but domestic legislation that refers to these Treaties will nonetheless be legally valid unless repealed.

Originally, as set out in the Home Office’s statement of intent on ‘settled status’, EU nationals exercising Treaty rights would be entitled to a temporary or permanent status document and will continue to qualify for those documents providing they meet the three conditions necessary under the proposed ‘settled status’ legislation:

- identity: they hold an EU nationality (or are a qualifying family member of an EU national);
- eligibility: they are resident in the UK as ‘eligible’ (meaning Treaty-rights exercising) EU nationals; and
- suitability: they pass a criminality check.

However, the Government has been clear that EU nationals will not need to show that they have been exercising their Treaty rights to be eligible for settled status.312 This is the case regardless of whether a deal is made. As such, EU citizens will need to show the following when applying for settled status:

- identity: they hold an EU nationality (or are a qualifying family member of an EU national);
- eligibility: they have been continuously resident in the UK for at least 6 months in any 12-month period for 5 years in a row for settled status – those who have been resident for less time may be eligible for pre-settled status; and
- suitability: they pass a criminality check.

The ‘settled status’ statement of intent makes clear that the status entitles qualifying EU nationals and their family members to “the same access as they currently do to healthcare, pensions and other benefits in the UK”. This means in practice that access to all domestic public services that EU nationals can currently access if resident in the UK will continue.

EU nationals coming to the UK after 29 March 2019

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19 (the “Immigration Bill”) received its Second Reading on 28

---

312 See, for example, PQ 191401 on Immigrants: EU nationals, 19 November 2018
January and has passed into Committee stage. The Bill would repeal free movement and other related rights derived from the EU, which have become part of UK legislation. This means it would bring EU citizens living in the UK under domestic immigration law.

On the same day, the Secretary of State for the Home Office, Sajid Javid, announced a new ‘European temporary leave to remain in the UK’ as part of the Government’s no-deal Brexit planning.

The Government plans to implement the Immigration Bill and end free movement from 30 March 2019 in the event of a no-deal Brexit.313 This means that for the most part, EU citizens and their family members who come to the UK from 30 March 2019 will require immigration permission to enter the UK.314 The Government and the Home Office will need rules in place to grant immigration leave to enter and remain to EU citizens.

However, the Government has stated that the new immigration rules, as set out in the White Paper, will ‘take some time to implement’.315 This means there will be a gap in immigration law and policy between the end of free movement and the implementation of the new immigration rules for EU citizens. To fill this gap, the Home Office has announced it will implement the new ‘European Temporary Leave to Remain in the UK,’ subject to parliamentary approval.316

The main features of European Temporary Leave to Remain
EU nationals (including EFTA nationals) will be able to enter the UK as they do now (i.e. without the need for a visa/immigration permission) for a period of up to three months. During this time EU citizens will have the right to work and study in the UK.

EU citizens who wish to remain in the UK for more than the initial three months will need to apply for ‘European Temporary Leave’. The Home Office has explained that this will be done through an online application where the applicant will need to prove their identity and declare any criminal convictions.317 This appears to be similar to the application process for settled status.

European Temporary Leave will allow the holder to remain in the UK for 36 months from the date of their application. EU citizens with this type of leave will have the right to work and study in the UK. It will be temporary and cannot be extended, nor will it lead to settlement in the UK. Holders of this type of leave would be required to apply for further

313 See Home Office policy paper Immigration from 30 March 2019 if there is no deal, published 28 January 2019.
314 There are some exceptions to this, for example, for family reunion for eligible EU and non-EEA nations of EU nationals with settled status.
315 Home Office policy paper Immigration from 30 March 2019 if there is no deal, 28 January 2019
316 Home Office guidance ‘European temporary leave to remain in the UK’ published 28 January 2019
317 Home Office guidance, ibid
leave to remain under the UK’s new immigration rules when implemented in the future. As the Home Office explains: ”there may be some who do not qualify under the new arrangements and who will need to leave the UK when their leave expires.”

There will be an application fee and family permits will be required for non-EEA ‘close family members’.

The Home Office explains in further detail:

European Temporary Leave to Remain will allow EEA citizens arriving in the UK after 29 March 2019 to live, work and study in the UK if there’s no Brexit deal.

EEA citizens who are granted European Temporary Leave to Remain will be able to stay in the UK for 36 months from the date of their application. European Temporary Leave to Remain will be a temporary, non-extendable immigration status. It will not give indefinite leave to remain (ILR), lead to status under the EU Settlement Scheme or make EEA citizens eligible to stay in the UK indefinitely.

If EEA citizens want to stay in the UK for more than 36 months, they will need to apply for an immigration status under the new immigration system, which will come into effect from 1 January 2021. Those who do not qualify will need to leave the UK when their European Temporary Leave to Remain expires.

Those who don’t need to apply

The following people will not be required to apply for European temporary leave:

- EU citizens and their family members with settled or pre-settled status
- EU and non-EEA citizens eligible for family reunion with an EU settled status holder
- Irish citizens

Those who are a “serious or persistent criminal or a threat to national security” will not be eligible and the UK’s deportation threshold will apply.

EU citizens can enter the UK with either their passport or a valid nationality identity card.

The Home Office explains that employers and landlords conducting right to work and rent checks for EU citizens will not be required ‘to start distinguishing between EU citizens who were resident before exit and

---

318 Home Office policy paper ‘Immigration from 30 March 2019 if there is no deal’ published 28 January 2019
319 Home Office guidance ‘European temporary leave to remain in the UK’ published 28 January 2019
320 Ibid
321 Ibid
post-exit arrivals.' Until 2021, EU citizens can continue to rely on their passports or national identity cards.

**EU nationals coming to the UK under the future immigration system**

On 19 December 2018 the Home Secretary set out the Government’s detailed proposals for "The UK’s future skills-based immigration system." There will be a year-long consultation on the proposals.

By making provision to repeal free movement in the UK, the Immigration Bill sets up the legal framework for the Government to implement immigration rules for EU citizens.

The overview of the White Paper states:

> As the UK leaves the European Union (EU) and we bring free movement to an end, different rules to the current ones must apply to migration here by EU citizens. We will take full control of migration by bringing all of it under UK law and institute a new border and immigration system, to serve the UK public and the economy, and to enable those who come to the UK to integrate and make a positive contribution.

The Government is proposing a single, unified immigration system to apply to everyone who wants to come to the UK after Brexit. The system will be based on the current immigration rules for non-EU nationals, with many changes. The Government’s position is that the focus of the immigration system should be on skill and talent to ensure the UK “welcomes talent from every corner of the globe and demonstrates the United Kingdom is open for business.”

**UK nationals in the EU**

The legal situation of UK nationals resident in one of the EU27 Member States at the time of UK withdrawal is much less certain. They are intended to be covered by the WA, and this will preserve a significant number of citizens’ rights. The WA, if concluded, will produce a single regime that all Member States will apply to EU nationals, meaning the rights of UK nationals living in the EU will be secured.

The legislation in each of the EU27 currently gives UK nationals rights to reside purely on the basis that they are nationals of an EU Member State. They do not have specific rights to reside as UK nationals, much as (for instance) German nationals do not have specific rights to reside in the UK under the *Immigration (EEA) Regulations 2017*. However, while EU27 nationals will still be ‘Member State nationals’ for the purposes of UK domestic laws following Brexit, UK nationals will no longer be ‘Member State nationals’ for the EU27.

---

322 Home Office policy paper [Immigration from 30 March 2019 if there is no deal](https://www.gov.uk/government/publications/immigration-from-30-march-2019-if-there-is-no-deal) published 28 January 2019
323 HM Government, *The UK’s future skills-based immigration system*, December 2018
324 Ibid
325 Ibid, foreword by the Home Secretary
If there is no WA, the basis on which UK nationals would have a right to reside in the EU27 State they currently live in would abruptly change on 30 March 2019. The Commons Exiting the EU Committee published a report on the rights of UK and EU nationals on 23 July 2018, which commented on this specifically:

If there is no agreement on ongoing free movement after the transition period ends, then the rights of UK citizens currently resident in the EU may be determined by EU rules on third country nationals (rules that apply to nationals of non-EU member states). Jane Golding, British in Europe, said there are different pieces of legislation that apply to third country nationals:

‘The conditions are far more stringent and in no way compare with being an EU citizen, and there is no right of free movement. There is a limited form of mobility. Then there are very big holes in this third-country national regime as far as self-employed people are concerned. There are a number of pieces of legislation that cover employees, but far fewer for self-employed people who are providing cross-border services. There are very big holes there.’

The Committee called on the EU27 to make a similar guarantee to that made by the UK Prime Minister, even in the event of ‘no deal’.

The UK Government also called on the EU27 to “uphold their commitments to citizens and to protect the rights of UK nationals in the event of a ‘no deal’ scenario.” The policy paper goes on to explain:

The UK continues to call on the EU and Member States to uphold their commitments to citizens and to protect the rights of UK nationals in the EU in the event of a ‘no deal’ scenario. We want UK nationals to be able to stay in the Member States that they live in when we leave, and for their rights to employment, healthcare, education, benefits and services to be protected. We ask Member States to set out details of how they would do so as soon as possible.

UK nationals who went to the EU and EU citizens who came to the UK before the UK’s exit from the EU did so on the basis that they would be able to settle permanently and build a life here, or in the EU. That is why the UK has taken steps to remove any ambiguity and provide complete reassurance for EU citizens in the UK. We ask that the EU and Member States do the same for our nationals.

We will continue to push the EU and Member States to secure these rights as soon as possible, which are in the mutual interest of all our citizens. Where it is in our control, the UK will also continue to preserve certain rights of UK nationals in the EU, for example by continuing to pay an uprated UK state pension to eligible UK nationals living in the EU.

On 19 December 2018 the European Commission issued a press release to the EU27, calling on each Member State to “take a generous approach” to the rights of UK nationals in the event of a no deal:

The Commission has consistently put citizens first throughout these negotiations and throughout its “no-deal” preparedness and contingency work. Today’s Communication invites Member

---

327 Ibid, 18-20
States to take a generous approach to the rights of UK citizens in the EU, provided that this approach is reciprocated by the UK.

In particular, Member States should take measures to ensure that UK citizens legally residing in the EU on the date of withdrawal will continue to be considered legal residents. Member States should adopt a pragmatic approach to granting temporary residence status. It is recalled that the Commission has already adopted a proposal for a Regulation which exempts UK nationals from visa requirements, provided that all EU citizens are equally exempt from UK visa requirements.

As regards social security coordination, the Commission considers it necessary that Member States take all possible steps to ensure legal certainty and to protect the rights acquired by EU27 citizens and UK nationals who exercised their right to free movement before 30 March 2019.328

EU proposals

Steve Peers, Professor at the University of Essex, argued in July 2018 that ‘citizens’ rights’ should be ring-fenced from the rest of the negotiations so as to ensure continuity of rights for eligible UK and EU nationals if the UK leaves with no deal. However, in the absence of any ringfencing, he made a separate argument for a unilateral EU-wide regulation that echoes what the ‘settled status’ legislation does, maintaining that the EU has the power to legislate on this issue and should do so for the sake of legal certainty.

The EU has not adopted comprehensive legislation covering citizens’ rights in the event of ‘no deal’, and if this happens continuation of these rights will largely depend on individual Member States’ legislation.329 EU27 States are making some progress in preparing relevant WA-related legislation and producing other legislation in case there is no deal. The UK has reached agreement on separation issues, including citizens’ rights, with the EFTA States. There are also UK reciprocal citizens’ rights agreements with Spain and Latvia, and suggestions for reciprocal rights agreements with Austria, Czech Republic, France, Hungary, Portugal and Slovakia.330

However, as part of its Brexit preparedness contingency planning, the Commission has proposed Regulations which are intended to mitigate some of the effects on UK citizens living, working and travelling in the EU27 and vice versa if there is no deal.

On 29 January 2019 the EP’s Civil Liberties Committee voted unanimously in favour of a Commission proposal (2018/0390(COD)) to exempt UK nationals from visa requirements for stays in the EU of up to 90 days in any 180-day period from 30 March 2019. If agreed by both the Council and EP, the UK will be included in a list of countries (in Regulation 2018/1806) whose nationals do not need a visa to enter the EU for business, tourism or visits to family or friends. The visa exemption

329 For EU27 preparedness to date, see Politico Pro, 31 January 2019, ‘Citizens’ rights for Brits in the EU if there’s no Brexit deal’
330 MLex
does not provide a right to work in the EU. The proposal requires a reciprocal visa waiver from the UK for EU nationals. The draft states that if the UK introduces a visa requirement for nationals of at least one Member State, “the reciprocity mechanism foreseen in EU legislation should apply”.

On 30 January 2019 the European Commission proposed a Regulation on establishing contingency measures in the field of social security coordination. The EU press release stated that the proposal “ensures that Member States continue applying the core principles of EU social security coordination, namely the principles of equality of treatment, assimilation and aggregation”, but it did not “replicate” the text of the November WA, cover rights accumulated after 29 March 2019, or “cover the exportability of cash benefits, the continuous provision of sickness benefits in kind and the rules on applicable legislation”.

9.1 Mutual recognition of professional qualifications

Automatic recognition in UK but not necessarily reciprocated

As just one example of the influence of EU law on domestic work entitlements, under EU Directive 2005/36/EC on the mutual recognition of professional qualifications, EEA healthcare professionals with a qualification from an EEA country have their qualification automatically recognised when applying to be registered with a relevant professional regulator. Regulators include the General Medical Council (GMC), Nursing and Midwifery Council (NMC) and General Dental Council (GDC).

Mutual recognition of qualifications is written into UK legislation and regulations governing doctors, nurses and other healthcare professionals, as well as a variety of other regulated professions set out in the EU Directive. This would probably be retained in UK law in the case of a no-deal Brexit, allowing UK regulators to automatically recognise EEA nationals’ qualifications; however, as discussed below, the conditions under which recognition of EEA qualifications operates can be amended by Parliament at will in the event of ‘no deal’.

‘No deal’ would mean that the qualifications of UK-trained medical professionals would no longer be automatically recognised when registering to practise in the EU27, unless equivalent provisions were swiftly introduced into national legislation by other EU countries.

The BMA has argued that continued mutual recognition of professional qualifications is crucial for hiring EU nationals to work in the health service, with any changes to this being particularly felt in Northern Ireland, whose health service employs a large number of healthcare professionals from Ireland.

331 European Commission press release, 30 January 2019
332 BMA, The impact of leaving the EU on patients, February 2018
It is important to note as well that, although UK regulators may continue to be allowed to unilaterally recognise EEA nationals’ qualifications, the UK would lose access to the current EU-wide alert system. This notifies UK regulators at the pre-registration stage of EU health professionals where concerns have been raised about their fitness to practise.

**English language testing**

The Government has commented to the Health Select Committee that after leaving the EU it would consider introducing more stringent pre-registration English language testing for healthcare professionals, which they are not currently allowed to do under the EU Directive on mutual recognition. Therefore, the Government may choose to amend the law on recognition of EU healthcare qualifications, rather than retain it in its current form. In its response to the Committee’s report on Brexit and health and social care, the Government set out its view on the need for a balance between language stringency and avoiding bureaucracy:

> The primary purpose of regulating healthcare professionals is to ensure public safety. Some regulatory bodies have concerns that MRPQ (Mutual Recognition of Professional Qualifications Directive) limits the action they can take when registering EEA professionals, particularly by restricting tests of language competence. The Department agrees that a balance needs to be struck between managing this risk in a proportionate way and ensuring that the flow of skilled and valuable healthcare professionals into the NHS is not impeded by unnecessary levels of bureaucracy.\(^{333}\)

More information can be found in the Commons Briefing Paper, *Language testing for healthcare professionals*, 7 March 2018.

### 9.2 Reciprocal healthcare

**Current reciprocal healthcare arrangements**

The EEA Member States and Switzerland co-ordinate the provision of social security including healthcare under Regulation 883/004. The Regulation includes rules on the reimbursement of healthcare costs between Member States in the following main circumstances:

- for visitors using the European Health Insurance Card (EHIC) for all necessary care during temporary stays in another Member State;
- for state pensioners and their dependants who have moved abroad, the state that pays their state pension is responsible for paying the costs of their healthcare – known as the S1 route;
- for a person who has been authorised to undergo a planned medical treatment in another Member State, costs are paid by the Member State that has referred them – known as the S2 scheme;

---

What if there’s no Brexit deal?

for a dependant (usually a spouse or child) of someone who lives in another EEA Member State or someone from another EEA Member State working in the UK.

What the Withdrawal Agreement provides

The negotiated Withdrawal Agreement aims to protect reciprocal healthcare arrangements for UK nationals resident in the EU before the end of the transition period (and vice-versa), so long as they continue to live or work in the country where they lived or worked at the end of the transition.\textsuperscript{334} This includes UK state pensioners who have retired to the EU27, as well as people who have started a course of pre-planned health treatment abroad.

The Government will continue to seek agreement with the EU that protects the reciprocal healthcare entitlements of state pensioners, including those not covered by the terms of the Withdrawal Agreement, and seek to fully protect rights under the EHIC S1 and S2 schemes, including:

- the rights of UK state pensioners who retire to the EU (and vice versa) after the end of the implementation period to benefit from a reciprocal healthcare scheme;
- the rights of UK residents to continue to receive needs-arising treatment in the EU under the EHIC scheme (and vice versa); and
- the rights of UK residents to be able to receive planned treatment in an EU Member State when this is pre-authorised by the UK (and vice versa).\textsuperscript{335}

Possible impact of no deal

In the event of a no-deal Brexit, the existing reciprocal healthcare arrangements for UK citizens in the EU and EU citizens in the UK would probably end. The Government has said it is developing contingency plans for this eventuality:

We are confident of securing a comprehensive deal but, to fully prepare for the unlikely event the UK and the EU do not agree the Withdrawal Agreement and implementation period, or secure a deal on future reciprocal healthcare rights, we are further developing contingency plans to minimise disruption for patients after the UK exits the EU. This includes building our understanding of the systems, processes and infrastructure needed in Member States to prioritise the safety of both UK and EU patients in all scenarios.\textsuperscript{336}

But the Department added that it was not at this stage “in a position to reveal further details of our contingency planning” as it was focussing on “securing a reciprocal deal with the EU”.\textsuperscript{337}

\textsuperscript{335} Ibid, p 8
\textsuperscript{336} Ibid, p 10
\textsuperscript{337} Ibid
The British Medical Association (BMA) provided the following summary of what a no deal could mean:

Should there be a failure to agree a withdrawal agreement by March 2019, access to reciprocal healthcare arrangements for UK citizens and residents within the EU, and EU citizens and residents within the UK, would end. This would lead to significant disruption to those individuals’ healthcare arrangements, an increase in costs of insurance, and uncertainty regarding accessing healthcare abroad. Moreover, the NHS would face a drastic increase in demand for services, which could dramatically increase its costs and place greater pressure on doctors and clinical staff. 

[...]

The impact of the loss of reciprocal care on patients would be significant, especially given the number of beneficiaries that are pensioners living abroad. Evidence given to the House of Commons Health Select Committee has suggested that many of them will be unable to fund private healthcare and so will be forced to return to the UK.12 UK citizens travelling within the EEA, and EEA citizens visiting the UK, will also need to purchase their own travel or health insurance should access to reciprocal arrangements be lost. This is a particular concern for those with disabilities or long-term conditions, as the cost of health and travel insurance for those with pre-existing conditions could be prohibitively high.338

The UK currently has bilateral reciprocal healthcare arrangements with 16 non-EEA countries.339 In the event of no deal, the UK could negotiate similar arrangements with the EU as a whole or with individual EEA Member States. However, bilateral agreements cannot be negotiated while the UK remains in the EU,340 which means that in the event of no deal, and before bilateral agreements have been agreed, there could be a sustained period where UK citizens do not have any access to reciprocal healthcare arrangements.

The UK has some reciprocal healthcare arrangements which pre-date EU membership (see below), but the status of these agreements if no deal is agreed remains unclear. Evidence given to the Health Select Committee noted that such agreements would not be comprehensive if relied upon as a contingency:

Of course, we have a number of agreements that predate the European Union that we could fall back on, but each of those has different terms and conditions, different eligibilities, different limits and different numbers of people who can be covered.341

Access to the NHS of EU nationals resident in UK

While visitors from the EU to the UK have access to the NHS governed by reciprocal healthcare arrangements, EU nationals who are ‘ordinarily

338 BMA, Brexit briefing: Reciprocal healthcare between the UK and EU, September 2017, page 2-7
339 NHS Choices, Non-European Economic Area (EEA) countries that have reciprocal healthcare agreements with the UK
341 Ibid, para 111
resident\textsuperscript{342} in the UK access free NHS treatment through a different legal mechanism.

Under the \textit{National Health Service (Charges to Overseas Visitors) Regulations 2015}, SI 2015/238, providers of NHS healthcare in England are required to charge overseas visitors (people not classed as ‘ordinarily resident’ in the UK) for use of the NHS, unless they have one of the exemptions set out in the regulations.

As set out in the Government’s \textit{Guidance on implementing the overseas visitor charging regulations}, there is a three-fold test of ordinary residence for EEA nationals:

- Is the individual lawfully in the UK?
- Is the individual here voluntarily?
- Is the individual properly settled here for the time being?

There are similar ordinary residence requirements in the Scottish, Welsh and Northern Irish equivalent regulations.

As set out above, in the event of a no-deal Brexit, the Government has stated its intention for EU nationals living in the UK to be able to apply for settled status, giving them the same access to the NHS as they have currently:

\textbf{Wera Hobhouse (Bath) (LD)}

…I have a very simple question. Do settled status and pre-settled status give EU citizens the same right to use the national health service as UK nationals?

\textbf{The Minister for Immigration (Caroline Nokes)}

Yes.\textsuperscript{343}

\textbf{New national body}

In a \textit{letter on 21 December 2018} the Department of Health and Social Care wrote to providers and commissioners of NHS Services about a new national body, the Operational Response Centre, to respond to disruption in the NHS caused by a no-deal Brexit. The new body “will lead on responding to any disruption to the delivery of health and care services in England” as a result of a no-deal Brexit, and will “co-ordinate EU Exit-related information flows and reporting across the health and care system”. The letter continued:

The Operational Response Centre will also work closely with all of the devolved administrations to ensure a co-ordinated approach across the UK. The Operational Response Centre will not bypass existing regional reporting structures; providers and commissioners of NHS services should continue to operate through their usual reporting and escalation mechanisms.

NHS England and Improvement will also establish local, regional and national teams to enable rapid support on emerging local

\textsuperscript{342} Access to the NHS is based on the concept of ‘ordinary residence’, rather than nationality or citizenship.

\textsuperscript{343} HC Deb 21 June 2018, c519
Medicines regulation and supply

Concerns about the potential impacts of a no-deal Brexit on medicines supply in the UK relate to how medicines (and medical devices) will be regulated and monitored for safety in the future, the supply of medicines and future pharmaceutical trade.

UK imports of medicine and pharmaceutical products were worth £24.8 billion in 2016, and mostly came from the EU. UK exports of these products were worth £24.9 billion – around half of these went to EU countries. The Association for the British Pharmaceutical Industry (ABPI) has said that this reflects:

45 million packs of medicines that leave the UK every month and go to Europe, and 37 million packs of medicines that leave the continent and come to the UK.344

Currently, the European Medicines Agency (EMA) provides and coordinates licensing, expertise and support for medicines and medical devices throughout the EU. Marketing authorisations (medicines licences) may be granted centrally or through a mutual recognition process and apply across the EU, or may be granted by the Member State regulator to apply in one country. The Medicines and Healthcare products Regulatory Agency (MHRA) is the UK medicines regulator. It currently works with the EMA as part of a regulatory network and contributes to its work.

The Government has said that it wants to seek an ‘associate’ membership of the EMA. The Secretary of State for Health and Social Care, Matt Hancock, has said this means “as close as possible participation with the European Medicines Agency with observer rights”.345 The November 2018 draft political declaration on the future stated that Parties will “explore the possibility of cooperation” with EU agencies such as the European Medicines Agency.

However, in the event of a no-deal Brexit, and without other arrangements in place, the UK could not continue to participate in the shared regulatory framework with the EMA. The Government has confirmed that the MHRA would take on responsibility for functions currently undertaken by the EMA and that this would require changes to the Human Medicines Regulations 2012.346

Medicines licences

For those medicines that are to be licensed and supplied in the EU, the EMA has set out that, in the event of a no-deal Brexit, there will be

345 Health and Social Care Committee, Work of the Secretary of State, Oral Evidence, 24 July 2018 (Q316)
346 Department of Health and Social Care, Guidance: How medicines, medical devices and clinical trials would be regulated if there's no Brexit deal, 23 August 2018
requirements for marketing authorisation holders and batch testing of medicines to be based in the EU from 30 March 2018.\textsuperscript{347}

Following a no deal Brexit, new medicines in the UK would need to be licensed separately. Concerns have been expressed that this could mean delays in applications for licences because the UK would represent a much smaller market, and that this could impact on how quickly medicines would be available.\textsuperscript{348,349}

**Medicines supply**

Beyond the regulation of medicines, there are concerns about potential trade barriers and resulting delays in medicines supply that may occur in the event of no deal.

In the absence of a trade agreement with the EU, under the WTO Pharmaceutical Tariff Elimination Agreement, tariffs on medicines are unlikely to increase significantly, compared with other products.\textsuperscript{350} However, not all medical products are included in this Agreement; pharmaceutical companies have reported that relying on WTO rules could disrupt supply chains and lead to higher costs of medicines.\textsuperscript{351} There are also concerns about an increase in non-tariff barriers in the event of no deal, and the potential delays this could mean for medicines supply, especially for those medicines with a short shelf life, such as medical radioisotopes.\textsuperscript{352}

**Box 4: Medical radioisotopes:** Radioisotopes are used in the diagnosis and treatment of a range of conditions\textsuperscript{353} and are imported to the UK from (mainly EU) research reactors.\textsuperscript{354} Although radioisotopes can be sourced from beyond the EU, the materials often have short half-lives, meaning they can decay rapidly and cannot be stored for very long. In the UK around 700,000 nuclear medicine procedures using radioisotopes are carried out each year.\textsuperscript{355}

Concerns have been raised that Brexit could affect the supply of radioisotopes\textsuperscript{356} by causing import delays\textsuperscript{357} and causing the UK to leave the Euratom Observatory which manages supply chains in times of shortages.\textsuperscript{358} A no-deal Brexit could mean that any potential customs agreement and cooperation with the Observatory which might be sought as part of a deal would not be realised. The Government has said that the availability of radioisotopes should not be impacted by Brexit.\textsuperscript{359}

\textsuperscript{347} EMA, *Questions and Answers related to the United Kingdom’s withdrawal from the European Union with regard to the medicinal products for human and veterinary use within the framework of the Centralised Procedure*, 1 February 2019

\textsuperscript{348} House of Lords Select Committee on Science and Technology, *Corrected oral evidence: Brexit: regulation and standards*, January 2017 (Q7)

\textsuperscript{349} BMA, *Brexit Briefing: Medicines and medical devices regulation*, October 2017

\textsuperscript{350} BEIS Committee, *The impact of Brexit on the pharmaceutical sector*, Ninth Report of Session 2017–19, May 2018

\textsuperscript{351} BEIS Committee, *The impact of Brexit on the pharmaceutical sector*, Ninth Report of Session 2017–19, May 2018

\textsuperscript{352} Dayan M, *Over the edge: a no deal Brexit and the NHS*, Nuffield Trust comment, August 2018

\textsuperscript{353} European Commission, *Supply of medical radioisotopes*, Accessed 13 August 2018

\textsuperscript{354} World Nuclear News, *Radioisotopes in Medicine*, May 2017

\textsuperscript{355} Supply of Medical Radioisotopes, POSTnote 558, July 2017

\textsuperscript{356} Dr Nicola Strickland, *RCR statement on the potential impact of leaving the Euratom treaty*, Royal College of Radiologists, 10 July 2017

\textsuperscript{357} Lords Select Committee on the EU, Home Affairs Sub-Committee, *Brexit: the health implications of leaving Euratom, Oral Evidence*, 22 November 2017, Q3

\textsuperscript{358} Ibid Q4

\textsuperscript{359} HC Deb 27 June 2017 Vol 626
For further information on the supply of nuclear material, see section 12.2.

**Government preparedness**

In July 2018 Secretary of State for Health and Social Care Matt Hancock said the Department was preparing for range of outcomes, including a no deal scenario. Furthermore, he said that:

> We are focusing on the importance of a continuous supply of medicines that have a short shelf life; some of the medicines that would be most difficult to provide in a no-deal scenario where there was difficult access through ports would need to be flown in, for instance. I hope that, even under a no-deal scenario, there will still be smooth movement in through ports, because it is not our intention to provide barriers to that, and the work will take that into account. But you can imagine that it is incredibly important for me, as Secretary of State, to ensure that people will have access to the medicines they need.

He said the Department was working with industry on the stockpiling of medicines and that he was “confident that with the right amount of work we can mitigate the worst of the circumstances”.

In August 2018, the Government published ‘technical notices’ relating to medicines regulation in the event of no deal:

- **How medicines, medical devices and clinical trials would be regulated if there's no Brexit deal**
- **Batch testing medicines if there's no Brexit deal**
- **Submitting regulatory information on medical products if there's no Brexit deal**

More detailed information on the regulation of medicines and medical devices in the event of no deal is provided in an MHRA January 2019 guidance document:

- **Further guidance note on the regulation of medicines, medical devices and clinical trials if there's no Brexit deal**

The technical notices (which have been updated since August) state that in the event of no deal:

- existing EU law on medicines would be converted into UK law under the *[EU Withdrawal Act 2018]*;
- the UK will recognise medical devices that are CE marked and approved for the EU market and will comply with new EU medical devices regulations due to come into force in 2020 and 2022;
- current marketing authorisations granted through the centrally authorised product route will be converted to UK marketing authorisations, but after 29 March 2019, all new applications for a marketing authorisation in the UK would have to be made to the MHRA;

360 Health and Social Care Committee, *Oral evidence: Work of the Secretary of State, HC 523* (Q209), 24 July 2018

361 Ibid, Q308
What if there’s no Brexit deal?

- batch testing of imported medicines from the EEA and named third countries will continue to be recognised in the UK;
- marketing authorisation holders and those responsible for pharmacovigilance (Qualified Persons) should be established in the UK by the end of 2020; and
- new systems for the submission and processing of regulatory information are being developed for March 2019.

The Government said that the MHRA would:

…take a streamlined approach to approving UKMA applications that places no greater burden on industry and ensures that patients can access new and innovative medicines at the same time as EU patients.362

On 23 August 2018, alongside the publication of the technical notices, Mr Hancock wrote to hospitals, GPs, pharmacies and pharmaceutical companies, setting out what action would need to be taken to ensure medicines supply to patients continues in the event of a no-deal Brexit. The letter requested that pharmaceutical companies ensure that by 29 March 2019 they have an additional six weeks’ supply of medicines on top of the normal buffer stock held and that for products with short shelf lives, suppliers should make plans to air freight these to avoid border delays.363

The letter also informed pharmacists and hospitals that they should not stockpile medicines and asks clinicians to advise patients about Government plans to maintain medicines supply - and that they too should not stockpile medicines.364

In December 2018, Matt Hancock wrote again to medicines suppliers to update on progress. He said that the Government had been working to design customs controls at the borders to ensure that goods can continue to flow into the UK and not be delayed by additional controls and checks. However, the European Commission had advised that in a no deal scenario, full third country controls would be placed on goods entering the EU from the UK. Government planning assumptions had now been revised to show that access across the short strait crossings into Dover and Folkestone could now be reduced for six months. This meant that additional measures would need to be introduced by pharmaceutical companies on top of stockpiling. The DHSC’s Medicines Supply Contingency Planning Programme requires medicines’ manufacturers and suppliers to provide information to the Department on their contingency plans for medicines imported from the EU.

The Government have also invested in additional warehouse space for the stockpiling of medicines, at an estimated cost “in the low tens of
millions of pounds.” This warehouse space is due to be in place by February 2019.365

The Department of Health and Social Care (DHSC) published its EU Exit Operational Readiness Guidance in December 2018. This set out a range of actions that were being taken by the Department to prepare for a no deal scenario and set out what action was required by commissioners, healthcare providers and pharmaceutical companies. It included the following:

- Ongoing work to ensure sufficient roll on, roll off freight capacity to enable medicines and medical products to move freely to the UK, and that these products would be prioritised on alternative routes to ensure unimpeded movement into the UK;
- In the event of delays, contingency planning was continuing with pharmaceutical companies and other government departments;
- DHSC and NHS England and NHS Improvement were working on measures to enable the local and regional monitoring of stock levels of medicines;
- DHSC would introduce a “Serious Shortage Protocol” through changes in medicines legislation to address potential medicines shortages (see below); and
- Public Health England was leading a UK wide programme to ensure the supply of centrally procured products such as vaccines.366

The guidance also reiterated that there was no need for stockpiling by hospitals, pharmacists or patients.

Two pieces of draft legislation have been published which aim to enable the continued regulation of medicines and medical devices in the event of a no deal Brexit:

- The Human Medicines (Amendment etc) (EU Exit) Regulations 2019 (laid on 23 January 2019) includes provisions to enable the MHRA to act as a standalone regulator in the event of a no deal Brexit.367
- The Medical Devices (amendment) (EU exit) Regulations 2019 (laid on 24 January 2019) amends UK legislation that implements EU legislation on medical devices and confirms that the UK will implement the new EU regulations on medical devices that will apply from 2020 and 2022.

Another piece of Secondary Legislation, the Human Medicines (Amendment) Regulations 2019 introduced the “Serious Shortage Protocol” measures highlighted in the EU Exit Operational Readiness Guidance. These makes provision for Ministers to issue a “Serious Shortage Protocol” in the event of a shortage of a prescription-only

365 Written Question: 203449 [Drugs], 7 January 2019
366 DHSC, EU Exit Operational Readiness Guidance, December 2018
367 The Human Medicines (Amendment etc.) (EU Exit) Regulations 2019, Explanatory Memorandum
What if there’s no Brexit deal?

This would allow pharmacies to dispense against a protocol instead of a prescription without going back to the prescriber first. This may allow a pharmacist to dispense a different quantity or strength of medicine or a generic or therapeutic equivalent. The Government have said that robust safeguards would be put in place to ensure this is used safely. These regulations are due to come into force on 9 February 2019. However, some concerns have been expressed about these measures, and the Opposition leader, Jeremy Corbyn, has tabled a motion to annul the negative Statutory Instrument.

More information for patients on getting medicines in the event of a no deal Brexit is provided in a Government guidance document.

9.3 Workers’ Rights

Current state of UK and EU employment law

A substantial component of UK employment law is grounded in EU law. This includes the law in areas such as working time, holiday pay, agency workers, discrimination, TUPE and data protection. A full list of EU employment rights is annexed to the Library Briefing Paper, Brexit and employment law.

Many EU employment rights are set out in Directives. These are implemented in the UK either by primary legislation (e.g. Equality Act 2010) or secondary legislation (e.g. Working Time Regulations 1998). Some EU employment rights are set out in Regulations (e.g. Regulation (EU) 492/2011 on workers’ rights) or in the Treaties (e.g. Article 157 TFEU on equal pay). These rights are directly effective.

EU law sets a minimum floor below which UK employment law must not fall. The UK can, and sometimes does, provide greater rights than is required by EU law.

EU employment rights if there is no deal

BEIS Technical Notice

On 23 August 2018, the Department for Business, Energy and Industrial Strategy (BEIS) published a technical notice on workers’ rights if there is no Brexit deal. The notice states that, for the large part, the Government will make no substantial changes to workers’ rights:

The EU (Withdrawal) Act 2018 brings across the powers from EU Directives. This means that workers in the UK will continue to be entitled to the rights they have under UK law, covering those aspects which come from EU law (including those listed above except where caveated below). Domestic legislation already exceeds EU-required levels of employment protections in a

---

368 The Human Medicines (Amendment) Regulations 2019, Explanatory Memorandum
369 DHSC, EU Exit Operational Readiness Guidance
370 DHSC, EU Exit Operational Readiness Guidance
371 Henry Zeffman, Chris Smyth, Ministers will order pharmacists to ration drugs if UK crashes out, The Times, 7 December 2018, and Jenny Cook, BMA safety warning as pharmacists gain power to switch prescriptions, GPonline, 21 January 2019
372 EDM 2048, 5 February 2019
373 Department of Health and Social care, Getting medication, 18 January 2019
number of ways. The government will make small amendments to the language of workplace legislation to ensure the existing regulations reflect the UK is no longer an EU country. These amendments will not change existing policy.

The notice does state that certain technical changes will be made to retained EU law, largely to correct references that are no longer applicable as a result of the UK leaving the EU. These changes will be made by the six statutory instruments which are listed at the end of the notice.

**European Works Councils**

European Works Councils (EWCs) are bodies through which workers at European companies can be consulted by management on decisions that are being made at a European level. EWCs can be set up where a company has more than 1,000 employees and at least 150 in at least two Member States. In the UK the rules on EWCs are implemented by the *Transnational Information and Consultation Regulations 1999* ("TICE Regulations").

The BEIS technical notice summarises the changes that will be made to the TICE Regulations: UK regulations will be amended so that:

- no new requests to set up a European Works Council or Information and Consultation procedure can be made
- provisions relevant to the ongoing operation of existing European Works Councils will remain in force
- requests for information or to establish European Works Councils or Information and Consultation procedures made before EU exit but not completed by EU exit will be allowed to complete.

Part 1 of the *Employment Rights (Amendment) (EU Exit) Regulations 2019* will give effect to these changes.

**Insolvency**

Directive 2008/94/EC (the Insolvency Directive) makes provision about protection of employees in cases where their employer goes insolvent. The Directive requires, in short, for Member States to set up financial “guarantee institutions” to provide certain financial protection to employees in such situations. Where a company operates in more than one Member State, the guarantee institution of the State where an employee habitually works is responsible for making insolvency payments to them.

In the UK, insolvency payments are made through the National Insurance Fund and is governed by Parts XI and XII of the *Employment Rights Act 1996*. The BEIS technical notice states that this scheme will not change in the event of a no-deal Brexit. It notes, however, that the rights of employees of UK companies in EU Member States will be determined by the laws of that country:

UK and EU employees who work outside the UK in an EU country for a UK employer may still be protected under the national guarantee fund established in that country. However, this might not always be the case, as there are variations in how each EU Member State has implemented
the guarantee required by EU law and how this applies to employees of employers based outside the EU, which will include UK employers after exit if there is no agreement

9.4 Social security

In the event of ‘no deal’, the provisions in EU law on the co-ordination of social security schemes for people between Member States – in Regulation 883/2004 and associated regulations – would cease to apply to situations involving the UK and the EU. The co-ordination rules do not harmonise social security systems across the EU, but instead support freedom of movement by, for example, providing for equal treatment in access to benefits with nationals of the host state, clarifying which state is responsible for paying benefits, allowing aggregation of insurance periods across countries, and enabling certain benefits to be ‘exported.’ A well-established system of administrative co-operation between Member States ensures the effective operation of the co-ordination rules, dispute resolution and secure data sharing.

This could have serious implications for people – both UK nationals and EU27 citizens – in cross-border situations. Situations that might occur include, for example:

- Individuals being unable to aggregate contributions paid or periods of residence in the UK and the EU27 states to satisfy the conditions for benefits;
- No clear rules about which country, if any, is responsible for paying a person’s benefits where they have lived in more than one country, and no mechanism for resolving disputes; and
- Posted workers – i.e. employees working in another country temporarily – finding themselves liable to pay social security contributions in both countries, instead of remaining insured only under the scheme of their home country.

UK contingency planning

The European Union (Withdrawal) Act 2018 converts EU law as it stands at the moment of exit into domestic UK law (‘retained EU law’) in order to maintain a functioning statute book. This will include EU Regulations relating to social security co-ordination. The Government has already laid before Parliament proposed negative Statutory Instruments (under powers in the EU (Withdrawal) Act to address deficiencies in retained EU law) intended to ensure that, to the extent that the UK can do so unilaterally, social security co-ordination can continue to operate in a ‘no deal’ scenario. So, for example, where previously the Department for Work and Pensions would have been able to request information from a Member State to determine which state is responsible for paying benefits in a particular case, it would now ask the claimant to provide

---

374 The co-ordination rules apply to countries in the European Economic Area (EEA), and to Switzerland.

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill currently before the House of Commons would enable the Government (and/or where appropriate, a devolved authority) by regulations to modify retained EU legislation on social security co-ordination. The Government states that this power is necessary to enable it to deliver a range of policy options from EU exit day, and specifically to implement its preferred approach to social security co-ordination in a ‘no deal’ scenario. It has not however explained what its preferred approach is. Given that social security co-ordination requires reciprocity, there would have to be an agreement or agreements in place with the EU or individual states for a working system to be established.

The UK Government is committed to implementing the EU Settlement Scheme even in a ‘no-deal’ scenario. EU nationals granted settled status should have full access to UK social security benefits. The position of those who, on 29 March 2019, have not been resident in the UK for five years – those with ‘pre-settled status’ – is less clear.

On 6 December the Department for Exiting the EU published a policy paper outlining the Government’s plans to protect citizens’ rights in the event that the UK leaves the EU without a deal. While it acknowledged that co-ordinating social security for people in cross-border situations required reciprocity from EU states, it said that the Government was exploring options to protect past social security contributions and reciprocal healthcare arrangements in the event of a ‘no deal’ scenario. EU citizens resident in the UK by 29 March 2019 would be able to access benefits in the UK as they do now, and the Government called on the EU and Member States to take corresponding steps to protect the rights of UK nationals in the EU.

To the extent that it was within its control, the Government would seek to preserve the rights of UK nationals in the EU. It is however making contingency plans to help returning UK nationals access benefits and other support quickly, should they find themselves unable to continue to live abroad. The policy paper published on 6 December stated:

We recognise that an issue raised by UK nationals is their ability to access to benefits and housing quickly on return to the UK. Arrangements will be made to ensure continuity of payments for those who return and are already in receipt of UK state pension or other UK benefits while living in the EU. We are considering how support could be offered to returning UK nationals where new claims are made and will set out further details in due course.

EU contingency planning

---

376 Citizens’ Rights – EU citizens in the UK and UK nationals in the EU
377 Ibid. para 24
140 What if there’s no Brexit deal?

On 19 December the European Commission issued a communication for Member States on contingency planning for a ‘no deal’ Brexit covering, among other things, social security co-ordination. It stated:

If the Withdrawal Agreement is not ratified, Union rules on social security coordination will no longer apply to the United Kingdom. This raises concerns for EU citizens who currently work or reside in the United Kingdom, or have done so previously, about their social security entitlements. The same applies to UK nationals currently working/residing in a different Member State.

The Commission calls upon Member States to take all possible steps to respond to these concerns and to ensure legal certainty and protection of the social security entitlements acquired by citizens who exercised their right to free movement prior to 30 March 2019.

In particular, the Commission calls upon Member States to:

1. take into account, for EU27 citizens and UK nationals, periods of work/insurance that occurred in the United Kingdom before the withdrawal;
2. inform citizens that they should keep the appropriate documentation that provides evidence for these periods;
3. ensure that ‘aggregation’ of periods completed until withdrawal also benefits those who continue to live in the United Kingdom;
4. export old-age pensions to the United Kingdom, despite the fact that it will be a third country. This would apply to those citizens who continue to reside in the United Kingdom after the withdrawal date, but also to the UK nationals who acquired old-age pension entitlements within the EU27 prior to the withdrawal date.

The communication reminded Member States however that ‘the Union has exclusive competence on social security coordination for the periods completed and for facts and events that occurred before the withdrawal date.’

This was followed on 30 January by a European Commission proposal for a new EU Regulation “on establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom of Great Britain and Northern Ireland.” An accompanying Commission press release states:

Protecting citizens’ social security rights

The Commission has consistently made clear that the rights of EU citizens in the United Kingdom and UK nationals in the EU are our priority. They should not pay the price for Brexit. Today’s proposal aims to ensure that in a “no-deal” scenario, the entitlements of those people who exercised their right to free movement before the UK’s withdrawal are safeguarded. These entitlements include periods of insurance, (self) employment or residence in the United Kingdom before withdrawal. For example, this means that if an

---

378 Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission’s Contingency Action Plan, COM(2018) 890 final. See also the accompanying memo, Questions and Answers: the consequences of the United Kingdom leaving the European Union without a ratified Withdrawal Agreement (no deal Brexit)

379 p5

380 COM(2019) 53 final, 2019/0019 (COD)
EU27 citizen worked for 10 years in the United Kingdom before Brexit, this period should be taken into account when his/her pension rights are calculated by the competent authorities in the EU Member State where he/she retires.

The proposed Regulation ensures that Member States continue applying the core principles of EU social security coordination, namely the principles of equality of treatment, assimilation and aggregation. Today’s proposal by no means replicates the significant advantages of the Withdrawal Agreement, as agreed in 14 November. It does not cover rights accumulated after 29 March 2019, nor does it cover the exportability of cash benefits, the continuous provision of sickness benefits in kind and the rules on applicable legislation.

Existing bilateral agreements

For some of the states covered by the co-ordination rules, the UK has bilateral, reciprocal social security agreements which pre-date their, or the UK’s, EC/EU entry. These agreements were superseded by the EU co-ordination rules, but remain in force for limited purposes. Should the co-ordination rules cease to apply and no alternative arrangements be in place, it is possible that these bilateral agreements would become applicable again. These bilateral agreements are, however, far more limited in scope than the EU co-ordination rules; vary widely in terms of the persons and benefits covered and may refer to benefits which no longer exist. Administrative mechanisms would also need to be established in tandem with each of the other countries for any reciprocal arrangements to work.

In a report published on 5 February the European Scrutiny Committee said that it had written to the Minister for Employment, Alok Sharma, seeking information as soon as possible about, among other things:

- The extent to which any pre-existing social security agreements with individual EU countries can be revived in a ‘no deal’ scenario, given the Commission’s assertion that the EU has exclusive competence over social security and healthcare arrangements with the UK that relate to periods of work undertaken before its withdrawal from the EU, and to what extent this limits what Member States can agree with the UK bilaterally with respect to UK and EU nationals who would otherwise have been within the scope of the Withdrawal Agreement.

Migrants in the UK

The NRPF Network – a “network of local authorities and partner organisations focusing on the statutory response to migrants with care

---

381 Brexit Preparedness: European Commission adopts final set of “no-deal” contingency measures for Erasmus+ students, social security coordination rules and the EU budget

382 EEA states with which the UK has historic bilateral social security agreements include Austria, Belgium, Croatia, Cyprus, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Slovenia, Spain, and Sweden. The UK also has a social security agreement with Switzerland.

383 Article 8 of EC Regulation 883/2004 provides that the co-ordination rules “shall replace” any pre-existing social security convention entered into by a Member State. It is not clear whether this means these conventions effectively cease to exist or merely remain ‘dormant’.

needs who have no recourse to public funds (NRPF)” – notes on its webpage about EEA Nationals that at present “EEA nationals and family members of EEA nationals, who are not eligible for welfare benefits social housing, may be able to receive housing and financial assistance from social services” only “if this is necessary to prevent a breach of their human rights or their European Treaty rights” and that any such assistance is limited to:

- Families where there is a child in need (if the family are destitute then the child will be in need) [for a definition of “children in need”, see the Library briefing paper on this issue]
- A young person who was formerly looked after by a local authority
- An adult requiring care and support due to a disability, illness or mental health condition

In a no-deal scenario, the NPRF Network states that “the Government and EU have yet to reach a final agreement on the full terms that will apply to the UK when it leaves, and it is unclear how a ‘no deal’ situation will impact on these proposals. Arrangements have not yet been confirmed for non-EU EEA (Iceland, Liechtenstein and Norway) or Swiss nationals, but the Government has indicated it intends for them to be subject to the same process”, adding that:

The Government is currently proposing that after the UK has left the EU on 29 March 2019, there will be a transition period that ends on 31 December 2020. EU nationals and their family members living in the UK by the end of the transition period will need to take action before 30 June 2021 and apply for either settled or pre-settled (temporary) status under the EU Settlement Scheme if they wish to stay here. EU nationals and family members who arrive after 29 March 2019 and people who have already obtained a permanent residence document will also need to apply. The Government has indicated that a person who fails to apply by the end of June 2021 may have no lawful basis to remain in the UK, but it is unclear what the consequences of this will be. The EU Settlement Scheme is being piloted at the end of August and is due to be implemented by the end of the year.

9.5 Pensions

State Pensions

The social security co-ordination rules allow periods of insurance for State Pensions purposes to be aggregated, so an individual who has worked in more than one Member States can on reaching pension age make one application to the relevant agency in the country of residence – in the UK, the International Pension Centre. This agency then notifies details of the claim to all countries in which the person has been insured. Each Member State in which the person was insured then calculates its pro-rata contribution and puts that amount into payment. There is information about these rules on the Europa.EU website – see State Pensions abroad.
The **draft Withdrawal Agreement** (WA) published on 14 November 2018 states that EU Regulations on social security co-ordination will continue to apply after the end of the implementation period for individuals in scope of the WA. The intention is to ensure that citizens who have moved between the UK and EU before the end of the transition period are not disadvantaged in their access to pensions. The WA provides protections in other circumstances so that, for example, where a UK national has previously work and paid social security contributions in a Member State, rights flowing from those contributions, such as pensions are protected.\(^{385}\)

The UK Government made an announcement on 6 December 2018 on citizens’ rights in the event of “no deal.” It said it had taken steps to provide reassurance for EU Citizens in the UK and had asked the EU and Member States to reciprocate:

19. UK nationals who went to the EU and EU citizens who came to the UK before the UK’s exit from the EU did so on the basis that they would be able to settle permanently and build a life here, or in the EU. That is why the UK has taken steps to remove any ambiguity and provide complete reassurance for EU citizens in the UK. We ask that the EU and Member States do the same for our nationals.

20. We will continue to push the EU and Member States to secure these rights as soon as possible, which are in the mutual interest of all our citizens. Where it is in our control, the UK will also continue to preserve certain rights of UK nationals in the EU, for example by continuing to pay an uprated UK state pension to eligible UK nationals living in the EU.\(^{386}\)

It was exploring options in relation to those areas that required reciprocity (like social security co-ordination) and would announce further details prior to exit.\(^{387}\)

Regarding uprating, it said it was committed to uprating the UK State Pension for UK nationals in the UK in 2019 to 2020, and beyond that subject to reciprocity:

**Will UK nationals continue to get their State Pension uprated under no deal?**

The UK leaving the EU will not affect entitlement to continue receiving the UK State Pension if you live in the EU, and we are committed to uprate across the EU in 2019 to 2020. We would wish to continue uprating pensions beyond that but would take decisions in light of whether, as we would hope and expect, reciprocal arrangements with the EU are in place.\(^{388}\)

On 30 January 2019, the European Commission published final set of ‘no deal’ contingency proposals for social security co-ordination. Its aim was to ensure that in the event of a “no deal” scenario, EU Member

---

386 DEXEU, *Citizens’ Rights – EU citizens in the UK and UK nationals in the EU*, 6 December 2018
387 Ibid, para 28
388 Guidance - UK nationals in the EU: benefits and pensions in a ‘no deal’ scenario, 18 December 2018)
State authorities would continue to take into account periods of insurance, (self) employment or residence in the United Kingdom before withdrawal, when calculating social security benefits, such as pensions.\textsuperscript{389}

For more detail, see Library Briefing Paper CBP-7894 Brexit and State Pensions (February 2019).

**Private pensions**

UK workplace pensions operate on a national basis subject to UK legislation.\textsuperscript{390} However, they invest internationally and a solution to the financial services passporting and derivatives issues discussed in section 6.2 is therefore important.

Another issue that will need to be addressed is ensuring that the small number of schemes operating across borders (in particular, between the UK and Ireland) are able to continue to do so.

These issues are discussed in more detail in Library Briefing Paper CBP-07629 Brexit – implications for private pensions (February 2019).

---

\textsuperscript{389} European Commission, ‘Brexit Preparedness: European Commission adopts final set of ‘no deal’ contingency measures for Erasmus+ students, social security co-ordination rules and the EU budget’, 30 January 2019

\textsuperscript{390} See Library Briefing Paper 7629 Brexit – implications for private pensions, August 2018
10. Food and Farming

10.1 Overview
The National Farmers’ Union (NFU) has said that a no deal outcome is the “worst possible one” for the farming industry.\textsuperscript{391} The Food and Drink Federation (FDF) has called no deal a “grisly prospect”.\textsuperscript{392}

In a no deal scenario for agriculture, trading arrangements, i.e. tariffs and standards, are the main issue.

No deal potentially means applying WTO tariffs where there currently are none for intra-EU trade, as well as WTO rules for plant and animal health checks (in trade terms these are known as sanitary and phytosanitary (SPS) measures).\textsuperscript{393} This could have a significant impact on the farming industry and consumers in terms of changing the balance of import and export markets and consumer choice, the speed of supply chains, and prices.

Tariffs are usually higher for agricultural products than for other goods and services. Perishable goods such as milk are also more sensitive to delays at borders, as are live animals.

Without an alternative arrangement, the EU will treat the UK as a third country and a range of tariffs, checks, registrations, certifications etc will start to apply for the first time for a range of commodities, food and feed and for plant and animal-based products. Agriculture is also impacted by the no deal effects of other policies e.g. immigration (for seasonal, agri-food workers and vets).

A number of practical issues arising from additional checks and customs processes could lead to supply chain disruptions if food consignments are held up at ports. The food and drink sector are reported to have been building up additional stock since mid-2018. There were widespread media reports in January 2019 that mounting concerns about supplies being affected by a no deal scenario had led to consumers stockpiling food at home.

10.2 Farm support schemes
The UK is already preparing farm support payment systems to apply outside the Common Agricultural Policy (CAP), whatever the Brexit scenario. This is because only EU Member States can participate in the CAP and its payment schemes.

CAP support is currently made up of direct payments under the Basic Payment Scheme (Pillar I) and payments for agri-environment measures and grants for rural development projects which contribute to wider

\textsuperscript{391} NFU Online, \textit{Technical notice serves warning over continuity of British food exports}, 23 August 2018
\textsuperscript{392} FDF, \textit{FDF response to Government’s no deal technical notices}, 23 August 2018
\textsuperscript{393} The WTO’s Agreement on the Application of Sanitary and Phytosanitary Measures (SPS measures) sets out the basic rules for food safety and animal and plant health standards
rural development objectives (Pillar II) under the Rural Development Programmes for each part of the UK. CAP support makes up around 50-60% of farm incomes in England. In other parts of the UK it is a larger proportion, mainly because there is more land which has more difficult farming conditions e.g. hill farming.

Consultations on new domestic agriculture policy have taken place across the UK legislatures. The UK Government has pledged to maintain the same cash funds as currently for farm support under CAP until the end of the Parliament, in the expectation that this will be 2022. This is for all of the UK and across all aspects of current CAP funding i.e. Pillars I and II. The ‘no deal’ technical notices issued by the Government in August 2018 included notices on Farm payments if there’s no Brexit deal and Receiving rural development funding if there’s no Brexit deal. These confirm that in the event of ‘no deal’ any remaining payments to farmers, land managers and rural businesses due after March 2019 would be funded. Rural development projects would be funded until they finish, and new projects can continue to be signed during the rest of 2019 and 2020 up to the value of programme allocations.

An Agriculture Bill (HC Bill 266) was published in September 2018 containing measures for the UK, with specific measures in addition for England, Wales and Northern Ireland. House of Commons Library Briefing Agriculture Bill 2017-19 provides full details of the Bill’s proposals and progress, as well as information on proposals being developed by the administrations in Scotland, Wales and Northern Ireland.

10.3 Regulatory issues: technical notices

The UK Government’s ‘no deal’ technical notices issued in August, September and October 2018 (updated in December 2018) and January 2019, have covered a range of food and agricultural issues. These outline regulatory changes which would affect certain activities and sectors, such as the regime for pesticide authorisations and exports of animal products to the EU.

Some of these notices indicate that retained EU law may need to be amended, whilst other notices indicate that the law will not be amended, as equivalency agreements are being sought with the EU on the basis of harmonised law.

The main technical notices cover the following areas:

---

394 Commons Library Briefing, Brexit: UK Agriculture, 8218, 11 September 2018
395 Northern Irish agriculture subsidies to fall after Brexit report warns, The Irish News, 16 January 2018
396 GOV.UK The Unfrozen Moment – Delivering a Green Brexit, 21 July 2017
397 GOV.UK How to prepare if the UK leaves the EU with no deal collection of guidance, accessed 22 January 2019
398 Ibid
399 Ibid
Organic food

- Producing and processing organic food if there’s no Brexit deal
  (published 23 August 2018)

Although no official data is available, it is estimated that about 10% of the UK’s organic output (worth some £2.2 billion in 2017) is exported and predominantly to EU countries.\(^400\)

UK businesses will need to be certified by an organic control body to export to the EU. The body must be recognised by the EU but the UK control body cannot apply to the European Commission until the UK becomes a third country. Approval can then take nine months. The notice states that the Government is “exploring alternative approaches that should speed up this process”.

The NFU has highlighted how this would in effect be a trade embargo on UK organic products and could have wider, disruptive implications for the future trade of all agri-food products if all of them were subjected to the same problems in approval and certification.\(^401\) The Food and Drink Federation (FDF) has pointed out that similar issues will apply for other food currently displaying EU marks or logos.\(^402\)

The Government has said that it anticipates “continuing to accept EU organic products in a ‘no deal’ scenario, but this will be at the UK’s discretion” and it expects to negotiate an equivalency arrangement because the UK will be retaining existing EU requirements for organic food.

The technical notice also states that certification and traceability of organic food and feed products will continue to be required by the UK. However, a new UK-owned imports traceability system would replace the current EU TRACES.NT system to ensure the traceability of organic food and feed. The EU Trade Control and Expert System (TRACES) tracks the entire trade and certification process for animals, food, feed and plants. The FDF doubts the UK Government’s ability to replace TRACES with a new, comprehensive, functional UK alternative IT system in time for EU Exit Day.\(^403\)

Genetically Modified Organisms (GMOs)

- Developing Genetically Modified Organisms (GMOs) if there’s no Brexit deal
  (published 23 August 2018)

Applications for new GMOs are managed at EU level, with assessment carried out by the European Food Safety Authority (EFSA). According to the notice, the transfer of provisions under retained EU law with amendment only to make it operable in the UK-only context, means that there would be “no significant implications for UK stakeholders”. Regulatory decisions on proposed GM trials would continue as now on a devolved basis.

\(^{400}\) [No deal Brexit could wipe out British Organic Farming, Farmers Weekly, 23 August 2018]
\(^{401}\) [NFU Online, Technical notice serves warning over continuity of British food exports, Accessed 22 January 2019]
\(^{402}\) [FDF, FDF response to Government’s no deal technical notices, 23 August 2018]
\(^{403}\) Ibid
and the UK would apply the same risk assessment process on marketing GMOs as currently takes place at EU level (although it is not yet decided if this is to be on a joint-UK basis or separately across the devolved legislatures).

- **Exporting GM food and animal feed products if there’s no Brexit deal** (published 12 October 2018)

As the UK would be treated as a third country, UK businesses would only be able to export GMO products to the EU if the GMO had EU marketing approval. This would be the same for the EU with UK marketing approval.

If there is no deal, UK exporters to the EU will require representation in the EU or EEA. EU countries each have their own systems for this. The Food Standards Agency is currently seeking clarity on interpretation of changes to EU rules, but the notice advises that “companies should nevertheless anticipate this revised interpretation and consider designating a representative within the EU or the EEA”. The notice also notes that:

Changes to holder-specific authorisations for GM food or feed or for feed additives require amendments to EU legislation which would need to be in place by 29 March 2019. Businesses in the process of such changes would need to approach the European Commission without delay.

**Fertilisers**

- **Manufacturing and marketing fertilisers if there’s no Brexit deal** (published 24 September 2018)

There are currently both a UK domestic and an EU framework under which manufacturers can choose to market their products: the UK framework remains in place under ‘no deal’ as it is separate from the EU framework. Both regimes would carry on in parallel to provide “the greatest continuity in the short-term” and existing requirements would continue. The notice adds that:

Over time, the regulatory framework would then be reviewed and rationalised. However, there would be some implications for material labelled ‘EC fertiliser’ in accordance with the EU Regulation and sold in the UK […] after the end of [a] time-limited adjustment period, fertilisers placed on the UK market would need to comply with the current domestic regime or with the requirements of the new ‘UK fertiliser’ regime.

The Government will publish a new list of laboratories approved to test to the standards required for the new ‘UK fertiliser’ label. The laboratories would need to meet the same requirements as they do now and test against the same standards as set out in the current EU Regulation.

There would be no material change for users of fertilisers. All fertilisers currently marketed in the UK could continue to be imported and marketed in the UK provided they met the requirements set out above. The same standards would continue to apply to fertiliser products.
Food labelling

- Producing and labelling food if there’s no Brexit deal  (published 24 September 2018)

Initially, the EU-based provisions would all be rolled over under the EU (Withdrawal) Act, and fixed where necessary by statutory instrument so the rules apply as before. However, some changes would be required to reflect the fact that the UK will no longer be a member of the EU.

For example, use of the term ‘EU’ in origin labelling would no longer be correct for food or ingredients from the UK and some products, such as honey blends from more than one country, will require further changes. In addition, from April 2020, the country of origin or place of provenance of the primary ingredient of a food (where different to that given for the food overall) will be required on labels as part of EU rules on food labelling. The Government may seek views on whether similar national rules would be appropriate in the UK when EU rules no longer apply.

The Government launched a consultation on food labelling: amending laws which closed in November 2018. This sought views on the changes needed to legislation under a ‘no deal’ scenario. The results of the consultation, which closed in November 2018, will be published by 7 February.

Animals and animal product imports and exports

- Importing animals and animal products if there’s no Brexit deal  (updated 19 December 2019)

In a ‘no deal’ scenario the EU will not allow the UK to access the EU import notification system, TRACES. A new UK import notification system is being developed to take the place of TRACES. The new system will be available for early testing in January 2019, to be fully operational for all users from the day the UK leaves the EU.

There would be no change to current import controls or requirements for notifications of imports of live animals and animal products for imports direct from the EU.

To maintain high levels of food safety, the UK would require importers of high-risk food and feed to pre-notify the Food Standards Agency (FSA) of imports from the EU. The notice states that “this requirement would have no direct impact at the border or for port health authorities. Pre-notifications would be made electronically, in advance, by those introducing high-risk foods into the UK, and would be managed by the FSA. No additional controls would be introduced at the border”.

There will be no change to current import controls and requirements for notifications of live animals, animal products, and high-risk food and feed imported directly from third

---

404 Written Question 908633 16 January 2019
countries. The only difference is that importers would need to use the new import notification system instead of TRACES.

Changes would apply to control requirements for imports of third country animal products and high-risk food and feed which move through the EU before arrival in the UK, from 29 March 2019. Importers would need to notify UK authorities using the new import notification system and would be directed to an existing UK Border Inspection Post (BIP) where the relevant checks would take place. This requirement would ensure the current level of biosecurity is maintained.

The requirement for live animal imports from a third country, which move through the EU before arrival in the UK, to enter via a UK BIP is being reviewed, as all live animals would have been subject to checks at the point of entry to the EU. For live animal imports the importer will be required to notify the UK authorities using the new import notification system.

- **Exporting animals and animal products if there’s no Brexit deal**  
  (published 24 September 2018)

If there is no deal all UK animal product and live animal exports to the EU must be accompanied by Export Health Certificates (EHCs) signed by an Official Veterinarian or authorised signatory following inspection. The consignment must travel through a Border Inspection Post. The UK would need to be listed as a third country. The notice says that:

the UK would apply for this status but cannot be certain of the EU response or its timing. Without listed status no exports to the EU could take place. We are confident however, that the UK meets the animal health requirements to secure listing, as other countries such as Australia and New Zealand have done so.

### Plant imports and exports

- **Importing and exporting plants if there’s no Brexit deal**  
  (published 24 September 2018)

Currently there are no border controls on most imports and exports of plants and plant products between the UK and the EU. Some plants and plant products that present a higher biosecurity risk are managed under the EU plant passport regime. The notice states:

In a ‘no deal’ scenario, the UK would become a third country, and would need to meet EU third country import requirements to export controlled plants and plant products to the EU, including controls on all plants for planting and all wood packaging material.

The process for sending controlled plants and plant products to the EU would be the same as the current process for sending them to third countries. Under this process, businesses need to apply for a Phytosanitary Certificate (PC) from the relevant UK plant health authority before they can export. Some commodities require laboratory testing of samples to ensure they are free from
pests and diseases, while others also need to have had an inspection during the growing season.

On imports, the notice states:

To deliver a smooth transition when we leave the EU, in a ‘no deal’ scenario the Government has decided that the majority of plants and plant products are low-risk and should continue to enter the UK from the EU freely, as they do now, with some exceptions such as Plants and plant products managed under the EU plant passport regime.

Geographical protections

- **Protecting geographical food and drink names if there’s no Brexit deal** (published 24 September 2018)

EU rules allow product names to be protected under geographic indication (GI) regulations, in line with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). UK GIs are protected from imitation and evocation throughout the EU. There are currently 86 GI-protected UK product names, comprising 76 agricultural and food products, five wines and five spirit drinks which together make up a quarter of the value of UK food and drink exports.

The UK Government has recently consulted on proposals for the new UK GI schemes which will bring the EU GI regulations into UK law via the EU (Withdrawal) Act 2018 from exit day to meet WTO obligations. There is only limited scope to diverge from the EU approach but the UK is consulting on a new logo and appeals process. Commons Library Briefing *Brexit: Future UK Agriculture Policy* (chapter 8.4 Food Labelling) provides more background information on this topic. According to the Institute for Government the provisions of the Withdrawal Agreement on GIs would have important implications for UK’s trade policy: “it prevents the UK from importing other countries’ versions of protected products (such as Australian feta cheese) or manufacturing its own (such as English Champagne).”

The notice says that the new GI scheme will be:

no more burdensome to producers. The UK would no longer be required to recognise EU GI status. EU producers would be able to apply for UK GI status. We will be publishing guidance on the UK GI schemes in early 2019.

Pesticides

- **Regulating pesticides if there’s no Brexit deal** (published 12 October 2018)

This notice sets out how the complex area of Plant Protection Products (PPP) regulation currently covered by EU rules will be...
addressed after Brexit. The UK currently works within an EU regulatory system of pesticide approval. Active ingredients are authorised at EU level for use across Europe, but Member States authorise the specific products which make use of these ingredients and set conditions for their use. The competent authority for doing this in the UK is the Chemicals Regulation Directorate (CRD) in the Health and Safety Executive.

The notice states that in a ‘no deal’ scenario the UK would repatriate all decision-making to the UK, but for stability would retain the two main EU regulations in national law with no change to policy. However, for the regime to operate in a domestic setting, secondary legislation is needed to make some technical corrections to “ensure a smooth transition in the event of no deal”. The Government is already planning for the regulatory capacity needed to implement the regulation of plant protection products in the UK, “building on the existing capacity in the Health and Safety Executive”.\textsuperscript{408} The notice states that EU legislation on active substance approvals and Maximum Residue Level will be replaced in the UK by a new statutory register which will be publicly available online.

All current plant protection product approvals in place on 29 March 2019 would remain valid in the UK, so “businesses could continue to trade and products would continue to be available”. An extension of three years to active substance approvals will be granted to those due to expire in the three years after Brexit to provide time for national renewal arrangements to be established. Parallel trade permits in force at the point of exit would remain valid for a two-year transition period or the extant expiry date (whichever is sooner).

The UK would not be legally committed to “medium or long-term regulatory alignment with the EU” under a no-deal Brexit so divergence from developing EU legislation would be possible “in due course”.

Other Technical Notices on preparing for ‘no deal’ published in 2018 and 2019 included:

- Plant variety rights and marketing of seed and propagating material if there’s no Brexit deal (12 October 2018)
- Breeding animals if there’s no Brexit deal (12 October 2018)
- Trading timber: imports and exports if there’s no Brexit deal (22 January 2019)
10.4 Food supply

Potential disruption to food supplies and price rises in the short-term immediately after a no-deal Brexit has been given regular media coverage.\(^{409}\)

**Supply chain disruption**

Under a ‘no deal’ scenario, Export Health Certificates (EHCs) would be required for all animal products (such as dairy and meat products) and live animals from the UK to the EU, and consignments would need to travel through Border Inspection Posts.\(^{410}\) The UK would need to be listed as a third country, as without this no exports to the EU could take place. There are currently no border controls on most imports and exports of plants and plant products between the UK and the EU but a no-deal outcome means the UK would need to meet EU third country requirements, including for all wood packaging material.\(^{411}\) This could have practical impacts on food supply, potentially disrupting just-in-time supply chains, especially affecting fresh produce.

Defra Secretary Michael Gove’s speech to the *Oxford Farming Conference* in January 2019 noted that the EU had said that 100% of (animal) products would face sanitary and phyto-sanitary checks, although the EU had pledged to accelerate recognition of the UK as a third country to allow exports to continue freely. He referred to practical obstacles for exports facing increased checks:

Much of our trade currently reaches European markets through the narrow straits between Dover and Calais. At the moment there are no border inspection posts at Calais. While we do hope the French take steps to build capacity there, that capacity is unlikely by the end of March to be generous.

He added that:

The EU have also said that hauliers from the UK can carry export goods to EU markets but they cannot make multiple journeys from EU country to EU country and thus the costs of haulage could rise as well.

The combination of significant tariffs when none exist now, friction and checks at the border when none exist now and requirements to re-route or pay more for transport when current arrangements are frictionless, will all add to costs for producers.

As will new labelling requirements, potential delays in the recognition of organic products, potentially reduced labour flows and the need to provide export health certificates for the EU market which are not needed now.\(^{412}\)

---

\(^{409}\) See, for example, the Metro, *Pets at Home to stockpile £8 million of pet food ahead of Brexit*, 22 January 2019, and BBC *My Brexit Box*: the people stockpiling food, 9 November 2018.

\(^{410}\) GOV.UK, *Exporting animals and animal products if there’s no Brexit deal*, 24 September 2018.

\(^{411}\) GOV.UK *How to prepare if the UK leaves the EU with no deal*: collection of guidance, [accessed 22 January 2019].

What if there’s no Brexit deal?

Previously, in August 2018, then EU Exit Secretary Dominic Raab said the Government had set out “practical measures to mitigate any risks of disruption to supply”. He said this would be achieved through “the recognition of EU food standards, our pursuit of equivalency arrangements on food regulation with the EU and indeed with non-EU countries, and through our support for UK farmers in terms of financial funding schemes”. Mr Raab highlighted that the UK’s food and drink supply is diverse, with the UK supplying half of the food that we consume with 30% imported from the EU and 20% from the rest of the world. He confirmed that there were no plans to deploy the army to maintain food supplies and played down the likelihood of the EU not offering some kind of mutual recognition in this area in a ‘no deal’ scenario: “Who is credibly suggesting, in a no deal scenario, that the EU would not want to continue to sell food to UK consumers?”

None the less, a number of food industry companies said they were stockpiling supplies in case of no deal. The British Retail Consortium has expressed concerns about the practicalities:

> Stockpiling of food is not a practical response to a no-deal on Brexit and industry has not been approached by Government to begin planning for this. Retailers do not have the facilities to house stockpiled goods and in the case of fresh produce, it is simply not possible to do so. Our food supply chains are extremely fragile and this is yet further demonstration of the need for an agreement on the backstop to ensure frictionless trade is maintained after the 29 March 2019.

The extent of any disruption at ports will in part depend on EU Member State preparations - to put in place Border Inspection Posts capable of undertaking checks on food imports from the UK at French ports, for example. The French Government triggered a no-deal plan on 17 January 2019. This included an Ordinance to “enable the emergency construction of the necessary infrastructure for restoring border checks (for customs, sanitary and phytosanitary standards, goods and people)”. Some €50 million (£44 million) would be invested in ports and airports, focusing on “control points and parking areas”, with the possible appointment of 580 customs and veterinary staff.

**Price impacts**

On prices, Defra Secretary Michael Gove told the Oxford Farming Conference in January 2018 that the costs imposed by tariffs (for example those above 40% on beef and sheep meat) would exceed any adjustments in currency markets. Although this could make exports

---

413 GOV.UK, Secretary of State Dominic Raab’s speech on no deal planning, 23 August 2018
414 Ibid
415 See also for example, The Grocer, Stockpiling begins among food suppliers as Brexit approaches, 14 September 2018
416 British Retail Consortium media statement, Stockpiling of food is not a practical response to a no-deal on Brexit, 26 July 2018
417 French Government press notice, France triggers contingency plan in the event of no-deal Brexit, 17 January 2019
418 Ibid
more competitive, it also would “feed inflationary pressures at home”.\(^{419}\)

The **Federation of Wholesale Distributors** has cautioned that without a trade agreement, the food and drink wholesale distribution sector will face upward pressure on their suppliers’ prices.\(^{420}\) The **Food and Drink Federation reported in October 2018** that 38% of surveyed members reported increases in costs as a result of stockpiling supplies in preparation for any no deal Brexit.\(^{421}\)

The **British Poultry Council** said on 21 January 2019 that increases in the cost of production could, in a “worst case no-deal scenario” lead to the price of chicken breast meat rising by 25%.\(^{422}\)

**Dairy UK** has said that the worst outcome from the Brexit negotiations would be for trade with the EU to be based only on WTO rules. This is because the tariffs for dairy products in the EU’s WTO Most Favoured Nation (MFN) tariff schedule are “prohibitively high” in order to prevent the import of dairy products into the EU. Working to the WTO schedule, in the absence of another agreement, would make EU dairy imports into the UK much more expensive, which would impact on UK wholesale prices.\(^{423}\)

### 10.5 Agri-food sector concerns

The potential longer-term impacts of a ‘no deal’ scenario vary widely by commodity and sector of the food chain and will also depend on the decisions made on applying tariffs under WTO schedules. This is because some agricultural sectors, such as sheep farmers, export far more produce to the EU than other sectors. Under WTO schedules, tariffs for many agricultural products are high – averaging more than 11% but considerably higher for many products.\(^{424}\) However, sectors could face competition from non-EU countries if the UK applied low or no tariffs, as the UK would have to apply the same tariffs to non-EU imports as to EU imports under WTO non-discrimination (‘Most Favoured Nation’) rules.

A **joint letter** to all MPs on 10 January from four farming organisations (the NFU, NFU Cymru, NFU Scotland and the Ulster Farmers’ Union) warned that ‘no deal’ could result in “huge disruption” as a result of “an effective trade embargo on the export of animal and animal-based products. The letter added that no deal could lead to:

---

\(^{419}\) Rt Hon Michael Gove MP, *Address to Oxford Farming Conference*, 3 January 2019

\(^{420}\) FWD, *Brexit: Current issues* [as viewed on 26 July 2018]

\(^{421}\) Food and Drink Federation news article, *More than a third of food and drink manufacturers facing increased costs as a result of ‘no-deal’ Brexit stockpiling*, 30 October 2018

\(^{422}\) British Poultry Council Press Release, *No-deal Brexit worst case for affordability and availability of British food*, 21 January 2019


\(^{424}\) The average EU tariff on agricultural goods was 11.1% in 2016 compared with 4.2% for non-agricultural goods. The average EU tariff on dairy products is over 30% and on sugars and confectionery over 20%. Some individual products have tariffs over 100%. [Source: WTO, *World Tariff Profiles 2017*, p81
Affected sectors facing particularly high customs tariffs on exports. For example, the effective EU tariff would be 65% on beef, 46% on lamb and 27% on chicken.

Impacts on UK production as a result of the government potentially choosing to unilaterally lower the UK’s import tariffs to control food price inflation, resulting in the UK market being open to imports of food produced to standards lower than that produced here by UK farmers.425

Scenario modelling by the Agriculture and Horticulture Development Board (AHDB)426 and the NFU427 have shown the lamb and beef sectors to be potentially two of the most vulnerable UK sectors post-Brexit overall. In particular, the sectors’ prospects suffer if there is no comprehensive trade deal with the EU that maintains similar tariffs to now, and if subsidies are reduced or removed. A variety of sector reports are available at https://ahdb.org.uk/brexit/.

A 2016 analysis commissioned by the NFU looking at a range of potential Brexit trade scenarios (including trading on WTO rules) and farm support levels found that, for most sectors, the biggest driver of UK farm income changes was the level of public support payments available. The loss of these support payments offset positive price impacts in all of the potential Brexit trading scenarios examined.

The British Poultry Council has said that:

A no-deal Brexit would be incredibly damaging for our sector, for our ability to trade, for our workforce and for British consumers of poultry meat. We directly employ 38,000 people up and down the country, 60% of our workforce are EU nationals. Britain could risk losing the EU nationals employed by our sector, the £5bn Gross Value Added we contribute to the economy and the £1bn in tax revenue we generate.

Almost three quarters of our imports (£2bn/year) and exports (£500m/year) are with the EU – ensuring a continuation of trade with that market is essential. We are concerned that leaving with no-deal could effectively result in a trade embargo; in the import of products produced to lower standards; and in export tariffs being imposed on poultry meat that goes to the EU (27% increase on chicken).428

425 NFU Online, UK farming industry urges MPs to take action to avoid no-deal Brexit, 10 January 2019
426 NFU online, NFU and AHDB team up for Brexit Roadshows, 25 October 2017
427 NFU Online, British Agriculture: The implications of a UK Exit from the EU – Summary of a study by the LEI Wageningen UR for the NFU of England and Wales, April 2016
428 British Poultry Council Press Release, No-deal Brexit worst case for affordability and availability of British food, 21 January 2019
11. Fisheries

Following Brexit, the UK will no longer be part of the EU Commons Fisheries Policy (CFP). It will become an independent coastal state and will be fully responsible for managing fisheries in the UK’s Exclusive Economic Zone (EEZ) of 200 miles. This will include setting total allowable catches (TACs), distributing quotas and determining who has access to fisheries. However, access for EU vessels to UK waters and vice versa is likely to be part of any agreement reached with the EU as part of a future relationship.

The UK will continue to be bound by the requirements of the UN Convention on the Law of the Sea (UNCLOS) and how they relate to the management of fisheries in any Brexit outcome. UNCLOS requires coastal States to give other States access to the surplus of the allowable catch in its EEZ and emphasises the need to minimise economic dislocation in States whose nationals have habitually fished in the zone. It also provides an obligation to co-operate with other coastal states on the management of shared stocks or stocks of associated species.

The Fisheries White Paper Sustainable fisheries for future generations, published in July 2018, set out the Government’s intention to continue to co-operate closely with the EU and other coastal states on the sustainable management of fish stocks that cross borders, and states that “any decisions about giving access to our waters for vessels from the EU, or any other coastal states including Norway, will then be a matter for negotiation”.

Setting the system for quota distribution to individual fishing vessels is already the responsibility of Member States and therefore largely unaffected by any Brexit agreement. However, the White Paper makes clear that the Government is considering some changes to how fishing effort is set post-Brexit, particularly for smaller and inshore fishing vessels.

For further information on the UK’s current approach to fisheries management within the context of the Common Fisheries Policy, see Commons Library Briefing Paper, Fisheries Management in the UK.

11.1 Priorities for fisheries

The fisheries sector is very diverse in the UK, with both a significant inshore and offshore fleet. There are also differences in the size and type of fishing vessels across the devolved administrations. Both EU quota species and non-quota species are important for different parts of

---

429 Article 61(1) of the UN Convention on the Law of the Sea (UNCLOS) states that: “The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.”

430 UN Convention on the Law of the Sea (UNCLOS)

431 Defra, Fisheries White Paper Sustainable fisheries for future generations, published July 2018

432 Defra, Fisheries White Paper, 4 July 2018

433 MMO, UK Sea Fisheries Statistics 2016, 28 September 2017
What if there’s no Brexit deal?

the sector.\footnote{434} Non-quota species do not fall under the CFP and include most shellfish, which is often high value and exported from the UK. The UK also has significant processing and aquaculture industries. This results in a diversity of views on priorities for the sector, as was noted in the White Paper:

> A full range of views have been expressed across a very wide range of issues and there is no consensus. Different sectors within the fishing industry (catching, processing, and trading) have different priorities. Within each of those sectors, there is a range of views.\footnote{435}

The House of Lords EU Committee’s 2016 report, Brexit: Fisheries, set out some of the potential concerns and priorities for fisheries going into the Brexit negotiation. The report recognised that whilst the fishing industry represents “a very small part of the UK’s GDP”, it is of great importance to many coastal communities and that opportunities exist for the UK in leaving the CFP. It also noted that the majority of fish caught in the UK are exported to the EU and that the UK currently imports most of the fish it consumes.

The report highlighted concerns about the potential impact on the fisheries industry of a lack of agreement during the Brexit negotiations on access, quotas and trade. The conclusions on access and quota included the following:

20. Unilateral restriction on access to fishing in the UK EEZ would almost certainly lead to reciprocal restrictions being placed on UK vessels fishing in the EU EEZ. This would also have a profound effect both on the fishing industry in the EU and on the UK fleet that relies on fishing outside the UK EEZ. Some form of mutual access arrangements must therefore be negotiated.

21. The historic reluctance of Member States to renegotiate the relative stability key suggests that negotiating new quota allocations after Brexit will be difficult. Such difficulty will be accentuated if these negotiations overlap with the wider negotiations on EU withdrawal. The Government could use access to fishing within the UK EEZ as a lever for achieving a better allocation of quotas but must also bear in mind that co-operation will be crucial for the long-term sustainability of stocks.

22. As an independent coastal state the UK will in principle be able to ‘walk away’ from negotiations with other coastal states if the compromises reached on TACs or quota shares are not aligned to UK interests. Walking away would, by leading to unilateral management of shared stocks, risk undermining the sustainability of fish stocks. It would also invite retaliation in other areas, including trade. Consequently, walking away should be a last resort.\footnote{436}

And on fisheries and trade:

23. Trade in fish and seafood is essential to the wider seafood industry, which relies heavily on importing raw goods at reduced or zero tariffs for domestic consumption, and on exporting

\footnote{434} MMO, \textit{UK Sea Fisheries Statistics 2016}, 28 September 2017
\footnote{435} Defra, Fishery White Paper, \textit{Sustainable fisheries for future generations}, published July 2018
\footnote{436} House of Lords Committee on the European Union, Brexit: Fisheries, December 2016
domestic catches and production. Any disruptions to the current trading patterns could have profound effects on both the catching and processing sectors.

24. Trade with the EU in fish products will be a key factor to the future success of the UK fishing industry and fish processors. We therefore urge that the fish sector should be included in the Government’s consideration of priorities for a future trading relationship with the EU.437

11.2 Fisheries and no deal
A no-deal Brexit, in which there was no transitional agreement on fisheries, would mean the UK would become an independent coastal state from March 2019 taking over responsibility for its EEZ. The UK would no longer be bound by the Commons Fisheries Policy and could deny access to EU Member States’ vessels. Likewise, UK vessels which currently fish in other Member States’ waters could be denied access by the EU, although under international legislation (UNCLOS) there is an emphasis on the need to minimise economic dislocation to States whose nationals have habitually fished in a zone.

In the event of ‘no deal’, the Government will have to legislate to replace a number of EU regulations on fisheries under the EUW Act by March 2019. In addition, the Government is has introduced a Fisheries Bill, which has completed its Committee stage in the House of Commons. This will provide the UK Government with the powers to allocate fishing opportunities to UK vessels and national authorities to licence foreign fishing vessels.438 Further details can be found in the Commons Briefing Paper on the Fisheries Bill.

Quotas and access to fishing grounds
In the event of ‘no deal’, should the Government decide to introduce any immediate changes to access to fisheries, the impacts for the different parts of the fishing industry would depend what changes are made. As yet, there has been no indication from the Government if any changes would be made immediately, or whether the current quota allocations and access arrangements would be maintained in the first instance. The position may be clarified when the Government publishes the technical notice on fisheries. However, UK in a Changing Europe noted in its briefing Cost of a No Deal Revisited that, unlike in other areas, maintaining the current approach could be difficult for the Government:

The government’s mitigation strategy in key policy areas has been to manage disruption through unilaterally retaining the status quo. However, this approach seems unsustainable in the case of fish. Maintaining current levels of EU access to UK waters would be politically problematic in the event of no deal; the pressure on the government to reclaim control of UK waters would be substantial.439

---

437 House of Lords EU Committee, Brexit: Fisheries, December 2016
438 EFRA Select Committee Evidence Session, 17 July 2018, Fisheries, Q385
439 UK in a Changing Europe, Cost of a No Deal Revisited, 3 September 2018
After Brexit the UK Government will have to reach agreement on a common framework for fisheries with the devolved administrations. In the case of a no deal scenario UK in Changing Europe notes that this will have to be “resolved as a matter of urgency”. In the longer term, as set out in the White Paper, the Government plans to maintain the system for the existing quota while exploring new ways to allocate any additional fishing opportunities that arise as a result of leaving the CFP.

TACs are agreed on a yearly basis at the EU Agriculture and Fisheries Council meeting every December for the following calendar year, starting in January. The implications of the UK leaving the CFP part-way through the year on the 2019 TACs agreements are unclear, as is how agreements with non-EU countries on shared stocks would be managed by all parties for the remainder of 2019. However, the EU has now published its contingency proposals for continued mutual access in the event of ‘no deal’ (see section 11.4 below).

Tariffs and trade
In 2017, UK exports in fish and related products to the EU were worth £1.3 billion and comprised 70% of all UK fish exports from the UK by value. Fish imports from the EU were worth £1.1 billion (34% of all fish imports to the UK by value).

The impact of a no-deal Brexit on the fisheries industry’s ability to export and trade are likely to be felt across the sector. With no agreement, as in other areas, trade in fisheries products would default to WTO tariffs. Generally, tariffs are higher on the most processed fish products. Defra set out, in evidence to the House of Lords Select Committee on Europe in 2016, examples of the level of tariffs that the EU currently applies to MFN under WTO rules:

The EU’s MFN tariffs on fisheries products range from 0% (e.g. on imports of fresh eels) to up to 25% (e.g. on fillets on processed mackerel). Generally, tariffs are higher on highly processed products compared to lightly or unprocessed products – for example, the EU’s MFN tariff on unprocessed salmon is 2%, while the tariff on prepared salmon is 5.5%. The EU’s MFN tariff for the UK’s five products lines with the largest exports to the EU are shown below, with their HS product code:

- Fresh, whole Atlantic Salmon, exports to the EU worth £168m in 2014 (HS 03021400): 2%
- Live, fresh or chilled scallops, exports worth £62m in 2014 (HS 03072100): 8%
- Frozen unsmoked Norway Lobsters (Nephrops), exports worth £56m in 2014 (HS 03061590): 12%
- Not frozen and unsmoked Norway Lobsters (Nephrops), exports worth £45m in 2014 (HS 03061590): 12%

---

440 UK in a Changing Europe, Cost of a No Deal Revisited, 3 September 2018
441 UK Trade Info database, downloaded in April 2018, using product code SITC 03 – ‘Fish, crustaceans, molluscs & aq. inverts & preps thereof’
Frozen whole mackerel, exports worth £44m worth £44m in 2014 (HS 03035410): 20%. In its evidence, Defra also emphasised that the EU would also face tariffs on fish exports to the UK and that “such an arrangement is unlikely to be attractive to the EU”. In addition to tariffs, fisheries products, like all perishable products, could be impacted by any increased delays at borders resulting from greater custom controls. Box 5 below sets out concerns expressed by the UK shellfish sector on the impacts of a no-deal scenario.

**Box 5: Shellfish Sector**

The shellfish sector does not fall under the CFP quota system, other than for Norway lobster and northern prawn in certain areas, and therefore fishing opportunities would be unlikely to change significantly as a result of the UK being outside the CFP. However, a report commissioned by Shellfish Association, NFFO and SFF, published in July 2018 and reported by Fishing News, highlighted the impact of ‘no deal’ on an industry that relies on “smooth, unimpeded trade”:

> Businesses throughout the shellfish supply chain in the UK and in the EU are reliant on smooth, unimpeded trade. We are dependent on the European market, but likewise there is heavy dependence on our products on the continent. We have undertaken this study to identify the issues to ensure that, as far as possible, no part of our industry will be disadvantaged. The study makes clear that both in terms of the tariff regime but also non-tariff barriers, there is a great deal at stake.

The article goes on to highlight the conclusion that “the possibility of replacing EU markets with alternative high-value markets is challenged not only by the difficulty of reproducing such traditions through marketing, but also by the global production and trade of most shellfish types”. The article refers to an estimated cost of EU tariffs to the sector of £41m per year, in the event of no deal.

**EU Preparedness and contingency planning**

The European Commission published a preparedness notice to stakeholders on Fisheries and Aquaculture in April 2018, setting out how UK withdrawal would impact both the UK and EU sectors in the absence of any kind of withdrawal agreement. It sets out that under Regulation (EU) 2017/2403 on the sustainable management of external fishing fleets, EU flagged vessels would need to obtain authorisation from both the UK and EU to fish in UK waters, and that UK vessels would have to obtain EU authorisation to fish in EU waters.

With regard to landings, as a third country the UK would only be able to land or transfer fish at designated EU ports, as set out in Regulation 1005/2008. The Regulation also requires third-country vessels arriving at EU ports to be inspected to ensure they comply with requirements on illegal, unreported and unregulated fishing (IUU). In addition, under the Regulations the UK would be required to send a flag notification to the EU to be able to export fish products to the EU:

---

442 House of Lords Committee on the EU, Brexit: Fisheries, December 2016, Defra written evidence
443 Ibid
444 Fishing News, Brexit shellfish threat: No deal Brexit shellfish warning, 30 July 2018
In order to export fishery products caught by third country flagged fishing vessels to the EU, the Commission has to have received a notification from the flag State. As of the withdrawal date, this applies to the United Kingdom.445

UK exports to the EU, together with EU exports to the UK, would also require to be accompanied by a catch certification under the regulations from the relevant competent authority:

The catch certificate to be validated by the United Kingdom must certify that the catches concerned have been made in accordance with applicable laws, regulations and international conservation and management measures. The catch certificate must have been validated by the United Kingdom competent authority.446

Certification of organic aquaculture products
As set out in the Commission’s notice, EU regulations require organic aquaculture products sold in its markets to be certified as such and that “a no-deal scenario would make UK issued certificates invalid”.

The Government warned in its preparedness note, Producing and processing organic food if there’s no Brexit deal, that businesses could experience delays of up to nine months after a no-deal Brexit because UK organic control bodies offering the necessary certification for export to the EU would need to seek approval by the EU. The Government has stated it is hoping to find ways to speed this process up.447

Funding for fishing communities
The EU provides funding for fishing communities through the European Marine and Fisheries Fund, which is part of the CFP and runs to 2020. The UK has an allocation of €243m for the period 2014-2020. The EMFF falls under the 2014-20 Multiannual Financial Framework allocation for structural and investment funds, and as the Government made clear in the notice on The government’s guarantee for EU-funded programmes if there’s no Brexit deal, it has guaranteed its funding until 2020.

11.3 UK Technical note on commercial fishing
The Government published a technical note on commercial fisheries on 15 October 2018. The note covered access to UK and EU waters, access to UK and EU ports, import and export of fisheries products, labelling and funding.

Access to waters
In the event of ‘no deal’ the note makes clear that “non-UK-registered vessels will no longer enjoy automatic access to UK waters”, or UK-registered vessels to EU waters. The note does not provide information

445 EU Commission, Preparedness notice to stakeholders on Fisheries and Aquaculture, 9 April 2018
446 Ibid
447 Defra, Producing and processing organic food if there’s no Brexit deal, 23 August 2018
as to whether there is any intention to grant any level of access in UK waters to EU registered vessels in the immediate aftermath of no deal.

**Quotas**

The intention is for the quota system to remain unchanged, with the UK Fisheries Administrations\(^{448}\) allocating quotas as usual for 2019. However, with regard to quota exchanges that often take place between different Member States, there will be “no automatic access” to these.

**Access to ports**

UK vessels will no longer have any automatic right to land fish in EU ports, other than in EU designated ports. To do this, fishing vessels will have to have all the required documentation and could be subject to inspections. This is also set out in the EU preparedness note on fisheries. The same rules will apply to EU vessels landing fish in the UK.

**Access to fisheries managed by Regional Fisheries Management Organisations (RFMOs)**

According the Commission website the EU, represented by the Commission, plays an active role in a number of RFMOs.\(^{449}\) The technical note makes clear that if the UK leaves the EU it will have to apply for membership of the relevant conventions as an independent state. This process could take up to six months and during this time “UK vessels may not be able to fish international waters covered by RMFOs”. The RMFOs include the *North-East Atlantic Fisheries Commission* (NEAFC) which extends into the Atlantic beyond EU EEZs. For a map of the area covered by NEAFC see [here](#). The NEAFC guidelines (from 2003) on becoming a contracting party are available on its website. It is not clear how or if these will be applied to the UK, which will be leaving and then rejoining as an independent member.

Other RMFOs that cover the North Atlantic include the *Northwest Atlantic Fisheries Organization* (NAFO) and the *North Atlantic Salmon Conservation Organisation* (NASCO). The Government says of both these organisations that it will “submit articles of ratification to the depositary at the point when the UK’s existing coverage under the agreement comes to an end”.\(^{450}\)

**Trade in fisheries products**

Export of UK-caught fish and fisheries products to the EU will require a catch certificate with each product or consignment, setting out where, when and how much fish has been caught, and (if rules remain the same) include accurate weights of the fish actually exported, an accurate description of the fish, and an EU tariff product code of 6 digits. Product from multiple vessels will require a Multiple Vessel Schedule.

---

\(^{448}\) These are: Marine Management Organisation in England; Marine Scotland in Scotland; Welsh Government in Wales and Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

\(^{449}\) 11 non-tuna RFMOs and 6 tuna RMFOs

\(^{450}\) From lists deposited by the Government on 25 January 2019 of bilateral and multilateral international agreements it has already signed or would be signing.
The note explains that UK Fisheries Authorities are in the process of developing an IT database to “facilitate the increase in export catch certificates” that will be required to be issued and verified.

Imports from the EU will also require catch certificates and will have to be submitted three days in advance to be checked by UK authorities. There is no reference in the document to how far in advance UK exporters will have to submit catch certificates to the Fisheries Authorities in EU Member States.

**European Maritime Fisheries Fund**

The note confirms all EMFF projects approved before 31 December 2020 will be fully funded.

### 11.4 EU contingency proposals to mitigate impact of ‘no deal’

The European Commission published its proposed contingency plan for ‘no deal’ and fisheries on 23 January 2019. It plans to regulate for extra funding through the EMFF to compensate for the cessation of fishing activities. It also proposes to regulate for continued access for UK vessels in EU waters based on 2019 quota allocations as long as the UK allows EU vessels into UK waters on similar terms.

The first proposal is to allow fishermen and operators from EU Member States to receive compensation under the European Maritime and Fisheries Fund for the temporary cessation of fishing activities. This will help off-set some of the impact of a sudden closure of UK waters to EU fishing vessels in a no-deal scenario.

The second proposal amends the Regulation on the Sustainable Management of the External Fleets. The aim of this proposal is to ensure that the EU is in a position to grant UK vessels access to EU waters until the end of 2019, on the condition that EU vessels are also granted reciprocal access to UK waters. The proposal also provides for a simplified procedure to authorise UK vessels to fish in EU waters and EU vessels to fish in UK waters – should the UK grant that access. This proposal is limited to 2019 and is based on the agreement in the Agriculture and Fisheries Council of 17 and 18 December 2018 on the fishing opportunities for 2019.

These contingency measures cannot mitigate the overall impact of a “no-deal” scenario, nor do they in any way replicate the full benefits of EU membership or the terms of any transition period, as provided for in the Withdrawal Agreement. They are limited to these specific areas where it is absolutely necessary to protect the vital interests of the EU and where preparedness measures on their own are not sufficient. As a rule, they will be temporary in nature, limited in scope and adopted unilaterally by the EU.

**Next steps**

These proposals are subject to the co-decision procedure. The Commission will work with the European Parliament and the Council to ensure the adoption of the proposed legislative acts so that they are in force by 29 March 2019.451

---

11.5 Longer term impacts

The New Economics Foundation published a report on the impact of various Brexit scenarios on fisheries, *Not in the same Boat*, in November 2017. In a modelled no-deal scenario, where there was agreement with the EU on shared fish stocks which increased UK share of stock, WTO tariffs were applied on trade and EU vessels were excluded from UK waters, there was an overall increase in catch and profitability for the sector. However, this was not evenly distributed, with the benefit mainly accruing to UK flagged vessels, fishing offshore, that fish quota species that currently fall under the CFP:

> This divide in quota ownership is one of the contributing factors to a sharp divide in current economic performance, with the large-scale fleet recording profit margins of 19% and the small-scale fleet operating at a profit margin of 0%. As the gains from quota increases accrue to those who hold the quota rights, these gains further entrench the ‘haves and have nots’ of UK fisheries. Small-scale vessels also see little benefit from exclusive access out to 200 nautical miles, as they fish exclusively in inshore waters.452

It should be noted that the study did not include in its no-deal model any new obstacles to trade with the EU, although it did highlight the potential negative impact of these for fisheries trade:

> New obstacles to selling to the EU market – such as product standards and port inspections – are also a significant concern for the future economic performance of the UK fishing fleet.

Fortunately, the UK is starting from a good position: current product standards are harmonised. However, to avoid border delays and inspections, there will need to be a continued close relationship between the EU and the UK on fisheries and the avoidance of an adversarial relationship that could ultimately force the EU to retaliate with a strong and obstructive hand.453

A study, *Impact of hard Brexit on European fisheries*, published by Wageningen University and Research in April 2018, modelled the impact for the EU as a whole of loss of mutual access to waters, together with the application of non-tariff measures (NTM) and the cost of measures required to facilitate trade. The study covered fisheries, aquaculture and fish processing. The authors concluded that a hard Brexit would lead to reduced fish prices in the UK and noted that the fish processing and aquaculture sectors could decline due to the impact of trade measures:

> If the United Kingdom (UK) would completely close its marine areas, the UK, Ireland, the Netherlands and Belgium would be affected the most. For the UK aquaculture and fish processing production will decline due to trade measures. For the other three countries production of all fish producing sectors will decline. Also, because of a higher production volume of wild fisheries in the UK, the price of fish in this country will go down, resulting in lower production value and thus income of the sector. In the whole of Europe fish prices will rise. Especially Irish consumers will

452 New Economics Foundation, *Not in the same Boat*, November 2017, p4

453 New ibid, p73
What if there’s no Brexit deal?

have to dig deep into their pockets: fish prices can increase up to 8%.\textsuperscript{454}

Fishing for Leave criticised the study, particularly the conclusion that ‘no deal’ would lead to increased UK fish production of only 15%.\textsuperscript{455} It responded by highlighting the large potential increase in available catches to UK flagged vessels that could follow if other vessels were excluded from UK waters:

Currently the EU catches 675,000 tons in UK waters – 60\% of the fish caught in the UK sector – whilst the UK only catches 88,000 tons or 16\% of the fish taken in EU waters.\textsuperscript{456}

The Wageningen report does refer to an increase in fisheries access having the potential to increase fisheries landings in the UK by up to 60\%.\textsuperscript{457} However, it concluded that realising this would require no trade measures being put in place by the EU, which would be unlikely:

Gains of $400m could be expected if UK gains back its fishing territories and there are no trade protectionism measures. However, under NTMs and MFN [most favoured nation] tariffs, which is the more likely scenario, most of these gains are faded away and there is a zero sum.\textsuperscript{458}

\textsuperscript{454} Wageningen University and Research, \textit{European consumers pay the price for fish when hard brexit occurs}, 24 April 2018
\textsuperscript{455} Wageningen University and Research \textit{Impact of hard Brexit on European fisheries}, April 2018, p11
\textsuperscript{456} Fishing for Leave, \textit{Flawed Fisheries Report Brings Serious Questions Over Economists Analyses}, 27 April 2019
\textsuperscript{457} Wageningen University and Research \textit{Impact of hard Brexit on European fisheries}, April 2018, p5
\textsuperscript{458} Ibid, p11
12. Energy

Although Member States remain ultimately responsible for the energy supply to their citizens and for deciding on the most appropriate energy mix, the UK and EU energy sectors are integrated through trade, EU legislation, the interconnection of energy supply and nuclear cooperation (under the Treaty establishing the European Atomic Energy Community/Euratom). Since the mid-1990s, the EU has been implementing an internal energy market (IEM) to build a more efficient energy market.\(^{459}\)

Given the existing energy integration between the UK and the EU - notably through Euratom and the IEM –the UK energy sector will likely be impacted by Brexit. However, the UK Government is committed to leaving Euratom and is open to leaving the IEM, and has begun preparations for leaving. As such, although the UK Government have expressed preferences for energy integration in future,\(^{460}\) the impact of a no-deal Brexit on energy could be much the same in the long term as a Brexit deal.

Potential impacts of ‘no deal’ could be a less integrated relationship than the UK government intended, and that preparations to leave are not ready in time for a no-deal Brexit. These are in addition to the potential impacts of Brexit in any scenario.

12.1 Internal Energy Market

In 2017 the UK imported 4.2% of its electricity demand through interconnectors to Europe and the island of Ireland, and 36.8% of its gas.\(^{461}\) The UK also imports Liquified Natural Gas, though not through interconnectors and predominantly not from EU countries.

The IEM facilitates harmonised, tariff-free trade across these interconnectors. The draft political declaration states that “the parties should cooperate” on supplies of electricity and gas and that there should be as far as possible “efficient trade over interconnectors”. However the Brexit White Paper said the UK wanted to “explore” options for the UK’s future relationship with the IEM and contains options to either leave or remain in the market.\(^{462}\) Therefore, it is possible that ‘no deal’ could be much the same as a deal, as the UK could stay in or leave the IEM in the event of a deal or leave in the event of no deal.

Leaving the IEM (as a result or a negotiated deal or a no-deal scenario) could have an impact on the trade of energy through interconnectors. However, it is also important to note that several countries outside the

\(^{459}\) European Parliament, Factsheets on the European Union, Internal Energy Market

\(^{460}\) HM Government, The Future Relationship between the United Kingdom and the European Union, 12 July 2018, para 139

\(^{461}\) Department for Business, Energy and Industrial Strategy, Digest of UK Energy Statistics 2018, Tables 5.5 and G.5

\(^{462}\) HM Government, The Future Relationship between the United Kingdom and the European Union, 12 July 2018, para 144
EU currently trade energy through interconnectors with the EU, and the EU does not generally apply tariffs to these imports.\(^{463}\)

National Grid told the BEIS Committee that ‘no deal’ posed no immediate risk to the UK’s security of electricity supply, which could be supported through greater domestic generation.\(^{464}\)

There may be other, longer term costs of leaving the IEM (with or without a deal) without any other sort of agreement to cooperate on energy matters, such as less: efficient trading, which could increase the cost of energy;\(^{465}\) exclusion from EU solidarity principles for gas supply crises;\(^{466}\) more difficulty securing future interconnector projects\(^{467}\) which can help increase flexibility and resilience of grids, especially with increasing intermittent renewables; and less influence on future IEM rules.\(^{468}\) These costs would impact EU Member States that export or import energy to and from the UK, as well as the UK itself.

**Ireland**

Ireland’s Single Electricity Market (SEM) allows free trade of power across the island, with all generators and suppliers trading through a central mandatory wholesale market.\(^{469}\) A new Integrated Single Electricity Market (I-SEM), designed closely around the rules of the IEM, was launched in 2018.\(^{470}\) Regulatory divergence between Northern Ireland and ROI as a result of Brexit could be problematic for the continued functioning of this Irish market. Article 11 of the Northern Ireland Protocol in the draft WA states that EU law governing wholesale electricity markets listed in Annex 7 will continue to apply. This legislation relates to generation, transportation, and wholesale cross-border trading of electricity and, in the event of no deal, would not apply unless otherwise legislated for.

There could also be potential impacts on Ireland’s gas supply as a result of Brexit, as Ireland imports much of its gas from the UK.\(^{471}\)

### 12.2 Euratom

The European Atomic Energy Community (Euratom) provides the basis for regulation of civil nuclear activity in its Member States. The Euratom Treaty shares the EU’s institutional framework but is a distinct legal entity from the EU.\(^{472}\) The Government announced in the March 2017

---


\(^{465}\) BEIS Committee, Ibid

\(^{466}\) BEIS Committee, ibid, p. 13

\(^{467}\) Andrew Ward, *Our friends electric: interconnection and Brexit*, *Financial Times*, 15 January 2018

\(^{468}\) BEIS Committee, ibid, para. 39

\(^{469}\) CER Factsheet on the Single Electricity Market, April 2011

\(^{470}\) Information note, Proposed Amendment to the Electricity Regulation (Amendment) (Single Market) Act 2007


\(^{472}\) *Euratom Treaty*, 1957
Article 50 letter that the UK would leave Euratom as well as the EU. The legal basis for leaving Euratom as part of the UK’s exit from the EU has been a subject of ongoing debate.

The UK been preparing to leave Euratom by negotiating and signing new nuclear cooperation agreements for trade with the necessary countries, and by passing the Nuclear Safeguards Act 2018 to replace the Euratom safeguard regime with domestic provisions. If there is no deal and no transition period the domestic arrangements will need to be concluded faster than in the case of a transition period.

For other aspects of Euratom such as nuclear research, a no-deal Brexit could have a clearer impact, with funding arrangements affecting the continuation of existing projects (radioisotopes are discussed in section 9.3). For example, Euratom provides 87.5% of the funding for the Culham JET project on fusion energy and the UK Government provides the rest. The Government has committed to paying its “fair share” of the funding until 2020. However, it is possible that Euratom will not renew its funding as a result of Brexit.

The UK Government have consistently said they want a “close relationship” with Euratom, and the draft political declaration stated the UK wanted an agreement to “facilitate trade”, to be “associated with the Euratom research and training programmes”, as well as to cooperate on the exchange of information on the supply of medical radioisotopes.

A no-deal Brexit could mean this relationship with Euratom is not realised. It is also possible that even without a deal, the UK could still secure a separate deal with Euratom. For more general information, see the Library’s briefing paper on Euratom.

12.3 EU Emissions Trading Scheme

The EU Emissions Trading Scheme (ETS) is a mandatory cap-and-trade scheme for greenhouse gases. It operates in 31 countries (the 28 EU countries, Iceland, Liechtenstein and Norway) and covers the 45% of the EU’s greenhouse gas emissions that come from energy intensive sectors. The EU ETS is currently in its third trading phase (2013-2020).

If there is no deal the UK would drop out of the EU ETS before the end of Phase 3 and all relevant EU legislation would cease to apply on exit.

---

473 HC Deb 1 February 2017, Vol 620
475 BEIS, Euratom Exit Factsheet, Research and Development, June 2018
476 Gov.uk, Government commits to continue funding its share of Europe’s flagship UK-based nuclear fusion research facility, 27 June 2017
477 Written Statement [Energy Policy], HCWS399, 11 January 2018
478 The greenhouse gases covered by EU ETS are carbon dioxide (CO2), nitrous oxide (N2O) and perfluorocarbons (PFCs). Greenhouse gas emissions are linked to global warming. See for instance the US Environmental Protection Agency, Overview of Greenhouse Gases
479 European Commission, Climate Action, EU Emissions Trading System (EU ETS), [accessed 18 July 2018]
What if there’s no Brexit deal?

This scenario - leaving part way through a trading phase - would have practical consequences for the overall EU ETS market and both EU and UK participants.

More generally, a no-deal scenario would not impact the UK’s domestic targets to reduce emissions under the Climate Change Act 2008 (which are more ambitious than EU targets) and the Government has committed to continuing to meet its international climate change commitments.

Further information on climate change policy and the possible impact of a no-deal scenario, in particular on carbon pricing in the UK, is set out in the Library Briefing Paper on Brexit: Energy and Climate Change.

EU preparations

The European Commission issued a Notice to stakeholders on the withdrawal of the UK from the EU ETS on 19 December 2018. It confirmed that as from 1 January 2019 the UK would not be able to auction EUAs, allocate allowances for free or exchange international credits, for as long as the suspension remains in place. The suspension would be lifted if a withdrawal agreement was ratified.

A European Commission press release issued on the same day as the Notice to stakeholders confirmed the following measures have been adopted in the area of EU climate legislation “in order to ensure that a ‘no-deal’ scenario does not affect the smooth functioning and the environmental integrity of the Emissions Trading System”.

- A Commission Decision to suspend temporarily for the UK the free allocation of emissions allowances, auctioning, and the exchange of international credits with effect from 1 January 2019.

- An Implementing Decision to allow an appropriate annual quota allocation to UK companies for accessing the EU27 market (until 31 December 2020).

- An Implementing Regulation to ensure that the reporting by companies differentiates between the EU market and the UK market to allow a correct allocation of quotas in the future.

Government preparations

The Government published a technical notice on Meeting climate change requirements if there’s no Brexit deal on 12 October 2018. The notice confirms that a no-deal scenario would not change the “UK’s deep commitment to domestic and international efforts to tackle climate change”.

In relation to the EU ETS, the Government confirmed that the UK will be excluded from participation (including access to the EU ETS Registry) in a no-deal scenario. In response to the Commission’s suspension notice, it confirmed that the UK Government would not issue any 2019

---

480 Lords EU Committee, Energy and Environment Sub-Committee, Oral evidence: EU Emissions Trading Scheme, 14 March 2018, Q1

481 HM Government, The Future Relationship between the United Kingdom and the European Union, 12 July 2018, Cm 9593, Para 108

allowances (unless and until the suspension was lifted). The notice went on to explain that the Government would remove requirements relating to the surrender of EUAs for the 2019 compliance year onwards, but that it intended to maintain the monitoring, reporting and verification (MRV) arrangements. It also stated that flights between the UK and the EEA “are not expected to be covered” by the EU ETS obligations. In evidence to the House of Lords EU Energy and Environment Sub-Committee, the Energy Minister referred to this outcome as “a mirror system linked to the ETS”.

The Government laid the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019 on 25 January 2019, subject to the negative procedure. The SI aims to maintain the MRV elements of the scheme in the UK, and to amend the other elements of the retained EU law to reflect the fact that the UK will no longer be part of the EU ETS and to ensure that the retained law operates effectively in domestic law in a no-deal scenario. Further information and explanation is available in the accompanying Explanatory Memorandum.

A new UK-wide carbon tax

The Government has also stated that, in a no-deal scenario, the UK would initially meet its existing carbon pricing commitments via the tax system, taking effect from 1 April 2019. At Budget 2018, a UK-wide carbon emissions tax rate of £16/tCO₂ was announced which would apply to EU ETS sectors for emissions over and above an installation’s allowance (based on the EU ETS free allowance) in the event of a no-deal scenario:

3.51 Carbon pricing following EU exit – The government continues to plan for all scenarios as it prepares for EU exit. In the unlikely event no mutually satisfactory agreement can be reached and the UK departs from the EU ETS in 2019, the government would introduce a Carbon Emissions Tax to help meet the UK’s legally binding carbon reduction commitments under the Climate Change Act. The tax would apply to all stationary installations currently participating in the EU ETS from 1 April 2019. A rate of £16 would apply to each tonne of carbon dioxide emitted over and above an installation’s emissions allowance, which would be based on the installation’s free allowances under the EU ETS. The government is also legislating so it can prepare for a range of long-term carbon pricing options.

This price was broadly in line with the EU ETS pricing at that time. Further information on this proposal is available in the Government.

---

483 Gov.uk, Meeting climate change requirements if there’s no Brexit deal, 12 October 2018
484 House of Lords Select Committee on the EU, Energy and Environment Sub-Committee, Uncorrected oral evidence: No deal preparations: energy and environment, 23 October 2018, Q25
485 Gov.uk, Meeting climate change requirements if there’s no Brexit deal, 12 October 2018
486 HM Treasury, Budget 2018, HC 1629, October 2018
487 EUAs were at EUR 16 on 31 October 2018 according to ICE EUA futures via Sandbag and Quandl.
policy paper on the Carbon Emissions Tax which was published alongside the Budget.

The Finance (No. 3) Bill 2017-19 contains provisions to implement the carbon emissions tax, which would be brought into force in the event of a no-deal scenario only.\(^{488}\) The relevant provisions are set out in Part 3 of the Bill and are explained as follows by the accompanying Explanatory Notes:

> [...] a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. [...] \(^{489}\)

The Explanatory Notes confirm that “if the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be laid in early 2020”.\(^{490}\)

A policy fellow at the Grantham Research Institute on climate change and the environment commented on the proposals, including on the potential impact on the UK’s decarbonisation targets:

> By indicating that the Carbon Emissions Tax will be set at £16/tCO₂ₑ it effectively raises the Total Carbon Price to £34/tCO₂ₑ – £10 higher than the Government’s original target price of £24/tCO₂ₑ and, significantly, probably high enough to prevent a resurgence of coal in the early 2020s.\(^{491}\)

Further discussion and commentary on the possible impact of a no-deal scenario on climate change policy, in particular on carbon pricing in the UK, is set out in the Library Briefing Paper on Brexit: Energy and Climate Change.

### 12.4 The environment

#### Government preparations

The Prime Minister has assured MPs that the UK would not reduce its environmental standards in the event of ‘no deal’\(^{492}\) and the Government has confirmed that UK organisations that secure funding through EU environment programmes, “from now until the end of 2020, will be guaranteed by the UK government, even in a no-deal scenario.”\(^{493}\)

---

\(^{488}\) The Bill is currently awaiting second reading in the House of Lords.

\(^{489}\) HM Treasury, Finance (No. 3) Bill Explanatory Notes, 7 November 2018, p211

\(^{490}\) Ibid

\(^{491}\) LSE, Grantham Research Institute on climate change and the environment, What does the October 2018 Budget mean for UK carbon pricing in a no-deal Brexit? 30 October 2018 [accessed 4 February 2019]

\(^{492}\) For example, see House of Commons Liaison Committee, Oral evidence: the Prime Minister, HC 1393, 18 July 2018, Q116

The process of converting EU environmental law into domestic law (pursuant to the EU (Withdrawal) Act 2018) requires a large number of Statutory Instruments to be laid by Defra. Whether the Department will have the time to complete this process before a no deal exit day has been a cause for concern (see Box 6).

**Box 6: Defra preparedness**

A number of select committees are monitoring Defra’s ‘no deal’ preparations, in particular the progress it is making on its EU Exit statutory instrument programme. This relates to Defra’s entire remit, including agriculture, fisheries and environmental policy. Defra Secretary of State Michael Gove confirmed to the Commons European Scrutiny Committee in July 2018 that “although no one wants it”, Defra was stepping up its preparation for the possibility that the UK would have to trade on WTO terms from March 2019. A subsequent NAO Report examined Defra’s preparedness for Brexit, including “No Deal”, and found that there was a “high risk that Defra will be unable to deliver all the Statutory Instruments it needs in time”.495

A letter from Michael Gove to the Lords EU Energy and Environment Sub-Committee on 15 January 2019 stated that “Since the National Audit Office report was published in September 2018 we have made good progress on our EU exit SI programme and are confident we can deliver a fully functioning statute book for the day we leave the EU”.496 He went on to confirm that (as of 11 January 2019) 83 of the 120 Defra EU exit SIs had been laid before Parliament or the sifting committees.

The Government published a Technical Notice on **Upholding environmental standards if there’s no Brexit deal** (updated on 19 December 2018). It confirms that such standards include waste, air quality, water and protection of habitats and species, and reaffirmed the Government’s commitment to maintain environmental standards after the UK leaves the EU. Other no-deal guidance related to environmental policy was also published on:

- **Industrial emissions standards** (updated 19 December 2018)
- **Reporting CO2 emissions for new cars and vans** (13 September 2018)
- **Maintaining the continuity of waste shipments if there’s no Brexit deal** (updated 19 December 2018)

The Technical Notice on environmental standards references the forthcoming Environment Bill, part of which—the **draft Environment (Principles and Governance) Bill**—was published on 19 December 2018. The wider Environment Bill is expected later in 2019. A number of commentators have expressed concerns that the new domestic approach to environmental principles and governance will not be in place in time in the case of a no-deal scenario, thus creating a potential governance gap as there will be insufficient time to put in place new arrangements for enforcement of environmental law against public

---

494 House of Commons European Scrutiny Committee, Oral evidence: EU Withdrawal, HC 763, Q718
495 NAO, Defra Progress in Implementing EU Exit, 12 September 2018. HC 1498
496 EU Energy and Environment Sub-Committee, Letter from Michael Gove, 15 January 2019. See also EFRA Committee correspondence from Defra Permanent Secretary (Clare Moriarty), 18 January 2019.
authorities. The Government has not announced interim measures to fill the gap but the Technical Notice states:

- We are considering what interim measures may be necessary in a no deal scenario after 29 March 2019 and before the Environment Act is passed and comes into effect.
- The UK’s legal framework for enforcing domestic environmental legislation by UK regulatory bodies or court systems is unaffected by leaving the EU and continues to apply. Environmental targets currently covered by EU legislation are already covered in domestic legislation. Permits and licences issued by UK regulatory bodies will continue to apply as now.

In direct response to the ‘No Deal’ notice, ClientEarth law and policy advisor (Tom West) raised concerns about the “holes in the Government’s contingencies” for the environment:

- Despite continued assurances that Brexit won’t damage our environment, today’s document release highlights the holes in the government’s contingencies for maintaining current environmental standards in a no-deal situation.
- The government claims that the EU Withdrawal Act and ‘interim measures’ will uphold standards after Britain withdraws, however it is unclear what exactly these essential safeguards would be.

Further discussion of the draft Bill and a no-deal scenario is available in the Library Briefing Paper on Environmental Principles and Governance: the draft Bill. The House of Lords EU Energy and Environment Subcommittee has an open inquiry on No deal preparations for energy and environment, examining the UK’s preparations for a no-deal Brexit.

EU preparations
The European Commission has issued a number of Preparedness notices to stakeholders, including on environmental issues such as waste law.

‘No deal’ commentary
A March 2018 risk analysis report commissioned by Friends of the Earth, UK environmental policy post-Brexit by UK academics examined a number of scenarios, including a “chaotic” ‘no deal’ (‘cliff-edge’ Brexit) and a “planned” ‘no deal’ (the WTO option) and the impact each could have on specific environmental policy areas. Waste, chemicals, habitats and birds and climate change were all identified as policy areas at moderate to very high risk under a no-deal scenario.

Greener UK (a coalition of environmental bodies) published a report What would a no deal Brexit mean for the environment? (July 2018) highlighting a number of ‘no deal’ concerns, including losing mechanisms for co-operating with the EU on transboundary...
environmental issues (of particular importance for Ireland), and a potential gap in governance between exit day and the date that any new UK environmental watchdog is established.  

Further discussion of environmental issues in the context of Brexit is provided in the Library Briefing Paper on Brexit and the environment, 8 August 2018.

**Chemicals (REACH)**

The main EU legislation for the regulation of chemicals is called REACH (formally the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (No 1907/2006)). There is also other specific EU legislation for certain types of chemicals, for example pesticides; this section only covers REACH. REACH facilitates free trade in chemicals across the single market while also providing a framework by which the use of hazardous substances in the EEA can be controlled or restricted, which is important for health and the environment. Further information is provided in the Library briefing paper on Brexit and Chemicals Regulation (REACH) (CBP 8403, 6 November 2018).

REACH requires substances that are manufactured or imported into the EEA (in quantities of more than one tonne) to be registered by relevant companies with the European Chemicals Agency (ECHA) along with data about the properties and safe use of that substance. Only companies based in the EEA can register substances with the ECHA. In principle, each substance only requires one registration, so companies work together to develop joint registrations. Registrations are complex and can take months to produce due to the amount and type of data that needs to be submitted.

The Department for Environment, Food and Rural Affairs (Defra) is the lead Government department with overall policy responsibility across the UK. The Health and Safety Executive (HSE) is the competent authority for REACH in the UK and plays a role in enforcement and in assessing substances that have been prioritised for potential regulatory action because of concerns about their hazardous properties.

REACH is an example of a (non-tariff) regulatory trade barrier that impacts the chemical industry and other industries that use chemicals, such as manufacturing sectors. The UK and EU chemical industries both want a trade deal that ensures frictionless trade and regulatory

---

501 Greener UK, What would a no deal Brexit mean for the environment? July 2018 [accessed 20 July 2018]
502 ECHA, Registration; Health and Safety Executive, The Registration Process [accessed 5 February 2019]
504 Health and Safety Executive, UK REACH Competent Authority and Other REACH Processes, [accessed 5 February 2019].
What if there’s no Brexit deal?

In a no-deal situation the UK would become a third party to REACH on exit day. There are two broad issues that arise: (1) how UK companies can access the EEA market and (2) how chemicals will be regulated in the UK.

Exporting chemicals to the EU market

In a no deal scenario, UK companies’ REACH registrations would no longer be valid (in the absence of an agreement otherwise). If REACH registrations are invalid, UK companies would not be able to sell to the EEA market without taking action to re-register with the ECHA via an EEA-based organisation. This may be an affiliate/subsidiary company or an “only representative” (OR) agent. Alternatively, the obligation for compliance would fall to the importer of the substance to the EEA. The European Chemicals Agency’s guidance for UK based registrants states that it is not sufficient to set up a company “on paper”:

A registrant is responsible for the substances covered by their registrations. This means that the responsible staff and relevant documentation must be present at the address of the registrant – setting up a company on paper only in the EU-27 or EEA is not sufficient.

Industry stakeholders warn of significant disruptions to complex supply chains in manufacturing sectors in the absence of a deal to ensure frictionless trade, saying that even minimal regulatory checks at borders would likely lead to companies re-evaluating their manufacturing strategies.

The House of Commons Public Accounts Committee (PAC) in November 2018 stated that Defra was “too complacent about the risk of disruption that UK chemical exporters could face in a no deal scenario”. The Committee raised concerns that the Department was “relying on the EU’s goodwill to minimise any interruptions to trade” which it stated “may not be forthcoming if there is no deal, particularly if no deal results in a dispute over the financial settlement”.

---

506 European Chemicals Agency, UKs withdrawal from the EU, [accessed 22 August 2018]; Defra, Regulating chemicals (REACH) if there’s no Brexit deal, 24 September 2018.
507 European Chemicals Agency, UKs withdrawal from the EU, [accessed 4 February 2019]; Defra, Regulating chemicals (REACH) if there’s no Brexit deal, 24 September 2018.
508 European Chemicals Agency, UKs withdrawal from the EU: UK based registrant [accessed 4 February 2019].
509 Squire Patton Boggs, Making Brexit work for the chemicals industry, February 2018.
510 Public Accounts Committee, Defra’s progress towards Brexit, 68th report of session, HC1514, 14 November 2019, paras 3-4.
511 Public Accounts Committee, Defra’s progress towards Brexit, 68th report of session, HC1514, 14 November 2019, para 3.
registration with the ECHA involves and recommended that the HSE provide “realistic honest advice to chemical manufacturers”. The Government’s response to the Committee’s report had not been published as of 31 January 2019. In December 2018, the HSE published additional guidance for businesses to prepare for a no-deal Brexit; this mainly provided information about registering with the UK system (see below) and pointed to the ECHA’s guidance for how to maintain access to the EEA market.

### Regulating chemicals in the UK (“UK REACH”)

Leaving the EU REACH framework means that a separate system for regulating chemicals must be established in the UK. In a no-deal scenario, this would need to be in place for 30 March 2019.

The Government intends to establish a UK system for regulating chemicals that mirrors the EU REACH system as far as possible – a “UK REACH”. Challenges include establishing a regulator to take over the functions of the ECHA and setting up a UK database of registered substances.

The Government published a no-deal technical notice on REACH in September 2018 that set out its policy for regulating chemicals in a no deal Brexit scenario. It confirmed that the HSE would be the lead regulatory authority carrying out the functions previously carried out by the ECHA. Existing REACH registrations and authorisations (approvals for certain substances to be used) would be automatically transferred (“grandfathered”) from the EU to UK system. This means that the chemicals that were registered and approved for use in the EU system would be allowed in the UK immediately after exit day. This is intended to minimise immediate disruption to supply chains. However, the UK would not have access to the information and data, for example about chemical safety, that supports those registrations. The Government would therefore implement a transitional period during which companies provide basic data about their registrations, with a requirement for companies to submit a full data package within two years. The HSE published guidance in December 2018 about steps that businesses would need to take to comply with the new UK regime.

Further discussion and commentary on the Government’s proposals is provided in the Library briefing paper on Brexit and Chemicals Regulation (REACH) (CBP 8403, 6 November 2018).

Secondary legislation that would implement the above policy was laid in Parliament by Defra on 9 January 2019 (the draft REACH etc (Amendment etc) (EU Exit) Regulations 2019). They are subject to the affirmative procedure and if passed would come into force on exit day. The Explanatory Memorandum provides further details about the

---

512 Public Accounts Committee, Defra’s progress towards Brexit, 68th report of session, HC1514, 14 November 2019, paras 3-4.
513 HSE, REACH: What you’ll need to do in a no deal scenario [accessed 1 February 2018].
514 Defra, Regulating chemicals (REACH) if there’s no Brexit deal, 24 September 2018.
515 HSE, REACH: What you’ll need to do in a no deal scenario, accessed 31 January 2019.
legislation, including about how the HSE would receive scientific/expert advice and about the role of the devolved Administrations. The Scottish and Welsh Governments have indicated they are content for devolved matters to go in the UK-wide SI.\textsuperscript{516, 517}

In January 2019 the House of Lords EU Energy and Environment Sub-Committee raised concerns about the Government’s no deal preparations, including whether the registration database would be ready in time:

> Last year we were hugely concerned about the scale of work that needed to be done to maintain adequate chemical regulation in light of Brexit, and frankly the Minister’s response to our report has done little to alleviate our concerns. It seems Brexit could leave us without a functioning and populated UK chemicals database, without an independent and transparent process for risk assessments, and without access to the thousands of chemicals produced by EU-led companies. I hope the Minister can provide further assurances on the measures that are being put in place, otherwise we risk a severe impact on the UK chemical and manufacturing industries, and potentially on human and environmental health.\textsuperscript{518}

On 28 January 2019, Defra told PAC that usability testing for the chemicals registration IT system would begin in late February.\textsuperscript{519} In November 2018 the Committee had raised concerns about the “enormous task” that Defra faced to get key IT systems in place. Regarding the chemicals system, Defra told the Committee that it would be an “unsophisticated” system “designed to address the basic needs of industry with a contingency solution to enable it to function at greater scale and with better functionality in the longer term”.\textsuperscript{520} In September 2018, the National Audit Office raised concerns that there was a risk that the basic design may need significant reworking in the future.\textsuperscript{521}

**Chemicals shortages**

There have been some press reports about potential shortages of chemicals needed in critical industry sectors in the UK, such as water


\textsuperscript{518} House of Lords EU Energy and Environment Sub-Committee, Government rebuked for lack of preparation on Brexit and chemicals, 16 January 2019. See also the Lords Committee Report, Brexit: chemical regulation, 23\textsuperscript{rd} report of session, HL 215, 7 November 2018.

\textsuperscript{519} Letter from Claire Moriarty (Defra Permanent Secretary) to Meg Hillier (Chair of PAC), 28 January 2019.

\textsuperscript{520} Public Accounts Committee, Defra’s progress towards Brexit, 68\textsuperscript{th} report of session, HC1514, 14 November 2019, para 27.

\textsuperscript{521} National Audit Office, Department for Environment, Food and Rural Affairs, Progress in Implementing EU Exit, HC1498, 12 September 2018, para 14; see also paras 2.10-2.15.
and gas in the event of a no deal Brexit.\footnote{No-deal Brexit could lead to vital chemicals shortage, experts warn, ENDS Report, Simon Pickstone, 6 December 2018, [subs only, accessed 1 February 2018]}.\footnote{Environmental Audit Committee, Oral evidence: Chemical Regulation after the UK has left the EU, HC 1769, 4 December 2018, Q47-54.} These concerns largely relate to potential disruptions to trade, for example through additional checks at the border or disruptions to supply chains, when some chemicals are required for just-in-time delivery. In response to questions about such shortages from the House of Commons Environmental Audit Committee (EAC) in December 2018, Defra Secretary of State Michael Gove said that the chemicals industry in the UK would continue to function but acknowledged that there would be additional costs and challenges in the event of a no deal situation:

[...] the inference from your point is that the chemicals would somehow evaporate and disappear, that there would be no chemicals industry in this country and no access to chemicals. That is emphatically not the case. But it is the case, I am very happy to acknowledge it and have already done so, that there would be additional costs, pressures and challenges for the chemical industry in the event of no deal, which is why we are so anxious to avoid it.\footnote{House of Commons Environmental Audit Committee, Oral evidence: Session with the Secretary of State for Defra on Resources and Waste Strategy, HC 1835, 19 December 2018, Q141.}
13. Transport

Much of the uncertainty around a no-deal Brexit and transport relates to the impact it may have on the continuity of air travel and on road haulage and delays at UK ports. The Government believes a no-deal scenario could be managed in an “orderly” fashion and on 23 August 2018 the Department for Exiting the EU began to publish ‘technical notices’ on how to prepare for Brexit if there is ‘no deal’.525 The European Commission has also provided clarification on transport ‘no deal’ planning, including emergency measures to allow time-limited continuity for air transport and road haulage. However, significant uncertainty remains about the short-term impact of ‘no deal’ on some transport sectors.

13.1 Aviation

Air travel

On flights between the EU27 and the UK in the event of ‘no deal’, UK and EU licensed airlines would “lose the automatic right to operate air services between the UK and the EU without seeking advance permission.”526 The Government’s technical notice on air travel goes on to state that in this scenario the UK envisages granting permission to EU airlines to continue to operate and would “expect EU countries to reciprocate in turn”. It adds that:

In order to ensure permissions were granted and flights continued, the UK’s preference would be to agree a basic arrangement or understanding on a multilateral basis between the UK and the EU.527

The European Commission has since adopted emergency measures for air transport that will avoid full interruption of air traffic between the EU and the UK in the event of ‘no deal’. Specifically, the Commission has proposed a regulation to ensure temporarily, for 12 months, the provision of certain air services between the UK and the EU. This is subject “to the United Kingdom conferring equivalent rights to air carriers from the Union, as well as to the United Kingdom ensuring conditions of fair competition”.528

The Secretary of State welcomed the Commission’s proposal on air travel529 and Baroness Sugg recently said the Government was looking forward to “engaging with the Commission and other Member States on the detail of the proposed EU legislative measures to ensure that they deliver the continuity of services that both the EU and the UK want...
to see”. Provided the details can be worked through ahead of the Brexit deadline, it is therefore unlikely that there would be a widespread disruption of these flights to and from EU27 countries in the short-term. While the International Air Transport Association also recently said that most flights would continue under a ‘no deal’ scenario, it could “could lead to a cap on flights that will stunt important economic opportunities and may lead to higher prices for consumers”. This is because the proposed guidance from the EU Commission in the event of ‘no deal’ calls for the current level of flights between the UK and the EU to be maintained but does not allow for an increase in flight numbers in 2019 compared to 2018.

On flights to and from the rest of the world, there is also unlikely to be significant disruption in a ‘no deal’ scenario. This is because the UK already has bilateral Air Services Agreements with 111 countries, including China, India and Brazil. For these countries, there will be no change under a ‘no deal’ scenario. For airlines from one of the 17 non-EU countries with whom air services to the UK are currently provided for by virtue of the UK’s membership of the EU, replacement arrangements are likely to be in place before Exit Day. The technical notice states that the UK “has already agreed a number of these agreements and is confident the remaining agreements will be agreed well in advance of the UK leaving the EU”. The UK negotiated new air service agreements with Canada and the United States in November 2018.

On air traffic management, the technical notice states that the UK would no longer be able to directly participate in the EU’s Single European Sky initiative, but that the UK “would continue to work through EUROCONTROL to ensure the safe and efficient management of airspace across its 41 members. The UK will continue to lead the way in providing safe and efficient air traffic control services”.

Security
The Government’s technical notice on aviation security states that if the UK leaves the EU in March 2019 with no agreement in place on aviation security, the existing regulations and procedures will be retained in domestic law under the EUW Act. It states that:

Given this, and the higher standards of aviation already in place in the UK, there is no reason for the UK’s aviation security regime not to be recognised by the EU as equivalent, which would mean no additional security restrictions would need to be imposed by either the EU or the UK. However, if the EU does not recognise the UK’s standards, there would be a number of possible implications for passengers and cargo.

---

530 Aviation: Written question - HL12722, 21 January 2019
531 IATA press notice, Statement: Current Flights Protected, but Future Growth at Risk from No Deal Brexit, 15 January 2019
532 DIT, Flights to and from the UK if there’s no Brexit deal, 24 September 2018
533 Ibid. Eurocontrol was created via an international convention in 1960. It is an intergovernmental organisation with 41 Member and 2 Comprehensive Agreement States. The aim behind the creation of Eurocontrol was to have an organisation that would be entirely responsible for upper airspace in Europe. Its primary objective is the development of a pan-European air traffic management system.
534 DIT, Aviation security if there’s no Brexit deal, 24 September 2018
These could include passenger and baggage rescreening at EU airports for UK passengers catching an onward flight. The European Commission has “indicated that they will not recognise the UK aviation security system”, with potentially “significant operational and cost implications for … EU airports, and passengers may have to factor increased time for rescreening into their travel schedule”.535

With respect to cargo, the Commission has set out that, in the absence of any agreement, the default regulatory position will require carriers to hold ACC3 designations536 from an EU Member State in order to transport cargo from the UK into the EU. The technical notice states that the EU “has not yet provided details of how carriers should apply for an ACC3 designation”. The technical notice states that an outcome where the EU does not immediately recognise UK security standards as equivalent (given standards are higher than in the EU) would “have significant implications for the EU air cargo industry, their supply chains, and the consumers of the products to be shipped” and that the UK therefore expects that its recognition of EU security standards “will be reciprocated in turn by the EU”.537

Safety

The Government’s technical notice on aviation safety states that in the event of ‘no deal’, the functions currently performed by the European Aviation Safety Agency (EASA) in relation to approvals for UK designed aeronautical products and approvals for third country organisations would be conferred on the Civil Aviation Authority (CAA).538 This position was also made clear in European Commission Notice to Stakeholders.

The CAA has set up a microsite, explaining in more detail what would happen in the event of ‘no deal’, including information on several aspects of aviation safety:

1. Aerospace design organisations;
2. Aerospace maintenance organisations;
3. Aerospace production organisations;
4. Air Navigation Service Providers;
5. Airlines and AOC holders;
6. Airports;
7. Approved Training Organisations;
8. Cabin crew;
9. Commercial pilots;
10. Continued Airworthiness Management Organisations;
11. Declared entities;

---

535 Ibid.
536 Air Cargo or Mail Carrier operating into the Union from a Third Country Airport
537 DfT, Aviation security if there’s no Brexit deal, 24 September 2018
538 Ibid.; the Civil Aviation Act 1982 (Amendment) (EU Exit) Regulations 2018 (see section 6.7, above) prepare for this contingency.
The CAA has also published a short paper explaining what a ‘no deal’ means for aviation safety regulation. One issue it deals with is that of commercial pilots. The CAA states that for most UK-registered commercial pilots, there would be little impact from ‘no deal’ as a consequence of global aviation rules. Pilots with UK licences who want to fly EU-registered aircraft post-Brexit would need to transfer their licence to another EASA member state before Brexit, or seek a second licence. If pilots currently hold a commercial licence from another EASA member state, they would need to seek validation from the CAA to operate UK-registered aircraft if they want to fly outside the UK. The CAA states that it “is currently developing processes to make this as seamless as possible”. UK airlines, aircraft manufacturers and other members of the aviation industry are now able to register with EASA as a ‘third country’, in preparation for a ‘no deal’.

13.2 Rail

On 12 October the Department for Transport published two technical notices on rail transport and rail safety and standards. The possible impact of a ‘no deal’ Brexit is likely to be less significant than that on other sectors, as most of the rail services operating in the UK are entirely domestic.

The principal operational considerations for the rail industry of a ‘no deal’ Brexit scenario relate to the cross-border passenger services and

---

539 Following some concerns from the CAA about how the issue had been reported by the media, see, e.g. CAA press notice, “CAA statement on Sky News aviation and Brexit story”, 11 September 2018.
540 Under the International Civil Aviation Organization (ICAO).
541 CAA, The CAA’s guide to Brexit No Deal & Aviation Safety, CAP 1714, 24 September 2018, pp5-6
542 EASA, Brexit [updated 2 October 2018]
543 European Commission, COM(2018) 890 final, 19 December 2018
544 DfT press notice, Department of Transport responds to European Commission contingency action plan, 19 December 2018
freight movements between the UK and France, Belgium, the Netherlands and Ireland. The Government said in its technical notice that it was seeking “bilateral arrangements with these countries…to facilitate the continued smooth functioning of cross-border rail services.”

The other main concerns from a ‘no deal’ Brexit for rail relate to the implications on licensing arrangements. On operator licensing, the Government proposed recognising operator licences in the UK that have been issued by another EU country for 2 years following exit day in a ‘no deal’ scenario. At this point an operator wishing to run services in the UK would need to apply to the Office of Rail and Road (ORR) for UK documentation. The Government added that because of the alignment with EU law in this area, “this would have a minimal impact on business and we would work with the ORR to ensure the application process is reasonable and proportionate.”

However, the European Commission issued a notice to stakeholders in July 2018 indicating that, in the event of ‘no deal’, certificates and licences issued by ORR to operators currently running train services in the EU would not be valid. This would result in operators who run cross-border services and/or operate in both the UK and one or more EU countries being required to have relevant documentation issued by both the ORR and an EU licensing authority.

On train driver licences, the notice states that train drivers in the UK using licences and certificates issued in an EU27 country would also be able to continue using this documentation for up to two years from Exit Day or until they expire, whichever is earlier. They would then need to obtain a GB licence from the ORR. Anyone currently driving trains in an EU27 country on an ORR licence would need to obtain a new EU27 licence and certification documents from the national safety authority of the country they wish to drive into.

On membership of the EU Agency for Railways (EUAR) and technical standards, the Government affirmed its intention not to seek membership of EUAR but only to disapply technical standards where there are clear benefits:

The technical specifications for interoperability and the safety regime have been developed by the EU Agency for Railways (EUAR) in conjunction with EU countries and stakeholders. As new rules and standards are developed by the EU after exit, as a third country, the UK will have the flexibility to align with or diverge from these as it wishes. We will only diverge where there are clear arguments for doing so and after fully engaging with industry to assess the impact - particularly the commercial and cost impact to industry.

To enable this flexibility, we do not intend to seek formal participation in the European Union Agency for Railways (EUAR) if there’s no deal. However, we encourage UK industry to participate with EUAR at technical and working level.

---

545 DfT, Rail transport if there’s no Brexit deal, 12 October 2018
546 ibid.
547 DfT, Meeting rail safety and standards if there’s no Brexit deal, 12 October 2018
548 DfT, ibid
13.3 Roads and vehicles

On driving in the EU27 in the event of ‘no deal’, the relevant technical notice states that a driving licence may no longer be valid by itself when driving in the EU and that anyone moving to an EU27 country to live may not be able to exchange their licence after the UK has left the EU.549

Drivers may be required to obtain an International Driving Permit (IDP) to drive in the EU27, which they would need to carry with a driving licence when driving outside the UK. DfT explains that there are two types of IDP:

- There are 2 types of IDP required by EU countries. Each is governed by a separate United Nations convention.
  - One type is governed by the 1949 Geneva Convention on Road Traffic.
  - The other type is governed by the 1968 Vienna Convention on Road Traffic.
- The version of the IDP you would require depends on which EU country you are visiting and whether it is party to the 1949 or the 1968 convention.
- Each type of IDP is valid for a different period.550

It cautions that drivers would need both types of IDP if they are visiting EU countries covered by different conventions, for example France and Spain.551

The Government states that after Exit Day on 29 March 2019, arrangements for EU27 licence holders who are visiting or living in the UK would not change.552

On commercial road haulage in the event of ‘no deal’, the relevant technical notice reiterated much of the Government’s position as stated throughout the Haulage Permits and Trailer Registration Act 2018 (see HC Library briefing paper CBP 8297). It stated that EU27 countries may choose to recognise UK-issued operator licences and associated authorisations as they are based on the same standards as EU Community Licences and do not require further authorisations. The notice is clear that this cannot be guaranteed and adds that:

If they do not, UK hauliers will be able to use European Conference of Ministers of Transport (ECMT) permits if there is no deal. In addition, some old bilateral agreements between the UK and specific EU27 countries may come back into force. The UK would also seek to put in place new bilateral agreements with EU countries to provide haulage access. Some of these bilateral agreements would also require the possession of a permit to allow access to the EU country concerned.

ECMT permits will be available to enable journeys to the EU, but these are limited in number. The process for managing the issue of permits is

549  DfT, Driving in the EU if there’s no Brexit deal, 13 September 2018
550  Ibid.
551  Ibid.
552  Ibid.
set out in the 2018 Act.553 The Freight Transport Association, in evidence to the Lords EU Internal Market Sub-Committee in September 2018, raised concerns about the viability of such a permit system:

ECMT permits come with strict quotas that can only be raised if the 43 participating countries unanimously agree. The quotas for 2019 are already set and OECD countries do not intend to increase them for the following years. ECMT permits would cover 2% to 5% of transport needs and would only allow 1 224 UK haulage companies to operate in the EU. Similar restrictions would be faced by EU hauliers willing to operate in the UK. This would not only decimate the UK international haulage industry, it would also affect all sectors of the economy that rely on international just-in-time supply chains.554

The European Commission announced on 19 December 2018 that it had adopted a regulatory proposal to allow UK road haulage operators to temporarily, for a period of 9 months after the UK’s scheduled withdrawal date from the EU on 29 March, carry goods into the EU “provided the United Kingdom confers equivalent rights to Union road haulage operators and subject to conditions ensuring fair competition.” In response, the UK Government said that “the UK stands ready in principle to consider taking reciprocal steps for EU hauliers coming here.”555

On the Certificate of Professional Competence (CPC) for HGV drivers in the event of ‘no deal’, the technical notice states that the UK will maintain a CPC scheme and recognise EU27-issued CPC documentation.556 However, there is no guarantee of any recognition for UK-issued CPCs in EU27 countries. The technical notice states that:

UK drivers will be able to operate in the EU when driving trucks covered by an ECMT permit, or any existing, reinstated or new bilateral arrangements without the need of an additional qualification. However, to drive for EU operators, drivers holding a UK-issued CPC would also need to hold a CPC issued by an EU country.557

On bus and coach services in the event of ‘no deal’, the relevant technical notice states that UK bus and coach operators could no longer rely on automatic recognition by the EU27 of UK-issued Community Licences.558 It affirms the Government’s intention to accede to the Interbus Agreement in its own right by Exit Day “or as soon as possible thereafter should this prove necessary”.559 This “would enable UK operators to run occasional services into the EU. It cannot be

553 DfT, Commercial road haulage in the EU if there’s no Brexit deal, 24 September 2018
554 Lords EU IMSC, Written Evidence – Freight Transport Association (TRA0017), September 2018, para 9
555 DfT press notice, Department of Transport responds to European Commission contingency action plan, 19 December 2018
556 DfT, Commercial road haulage in the EU if there’s no Brexit deal, 24 September 2018
557 Ibid.
558 DfT, Operating bus or coach services abroad if there’s no Brexit deal, 24 September 2018
559 Ibid.
guaranteed at this stage that the agreement would be extended to cover regular services”.  

On vehicle type approval in the event of ‘no deal’, the relevant technical notice states that type-approvals issued in the UK would no longer be valid for sales or registrations on the EU27 market and EU27 type-approvals would no longer be automatically accepted on the UK market. This means that affected manufacturers would need to ensure that they have the correct type-approval for each market. It confirms that the UK will continue to recognise UN-ECE approvals for systems and components.  

Finally, on vehicle insurance in the event of ‘no deal’, the relevant technical notice states that access to the Green Card-free circulation area would cease. This would mean that UK motorists would need to carry a Green Card as proof of third-party motor insurance cover when driving in the EU27, EEA, Andorra, Serbia and Switzerland. The converse would be true for EEA motorists wishing to travel to the UK with their vehicle. It goes on:

The validity of UK Green Cards in these countries is subject to agreements that need to be reached between the UK’s Motor Insurers’ Bureau and the relevant National Insurers’ Bureaux. These agreements ensure Green Cards are recognised and facilitate the settlement of claims for traffic accident victims.

13.4 Ports

The main concerns for ports are the impacts of changes to customs, border and immigration processes in the event of ‘no deal’ and the knock-on impacts for inland transport of goods.

This concern is heightened for the Port of Dover, which handles up 17% of the UK’s total trade in goods, has more international lorries than all other UK ports combined and has the shortest sea crossing to Europe.

In the event of a ‘no deal’ scenario, full third country controls on people and goods entering the UK from the EU and vice versa may be applied; although the Government has said that it “wants to work closely with Member States to introduce pragmatic arrangements to ensure the continued full flow of goods which would be to their benefit as well as ours.” According to the NAO:

…it could take up to three years to put new infrastructure in place because ports, airports and other border crossing point operators, which are responsible for funding infrastructure to deliver the border compliance regime, will need certainty about how the border will...

560 Ibid.
561 DfT, Vehicle type approval if there’s no Brexit deal, 13 September 2018
562 The Green Card is an international certificate of insurance providing visiting motorists the minimum compulsory insurance cover required by the law of the country visited.
563 DfT, Vehicle insurance if there’s no Brexit deal, 24 September 2018
564 Ibid.
565 Ibid.
566 Port of Dover, It’s all Dover for boxed-in container ports, 11 October 2018
operate so that they can access the necessary finance and comply with local and national planning processes.

The additional controls on people and goods at the border could cause significant delays and have knock on effects to wider parts of the motor network. Imperial College London completed research into the impact of customs delays on the M20/A20 motorway in Kent. They found that two extra minutes spent on each vehicle at the border could more than triple the existing queues on the M20/A20, to 29 miles. At peak times, Kent could see nearly five hours of traffic delays.

Managing traffic flow from the Port of Dover: Operation Brock

The DfT identified that a temporary solution was needed on the M20 near Dover to manage traffic flow as a contingency to mitigate the risk of cross-channel disruption including any that may be caused by new border arrangements following the UK’s exit from the EU. It is calling this work ‘Operation Brock’ (formerly ‘Project Brock’). The NAO explained in its July 2018 report:

The project aims to hold coast-bound lorries on the M20 while allowing non-port traffic to continue to move in both directions. Given the need to be ready by March 2019, the project is required to deliver at pace. It is sponsored by the Department and to be delivered by Highways England.

The details were summarised by Chris Grayling in October 2018:

Operation Brock consists of three phases, a contraflow queuing system on the M20, a holding area at Manston Airport and, if necessary, a holding area on the M26. The Department is working closely with the Kent Resilience Form, the Port of Dover, Eurotunnel and other associated bodies. The contraflow queuing system on the M20 will cost about £30 million to build and operate and would be used for all disruption events including those seen in 2015. The works required for the M26 are within the region of £5 million.

The NAO stated that in March 2018 the DfT approved a preferred option for the work and formally delegated responsibility for the project’s delivery, including approval of the business case, to Highways England. Highways England awarded a contract on 11 May 2018, with a view that preparatory engineering and operational plans would be developed in parallel and work would begin in early July 2018.

In an October 2018 letter to the Chair of the Public Accounts Committee Bernadette Kelly said that the deployment of Operation Brock had “progressed… and is nearing completion”. She stated that “infrastructure work… is underway on the M20 between junctions 8 & 9. The project remains on track to be complete by March 2019”. Ms Kelly later told the Committee in oral evidence that DfT is spending “around £30 million to £35 million… on the infrastructure, principally for Operation Brock”.

The Government organised a practice-run in January 2019 of Operation Brock, which saw lorries congregate at Manston Airport near Ramsgate and travel to Dover. The DfT anticipated that up to 150 trucks would be involved, but 89 participated at the disused airfield which has a capacity of just under 4,000.

As part of its contingency planning, the Government announced in December 2018 that it had entered into three contracts totalling £103 million with ferry operators to provide additional ferry capacity and services into the UK. Two contracts went to established operators, Brittany Ferries (£46.6 million) and DFDS (£42.6 million). The third contract was awarded
to Seaborne Freight (£13.8 million), a new operator to provide a new service between Ramsgate and Ostend. This capacity will be used “for critical goods such as medical supplies in the event of disruption to cross-Channel crossings.”

Ordinarily, public procurement follows a competitive tender process. However, in awarding £103m-worth of contracts, the DfT relied on an emergency exemption provided for by the Public Contract Regulations Act, which states public tender can be avoided. Questions have since been raised by Chair of the Transport Select Committee Lilian Greenwood as to why the Government awarded the contracts using the emergency exemptions and whether Seaborne freight were suitably qualified to deliver the services.

The Government also recently announced further contingency arrangements to mitigate the impact of a ‘no deal’ Brexit on roll on roll off locations like Dover or the Channel Tunnel. Currently, under import processes for trading with the rest of the world, goods are not released from customs control until you make a full import declaration and pay the duty owed in full. New Government guidance for importers and hauliers now means that they would be able to file a simplified form online in advance and pay duty later. These “transitional simplified procedures” are aimed at reducing possible delays at the border from the revised custom arrangements under a ‘no deal’ Brexit.

13.5 Maritime

On 13 September the Department for Transport published two technical notices on maritime transport, covering maritime security notifications and seafarer certificates of competency.

On maritime security notifications, the relevant paper explains that under Article 6 of EC Regulation 725/2004, shipping companies (including ferries carrying passengers and lorries) are required to submit security information prior to entering an EU port. Sometimes this is referred to as a pre-arrival notification (PAN). Article 7 allows EU countries to issue exemptions from the requirement to provide this information to companies operating scheduled services between ports located in their territory, or between ports within their territory and that of another EU country.

The DfT states that in the event of ‘no deal’ Article 7 exemptions would not be permitted from EU27 countries for vessels, irrespective of registration/flag, operating scheduled services from the UK. DfT advises shipping companies holding such an exemption to engage with EU27 countries to ensure they understand what information they would be required to provide and how it would be submitted. The UK intends to continue issuing exemptions for scheduled services from an EU27

---

568 DfT, *Getting an exemption from maritime security notifications if there’s no Brexit deal*, 13 September 2018
569 Ibid
country to a port in the UK, or between ports in the UK, after Brexit “regardless of the outcome of negotiations”.570

On seafarer certificates of competency, the relevant paper explains that at present, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) mandates that crew members carrying out certain duties must have a certificate of competency (COC). A COC must be renewed every five years. EU legislation has harmonised the way that EU countries apply the STCW requirements. This has led to two different procedures for recognising seafarers’ qualifications.571

DfT states that in the event of ‘no deal’, endorsements issued before withdrawal by EU27 countries to seafarers holding UK COCs would continue to be valid until they expire. After exit, the rights and obligations placed on the UK as a signatory to the STCW convention would remain, including those for recognising certificates issued by third countries. Therefore, the UK Government’s intention is to:

1. continue recognising all certificates that we currently recognise, including those issued by EU and EEA countries after exit
2. seek third country recognition of UK certificates by the EU under the STCW convention572

It further explains that EU27 countries that wish to continue accepting new UK COCs would need to write to the European Commission, in accordance with the procedure in EC Directive 2008/106. They would then be able to recognise such certificates.

570 Ibid
571 DfT, Recognition of seafarer certificates of competency if there’s no Brexit deal, 13 September 2018
572 Ibid
14. Higher education, science and research

Access to research funding and Erasmus+

Research funding
The UK currently does disproportionately well in securing EU research funding and UK Universities are the top performers in receiving EU funds based on scientific excellence. Recent figures show that UK Universities receive over £836 million in research grants and contracts from EU sources, representing more than 14.2% of all income from research grants and contracts. Million+, The Russell Group and the British Heart Foundation said in their evidence to the House of Lords EU Committee inquiry on a no-deal Brexit that ‘no deal’ could stop the UK’s access to EU research funds and prevent UK collaboration in EU projects:

MillionPlus argued that no deal would be “extremely damaging for UK universities and should be avoided if at all possible”. They cited in particular the reputational damage, deterrent effect and confusion that could arise from the designation of EU students as international students. No deal could also place existing EU-funded research projects in jeopardy.

The Russell Group concluded that no deal would affect universities’ ability to deliver world-leading research and education. No deal on the rights of EU citizens to live, study and work in the UK could lead to a loss of talented researchers and technicians with specialist skills who could not be replaced easily by UK nationals. If the UK and EU did not secure an agreement on science and research collaboration, UK institutions would cease to be eligible for Horizon 2020 funding on the day of exit. This would mean funding for existing projects would be withdrawn and researchers would immediately lose the ability to bid for this funding, with a detrimental impact on international competitiveness.

The British Heart Foundation also noted that the EU was a major funder of UK research, and helped to promote international collaboration. Uncertainty about what could happen to UK access to Horizon 2020 funding after March 2019 could discourage EU researchers from approaching British counterparts to collaborate on projects. They too expressed concern about the reputational damage caused by uncertainty over the status of EU researchers and healthcare professionals in the UK.

In October 2017 EU Commissioner Carlos Moedas also said that ‘no deal’ could result in the UK losing EU funding from the date of withdrawal from the EU:

“For research, ‘no deal’ means programmes could potentially stop with barriers erected in ongoing projects, and significant projects and programmes terminated or not initiated”

Million+ 25 October 2017

573 The Royal Society, UK research and the European Union, December 2015
575 House of Lords paper 46, Brexit: Deal or no deal, 7 December 2017
Until the UK leaves, its researchers, universities, organisations, and companies are eligible to participate and receive funding in Horizon 2020.

But the eligibility criteria must be complied with for the entire duration of the grant. This is why it was important to be transparent and inform UK-based applicants now that if the UK withdraws from the EU without concluding a withdrawal agreement they may be required to leave the project and no longer receive funding.576

The Russell Group have further warned of the dangers of no deal on international research competitiveness:

A sudden cliff-edge in research funding from the EU will have a serious impact on our universities’ international competitiveness in research. It is already the case that talented researchers at our universities are being approached by universities in other European countries with offers of academic contracts, so a sudden loss of access to EU research programmes in the UK could motivate many to relocate.577

The Government guidance published on 23 August provides further information in “Horizon 2020 funding if there’s a Brexit no deal”.

Erasmus+

On the 30 May 2018 the EU Commission announced that for the funding cycle starting in 2021 any country in the world would be able to participate in the Erasmus+ programme if they met set requirements. It is possible, therefore, that in the event of ‘no deal’ the UK might still be able to access the Erasmus+ programme, provided the UK meets criteria for admission to the scheme.578

The Government guidance published on 23 August 2018 includes a paper, “Erasmus+ in the UK if there’s no Brexit deal”, which gives some information on no deal implications for studying in the EU or the UK.

On 30 January 2019 the European Commission proposed a Regulation laying down provisions for the continuation of ongoing learning mobility activities under the Erasmus+ programme. The EM states:

If the Withdrawal Agreement is not ratified, it would mean that the current EU-27 and UK Erasmus+ participants would have to interrupt their learning mobility activities. Many students would lose their academic credits and could be obliged to repeat their academic semester or year. This would be a very disruptive impact for students themselves as well as for their sending and hosting institutions. This proposal aims to put in place contingency

576 Holyrood, Brexit ‘no deal’ will rip up university research funding, warns European Commission, 26 October
577 Lords EU Committee, Brexit: Deal or no deal, 7 December 2017, Written evidence from Russell Group (DND0044)
578 In its proposal for the Erasmus+ programme for the period 2021-27, published on 30 May, the European Commission said that countries outside the EU and the EEA would be able to participate fully as long as they do not have a “decisional power” on the programme and agree to a “fair balance” of contributions and benefits. Any agreement with third countries would include “the calculation of financial contributions to individual programmes and their administrative costs”. See Erasmus+ exchange programme set to open to all countries in 2021, Times Higher Education, 31 May 2018.
measures to avoid the disruption of Erasmus+ learning mobility activities involving the United Kingdom at the time of its withdrawal from the European Union. These measures will be applied to Erasmus+ ongoing learning mobility activities starting before the date on which the Treaties cease to apply to and in the United Kingdom.

EU students

‘No deal’ could potentially result in EU students being re-classified as international students, being charged higher fees and denied access to student support. Million+ have said that a ‘‘no deal’ which resulted in EU students being treated as international students would have a very significant and negative impact on EU student mobility and the EU market’.579

EU staff in UK universities

EU staff represent 16% of the academic workforce.580 Million+ has said that a no-deal could result in EU staff leaving UK universities and that this would have a particularly damaging effect on university foreign language and Science, Technology, Engineering and Mathematics (STEM) departments:

The situation would be even starker for EU staff, as their legal status would be in question and their rights not guaranteed. It would be difficult to make any claim to say they will definitely be able to stay in the UK to work, if indeed they then still wanted to. Any significant loss in EU staff, through voluntary means or otherwise, would disproportionately impact on certain key subjects, like foreign languages and STEM courses, as EU staff make up significant proportions of staff in those subject areas. It would also, as for students, damage the effective running of institutions and the image and reputation of the sector. This would be particularly concerning at a time when the UK is already being seen as less open than its competitor nations, and when it is losing international market share to direct competitors like Australia and Canada.581

The Russell Group has also warned about the damaging effect of a loss of highly qualified EU staff:

If EU staff were required to meet current Tier 2-style visa conditions in the absence of an agreement which guarantees their rights to stay, our analysis shows that nearly a quarter of existing EU staff (over 6,000 people) at Russell Group universities would not be eligible to work in the UK. This includes a significant number of staff with postgraduate, doctoral and other higher degrees (over 2,100 individuals). This would be a great loss for the UK’s science base and one that could take many years, and probably decades, to rebuild. It is certainly not the case that EU staff at Russell Group universities could be replaced easily by UK nationals (particularly in the short term) as they are unlikely to

579 House of Lords paper 46. Brexit: Deal or no deal; 7 December 2017, Written evidence MillionPlus (DND0013)
580 Universities UK submission to the House of Commons Education Committee inquiry on ‘The impact of exiting the European Union on higher education’, November 2016.
581 Ibid
have the specialist skills, expertise and experience to match those
brought to the UK by excellent European academics.\textsuperscript{582}

\textsuperscript{582} House of Lords paper 46, \textit{Brexit: Deal or no deal}, 7 December 2017, written
evidence – Russell Group (DND0044)
15. Internal security

The UK currently participates in approximately 40 EU measures that aim to support and enhance internal security and police and judicial cooperation in criminal matters. Measures identified as being of particular significance include:

- The European Arrest Warrant (EAW);
- Access to databases, including the Second Generation Schengen Information System (SIS II); European Criminal Records Information Exchange System (ECRIS); Passenger Name Records (PNR); the Prüm Convention – the framework for the exchange of DNA profiles, fingerprints and vehicle registration data; and
- Participation in agencies, including Europol and Eurojust.

The Government initially indicated that it would like future cooperation with the EU on all the EU police and criminal justice measures in which the UK currently participates, suggesting it anticipates a significant operational impact if this cooperation were brought to an abrupt ‘no deal’ end.

15.1 Data protection and exchange

The main elements of the EU’s data protection framework are:

- the General Data Protection Regulation (GDPR)\(^{583}\)
- the Police and Criminal Justice Directive (the “Law Enforcement Directive”)\(^{584}\)

The GDPR applies to the general processing of citizens’ personal data. The Law Enforcement Directive applies to the processing of personal data for law enforcement purposes.

Under the EU’s data protection framework, personal data can only be transferred to third countries when an “adequate” level of protection is guaranteed. One option is for the European Commission to make an adequacy decision. Other options that data controllers can implement for their own data processing include:

- Binding corporate rules
- Standard contractual clauses

The Government has stressed that it wants to maintain the unhindered flow of data between the UK and the EU after Brexit.\(^{585}\) The Data Protection Act 2018 includes a chapter on international data transfers following Brexit.

---

\(^{583}\) Regulation 2016/679 EU

\(^{584}\) Directive 2016/680/EU

\(^{585}\) See, for example, Matt Hancock (the then Minister for Digital), Oral evidence to the Select Committee on the European Union Home Affairs Sub-Committee, 1 February 2017, p1; PQ 163493 [answered 19 July 2018]
Protection Act 2018 brought the GDPR and the Law Enforcement Directive into UK law. According to the Government, this will “ensure that the UK is prepared for the future after we have left the EU”. 586

Possible impact of no deal
In a December 2017 report, the House of Lords European Union Committee warned that a complete “no deal” would bring UK-EU cooperation in a number of areas – including data exchange - to a “sudden halt”.587 This would be “deeply damaging for the UK”.588 However, David Davis, the then Secretary of State, told the Committee that in the absence of a full deal, a “bare bones” deal could include an agreement on data sharing.589

Data exchange in the event of no deal

European Commission Communication
A European Commission Communication of 13 November 2018 confirms that in the case of a no-deal scenario, the transfer of personal data to the UK would become subject to the rules on international transfers contained in the GDPR and Law Enforcement Directive (LED). The Communication notes that these contain “appropriate safeguards” – e.g. the Commission’s approved Standard Contractual Clauses, Binding Corporate Rules, administrative arrangements - that can be used by the private sector and public authorities. In addition, even in the absence of appropriate safeguards, the GDPR and LED allow data transfers in certain circumstances e.g. where an individual has given explicit consent, for the performance of a contract, for exercising legal claims, or for important reasons of public interest. Given these options, the Communication states that “the adoption of an adequacy decision is not part of the Commission’s contingency planning”.

UK Government technical notices
On 13 September 2018, the Department for Digital, Culture, Media and Sport (DCMS) published a technical notice on data protection in the event of the UK leaving the EU without a deal.590 Another notice was published on 13 December 2018 setting out how data protection law would work in such a scenario. This explains:

(…) The EU (Withdrawal) Act 2018 (EUWA) retains the GDPR in UK law. The fundamental principles, obligations and rights that organisations and data subjects have become familiar with will stay the same.

To ensure the UK data protection framework continues to operate effectively when the UK is no longer an EU Member State the Government will make appropriate changes to the GDPR and the

586 See, for example, Department for Digital, Culture, Media and Sport, Data Protection Bill Factsheet – Overview, September 2017, p1; PQ 187077 [answered 8 November 2018]; Library Briefing Paper (CBP 8214, 1 March 2018) gives background to the 2018 Act
587 House of Lords European Union Select Committee, Brexit: deal or no deal, HL Paper 46, December 2017, p3
588 Ibid, para 48
589 Ibid, para 34
590 DCMS, Data protection if there’s no Brexit deal, 13 September 2018
Data Protection Act 2018 using regulation-making powers under the EUWA.

The regulations and more detailed guidance will be published in the next few weeks. These regulations would:

- Preserve EU GDPR standards in domestic law
- Transitionally recognise all EEA countries (including EU Member States) and Gibraltar as ‘adequate’ to allow data flows from the UK to Europe to continue
- Preserve the effect of existing EU adequacy decisions on a transitional basis
- Recognise EU Standard Contractual Clauses (SCCs) in UK law and give the ICO the power to issue new clauses
- Recognise Binding Corporate Rules (BCRs) authorised before Exit day
- Maintain the extraterritorial scope of the UK data protection framework
- Oblige non-UK controllers who are subject to the UK data protection framework to appoint representatives in the UK if they are processing UK data on a large scale…

15.2 Cooperation in law enforcement and criminal justice

Both the UK and the EU have emphasised the importance of maintaining cooperation in the field of security, law enforcement and criminal justice. The Home Secretary told the House of Commons Home Affairs Select Committee (HASC) that security “is something that should not be linked to any of the other discussions”, and that the UK’s proposals are “completely unconditional”.

More recently, however, the Policing Minister indicated to HASC in November 2018 that any security treaty might be included as part of a wider agreement, including trade arrangements.

Possible impact of ‘no deal’

On 28 November 2018 the Government published EU Exit: Assessment of the security partnership, providing a comparison of the proposed future security partnership with a no-deal scenario. This set out the assumptions on which its analysis of the impact of ‘no deal’ is based:

- The UK leaves the EU on 29 March without a Withdrawal Agreement or Political Declaration. There will be no transition/implementation period and no agreement on the future relationship;
- There will be no agreements in place on how to wind down cooperation;
- The UK will not have negotiated any new agreements with the EU or Member States;

591 DCMS, Amendments to UK data protection law in the event the UK leaves the EU without a deal on 29 March 2019, 13 December 2018
592 Oral evidence on the work of the Home Secretary, 10 July 2018, Q489
593 Home Office preparations for the UK exiting the EU, Home Affairs Select Committee, Twelfth Report of Session 2017-19, 7 December 2018, para 13
Cooperation will continue on the basis of non-EU international agreements where they exist and where relevant implementing legislation is in force;
• The UK will no longer have access to databases, systems and networks;
• The UK will not participate in or have access to EU agencies, bodies or institutions of the EU;
• Data exchange will be more difficult and carry additional administrative costs.

It states that the absence of an implementation period would “create immediate legal and operational uncertainty with the risk of operational disruption and potential security implications”, and that the Government would seek to mitigate these risks.

The Security Minister, Ben Wallace, added in a speech in November 2018 that a ‘no deal’ scenario in security cooperation would “create immediate and lasting harm to both sides and undermine our ability to work together”. He went on:

If we reach March next year without a deal in place, we will not enter a transition period, and will therefore be locked out of many of the EU security tools that currently help our police, law enforcement and criminal justice partners do their jobs.

Security cooperation would continue but only through non-EU channels, meaning we would be choosing to relinquish the additional operational capabilities that are currently provided by our membership of the EU, and which the transition period and the Future Framework are intended to protect. […]

There will be less information available to our border officers and police forces.

It will take longer to track and arrest criminals and all the time putting at risk the cooperation and sharing that we know to be so vital.594

Representatives from the worlds of law enforcement, criminal justice, and security and intelligence have provided further insight into the possible consequences of the UK losing access to EU measures in this area. Impact centres around three broad themes: loss of operational capacity, loss of strategic influence, and an increased demand on resources resulting from the need to compensate for these losses. The consensus is that a ‘no deal’ scenario would have a significant negative impact on public safety.

Concerns have also been raised about the impact of a loss of cooperation on the security situation in Northern Ireland and around the Irish border (see section 8 of this paper).

Sir Rob Wainwright, former Director of Europol, said in evidence to HASC:

Serious crime today and terrorism today is without doubt a transnational problem and requires that kind of response, of course. That is precisely why the UK, as much as any other member state of the European Union, has invested so much effort

594 Rt Hon Ben Wallace, Brexit security speech, 29 November 2018
over the last three decades in constructing the closest possible, most cohesive and effective cross-border police co-operation arrangements in Europe. It is therefore axiomatic to say that in the face of these threats that are continuing to grow and evolve in that way that any dislocation in that effort, any break-up of that would lead of course to a decrease in the overall effectiveness of all of us to keep all of our citizens safe here in the UK, but across Europe as well. I think therefore that is a well-understood point.

Asked whether there was cause for concern, given the different positions of the UK and the EU in negotiations on future security cooperation, he said that ‘no deal’ would have an adverse effect on Europe’s collective ability to fight crime and terrorism.

On the specific consequences of ‘no deal’ for the UK, he said:

We would survive as a country, of course. However, without a doubt we suddenly lose access to instruments of very direct and practical operational value to the UK on an everyday basis. That would be quite serious for the ability of our national police authorities to keep us safe.

Sir Julian King, European Commissioner for the Security Union, expressed a similar view to the Lords EU Home Affairs Sub-Committee:

“If there is no agreement, we all stand to lose, because we will be less well-equipped to cooperate effectively against these shared threats [terrorism, cyber, and serious and organised crime].

Members of the Association of Policing and Crime Commissioners’ (PCC) Brexit Working Group wrote to the Home Secretary on 2 August 2018, expressing concerns that a no-deal scenario would lead to a significant loss of operational capacity, which could pose significant risks to communities. The letter from Matthew Scott (Kent), Lord William Bach (Leicestershire) and Martyn Underhill (Dorset) stated that “[t]he UK and EU share a common and ever evolving threat picture. We believe that a comprehensive partnership in all areas of policing and security cooperation is of mutual benefit to all”. They continued:

Through discussions with the NCA and NPCC, we understand that considerable additional resource would be required for policing to operate using non-EU tools and that such tools would be sub-optimal – potentially putting operational efficiency and public safety at risk.

It is also recognised that recruitment, vetting, and training of staff to use these tools would take a substantial amount of time.

Should an implementation period not be agreed, contingency plans will need to be implemented by the end of March 2019. Given that the implementation period decision is not likely to be known until October 2018, the resultant five-month window is likely to be very challenging.

---

595 Oral evidence: EU policing and security cooperation, HC 1356, 3 July 2018, Q1
596 Ibid, Q32
597 Oral evidence, ibid, Q63
598 Brexit: the proposed UK-EU security treaty, Uncorrected oral evidence, 14 June 2018, Q115
599 The Guardian, No deal Brexit poses serious risk to public safety, say police leaders, 6 August 2018
We are therefore concerned that a ‘no deal’ scenario could cause delays and challenges for UK policing and justice agencies.

The Police and Crime Commissioners asserted that the “shared tools, measures, initiatives and capabilities” developed over the years of the UK’s EU membership had “saved many lives”, and that ways had to be found “to protect these mutually important capabilities […] to ensure the safety and security all our citizens”. The PCCs called on Sajid Javid to “[c]onfirm that the Home Office has developed effective contingency plans for a ‘no deal’ scenario”.

In January 2019, Assistant Commissioner Neil Basu described the possibility of a no-deal scenario as “incredibly concerning” and suggested that the UK and the EU would be in a “very bad place” if police could not exchange data or biometrics on suspected criminals.600

The Law Society of England and Wales suggested in written evidence to the Lords EU Committee Home Affairs Sub-Committee that leaving the EU without a deal on security would lead to legal and organisational chaos and create a void which could be exploited by terrorists and criminals.601

Operational impact
Data exchange

The House of Lords EU Home Affairs Sub-Committee concluded in its report Brexit: future UK-EU security and police cooperation, that access to EU law enforcement databases and data-sharing platforms is integral to day-to-day policing, and that loss of access could pose a risk to the safety of the public.602

In a subsequent report, Brexit: the proposed UK-EU Security Treaty, the Committee stated:

Were the UK to lose access to the EU’s security databases, information that today can be retrieved almost instantaneously could take days or weeks to access, creating not only a significant hurdle to effective policing but a threat to public safety.603

These conclusions reflect evidence taken from law enforcement bodies, former members of the security and intelligence agencies, the Crown Prosecution Service (CPS) and the legal profession, among others.

Richard Martin, Deputy Assistant Commissioner of the Metropolitan Police, told the Committee that under current arrangements police officers on the street are able to run checks on a car or person on the police national criminal database and on SIS II simultaneously. He described this ability as “absolutely essential” in order to keep people safe.604 He suggested that without access to these databases, the police would not be able to make as many checks, and the system would be

---

600  Far-right groups could exploit Brexit tensions – police, bbc.co.uk, 23 January 2019
601  Law Society of England and Wales, written evidence
602  Lords EU Committee, Brexit: future UK-EU security and police cooperation, 7th Report, 2016-17, HL Paper 77, para 120
603  HL Paper 164, para 152
604  Lords Home Affairs Sub-Committee, Brexit: the proposed UK-EU security treaty, oral evidence, 2 May 2018, Q59
much slower and less efficient. Delays in access to information on suspects could mean that opportunities to prevent crime would be lost. He concluded that a loss of access to databases would mean “[W]e will get a poorer picture, a lot more slowly than we do now, which will affect our operational capability”. 605

Steve Smart, Director of Intelligence at the National Crime Agency, set out the operational impact at a tactical and strategic level:

At a tactical level, the impact of losing access to those datasets is that more bad people will get into the UK, and it will be harder for us to find and deal with them. At a more strategic level … As an organisation, we are looking to build, on behalf of wider law enforcement, a national data exploitation capability over the next three years. Not being able to link to the data that our European partners hold, the data that sits at Europol and on the Schengen information system, would undoubtedly have a negative impact on what we can do with the data we already have. 606

Rob Wainwright told HASC that the UK derives specific and important operational value from all the main databases, including the Europol Information System, SIS II and the Prüm Convention. 607 He explained that the ability to quickly circulate information about criminal and terrorist suspects has a direct operational benefit:

The analogy might be that a serious criminal, maybe a sex offender from one member state, would be registered on the Schengen Information System in case, unknown to those authorities in Germany or France, he were to travel around Europe, then were he to arrive at Dover Docks, then the fact that he is on the Schengen Information System would allow our border officials here to identify him as that suspected offender. If those officials do not have access to that common database on which the other authorities have placed his name, then it is pretty obvious what possible detrimental effect that might have on the ability of that border official to make the right decision about letting him in the country. 608

These concerns were shared by Lord Evans of Weardale, former Director General of MI5. When asked whether the loss of access to databases could cause problems for the security service, he agreed that it could:

[O]ne of the main ways in which we seek to reduce the risk of harm is by getting criminals locked up who are involved in planning terrorism or whatever. For that, we have to rely on law enforcement agencies because the Security Service has no law enforcement powers. From that point of view, a very important part of the overall counterterrorism efforts in the country is dependent on law enforcement, which in turn is reliant upon international cooperation. 609

605  Ibid, Q63
606  Ibid, Q63
607  This Convention is often referred to as ‘Schengen III’. It is a treaty signed on 27 May 2005 by Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain. It deals with cross-border cooperation, particularly in combating terrorism and cross-border crime.
608  Oral evidence: Eu policing and security cooperation, HC 1356, 3 July 2018, Q22
609  Brexit: the proposed UK-EU security treaty, oral evidence, 16 May 2018, Q97
Rob Price, head of the ACRO criminal records office reportedly told the *Independent* in January 2019 that dangerous criminals could go free in the UK if police officers cannot access European conviction records, because British police will be unaware of crimes committed abroad. He said that EU conviction records were critical to decisions on whether to charge or release foreign suspects, and how to protect the public.610

The Government appears to concur with this analysis. Its *Assessment of the security partnership* paper states that in the event of ‘no deal’, the UK could lose access to information that helps its Border Force Officers and police to detect and prevent security threats, and provides some specific illustrations and examples:

**PNR**: A routine sniffer dog inspection at a UK airport led to the detection and seizure of a significant amount of cash from an outbound travelling EU national. UK officers analysed that individual’s passenger information to identify a number of individuals with matching travel arrangements. All individuals had used the same EU travel agency to book flights and were put on the UK watchlist as suspected criminal associates. This led directly to three further hits at other UK airports and detection and seizure of another two significant amounts of cash.611

**Prüm**: The Prüm system automates DNA matching to produce hit results within 15 minutes. This speed of information exchange helps the early stages of an investigation, particularly where forensic evidence is involved, in order to prevent destruction of evidence and identify suspects before they have a chance to commit further crimes or evade justice. UK police forces sent 69 DNA profiles abroad in 2014-15 using Interpol, whereas 9,931 profiles were sent in less than six months during a pilot of the Prüm system.612

**SIS II**: UK authorities issued a SIS II alert in April 2016, marking the individual as a suspected criminal. Less than three months later, the subject was stopped in Spain driving a motor vehicle which generated a hit on the alert. Spanish authorities conducted discreet checks and passed information back to UK authorities regarding an address and place of work. The real-time information exchange through SIS II meant that this absconder was traced, located, arrested and surrendered to face trial for serious drug offences, all within the space of six months.613

**ECRIS**: Information available through ECRIS supports the UK’s law enforcement agencies in the effective management of violent and sexual offenders. For example, the UK Criminal Records Office (ACRO) was notified in October 2016 that a UK national convicted in Cyprus for possessing indecent images of children was travelling back to the UK. The offence was added to his

---

610 *Brexit could see dangerous criminals go free in UK with police unable to access EU conviction records*, *The Independent*, 4 February 2019

611 Para 35

612 Para 36

613 Para 37
UK criminal record and ACRO promptly informed his local police force in the UK who were able to take appropriate action.614

**European Arrest Warrant and other criminal justice cooperation measures**

Writing in *The Times* on 9 August 2018, Ed Davey, Liberal Democrat spokesperson for Home Affairs, suggested that losing access to the European Arrest Warrant (EAW) would mean UK criminals could evade justice in other European countries, and that criminals from elsewhere in the EU would be able to evade justice in the UK.615

In support of this contention, he quoted the then Home Secretary Theresa May in 2014, who described the EAW as “a vital tool for ensuring that justice is done in this country and for keeping the British public safe”, without which the UK risked becoming “a honeypot for all of Europe’s criminals on the run from justice”. Mr Davey cited the example of a case in Ireland, in which an individual sought to resist extradition to the UK to stand trial for murder, arson and rape, on the grounds that he will not be able to rely on EU derived rights after Brexit.616

Debbie Price, Head of International Justice at the CPS, gave evidence to the Lords EU Home Affairs Sub-Committee on the impact of losing access to criminal justice cooperation measures, including the EAW, on prosecuting crime. She highlighted the operational importance of speed in being able to obtain people, evidence and the proceeds of crime, which the current arrangements facilitate. She also raised the issue of legal certainty:

> [A] reversion to a different set of instruments will lead to a period of legal uncertainty where things need to be tried and tested in the courts, which takes a lot of resources, time and money from everyone involved.617

She explained that alternative extradition arrangements were slower and more expensive, and that alternatives to the European Investigation Order and Mutual Legal Assistance mechanisms would also be slower. This could lead to a capability gap, for example where someone was on remand awaiting trial, but it was not possible to obtain crucial evidence in time for the trial.

She also noted potential costs to victims and witnesses of having to travel to trials in other countries if extradition was not possible.618

Deputy Assistant Commissioner Richard Martin suggested that criminals may seek to exploit changes to extradition arrangements:

> Criminal groups are not daft. They may already be thinking that, if certain powers do not exist, there are opportunities for them to

---

614  Ibid
615  Accept the jurisdiction of the ECJ – or criminals will walk our streets, Ed Davey, *The Times*, 9 August 2018
616  See Court of Justice of the EU, *Case C-327/18 PPU*
617  Brexit: the proposed UK-EU security treaty, oral evidence, 16 May 2018, Q104
618  Ibid, Q108
either operate here, knowing it is far harder to be extradited from the country, especially if they are a foreign national, or vice versa.  

Rob Wainwright suggested that the loss of the EAW would have an adverse impact on the UK’s overall security arrangements.  

Jim Brisbane, CPS Brexit lead, gave evidence about contingency planning. In the context of the EAW, he explained that there was a need to ensure that the correct processes were in place and that the CPS had the necessary expertise to deal with extradition in a different context. He suggested this would require additional resources because the process would be less streamlined and there would be more legal challenges. However, it was not yet possible to estimate the scale of the additional demand.

Richard Martin and Steve Smart also discussed the resource implications of losing access to existing measures. Richard Martin said their contingency planning included looking at the impact of losing access to the EAW:

If that is the case, it is much slower and there are a lot more manual linkages. It means that we have to get a warrant for certain things. That means there is an impact on the CPS.

We are now trying to quantify what that means at ground level for local policing and what each organisation will need in order to process things in a different way at a slower rate. Other things include … what our overseas liaison network looks like. What might our footprint in Europol look like as a third country? How many people do we need? Do we need greater influence? Does that equal more people or are there key countries that we need to be better represented in?

The Government’s Assessment of the security partnership paper also acknowledges that a ‘no deal’ scenario would mean that extradition procedures would be considerably slower, and that the UK would lose access to a range of practical cooperation measures, including prisoner transfer and joint investigation teams. This would mean that the UK would transfer fewer prisoners to and from EU prisons, which would result in increased capacity and financial pressures on HM Prison and Probation Service, according to the paper.

The island of Ireland

The Police Service of Northern Ireland (PSNI) provided evidence to the Lords EU Home Affairs Sub-Committee on the impact of losing access to EU measures in the context of cooperation with the Garda in Ireland in relation to the border. PSNI noted the importance of good working relationships, but also emphasised the need for a clear legal framework:

For example, the loss of European Arrest Warrants would impact on the PSNI ability to pursue those who use the land Border to

---

619 Brexit: the proposed UK-EU security treaty, oral evidence, 2 May 2018, Q67
620 Oral evidence: Eu policing and security cooperation, HC 1356, 3 July 2018, Q56
621 Brexit: the proposed UK-EU security treaty, oral evidence, 16 May 2018, Q106
622 Brexit: the proposed UK-EU security treaty, oral evidence, 2 May 2018, Q68
623 Assessment of the security partnership, paras 38-42
evade prosecution. This will affect Counter Terrorism, Serious/ Organised Crime and Volume Crime. […]

There is significant interaction and relationships between Organised Crime Groups operating on both sides of the Border and they often work together across a number of types of organised crime. It is likely that organised crime groups will seek to exploit any new arrangements for criminal gain. Many of these groups have links to terrorist activity and the funding of acts of terrorism.624

Robert Hannigan, former Director of GCHQ, suggested that the presence of a physical border on the island of Ireland would be a threat to internal security in itself:

It is hard to see any of the current solutions not resulting in more smuggling, and anyone who has worked there knows that smuggling and crime on the border are corrosive to the peace process because the money tends to go to paramilitary groups, or the rump of paramilitary groups. That is a worry. It is the threat and the criminality that might be affected rather than the cooperation.625

Others have also noted that the loss of the EAW would be felt particularly acutely in the Ireland/ Northern Ireland context. The legal basis for extradition between the UK and the Republic of Ireland under the 1957 Extradition Convention is unclear due to changes to Irish legislation brought about by implementation of the EAW. It is likely that Ireland would need to amend domestic legislation in order to apply the Convention arrangements to the UK.626

In December 2018 the Irish Government published a Brexit Contingency Action Plan. It stated that cooperation in the area of law enforcement with respect to Northern Ireland is at an all-time high, and that the Irish Government is determined that that should be maintained. On the impact of a ‘no deal’ on security it said:

As Britain’s nearest neighbour, Ireland would be seriously impacted by the sudden changes to the arrangements for security co-operation under a no deal scenario.

The British Government has indicated its concern about a range of no deal impacts in this area. These include no agreement on the security aspects of the withdrawal or future relationship with the EU, no access to EU databases or networks, no agreements with EU bodies, no application of EU law, no EU based operational co-operation, no access to data on DNA, fingerprints, vehicles, criminal records, wanted persons or airline passengers, lapsed membership of EUROPOL and EUROJUST, the unavailability of European Arrest Warrants and no access to classified EU information as a third country.

624 Police Service of Northern Ireland, Written submission to the House of Lords EU Sub- Committee on Brexit: the UK-EU Security Treaty, June 2018
625 Brexit: the proposed UK-EU security treaty, oral evidence, 16 May 2018
626 The Policing Minister said in evidence to HASC in November 2018 that no changes were required to Irish law in order for the Convention to apply to UK-Ireland extradition arrangements post-Brexit. This contradicts evidence provided by experts to several other parliamentary Committees.
There will also be a need to try to ensure continued EU-UK co-operation on cyber security, civil protection, illegal migration, health security, countering terrorism and violent extremism.

Needless to say, all of these issues are even more pressing in the context of the island of Ireland.627

**Strategic influence**

Rob Wainwright told the Lords EU Home Affairs Sub-Committee that a change in the UK’s relationship with Europol would be felt mainly in the context of strategic influence. He explained that the UK is currently the lead Member State in a number of important projects in the areas of modern slavery, large-scale fraud and cocaine trafficking, for example. The UK is also currently chair of the counter-terrorist programme board at Europol and has been one of the primary architects in the development of police cooperation systems in the EU.628

Steve Smart and Richard Martin both emphasised the need for the UK to continue to be able to influence the development of law enforcement tools in light of the evolving nature of crime.629 Steve Smart pointed out that the UK was responsible for instigating many of the measures to which law enforcement now hopes to retain access, such as the EAW and PNR. He suggested that as the threat changes, new tools will be needed and “[w]e have to maintain the ability to drive that discussion”.630 If the UK ends up with a radically different relationship with Europol to the one it has now, influencing and shaping Europol’s agenda would be a lot harder.631

As an example of UK influence, Richard Martin said the UK had been successful in persuading Europol to include firearms on its list of priorities:

> … which allows them to collect intelligence against that, allows them to develop products, and gets it on to some of the work groups that we need to have. It was our influence that got it on. It was not originally on. Areas such as that would concern me. 632

Lord Evans and Robert Hannigan also regarded a change in the UK’s status as detrimental to its ability to influence. Mr Hannigan suggested that while for cultural reasons the UK could still be a bridge between the EU and the Five Eyes countries,633

> [T]here is no question that removing ourselves from one of those groups is going to have an impact as we become another member of the Five Eyes that is outside the EU.634

Lord Evans expressed concern that the UK’s absence from the Council of the EU and the European Parliament would mean the loss of a well-
informed and influential voice in the formation of policy that impacts on national security:

We will not be there in the same way in future. It was always noticeable that when the Club of Berne [a group comprised of heads of EU security agencies] would brief the permanent representatives in Europe, which we did periodically, at a quasi-political level, they were always keen to have the British there, because we tended to be better connected in some of those areas and more familiar with some of the policies than some of the smaller countries perhaps were. We were able to be a helpful voice, which will be more difficult going forward. That is an area of vulnerability.  

Robert Hannigan agreed, and emphasised the role of the UK in the debate about balancing privacy and security in the context of investigatory powers:

That is an important point on data, in particular. After the referendum one of the concerns that I picked up from counterparts in Europe was that the strongest voice at one end of the spectrum on balancing privacy and security and getting a sensible UK-style balance would be gone. There is a wide spectrum among the member states. Some are at the extreme other end. I know that some of our colleagues worry a lot about the absence of that voice.

Steve Smart suggested that as the Five Eyes partners look to the UK to put forward their point of view within Europol, a loss of access to Europol would therefore have a negative impact on them as well.

**Could the UK fall back on other mechanisms for international cooperation?**

**Policing and criminal justice**

In some areas there are existing fall-back options, but they are regarded as suboptimal in comparison with EU measures.

The 1957 Council of Europe Convention on Extradition would be the fall-back option for extradition. However, it does not impose time-limits and requests are made through diplomatic rather than judicial channels. There are also more grounds on which extradition can be refused, so this process would be slower more costly and lead to fewer extraditions. Further, since implementation of the EAW, some EU Member States have repealed legislation giving effect to the Convention.

The 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters would provide a fall-back for cooperation in criminal investigations. But this would also be a slower, more bureaucratic

---

635 Ibid
636 Ibid
637 Brexit: the proposed UK-EU security treaty, oral evidence, 2 May 2018, Q64
638 According to Camino Mortera, Centre for European Reform, “extradition under the Convention takes almost 20 times longer than it does with the EAW”, Financial Times, 7 September 2018.
process than under existing arrangements, and it has not been ratified by all EU Member States.

The Council of Europe’s 1983 Convention on the Transfer of Sentenced Persons would provide a fall-back option for the transfer of prisoners. However, the Government has noted that this provides extensive grounds for EU Member States to refuse to take prisoners.\(^{639}\)

In police cooperation, the UK would have to rely on cooperation through the International Criminal Police Organization (Interpol) and bilateral agreements. Interpol’s capabilities are less developed than those of Europol, and the quantity and quality of data shared via Interpol are regarded as inferior.

DAC Richard Martin explained in evidence to the Lords EU Subcommittee that law enforcement teams working with the Home Office on contingency planning were looking at using the Interpol database I-24/7. However, he suggested that this would have limitations compared to existing mechanisms:

> [The fall-back options] all have limitations compared to what we currently have, but we are mapping through all those processes. What does that look like when it is a bit slower? How does that work for officers on the street, and the NCA officers, when they are doing their roles? …

> If there was a cliff edge scenario … we would have these fallbacks ready to use. They would be clunky and they would be slower, but we would still be able to operate in a way around all that.\(^{640}\)

Steve Smart added that in some areas there were no obvious fall-back options, and reliance on what was available would make law enforcement agencies less dynamic and less effective:

> We will not be able to work at the speed we work now, assuming all things remain the same. There will be a resourcing issue, both for national policing and for the NCA, if we end up with a treaty that does not give us a lot of what we currently have.\(^{641}\)

**Intelligence sharing**

National security is not part of EU law and remains the responsibility of Member States. Some have therefore suggested that the impact of Brexit of any sort in this area will be minimal, because intelligence cooperation can and will continue at an intergovernmental level. Before the EU referendum, Sir Richard Dearlove, former head of the Secret Intelligence Service, suggested that the cost of Brexit to the UK in national security terms would be low, because the practical business of counter-terrorism and counter-espionage is conducted principally through bilateral relationships.\(^{642}\)

Andrew Parker, Director General of MI5, seemed to concur in a speech in Berlin to the German domestic intelligence agency BfV in May 2018.

---

\(^{639}\) Assessment of the security partnership, para 42

\(^{640}\) Brexit: the proposed UK-EU security treaty, oral evidence, 2 May 2018, Q62

\(^{641}\) Ibid.

\(^{642}\) Richard Dearlove, “Brexit would not damage UK security”, Prospect Magazine, 23 March 2016
He described existing structures for bilateral and multilateral intelligence cooperation in Europe, before concluding:

This highly developed national security collaboration largely takes place outside EU structures, and doesn’t depend on membership. So, at the primary level, Brexit makes no difference to the strength of those partnerships. 643

However, he then went on to explain how EU mechanisms contribute to this cooperation:

But that is not the whole story. National level and multilateral security work between European nations draws strength from a range of important EU systems and arrangements.

Exchanging data through EU law enforcement databases, and Passenger Name Records on the travel of terrorist subjects across Europe provides vital intelligence. Practical cooperation to efficiently arrest and surrender terrorists and criminals using the European Arrest Warrant enables the swift delivery of justice. And our exchanges with Europol and other EU bodies, where the UK is a major contributor, make us all safer. 644

A similar point was made by Lord Evans in evidence to the Lords EU Home Affairs Sub-Committee. He said that most cooperation took place bilaterally or multilaterally outside EU measures, but added:

It is important, certainly from MI5’s point of view, that you cannot understand the counterterrorism work of MI5 in isolation from the law enforcement and policing work because we have an extremely interrelated model between the intelligence agencies and the police. The dependence of the law enforcement community on Europol, the European Arrest Warrants, law enforcement cooperation and so on was therefore extremely important to the overall efforts that we made collectively, although MI5 was not itself a member of Europol because we are not a law enforcement agency. 645

Robert Hannigan explained that for GCHQ, which does not work directly with law enforcement in the same way, relationships with European counterparts were extremely important, but that cooperation takes place largely outside EU structures:

Over the last five years there has been an extraordinary change in the quality and quantity of sharing with European counterparts, driven partly by terrorism but also by other threats, cyber in particular and Russia. In general, the cooperation is better than ever. One of the things that all the agency heads did after the referendum was to reassure each other that that would continue. The legal basis … is bilateral in most cases. It does not touch on EU structures. Where it is multilateral in signal intelligence and cyber, it is done through a series of bilateral legal frameworks that exist between the SIGNIT agencies of the Five Eyes and a number of European countries both inside and outside the EU. 646
Government contingency planning

HASC reported in March 2018 that the National Crime Agency was unwilling to give public evidence on its contingency planning and expressed frustration that as a result, the public debate on this aspect of Brexit has been lacking in detail and urgency.647

The Committee recommended that the Government devote a substantial proportion of its Brexit planning fund to policing and security cooperation, including detailed impact assessments of losing access to existing measures and fully costed plans for contingency arrangements such as UK-based call centres for bilateral cooperation with EU agencies.648

In a follow-up inquiry, the Home Secretary told HASC that the Government was preparing contingencies for security arrangements but that they would be “suboptimal” in many areas, providing the example of the 1957 European Convention on Extradition.

HASC concluded that contingency planning in this area had been inadequate and that the Home Office’s Brexit planning budget was largely devoted to the UK’s future immigration system:

It is often said that the primary purpose of any Government is to protect its citizens from violence and harm – yet crucial questions about the UK’s future security relationship with the EU remain unanswered, and the issue continues to be side-lined by public debate about customs, borders and immigration after Brexit. […]

Without urgent action to make progress in these negotiations, and to put workable contingency plans in place for a ‘no deal’ scenario, the safety and security of UK and EU citizens will be put at serious and unnecessary risk.649

In September 2018 the National Police Chiefs’ Council (NPCC) announced the formation of a new national unit to assist police forces to use alternatives if the UK loses access to current measures. The plans would involve UK law enforcement reverting to international police tools through Interpol, bilateral channels and existing Council of Europe conventions.

The NPCC Chair Sara Thornton made the following statement:

Existing EU tools allow us to respond quickly and intelligently to crime and terrorism in the UK and the EU - they make us better at protecting the public. The alternatives we are planning to use, where they exist, are without exception slower, more bureaucratic and ultimately less effective. […]

We have agreed a model that minimises the risks and makes best use of already pressured police resources. It does not predict a worst-case scenario but it does prepare for it.650

648  Ibid, para 139
650  Police chiefs to establish a safety net if access to EU security tools is lost, NPCC Press Release, 18 September 2018
The Government has now published a draft SI, the *Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019*, the explanatory memorandum to which states that its purpose is to ensure that the UK’s statute book continues to function effectively in the area of security, law enforcement and criminal justice should the UK leave without a deal. The draft Regulations cover a wide range of issues, revoking measures that would otherwise be part of retained EU law, including on cross border surveillance; Europol; Eurojust, ECRIS; PNR; Prüm; SIS II; JITs; exchange of information and intelligence; and MLA. These changes are subject to certain saving provisions to deal with requests made or operations begun before exit day.

Part 14 of the Regulations would amend orders made under the *Extradition Act 2003* so as to re-designate the current Part 1 territories – those operating the EAW – as Part 2 territories. This will mean that extradition requests from Member States will be administered under Part 2 of the Act based on extradition arrangements under the 1957 European Convention on Extradition. Under this procedure, the Secretary of State is required to make a decision as well as the courts.

The accompanying Impact Assessment (IA) states that the Home Office has fully engaged with operational partners and the Devolved Administrations on preparations for a no-deal scenario. Costs are not monetised but the IA notes that legislating will enable the implementation of no deal contingency arrangements for extradition, which will result in the cost per incoming extradition case to rise. It states further that

> Due to the more complex extradition process set out under Part 2 of the Act, it is anticipated that the number of extraditions per year would be lower and each would take longer, with resultant implications for outcomes for criminal justice, including victims’ interests.  

651  Table 1

652  Para 83

**Are there any potential advantages to ‘no deal’?**

The Political Declaration on the future relationship between the UK and the EU notes that the scale and scope of the future security relationship will depend on

> … long-standing commitments to the fundamental rights of individuals, including continued adherence and giving effect to the ECHR, and adequate protection of personal data, which are both essential prerequisites for enabling the cooperation envisaged by the Parties.  

652  Para 83

This requirement is consistent with the EU's position set out in a set of slides on 18 June 2018 addressing ‘Police and judicial cooperation in criminal matters’, in which it was proposed that the UK’s withdrawal from the ECHR, or failure to execute a judgment of the European Court of Human Rights (ECtHR), would activate a “guillotine clause” with respect to internal security cooperation.
In a ‘no deal’ scenario, the UK would no longer need to adhere to these requirements and would therefore have greater latitude in its approach to balancing security against other factors. Some have advocated departure from the ECHR in order to pursue security objectives. 653

Proponents of Brexit also suggested during the referendum campaign that there would be a security dividend in the UK obtaining greater control over its borders, and thus being able to apply more stringent tests to EU nationals entering the country.654

Richard Martin made a similar point in evidence to the HL EU Home Affairs Sub-Committee, suggesting that post-Brexit there would be an opportunity to have stronger borders and to have more intervention at borders. However, he noted that this opportunity was dependent on having access to information about people attempting to enter the country.655 Other representatives of law enforcement, such as Rob Wainwright, suggested that a loss of access to databases would have a detrimental impact on border security, as noted above.

In January 2019 it was reported that Sir Richard Dearlove and Lord Guthrie, former chief of the defence staff, had written to Conservative Association chairs claiming that the WA threatens national security. The concerns raised in the letter related primarily to future defence and foreign policy cooperation and how this might impact on NATO and bilateral defence relationships. However, it also suggested that the WA posed a threat to the UK’s bilateral intelligence sharing relationships, in particular with the USA and the Five Eyes alliance. The letter concluded by asking the recipients to ensure that their MPs vote against the deal and “support a sovereign Brexit on WTO rules, without payment of ransom”.656

However, this was subsequently contradicted by another former head of MI6, Sir John Sawyers, who together with Lord Richards, former chief of the defence staff, and Lord Ricketts, former National Security Adviser, told Sky News that a no-deal Brexit would create a serious and immediate problem for British national security. He described the UK as being in a “uniquely powerful and influential position”, as the only country to be in NATO, the Five Eyes Alliance and the EU.657

653 Sir Michael Fallon suggested in a Commons debate on returning fighters that the ECHR makes it difficult to prosecute individuals who have travelled to join terrorist organisations overseas, and that the UK should therefore withdraw from it (HC Deb 23 July 2018, c727). A similar point was made by Colonel Richard Kemp writing in The Telegraph, 24 July 2018 about the prosecution of returning fighters: “Brexit enables us to leave the European Convention on Human Rights, which never contemplated the type of conflict we face and shackles our legal system in a way that costs innocent lives”.


655 Brexit: the proposed UK-EU security treaty, oral evidence, 2 May 2018, Q70

656 Ex-MI6 and defence chiefs warn Tory MPs to vote down Brexit deal that ‘threatens national security’, Sky News, 10 January 2019

657 National security will take ‘years’ to rebuild in event of ‘no-deal’ Brexit, Sky News, 25 January 2019
15.3 Civil justice cooperation

Extent of existing cooperation
The UK currently participates in certain measures designed to facilitate judicial cooperation in civil, family and commercial matters. These concern the choice of court to be used to determine disputes (jurisdiction), which country’s laws apply (applicable law), recognition and enforcement of legal decisions in different Member States, and the handling of cross-border procedural issues.

The Justice Sub-Committee of the House of Lords EU Committee summarised the practical effect of these measures as follows:

In the area of family law [these measures] provide certainty and protection to children and families in the often fractious and difficult environment of family disputes. … [S]uch disputes can be made additionally complicated by a cross-border element. …

In the civil field [the measures facilitate] the affairs of all those engaged in the myriad cross-border links enabled by the EU’s rules, from the tourist hit by a car in Warsaw, the consumer seeking redress for a defective product in Lisbon, to the employee seeking equal pay in London, and the tenant enforcing their rights in Nicosia. For businesses operating within the Single Market, from large multinational corporations to Small and Medium Enterprises, the [measures offer] all these people the reassurance that when problems arise legal remedies are readily available and easily enforceable across borders.658

For further detail on family law and child maintenance, see below.

Key measures
The Rome Regulations standardise the rules by which the applicable law is determined. They aim to ensure that the courts in EU Member States apply the same law to the same international dispute, in order to reduce the risk of forum shopping (choosing the most favourable jurisdiction for a particular dispute, rather than the most appropriate):

- **Rome I Regulation:**659 applies in relation to contractual disputes. It provides that, in the absence of party choice, the applicable law is the law of the place where the party performing the service characterising the contract has his or her habitual residence. It also applies with respect to the law of non-Member States.

- **Rome II Regulation:**660 applies in relation to non-contractual obligations. It provides that the applicable law for the resolution of non-contractual disputes is determined on the basis of where the damage occurs, or is likely to occur, regardless of where the act giving rise to the damage occurs. As with Rome I, it applies equally to the law of non-Member States.

---


What if there’s no Brexit deal?

• **Brussels I Regulation** (recast): applies in civil and commercial cases, typically with a cross-border or external element. It sets out reciprocal rules on:
  
  — Jurisdiction, that is, which court in which Member State should hear a particular civil/commercial dispute. The primary rule is that a defendant must be sued in courts of the State in which he or she is domiciled, although there are specific exceptions to this rule;

  — Enforcement of judgments, so that court judgments delivered by one Member State court must be recognised and enforced in another Member State without additional processes or procedures.

• **Brussels IIa Regulation** sets out a system for establishing jurisdiction in relation to divorce, legal separation and the annulment of marriage. It provides that an individual may take a matrimonial action in the courts of the Member State where one or both parties to the marriage are or were habitually resident or the Member State of the parties’ common nationality or domicile. It also provides a framework for the automatic recognition of divorces concluded in other EU Member States, without the need for any special procedure, and deals with matters of parental responsibility, including custody, access, and guardianship.

• **EU Maintenance Regulation** establishes similar rules on jurisdiction, recognition and enforcement of decisions in matters relating to maintenance obligations. It is designed to enable an individual to whom maintenance is owed easily to obtain in one Member State a decision that will be automatically enforceable in another without further formalities. It also establishes jurisdiction for the making of maintenance decisions and includes rules on the applicable law, that is, which Member State’s law should be applied to a particular dispute.

• **Small Claims Procedure Regulation**, **European Enforcement Order Regulation**, and **European Order for Payment Procedure Regulation** establish streamlined procedures for determining small claims and enforcing uncontested judgments and debts.

There are also a number of international agreements in this area that the UK is party to, either in its own right or by virtue of EU membership:

• **Lugano Convention 2007**: governs jurisdiction and the recognition and enforcement of judgments in civil and

---

662 Council Regulation (EC) No 4/2009 of 18 December on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
663 Regulation (EC) 861/2007 on European Small Claims Procedure
664 Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims
665 Regulation (EC) No 1896/ 2006 creating a European order for payment procedure
commercial matters between EU countries and Switzerland, Norway and Iceland;

- **2005 Hague Convention on Choice of Court agreements**: provides rules to ensure the effectiveness of exclusive choice of court agreements between parties to international commercial transactions;

- **1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children**: includes rules determining which country’s laws are to be applied, and provides for the recognition and enforcement of measures taken in one Contracting state in all other Contracting States. It addresses custody and contact disputes, care of children across frontiers, and the treatment of unaccompanied minors;

- **2007 Hague Maintenance Convention**: provides rules for the recognition and enforcement of child support and other forms of family maintenance;

- **EU/Denmark 2005 Agreement**: extends the Brussels I rules to Denmark (which has an opt out in the area of EU civil law).

**UK Government guidance**

In September 2018 the Government published guidance on **handling civil legal cases that involve EU countries if there’s no Brexit deal**. It explains that in this scenario there would be no agreed EU framework for ongoing civil judicial cooperation between the UK and EU countries. The UK would therefore repeal most existing civil justice cooperation rules and instead use domestic rules which currently apply to non-EU countries. The UK would retain EU rules in some instances, where they do not rely on reciprocity, or where they form the basis for existing domestic or international rules.

The UK would also continue to apply existing international agreements, and where the UK currently participates in Hague Conventions by virtue of its EU membership, it would make the necessary arrangements to continue to participate in these international agreements. The guidance notes that in many areas these agreements cover the same areas as EU-specific instruments, although they are not always as comprehensive. It advises any party to a cross-border legal dispute to consider the effect that these changes would have on any existing or future cases involving parties in EU countries, and suggests seeking professional legal advice.

**Civil and commercial judicial cooperation**

The guidance states that in a no-deal scenario the following rules would be repealed:

- Brussels I;
- The Enforcement Order, Order for Payment and Small Claims Regulations;
- The EU/Denmark Agreement;
- The Lugano Convention

The guidance advises that businesses, individuals and legal practitioners should consider how the domestic common law and statutory rules which would then apply in cross border cases would interact with the
domestic rules of relevant EU countries, to determine how jurisdiction should be established and whether any judgments should be enforced or recognised. It notes that there may be a lack of clarity about this interaction, meaning that some countries may not recognise judgments from UK courts.

In contractual and non-contractual disputes, the guidance states that the Rome I and Rome II rules will continue to apply, as they do not depend on reciprocity to operate.

It further states that the UK would take the necessary steps to re-join the 2005 Hague Convention, and that the Government anticipates this coming into force by 1 April 2019. It therefore advises that individuals and businesses consider the implications of any gap in coverage between the 29 March and 1 April.

European Commission Notice
The European Commission’s Notice to Stakeholders was updated in January 2019. It sets out the consequences of EU rules in the field of civil justice and private international law no longer applying to the UK:

- **International jurisdiction:**
  
  Proceedings pending on the withdrawal date: EU rules for international jurisdiction will apply with respect to proceedings involving a defendant domiciled in the UK which are pending before a court of the EU-27.

  Proceedings initiated as of the withdrawal date: EU rules will no longer apply to proceedings involving a UK domiciled defendant initiated on or after the withdrawal date, unless the EU instrument sets out rules of jurisdiction with respect to third countries. Jurisdiction will therefore be governed by national rules of the Member State in which proceedings were initiated. In some instances international conventions will apply.

- **Recognition and enforcement:**
  
  Exequatured judgments: if a judgment of a UK court has been ‘exequatured’ (formally accepted in the other jurisdiction) in the EU-27 before the withdrawal date it may still be enforced.

  Proceedings pending on the withdrawal date: if a judgment of a UK court has not been exequatered before the withdrawal date, the EU rules on recognition and enforcement will not apply to a judgment that has not been enforced before the withdrawal date. This is the case even where the judgment was handed down before the withdrawal date or the enforcement proceedings were commenced before the withdrawal date.

  Proceedings initiated on or after the withdrawal date: EU rules will no longer apply to proceedings to enforce a judgment of a UK court that are commenced as of the withdrawal date in the EU-27. Recognition and enforcement will therefore be governed by the national rules of the Member State in which recognition/enforcement is sought.
The Notice advises that stakeholders should take these consequences into consideration when assessing contractual choices of international jurisdiction.

The Notice further provides that, as of the withdrawal date, EU-27 Member States should not proceed further with pending judicial cooperation procedures (eg on service of documents and taking evidence), or launch new procedures, involving the UK.

It advises all national Central Authorities to assess whether judicial cooperation procedures risk being pending on the withdrawal date and whether the procedure can continue under national law or a relevant international convention.

**Family law**

**Child maintenance**

**Relevant provisions affected by no deal EU exit**

- EU Regulation 4/2009
- Lugano Convention

In the UK most child maintenance cases are handled by the Child Maintenance Service (CMS), or for the remaining legacy cases the Child Support Agency (CSA), under the statutory child support scheme – these will not be affected by a no deal exit from the EU.

However, in cases where the CMS or CSA does not have jurisdiction, e.g. where one of the parties is not habitually resident in the UK, then the matter can be referred to a court instead. In the event of a no-deal exit, the Government has stated that in regard to cases in court:

- If you have an ongoing case about maintenance payments for a child or husband/wife in England, Wales or an EU country on 29 March 2019, your case will continue unchanged.
- If you make new or further applications after 29 March 2019, your application may need to be made to a different court or under a different process. Speak to your lawyer for advice.
- If you have a child maintenance decision which you want to have recognised and enforced in an EU country after 29 March 2019, you can contact the Reciprocal Enforcement of Maintenance Orders (REMO) unit.
- If your maintenance case was resolved and has been recognised by the relevant court in an EU country before 29 March 2019, you should not be affected.

In cases of cross-border child maintenance cases involving EU Member States, it is possible seek a reciprocal enforcement of a maintenance order (REMO) made in the UK through EU Regulation 4/2009. Should

---

667 Foreign and Commonwealth Office and Ministry of Justice, Guidance: Family law disputes involving EU after Brexit, 6 February 2019
the UK leave the EU without a deal, this regulation would no longer apply.

There is the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and the Protocol on the Law Applicable to Maintenance Obligations. But the UK has not ratified the Convention and is only bound by it as a result of its approval by the EU. If there is no deal, the UK would need to apply to accede to the Convention in its own right. The Government has indicated that it would do so, stating in September 2018 that in the event of a no-deal exit from the EU it:

would take the necessary steps to formally re-join the 2007 Hague Maintenance Convention (in which we currently participate because of our EU membership). It is anticipated that it would come into force by 1 April 2019. Parties would need to consider the implications for any new maintenance applications made during the gap in coverage between 29 March and 1 April 2019.

Regulations have already been made to ensure that the “implementing legislation to ensure that the necessary domestic legislation” to become an independent contracting member of the 2007 Hague Convention “is in place”. The Government anticipates that this Convention would come into force in the UK “by 1 April 2019”, but that “parties would need to consider the implications for any new maintenance applications made during the gap in coverage between 29 March and 1 April 2019”.

The Government has recognised that there are differences between EU Regulation 4/2009 and the 2007 Hague Convention, but has said the Hague Convention provides “an effective alternative to the EU rules”. However, The Bar Council for England and Wales has contended that “the 2007 Hague Convention on maintenance, to which the UK could accede, would to a much lesser extent fill the gap left by the Maintenance Regulation”.

---

668 See: https://www.hcch.net/en/instruments/conventions/full-text/?cid=131
669 Department for Business, Energy and Industrial Strategy, and Ministry of Justice, Guidance: Handling civil legal cases that involve EU countries if there’s no Brexit deal, 13 September 2018
672 Department for Business, Energy and Industrial Strategy, and Ministry of Justice, Guidance: Handling civil legal cases that involve EU countries if there’s no Brexit deal, 13 September 2018
673 Compared to other aspects of international family law that it considered and the international agreements that could be substituted in those areas.
In addition, REMOs can be established with EFTA members Norway, Iceland and Switzerland through the Lugano Convention which the EU, rather than individual Member States, has ratified.

In the event of ‘no deal’, the UK would need to re-join the Lugano Convention in its own right, which the Government has not ruled out.675 The Government has said that in the mean-time:

we would instead revert to the existing domestic common law and statutory rules, which currently apply in cross border cases concerning the rest of the world, to govern our relationship with the remaining EU countries (and Iceland, Norway and Switzerland).676

**International child abduction**

**Relevant provision affected by no deal EU exit**

European Council Regulation No. 2201/2003 (“Brussels IIR”)

Sometimes a parent takes a child across international borders and retains them overseas without the consent of the other parent.

Where the two countries concerned in a child abduction case have brought the 1980 Hague Convention on the Civil Aspects of International Child Abduction into force, a court hearing takes place in the country to which the child has been taken to determine the return of the child to their country of origin.

The UK is a signatory in its own right to the 1980 Hague Convention, which for cases involving EU Member States (except Denmark) is supplemented by certain provisions of Council Regulation No. 2201/2003 (‘Brussels IIR’).

**Box 7: A primer on Brussels IIR/IIa**

Brussels IIR (also known as “Brussels II bis” or “Brussels IIa”) affects a number of family law matters. As the Law Society explains:

“The Brussels II bis Regulation is a single legal instrument that aims to help international families to resolve disputes, involving more than one EU state, over divorce and the custody of children. It aims to:

• provide rules to determine which court is responsible for dealing with matrimonial matters and parental responsibility in disputes involving more than one EU state
• simplify the recognition and enforcement of judgments (e.g. a court order) from one EU member state to another
• provide a procedure for situations in which a parent abducts a child and takes them to another EU state.

“The present system does not deal with substantive family law, which remains in the scope of the national law.

“Under the Regulation, EU courts automatically recognise judgments delivered in other EU states on matrimonial and parental responsibility matters. Recognition can be refused only in certain cases”. 677

The European Commission has published a [Practice Guide for the application of the Brussels IIa Regulation](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1523655320669&file=OJ-L-2014-374-EN.pdf) which sets out how Brussels IIR complements the Hague Convention in more detail. For example, under

---

675 BEIS and MoJ, [Guidance: Handling civil legal cases that involve EU countries if there's no Brexit deal](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690766/brussels_iir_no_deal_guide.pdf), 13 September 2018

676 Ibid

Brussels IIR, “the court shall ensure that the child is given an opportunity to be heard during the proceedings, unless it is inappropriate having regard to the child’s age and maturity”. Another example is that “the court shall use the most expeditious procedures available in national law. The court shall issue its decision no later than 6 weeks from the lodging of the application, unless this proves impossible due to exceptional circumstances”.

A full list of the ten areas in which Brussels IIR complements the 1980 Hague Convention can be found in section 1.2 of the Library briefing paper, *International child abduction*. Although the additional safeguards provided by Brussels IIR will be lost should the UK leave the EU without a deal, the Government contends that:

After 29 March 2019, whether the UK leaves the EU with a deal or not, the rules about abduction or wrongfully retained children in EU countries will mostly not change.679

**Parental responsibility**

**Relevant provision affected by no deal EU exit**

European Council Regulation No. 2201/2003 (“Brussels IIR”)

Parental responsibility is a legal concept concerning the rights of a parent to take important decisions in regard to that child’s life and their property.

The UK has ratified and brought into force the 1996 *Hague Convention on the Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*. Should the UK leave the EU without a deal, this will not be affected. However, as with international child abduction, the Hague Convention is supplemented by the Brussels IIR regulation.

The UK Government has explained the impact of leaving the EU without a deal in this area:

If you start a case about arrangements for your children where you have a dispute with your partner parental responsibility after 29 March 2019, the new rules will be in place but you should apply in the same way. Speak to your lawyer for advice.

- If a case about arrangements for your children (parental responsibility) is ongoing in England or Wales on 29 March 2019, your case will continue under the current rules.
- If a case about arrangements for your children (parental responsibility) is ongoing in an EU court or needs to have judgments accepted and put into action in an EU country after 29 March 2019, this may need to be done in a different court or under a different procedure. Speak to your lawyer for advice.
- If a case about arrangements for your children (parental responsibility) has been made final and

---

678 Hershman and McFarlane, Children Law and Practice, para G172AA
recognised by a court in England or Wales before 29 March 2019 it should not be affected. However, if you make further applications (even about the same child(ren)) these may need to be made to a different court. Speak to your lawyer for advice.680

The Bar Council for England and Wales has commented:

The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (which the UK has already ratified) would significantly (but not entirely) fill the gap left by the children aspects of Brussels IIa.681

**Effect on ongoing civil and family cases**

The Government guidance states that the Government will seek to provide legal certainty for businesses, families and individuals who are involved in ongoing cases on exist day, and that broadly speaking, cases ongoing on Brexit day will proceed under the current rules. It acknowledges that it cannot be guaranteed that the EU courts will follow the same principle, nor that they will accept or recognise any judgments resulting from these cases. Individuals with cases proceeding on exit day are advised to seek legal advice.

A number of draft SI have now been published which would seek to give effect to the Government’s intentions.682

---


682 The Law applicable to contractual obligations and non-contractual obligations (amendment etc) (EU Exit) Regulations 2018; Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019; Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018
16. External relations

16.1 EFTA separation agreements

On 20 December 2018, the Government announced it had reached agreement with the three EFTA EEA countries to address separation issues following Brexit, including protecting the rights of UK citizens living in these countries and citizens of these countries living in the UK, as well as an agreement with Switzerland covering citizens’ rights.

The agreement with the EEA EFTA states (Norway, Iceland and Liechtenstein) covers separation issues similar to some of those covered by the UK-EU withdrawal agreement, including citizens’ rights, arrangements for goods placed on the market, intellectual property, ongoing police and judicial co-operation, ongoing judicial procedures, data protection and public procurement. It winds down certain arrangements that the UK has with these states by virtue of the UK’s participation in the EEA agreement (as a member of the EU) as well as addressing citizens’ rights following the UK’s exit from the EU. On citizens’ rights it provides that all UK nationals legally resident in EEA EFTA states and nationals of these countries legally resident in the UK at the end of the post-Brexit implementation or transition period will have the right to reside permanently in these countries, together with family members. Close relatives will be able to join them at any point in the future. The right to permanent residence will apply to those who have resided continuously in the host state for five years. Those who have not met this threshold will also be able to stay and then apply for permanent residence once they have reached the threshold. The agreement also covers rights of workers, equal treatment, mutual recognition of qualifications and social security co-ordination.

The Government explainer for the agreement said that it would be implemented in domestic legislation through the planned EU (Withdrawal Agreement) Bill. The agreement is predicated on the approval of the UK-EU Withdrawal Agreement (WA), with most provisions applying following the envisaged implementation or transition period in the WA. Article 4(3) states that the provisions of Part Two (Citizens’ Rights) and Part Three (Separation Provisions) shall be implemented in conformity with the corresponding provisions in the EU-UK WA. The agreement would not apply in the event of the WA (or an amended version of it) not being approved. In announcing the agreement, the Government said it was “discussing no deal arrangements with the EEA EFTA states”.

The UK-Switzerland agreement is narrower in scope, just covering citizens’ rights. As with the agreement with the EEA EFTA states, the Government explainer for the agreement said that it would be implemented in domestic legislation through the planned EU (Withdrawal Agreement) Bill. Unlike the agreement with the EEA EFTA states, the agreement with Switzerland will come into force in the event
of no deal with the EU. It provides that the agreement will come into force following the envisaged implementation or transition period should the WA be approved, or from the date of exit from the EU if there is no deal.

The agreement protects the rights of Swiss and UK nationals who have acquired rights under the EU-Swiss agreement on the free movement of persons (FMOPA), which will no longer apply to the UK as a consequence of UK withdrawal from the EU. It provides that UK nationals and family members lawfully residing in Switzerland and Swiss nationals and family members residing in the UK on the specified date (the date of Brexit if the UK leaves the EU with no deal, or the date of the end of the transition period if there is a deal) will be able to continue living in their host countries. There are also rights to family reunion for five years after the arrangements enter in force. Once they have five years residence, citizens covered by the agreement will be able to apply for settled status in the UK or permanent residence in Switzerland. The agreement also covers rights of workers, equal treatment, mutual recognition of qualifications and social security co-ordination.

The Government statement announcing both agreements said that EEA EFTA and Swiss nationals who want to stay beyond the end of the implementation period will be able to apply to the UK’s Settlement Scheme in the same way as EU citizens, and would need to do so by June 2021.

On 8 February 2019, the Government announced that it had reached a separate agreement with Norway, Iceland and Liechtenstein to protect citizens’ rights in a no deal scenario.

16.2 Open Skies agreement with the US

On 28 November 2018 the Government announced that it had concluded a new ‘open skies’ air services arrangement with the USA ahead of EU exit. This would replace the existing EU aviation agreement with the USA (as it applies to the UK) and would safeguard flights between the UK and the USA after Brexit.

The Government said that this was one of nine new bilateral aviation arrangements the government has already concluded with countries guaranteeing the continuation of vital air routes. The others are with Albania, Georgia, Iceland, Israel, Kosovo, Montenegro, Morocco and Switzerland. This was followed by an announcement on 30 November that a similar air services agreement had been concluded with Canada. On 17 December, Transport Secretary Chris Grayling said he would, that day, be signing the previously flagged air services agreement with Switzerland.
16.3 The EU’s international agreements

The UK is currently party to numerous international agreements with third countries as an EU Member State. The EU’s Europa online treaties database lists 1,256 international agreements to which the EU is party. How many of these are pertinent to the UK is as yet unclear. But as most aspects of external relations are Member State or shared competences, there are more options available to the UK to establish working bilateral mechanisms for cooperation in a no-deal scenario.

A report in the Financial Times in May 2017 suggested that there were 759 separate EU international agreements with potential relevance to the UK. These included 295 agreements related to trade (discussed in section 6), as well as agreements on regulatory co-operation, fisheries, agriculture, nuclear co-operation and transport co-operation (including aviation agreements enabling air transport). The agreements cover 168 countries, with multiple accords with certain countries.

Liam Fox has indicated that such high figures are misleading, and that not all of the treaties would require action to maintain continuity following Brexit. Some of these treaties have been superseded, are redundant or no longer relevant to the UK, and there are also multiple agreements that could be understood as one agreement. It is not possible to identify which treaties remain in force from the FCO UK Treaties Online database. Dr Fox said in December 2017 that work was “ongoing” to “identify the full range of agreements that are affected by exit and to take action to ensure continuity for businesses and individuals on exit”.

The Department for Exiting the EU oversees the International Agreements programme across the Government, with the Foreign and Commonwealth Office (FCO), the Department for International Development and the Department for International Trade having responsibility for agreements. A Financial Times article on 29 October 2018 reported that the UK had so far managed to rollover only 14 of 236 relevant EU international treaties, referring to figures discussed at an internal meeting of Government officials. It said the 236 treaties covered trade, aviation and financial services, fisheries and the nuclear industry.

UK relations with most of the states that are party to the European Neighbourhood Policy (ENP) are, at least partially, mediated through that relationship. So ‘no deal’ would mean the UK would drop out of the Association Agreement with Ukraine, for example, and in addition to losing the EU-Ukraine Deep and Comprehensive Free Trade Area, it would not be able to participate any longer in EU-led stabilisation initiatives there.

---

683 See Letter from Dr Liam Fox, Secretary of State for International Trade, to the Chair of the International Trade Committee, 4 February 2019.

684 The ENP seeks to link countries to the east and south of the territory of mainland Europe to the EU.
In oral evidence to the International Trade Committee on 30 January 2019, Sarah Taylor, Director for International Agreements at the FCO, explained that the FCO is leading on the rollover of EU association agreements with Albania, Algeria, Bosnia, the Central Americas, Egypt, Georgia, Jordan, Kosovo, Lebanon, Macedonia, Moldova, Montenegro, Morocco, Serbia, Tunisia and Ukraine.

Although these agreements contain a trade element, they also contain other political and co-operation areas of agreement, and it was decided that the FCO should lead on them “because of the breadth of the nature of the relationships that those agreements represent”. In addition to these, the FCO is also leading on 11 political co-operation agreements relating to the support of human rights, democracy and security co-operation rather than trade.

Ms Taylor explained that the political co-operation agreements do not require rollover in the same way, as they are not treaty based and take a number of different forms, not all of which “has to be replicated in exactly the same way”.

Regarding the 16 association agreements, Ms Taylor said she was “confident that a number of those agreements will be signed in time for 29 March” but did “not have absolute confidence that every single agreement will be in place by 29 March” and it was “unlikely that all those agreements will be in place”. Ms Taylor explained that:

These discussions are ongoing. You will know that, through technical discussions, which are happening as we speak, things can become unblocked very quickly, discussions can move very fast and, equally, discussions where you think you are nearly there can throw up new legal questions that you need to go away and think about. I am not going to prejudice those discussions.685

In the absence of definitive information about the state of play of negotiations with third countries on the rollover of existing trade and other co-operation arrangements, the areas of co-operation covered and the Government’s assessment of which of the EU’s international treaties require replacement in order to avoid disruption of relations, it is difficult to assess whether the necessary arrangements will be in place by March 2019.

The impact of ‘no deal’ on trade agreements specifically is discussed in section 6.4.686

Government update on international agreements signed and nearly ready
On 25 January 2019, Brexit Secretary Steve Barclay wrote to the Chair of the Exiting the EU Committee and other Committee chairs attaching a list of bilateral agreements the Government has so far signed with third countries to replace existing EU international agreements, those

686 For further information, see House of Commons Briefing Paper 8370, UK adoption of EU external agreements after Brexit, 24 July 2018, and House of Commons International Trade Select Committee report on Continuing Application of EU trade agreements after Brexit published on 28 February 2018.
that it expects to sign in the near future and those where the text is nearly finalised. In his letter Mr Barclay said:

As you will be aware, we have been working with third countries to identify which of the EU’s existing international agreements are relevant, important and need action as a result of our exit from the EU. Not all of these need action. This is for various reasons; some of these agreements have been superseded because they have been amended over time as the terms have changed or new countries have joined the EU; some are not applicable to the UK, and in some instances, we signed the agreement as a member in our own right and so our membership will therefore continue. As a consequence, the number of replacement treaties is much lower than the full list on the EU Treaties database.

The trade-related agreements signed/nearly ready to be signed or close to being finalised are listed in section 6.4. Other agreements on the list of signed deals include nuclear co-operation agreements with Australia, Canada, USA and the IAEA, and nine air services agreements (see section 16.2). Agreements that the UK intends to sign shortly include a further seven air services agreements. Among the agreements which the Government says is close to being finalised is the UK-EEA EFTA Citizens Rights’ Agreement, which it says will “largely seeks to preserve the terms of the EEA EFTA citizens’ rights element of the separation agreement, in a no deal scenario”.

The Government also listed multilateral agreements for which the UK is taking action to become an independent party. These include the Hague Conventions on the International Recovery of Child Support and Other Forms of Family Maintenance, and on Choice of Courts Agreements, various international fisheries conventions, the Agreement on Government Procurement (GPA), the Convention on a Common Transit Procedure (CTC) and the Interbus agreement.

FCO funding
According to the NAO report, Implementing the UK’s exit from the European Union. The Foreign & Commonwealth Office, April 2018, “Under a ‘no deal’ outcome with the EU the FCO will request a further £65 million for 2018-19” and possibly more to support some of the Overseas Territories. The report notes:

Having previously reduced the number of UK diplomats across the EU27, the FCO now intends to increase them in order to enhance its ability to engage bilaterally with member states. Although the FCO does not have reliable data on actual numbers, it is clear that the number of UK diplomats reduced substantially in the decade up to the EU referendum. To compensate for leaving the EU institutions the UK is increasing staffing numbers across the FCO’s Europe network in the EU27 member states. In March 2018, the FCO announced 250 new posts in its overseas network, including the Europe network.

Overseas aid spending
The EU has been one of the UK’s largest multilateral aid partners. We are still waiting to find out whether any UK aid will be channelled through the EU after Brexit. It is reasonable to anticipate that about 10% of the UK’s 2019/20 aid budget will potentially be available for
reallocation after Brexit. This looks all but certain in the event of ‘no deal’.

The Government spent £884 million in aid through the EU in 2017, around 6% of all aid spending.\(^{687}\) If the UK stops contributing to all EU development activities, this will not result in it spending less money on aid (because it is legally obliged to continue to spend 0.7% of gross national income as aid each year); it will, however, mean that this aid will have to be spent differently.

In the July 2018 White Paper on the future relationship between the UK and the EU, the UK Government proposed that the two parties make a series of cooperative accords, one of which would cover international development and international action.\(^{688}\) This would provide a framework under which the UK could continue to participate in EU activities, potentially including those which spend aid money. The EU does already have agreements with third countries covering specific aid programmes, implying that such collaboration is possible.

Current proposals for future EU development funding emphasise converting multiple funding streams into a single external action instrument, rather than the kind of openness and flexibility towards non-member states which the UK has said it would like to see. So, whether there is a deal or not, it remains unclear whether (and if so, how) the UK might participate in EU development activities in future as a third country.

In recent months, there has been concern that the European Commission may decide that UK-based humanitarian NGOs should be immediately ineligible to continue to receive EU funding in the event of a ‘no-deal’ Brexit. In response, the UK Government has pledged to cover any loss of EU funds by UK-based humanitarian NGOs acting as lead consortium partner or sole implementer of pre-existing programmes.

A more detailed explanation of the UK’s aid spending, and a discussion of the possible ways in which it could change after Brexit, are covered in a House of Commons Library briefing paper, UK aid: frequently asked questions.

### 16.4 External security

**Foreign and defence policy**

With no deal the UK would lose access to Common Foreign and Security Policy (CFSP) decision-making mechanisms used to co-ordinate joint responses to foreign policy challenges across all EU Member States. A recent example is the EU response to the Skripal assassination attempt, when the EU recalled its ambassador from Moscow, and EU Member States, as well as NATO partners and the US, ordered the expulsion of Russian diplomats. There are also questions around

---

\(^{687}\) DFID, Statistics on International Development: Provisional UK Aid Spend 2017, 5 April 2018

\(^{688}\) DExEU, The future relationship between the United Kingdom and the European Union, 12 July 2018
intelligence sharing, if there is no legal mechanism in place to share classified information (as discussed in section 14 above).

But the implications of ‘no deal’ for UK defence policy and the UK armed forces would be arguably relatively limited.

Successive Governments have stated that NATO is the cornerstone of European defence and security, supported by a network of strong multilateral and bilateral alliances and partnerships of which the UK is a participant, including permanent membership of the UN Security Council. From the UK’s perspective the EU has instead been a notable ‘soft power’ actor, focusing on crisis prevention, crisis management and post-conflict stabilisation. In terms of military capabilities the UK could also be considered a net contributor to the EU.

Were the UK to leave with EU with ‘no deal’, the most immediate implication would be that that UK would no longer be able to participate in CSDP missions, the EU battlegroups or in organisations such as the European Defence Agency (EDA). All military personnel deployed on EU-led operations, such as Operation Althea in Bosnia, would have to return to the UK, along with all UK military staff seconded to the EU. Yet, the UK’s ability to project military power would arguably remain largely unaffected at this time. ‘Hard’ power would continue to be the purview of NATO or ‘coalitions of the willing’; while any shortfalls in soft power projection could be compensated for through other multilateral or bilateral frameworks.

In terms of capability development, the UK would no longer be able to participate in the European Defence Agency, or any projects currently underway under the remit of the European Defence Research Programme (which is part of the European Defence Fund). Even during the proposed transitional period, the UK could already be excluded from certain EU-funded research & development projects related to defence because of their ‘sensitive’ nature.

In the longer term, however, and regardless of a ‘no deal’ scenario, the UK could seek to re-negotiate its participation in EU military operations.

---

689 The UK is one of the largest and most advanced military powers in the EU in terms of manpower, assets, capabilities and defence spending. It currently provides 20% of the EU’s force catalogue, including strategic enablers such as airlift, refuelling and intelligence surveillance and reconnaissance. It is also one of only five EU countries capable of deploying an operational HQ and therefore taking command of a mission. At present the UK provides the operational HQ of the CSDP mission Operation Atalanta. On the other hand, the UK contributes only 3-5% of CSDP spending (it varies a little depending on whether military only or civilian and military together are taken into account.

690 It would also no longer be able to provide the operational headquarters of Operation Atalanta, although this would also be the case under any withdrawal agreement.

691 The UK is currently part of the Pythia project and Ocean 2020 project. The ‘capability’ strand of the EDF (the European Defence Industrial Development Programme) is currently being established, with a view to the first projects being financed from 2019. Third party arrangements allowing access to the fund are currently being negotiated and would be relevant to Brexit regardless. The UK is also not currently part of Permanent Structured Cooperation (PESCO). Details on all of these initiatives is available in Library Briefing Paper CBP 8216, European defence: where is it heading?
via a third party framework agreement, in much the same way that the United States, Canada and Norway have.692 The same is true of the European Defence Agency,693 and the European Defence Fund, although under current assumptions third country access to the European Defence Fund will be tightly controlled and therefore the impact on the UK will be the same whether it leaves the EU with an agreement or not.

Indeed, in the event of a ‘no deal’, and were the UK to pursue third country agreements in the longer term, then the majority of the negotiations and debate would centre around exactly the same discussions which are happening now with respect to Brexit. Yet, the political will of the EU27 to positively engage with the UK in such negotiations following a ‘no deal’ scenario is debatable. As a result the process could be lengthy, and the terms of engagement could be less favourable.

There is a school of thought which would argue that, in defence terms at least, the EU needs the UK. And given recent shifts in the international security environment, the increasing belligerence of Russia and a US President who appears to have very little time for European security or the US’ European allies, engaging the UK as a third country participant in CSDP regardless of a no deal scenario may not be so unappealing. There is another view that it could be helpful for the UK to be leaving, after years of blocking developments such as an Operational Headquarters.694

But there are also non-EU initiatives afoot, such as French President Macron’s European Intervention Force proposal, in which the UK could take part whether or not there’s a Withdrawal Agreement, if there is sufficient political will.695

Sanctions

A no-deal Brexit seems not to have been discussed during debates on the Sanctions and Anti-Money laundering Bill.

The UK Government currently imposes sanctions and updates the anti-money laundering (AML) regime using powers in the European Communities Act 1972 (ECA) and other instruments such as the Export Control Order 2008 and the Immigration Act 1971. The powers under the ECA will disappear on exit day under the EU(Withdrawal) Act and

---

692 As a result, Canada and Norway have both contributed forces to Operation Althea in Bosnia, Canada has provided personnel for EU police Missions in Bosnia and the Democratic Republic of Congo, while Norway has contributed assets to Operation Atalanta (EUNAVFOR) and has provided forces to the EU Nordic Battlegroup.

693 In 2006 Norway, for example, signed an administrative agreement with the EDA which allows it to participate in the Agency’s research and technology projects. Switzerland also has a similar cooperation agreement. Under current Brexit discussions the UK will still have to conclude an Administrative Agreement with the EDA to continue participating in specific EDA capability projects.

694 A decision to establish an EU Military Planning and Conduct Capabilities (MPCC) unit to run “non-executive” training missions in parts of Africa was adopted in June 2017, having been blocked by the UK Government, which objected to the use of the term ‘operation headquarters’.

the commencement of provisions under the *Sanctions and Anti-Money Laundering Act*, which gives the UK Government new powers not dependent on EU membership.

A no-deal Brexit would give the UK Government the immediate freedom to implement regulations that differ from the EU’s. Sanctions and AML regimes are, however, usually coordinated internationally (depending on the regime), for example at G7 meetings, by UN resolution, or following decisions by the international Financial Action Task Force. The freedom to impose unilateral UK rules is unlikely to be exercised very often. The Government has in any case repeatedly insisted - including during the debate following the [statement](#) on 5 September 2018 on the Salisbury Skripal investigation - that it intends to keep aligning its sanctions policy with the EU’s. This is unlikely to change in a no-deal scenario.

**Government guidance**

On 12 October 2018 the Government published guidance on [sanctions policy if there’s no Brexit deal](#), which it [updated](#) on 1 February 2019. The guidance stated that the UK would carry over all existing EU sanctions, mostly in the form of regulations using the powers in the Sanctions Act. Many of the necessary regulations would be put before Parliament before March 2019 to prepare for the possibility of a no-deal exit.

Any sanctions regimes that had not been carried over using the Sanctions Act would become retained EU law through the powers in the *EU (Withdrawal) Act*, meaning that there would be no gaps.
Appendix

Brexit no-deal planning in the EU27

Austria

The Austrian Chancellor Sebastian Kurz said in 2018 he would rather extend negotiations than surrender to a hard Brexit if a deal on the Irish border was not agreed.696 According to Bloomberg (19 July 2018), Austria did not anticipate customs problems “because the current WTO regime could handle shipments to and from the U.K”. The Government was also “confident the country’s banking industry is prepared for all scenarios”.

Belgium

The Belgian Government hired more agents for the port of Antwerp and looked into “the need for scanners, sniffer dogs, weapons and drones to beef up post-Brexit customs surveillance” to monitor its coastline and the North Sea.697

Open Europe reported in August 2018:

The Belgian customs administration has also set up an internal committee which will be responsible for the extra infrastructure and for training the new staff. It has drawn up a list of potential items that may be needed after Brexit, which reportedly includes more luggage scanners, sniffer dogs, manual scanners, drones to survey the coastline, a submarine to examine ships in the North Sea, as well as vehicles, computers, work spaces, and uniforms. There are also plans to coordinate with neighbouring countries, the European Commission, Belgian ports and airports.

Special attention is being devoted to the ports of Zeebrugge and Antwerp, which are big re-exporters of goods to the UK. Together with the Dutch ports they account for the majority of total inbound and outbound traffic with Britain’s ports. The CEO of Zeebrugge, which has 46% of its traffic with the UK, has claimed the port will be ready for Brexit. It is building a digital platform to speed up bureaucratic procedures, and thinks it may be better equipped than some competitors, because it specialises in people-free freight.698

Flanders News reported on 16 January 2019:

Only one in five Belgian businesses trading with Britain is ready to fulfil customs formalities on shipments bound for the UK after it leaves the European Union at the end of March. An estimated 25,000 Belgian companies trade across the English Channel. Today 20,000 remain unprepared.

On 16 January 2019 deputy prime minister, Didier Reynders, said that safeguarding the rights of UK and Belgian citizens living in each other’s country was “a priority” in its no-deal planning. The social affairs

696 See Politico, 6 July 2018
697 New York Times, 19 July 2018; The Express, Brexit no deal MAPPED: How EU countries are secretly preparing for no deal UK exit from EU, 20 July 2018
698 Open Europe, The view from Brussels: How are the EU27 preparing for a ‘No Deal’ Brexit? Pieter Cleppe, 30 August 2018
What if there’s no Brexit deal?

minister, Maggie De Block, wrote in a blog on 16 January 2019 that reciprocal rights would be guaranteed and the Belgian Government will publish measures allowing UK nationals lawfully residing in Belgium on 30 March to continue to live and work in Belgium, at least temporarily. The measures are currently being reviewed by the Council of State.

Bulgaria

Bloomberg reported in July 2018 that Bulgaria was preparing for the risks of three possible Brexit scenarios: a comprehensive agreement, a partial agreement, and no deal. The Government would “develop a detailed action plan for the three scenarios”.

Denmark

Denmark has made contingency plans for a no-deal Brexit, including setting aside 700 million kroner to cover extra payments to the EU. Finance Minister Jensen said in August 2018:

We don’t expect Brexit to materially impact the 2019 budget structurally, so the budget will be stable and reliable. But what actually will happen is that our payment to the EU may change if we get a hard Brexit.

Through 2019 and maybe into 2020 we’ll be negotiating the EU budget for years to come and we’ll be missing the voice of the U.K. when advocating fiscally responsible spending.

On 2 October Prime Minister Rasmussen told the new Danish Parliament “We are employing customs officers and preparing the system”. He also assured British citizens living in Denmark that “no matter the end result of the negotiations”, they would be looked after.

In their Negotiating Brexit chapter, Jensen and Kelstrup reported that the Danish Government’s Brexit task force was collecting intelligence from ministries and stakeholders on areas that will be affected by a no deal Brexit and preparing contingency plans.

Finland

The Finnish Government instructed ministries to prepare for any outcome in the Brexit negotiations. Its main concern was the aviation industry, but in mid-2018 “no concrete contingency preparations” had started.

A report in October 2018 on UK nationals living in Finland said that according to officials at the Interior Ministry, “up to now, not much thought has gone into the scenario of what should happen to more

699 Bloomberg, Hard Brexit? Denmark Prepares for Worst with Budget Reserve, 30 August 2018
700 The local.dk, Brexit is ‘tragedy’. Danish government will ‘look after’ Brits in Denmark: PM, 2 October 2018; YouTube, 2 October 2018
701 Bloomberg, How Europe Is Bracing for Messy Brexit: Dogs, Drones, Do Nothing, 19 July 2018
than five thousand British passport holders who currently live and work in Finland”.702

France
France has been preparing for Brexit “for almost two years in sectors spanning from fisheries and borders to financial services”.703

Prime Minister Édouard Philippe said on 27 August 2018 that France would be ready in the event of a ‘cliff edge’ exit. He has “tasked ministers to prepare contingency measures that would be necessary... to mitigate the difficulties linked with this unprecedented challenge”.704 France has adopted measures on the status of approximately 150,000 UK citizens living in France. They have been encouraged by the French Government to apply for a ‘carte de séjour’ residency permit to avoid administrative chaos post-Brexit”.705 In the case of ‘no deal’ Prime Minister Philippe wanted plans in place to “facilitate the residency of British nationals already living in France” and to ensure “the greatest possible fluidity of border controls”.706 The Government will shortly present a bill to the French Parliament.

According to The Guardian, Xavier Bertrand, a former French minister and president of Hauts-de-France, has said that “Calais was prepared to solve the problem of space for checks in Dover”. The port had acquired 17 hectares (42 acres) of land, which could be used for customs inspection posts and storage. France is also reported to be planning to recruit 700 new customs officials, some of whom will be based in Calais. An additional 250 members of staff have been recruited in 2018, rising to around 700 by the end of 2020.707 The port also wants to test a new “Fastpass” virtual queuing system, whereby preloading passport and cargo information would increase the speed of border inspections.708

Speaking at Chatham House on 13 September 2018, Europe Minister Nathalie Loiseau said the French Government would introduce emergency legislation within weeks to protect its citizens from the impact of Britain leaving the EU without a deal in March 2019. She warned that in the absence of any contingency plans, Eurostar trains could be stopped on reaching French territory, and planes from the UK could be prevented from entering French airspace.709

---

702 Newsnowfinland, Interior Minister: No guarantees for Brits in Finland if Brexit deal fails, 17 October 2018
703 The Express, Brexit no deal MAPPED: How EU countries are secretly preparing for no deal UK exit from EU, 20 July 2018
704 France24, France and Germany are making contingency plans for a no-deal Brexit, with Paris looking at residency issues and Berlin examining medical supply chains with the UK, 29 August 2018
705 Ibid
706 The Local Fr, No-deal Brexit: French government makes contingency plans for Brits living in France, 28 August 2018
707 The French customs authority has produced detailed online information (in French) for businesses on how to prepare for Brexit.
708 'Dover-Calais 'facing economic catastrophe' due to Brexit', Guardian, 17 July 2018
709 See also Independent, Eurostar will not run if there is a no-deal Brexit, French Europe minister warns, 13 September 2018; EurActiv, Hard Brexit may stop Eurostar trains entering France: French minister, 14 September 2018
She also said that France was against a “blindfold Brexit”, in which there would be a withdrawal agreement but key details of the future UK-EU relationship would be deferred until the UK had left the EU. She said:

We have to have a clear sense of the balance of rights and obligations on the future relations between the UK and the EU27. Details will be worked out afterwards, but it would be to the benefit of neither the UK or the EU27 to remain vague on what is going to be our future relations at the moment of leaving.

Loiseau added that there was “a need for clarity and perspective for our fellow citizens, for our businesses”. She also said that those who had suggested the significance of the Irish border was being exaggerated were being irresponsible, stressing the need for a legal backstop to avoid a hard border in Ireland. She insisted: “we cannot wake up on 30 March to tell our Irish colleagues we don’t have a solution and we must go back to a hard border”.

In October the Government published a draft bill providing for measures to be taken in the event of ‘no deal’ to reinstate checks on goods and passengers going to and from the UK, and inspections of food, plants and live animals. BBC News summarised the Bill.

The Senate debated Brexit preparedness on 6 November.

On 17 January 2019 Prime Minister Édouard Philippe announced that the Government would introduce five proposals under an emergency procedure as part of its no-deal Brexit planning and the triggering of €50 million preparedness fund for infrastructure at ports and airports so that they will be operational form 30 March.

The Government adopted a measure on trade in the defence and space sector and on 6 February 2019 three sets of emergency measures on citizens’ rights, financial services and road transport that will enter into force if there is no deal.

**Citizens’ rights**

UK citizens residing in France will have one year to obtain a residence permit under a simplified application process. They will be granted the same health coverage they currently have as EU citizens for two years after Brexit day.

**Financial services**

There will be continued access to interbank settlement systems and existing insurance contracts with UK companies will remain valid. The current contractual framework for some products (e.g. derivatives) will be adapted.

**Road transport**

---

710 The Guardian, France may stop trains and planes from UK under no-deal Brexit, 13 September 2018.
711 BBC News, Reality Check: What are EU countries doing to prepare for a no-deal Brexit?, 6 November 2018
712 Prime Minister, Communiqué de Presse, 17 January 2019
Road transport operations by UK companies will continue.

**Germany**

Germany’s preparations for Brexit have included “the recruitment of additional personnel to deal with a less open economic relationship with the UK”. ⁷¹³

Although traditionally it is the Chancellor’s office that deals with EU policy, there is a cross-ministerial Brexit Task Force headed by the Foreign Ministry and a dedicated Brexit team in the Finance Ministry.

In 2017 the *Deutscher Industrie und Handelskammertag* (Association of German Chambers of Industry and Commerce) looked at the possible impact of Brexit on German business:

> In the estimation of German companies, the withdrawal of the United Kingdom from the European Union will represent a significant drag on the trade of goods and services. The business outlook of companies which are engaged in trade with the United Kingdom is worsening significantly, as expected cost burdens due to taxes and tariffs and increasing bureaucratic hurdles at Europe’s new borders will negatively affect business on both sides. The magnitude of this effect largely depends on negotiations between the United Kingdom and the EU. Regardless of the specific outcome of these negotiations, almost one in every ten companies is already planning to shift investments away from the UK because of Brexit and towards Germany or other countries within the EU internal market. ⁷¹⁴

Many German businesses have been preparing for Brexit, including for the possibility of a no-deal Brexit. *Deutsche Welle* looked at some of their “worst scenario” planning:

> Among other measures companies are setting up new facilities, looking for other suppliers that operate within the single market and are hiring people in order to process goods through customs […]. They are even setting up new servers because they are uncertain about “whether the free flow of data is still possible with the UK and the EU”. ⁷¹⁵

By contrast, the *Financial Times* commented in May 2018 that Germany did not think much of the UK’s preparations:

> Certain themes crop up regularly in such articles and conversations with Germans about Brexit. The first is sheer amazement at how ill-prepared British politicians were for the talks, how ignorant they were of basic facts about how the EU works and, consequently, how unrealistic their negotiating positions have been. ⁷¹⁶

---

⁷¹³ *BBC News, Reality Check: What are EU countries doing to prepare for a no-deal Brexit?* 6 November 2018

⁷¹⁴ *The Impact of Brexit on German Businesses, Results of the IHK Business Survey, Going International 2017, March 2017*

⁷¹⁵ *Deutsche Welle, Growing unease over Brexit in German business community, 28 June 2018*

⁷¹⁶ *Financial Times, Germans see Brexit as a UK own goal, 1 May 2018*
**Brexit transition law**

Preparations for Brexit have included managing the status of the estimated 100,000 British citizens living in Germany and Germans living in the UK.

In July Germany published a draft law, the Brexit-Übergangsgesetz (Brexit Transition Act), which provides that during the transition period the UK would be deemed to be an EU Member State for all purposes of German Federal Law (though not state law). In May there were reports of record numbers of Britons applying for German citizenship and the new law would also allow qualifying Britons living in Germany to become German citizens during the post-Brexit transition period. The German Cabinet approved the bill on 5 September 2018 and it will now go to the Bundestag. The German Foreign Ministry outlined the wider purpose of the Bill and the citizenship provision as follows:

The main aim of the bill is to create legal clarity for the transition period as regards provisions of federal law that refer to membership of the EU. The bill contains a clear and simple transitional rule for the transition period: wherever federal law refers to the EU Member States, this will also include the United Kingdom as long as none of the stated exceptions apply.

The bill also includes a provision to help British and German citizens who apply for citizenship of the other country before the end of the transition period. Under this provision, they will be allowed to retain their original citizenship even if the decision on their naturalisation is made after the end of the transition period. In such cases, dual citizenship will be tolerated under certain conditions.

On 17 January 2019 the Bill was introduced in the German Bundestag. It is intended to enter into force on the same date as the Withdrawal Agreement, so its provisions will not apply if there is no withdrawal agreement.

The Federal Ministry of the Interior, Building and Community has FAQs on right of residence in the context of Brexit in which it sets out provisions for UK residents in Germany with and without a deal.

**Greece**

In July Georgios Katrougalos, Greece’s alternate foreign minister, said the Government was studying the “improbable” scenario of no deal and was trying to estimate the possible consequences and taking the necessary measures. A Greek Government working paper has warned that in the event of a no-deal Brexit, the financial fallout from a shortfall

---

717 See, for example, Deutsche Welle, Brexit causes record number of Britons to be granted German citizenship, 23 May 2018

718 See Brexit Legal, Germany Provides Draft of Brexit Implementation Act, Jens Rinze, 26 July 2018

719 The act must be approved by the Bundestag with the consent of the Bundesrat.

720 Auswärtiges Amt, Brexit transition act, 5 September 2018

721 Bloomberg, How Europe Is Bracing for Messy Brexit: Dogs, Drones, Do Nothing, 19 July 2018
in the EU budget up to 2020 could leave Greece facing “increased financial and political instability”. The paper proposed that in the event of no deal, Greece should seek a special agreement with the EU, as it would be unable to finance a budgetary shortfall through national funding.\textsuperscript{722}

**Ireland**

After the UK vote the Irish Government announced a range of contingency plans to address the potential impacts of the withdrawal process.\textsuperscript{723} These included prioritising British-Irish relations, Northern Ireland, trade, investment, North-South border impacts, competitiveness and macro-economic issues, research/innovation funding and energy.

In a statement on 17 January 2017, the Irish Government said it was “acutely” aware of the possible risks to the Irish economy of Brexit, but that it was also aware of potential “economic opportunities”, including in terms of mobile investment:

> Bids for the EU agencies currently located in London—the European Medicines Board and the European Banking Authority have already been announced and the State enterprise agencies are actively pursuing opportunities for increased investment, business and job creation in Ireland.\textsuperscript{724}

On 23 January 2017, the *Guardian* reported comments from Prime Minister Kenny that Ireland wanted a special provision in any Brexit deal to allow Northern Ireland to rejoin the EU should it be united with the Republic of Ireland:

> In other words, that in such future time, whenever that might be, were it [reunification] to occur, that the north of Ireland would have ease of access to join as a member of the European Union again […] We want that language inserted into the negotiated treaty, the negotiated outcome, whenever that might occur.\textsuperscript{725}

The Irish Government’s *2018 National Risk Assessment – Overview of Strategic Risks* analysed a range of Brexit-related risks for Ireland and concluded:

> While the Irish Government will continue to do all in its power on both a domestic and European front to work for a Brexit agreement in line with Irish interests, the risks to our interests, our trade, our economy at both the macro and micro level\textsuperscript{8}, and our relationship with Northern Ireland, and the UK which could emerge from potential Brexits are manifold and significant, and it is likely that Brexit will remain one of the most significant risks facing this country over the coming years.

In July 2018 Leo Varadkar said his Government was making contingency plans for a no-deal Brexit, including extra customs officers and

\textsuperscript{722} *Daily Telegraph*, *Greece warns ‘no-deal’ Brexit would plunge country into ‘financial and political instability’*, 17 August 2018

\textsuperscript{723} Department of the Taoiseach, *Irish Government Brexit Contingency Plans Announced*, 24 June 2016

\textsuperscript{724} Department of the Taoiseach, *Government Statement on Brexit*, 17 January 2017

\textsuperscript{725} *The Guardian*, *Irish Leader Calls for United Ireland Provision in Brexit Deal*, 23 February 2017
veterinary inspectors to deal with changes in trade rules. Ireland also considered whether to relocate part of the emergency oil stocks that it stores at UK refineries back to Ireland or to other EU countries. The Government was also reported to be drawing up plans to stockpile insulin, vaccinations and other medical supplies.

Foreign Affairs Minister Simon Coveney presented Brexit contingency plans to the Cabinet on 18 July 2018. Speaking after the Cabinet meeting, the Taoiseach said:

The key decisions are particularly focused on areas where the Government has direct responsibility and on measures that need to be taken on an East-West basis, such as customs and veterinary controls at ports and airports. The Government also reiterated its position today that it would not countenance a return of a border on the island under any circumstances, including in the event of a hard Brexit.

Simon Coveney said a “huge amount of work has been underway across Government and its agencies for many months”, and that the Government would also be carrying out preparations “on an EU-wide basis, in cooperation with our EU partners”. The Government has held public events on Brexit, including road shows called ‘Getting Ireland Brexit Ready’.

Finance Minister Paschal Donohoe made several announcements in the Budget, “including investing 300m euros (£260m) in training schemes for sectors that could be hit by Brexit”. Open Europe reported in August 2018:

Other measures include setting up a new system on the Irish stock exchange to settle shares and securities, lobby the EU Commission to relax state aid rules, offer businesses a ‘Be Prepared’ grant of up to €5,000 and making sure Irish pensioners with a UK pension continue to receive it.

In the Oireachtas on 4 October 2018 Deputy Maurice Quinlivan (Sinn Féin) asked the Minister for Foreign Affairs and Trade about contingency plans “for businesses for a situation in which the landbridge through Britain becomes unusable for Irish lorries travelling to and from the Continent” [30826/18]. Simon Coveney replied in some detail about the work of the Government’s Landbridge Project Group, concluding.

Our work on the landbridge must also include the possibility of a no-deal or worse-case outcome.

---

726 See *The Telegraph*, Brussels warns EU countries: get ready for a no-deal Brexit, 19 July 2018
727 *Sunday Independent*, Ireland set to remove oil reserves from Britain as Brexit deadline looms closer, 15 July 2018, and *Cabinet to move Irish oil reserve from UK*, 15 July 2018
728 *Irish World*, ‘No deal’ will mean ‘no drugs’, 1 August 2018
729 See RTÉ, 1,000 new customs and veterinary inspectors to be hired, 20 July 2018
730 Merrion Street, Irish Government News Service, *Cabinet Agrees Brexit Preparedness Measures*, 18 July 2018
731 Ibid
732 *BBC News*, Reality Check: What are EU countries doing to prepare for a no-deal Brexit? 6 November 2018
733 Open Europe, *The view from Brussels: How are the EU27 preparing for a ‘No Deal’ Brexit?* Pieter Cleppe, 30 August 2018
To this end, relevant Departments have now been tasked by the Government to roll out detailed Action Plans with a view to advancing, as appropriate, the mitigating measures which have been identified in the areas of their responsibility from the planning to the implementation phase. In line with this approach, the Government has already approved a number of key Brexit preparedness measures focused on East-West trade which will also take account of the continued use of the landbridge.

In mid-December the Department of Foreign Affairs and Trade published its Contingency Action Plan, ‘Preparing for the withdrawal of the United Kingdom from the European Union on 29 March 2019’. The Government states in the introduction that it “recognises that, given the proximity of the formal date for UK exit from the EU of 29 March 2019, the prospect of a no deal Brexit is very real”. It points to “the real possibility of a no deal Brexit” and sets out the Government’s approach. It also states:

The challenges posed by a no deal Brexit require an understanding of the same issues as for an orderly Brexit, although of course they arise in a very different context and in a much shorter timeframe. In many significant ways, a no deal Brexit would pose unique, unprecedented and extremely difficult challenges for the EU, including Ireland, and especially the UK.

It refers to the need for “an immediate focus on crisis management and possible temporary solutions (political, economic, administrative, legislative and communication), which would be rapidly implemented until the necessary longer-term adjustments are in place”. It acknowledges that of all the EU Member States, Ireland “could be the most adversely affected” by Brexit and “to the greatest extent in a no deal scenario”. The Plan sets out details of issues and panned measures across sectors.

The Government’s latest Brexit Contingency and Preparedness Update was published on 15 January 2019:

Today Government agreed that, aside from the European Parliament Elections (Amendment) Bill 2018 and the Regulated Professions (Health and Social Care) (Amendment) Bill, legislation across different sectors be grouped into one omnibus Bill, in order to assist with the speed of passage through the Houses.

The Bill, comprising 17 Parts, will focus on the broad themes of protecting the citizen, and supporting the economy, enterprise and jobs. Amendments to the Interpretation Act 2005, which would be required in the event of an orderly Brexit with a transition period, will also be included. The work on primary legislation will be complemented by responses in secondary legislation through the adoption of a range of Statutory Instruments.

Proposed Miscellaneous Provisions (Withdrawal of the United Kingdom from the European Union on 29 March 2019) Bill Omnibus Bill with 17 parts focused on the broad theme of protecting the citizen, and supporting the economy, enterprise and jobs.

<table>
<thead>
<tr>
<th>Part</th>
<th>Department</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Health</td>
<td>Healthcare Arrangements</td>
</tr>
<tr>
<td>Part</td>
<td>Department</td>
<td>Legislation</td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
<td>-------------</td>
</tr>
<tr>
<td>2</td>
<td>Business, Enterprise and Innovation</td>
<td>Amending Industrial Development Acts</td>
</tr>
<tr>
<td>3</td>
<td>Communications, Climate Action and Environment</td>
<td>Single Electricity Market</td>
</tr>
<tr>
<td>4</td>
<td>Communications, Climate Action and Environment</td>
<td>Energy</td>
</tr>
<tr>
<td>5</td>
<td>Education and Skills</td>
<td>Student Support</td>
</tr>
<tr>
<td>6</td>
<td>Finance</td>
<td>Taxation</td>
</tr>
<tr>
<td>7</td>
<td>Finance</td>
<td>Financial Services</td>
</tr>
<tr>
<td>8</td>
<td>Finance</td>
<td>Amendments to EU regulations</td>
</tr>
<tr>
<td>9</td>
<td>Transport, Tourism and Sport</td>
<td>Railway Safety</td>
</tr>
<tr>
<td>10</td>
<td>Transport, Tourism and Sport</td>
<td>Public Transport Regulation</td>
</tr>
<tr>
<td>11</td>
<td>Employment Affairs and Social Protection</td>
<td>Social Welfare</td>
</tr>
<tr>
<td>12</td>
<td>Employment Affairs and Social Protection</td>
<td>Amendment of Protection of Employees (Employers’ Insolvency) Act</td>
</tr>
<tr>
<td>13</td>
<td>Taoiseach</td>
<td>Amendment to the Interpretation Act</td>
</tr>
<tr>
<td>14</td>
<td>Justice and Equality</td>
<td>Amendments to the Extradition Act</td>
</tr>
<tr>
<td>15</td>
<td>Justice and Equality</td>
<td>Amendments to the Immigration Acts</td>
</tr>
<tr>
<td>16</td>
<td>Justice and Equality</td>
<td>Amendments to the International Protection Act</td>
</tr>
<tr>
<td>17</td>
<td>Justice and Equality</td>
<td>Amendments to the Data Protection Act</td>
</tr>
</tbody>
</table>

There will also be 20 Statutory Instruments covering a range of matters to mitigate a no deal Brexit.

**Italy**

Italy considers a no-deal Brexit unlikely. Guglielmo Pichi, Under Secretary of State for Foreign Affairs, thought there would be a deal “because it is the interest of both parties”.734

However, on 20 December 2018 Italy announced it was preparing legislation to allow British citizens resident in Italy after Brexit, on

---

734 Interview on BBC Today programme, 19 September 2018
application, to continue to be legally resident with their existing rights to work, if there is no deal.735

Malta

Mr Muscat said his Government had set up a Brexit task force on which the Opposition also sat, which was coordinating Malta’s Brexit preparations. The Times of Malta reported:

Dr Muscat said the government did not want to be fatalistic about Brexit, but was already preparing for worst case scenarios.

“Even in the worst possible case, our health agreement with the UK will remain,” he said, adding that Malta was not only an EU member state, but also a member of the Commonwealth.

The Customs Department, Dr Muscat said, was among the most prepared to deal with a Brexit, and so he was confident in its ability to manage such a transition.736

Netherlands

The Dutch government has carried out several assessments of the impact of Brexit on the Netherlands, including the rights of Dutch citizens, the economy and medical sector.737 In the State Opening of Parliament in September 2017, Bert Koenders emphasised that in the Brexit negotiations, “the main priority should be to clarify the rights of EU citizens, eliminate uncertainty for businesses and ensure that existing financial obligations are met”.738

The Dutch government has planned for extra officials, mostly in the port of Rotterdam, “to prepare for the extra bureaucracy required for British goods to go through customs before entering the EU after Brexit”.739 According to the New York Times (19 July), “[t]he Dutch government is hiring nearly 1,000 customs officials”. The Government is also recruiting up to 90 veterinarians for animal and food inspections and warehouses for inspection are being considered.740

The Government’s web-based ‘Brexit impact scanner’ can be used by SMEs to assess their exposure to potential problems related to Brexit, and it offers €2,500 ‘vouchers’ for small companies to obtain independent advice about the Brexit implications for their business.

---

735 See British in Italy, 20 December 2018
736 Times of Malta, Muscat confident of post-Brexit agreement between Malta and the UK, 23 October 2018
737 Government of the Netherlands, What impact will Brexit have? [accessed 2 October 2018]
738 Government of the Netherlands, Foreign Affairs Budget 2018 [accessed 2 October 2018]
739 Reuters, Dutch cabinet drafting ‘playbook’ for chaotic Brexit: parliament, 9 July 2018
The UK being the Netherlands’ third largest trading partner, the Dutch customs authorities are expecting an increase of the number of customs operations by a third and are expanding the staff capacity by 20%.\textsuperscript{741}

MLex reported on 4 September on research for the Dutch Government by Kantar Public that concluded that around 18\% of Dutch companies doing business with the UK are “actively preparing for Brexit”, up from 10\% in 2017. The study was carried out in the period 28 June – 3 July among 245 companies doing business with the UK.\textsuperscript{742}

A letter from the Minister of Foreign Affairs to the House of Representatives, 7 September 2018, sets out the state of preparation for Brexit (contingency planning and preparedness at national and EU level). The Government website provides information for citizens and businesses on how to prepare for Brexit.

**Poland**

Several ministries have been analysing the potential impact of no deal. “The government is determining how many additional customs agents will be required and is investigating measures to limit the risks to business”.\textsuperscript{743} Deputy Foreign Minister Szymański said in July that Poland had been “making preparations to assess a ‘no deal’ Brexit both from a financial point of view, as well as with regard to business, administration and citizens’ rights”.\textsuperscript{744}

The Visegrad Group website reported on the Government’s preparations for business:

> Poland’s Ministry of Entrepreneurship and Technology (MPiT) wants to prepare companies, accountants and tax advisors for the UK’s departure from the EU. It has started a mailing campaign to help them adapt to Brexit-related changes. “The results of the negotiations concerning the exit of Great Britain from the EU are still unknown”, the ministry noted. “Polish businesspeople should therefore prepare for several possible scenarios. Each of the variants means great changes for businesses that import and export goods and services to and from Great Britain or are part of the production-delivery chain which ends there”, it added.\textsuperscript{745}

**Portugal**

According to Bloomberg, Portugal is not expecting major changes or increases in staff at the ports of Sines and Lisbon from any kind of Brexit: “Almost three-quarters of goods trading at the port of Sines --

\textsuperscript{741} De Volkskrant, Nederlandse Douane nog niet klaar voor Brexit, honderden extra mensen nodig: ‘Het effect is echt groot’, (The Netherlands Customs administration not yet ready for Brexit, need more people: ‘The effects are major’), 16 February 2018

\textsuperscript{742} See also DutchNews, Just one in five Dutch firms are ready for Brexit, ministry says, 4 September 2018

\textsuperscript{743} Bloomberg, How Europe Is Bracing for Messy Brexit: Dogs, Drones, Do Nothing, 19 July 2018

\textsuperscript{744} Poland in English, Poland preparing for ‘no deal’ Brexit: deputy minister, 20 July 2018

\textsuperscript{745} Visegrad Group, Ministry aims to ready firms, accountants and tax advisors for Brexit, 25 October 2018
the nation’s largest -- is with countries outside the EU, so it’s already well equipped to deal with shipments to and from non-EU nations”.746

A Reuters report said Portugal was “actively courting wealthy British to move and invest there in the run up to Brexit”.747 There have also been bilateral initiatives, such as consolidating an Anglo-Portuguese science partnership involving Imperial College.748

A report by the Confederation of Portuguese Business (CIP) that estimated Portuguese exports to the UK could fall by more than 25%. It recommended that the Government and industry “step up efforts to promote Portugal in the British market, particularly for sectors most at risk such as tourism, electronics and the auto industry”.749

Spain
An Elcano policy paper in May 2018 stated that in preparation for a possible no deal:

… it is important for Spanish companies to design contingency plans for coping with a reduction in business, whether in terms of preparing for changes in the regulatory framework or seeking alternative customers and suppliers in other markets, both within and beyond the EU.750

It also noted the possible effects on the Spanish tourism industry (“Spain receives millions of British tourists every year, accounting for almost a quarter of visitors to the country”):

it is important that the Spanish tourism industry prepares for a possible reduction in British visits and draws up contingency plans both with the Spanish authorities and with British tour operators, who are equally dependent on tourism to Spain.

Fears about the effects on tourism have continued.751 On 6 November the Independent reported that Spanish tourism Minister Reyes Maroto is meeting UK tour operators “to discuss contingency plans to ensure millions of British tourists can still visit her country in the event of a no-deal Brexit”.752

According to BBC News, Spain was “taking the mañana approach to planning for a no-deal Brexit”.753 Economy Minister Nadia Calvino said on 29 October in London that “for the time being, nothing was being

---

746 Bloomberg, How Europe Is Bracing for Messy Brexit: Dogs, Drones, Do Nothing, 19 July 2018
747 Reuters, Portugal wants Britain to welcome all EU migrants after Brexit, 26 July 2018
748 Portugal resident.com, Portugal and UK “prepare to reinforce scientific collaboration” ahead of Brexit, 24 April 2018
749 Politico, Portuguese business pushes for Brexit deal, 31 October 2018
750 Spain and the prospect of Brexit, Salvador Clades, Ignacio Molina, Miguel Otero Iglesias & Federico Steinberg, May 2018
751 See, e.g. The Express, ‘UK is our main market!’ Spain in Brexit PANIC as tourist boss warns of no deal DISASTER, 11 October 2018
752 The Independent, Spain seeks contingency plans with UK tour operators over fears of no-deal Brexit, 6 November 2018
753 BBC News, Reality Check: What are EU countries doing to prepare for a no-deal Brexit? 6 November 2018
What if there’s no Brexit deal?

done to prepare for no deal. There is no written plan or anything formal and […] the government was waiting another few weeks before planning for a no-deal scenario”.

But the Government has woken up to the need for Brexit planning, including contingency planning for a possible no-deal outcome. Open Europe reported:

Spain’s government has been running an analysis of the different potential outcomes of the Brexit talks, including the ‘cliff-edge’ scenario, based on input from companies and business groups. It has also been working on a plan to shield its tourism industry from any disruption to air travel and will allow UK citizens to use their existing Spanish ID as a post-Brexit entitlement paper, which is a more flexible arrangement than the one France has in mind.754

*Politico* reported on 2 November 2018 that “Only 31 percent of Spanish companies have made contingency plans for Brexit, and just 19 percent have started implementing those plans, according to a survey of 2,000 executives conducted by KPMG in coordination with the CEOE, Spain’s biggest business lobby”.755 But the report went on to outline Government initiatives to help business – some of which are in denial – to prepare for Brexit:

Industry and Commerce Minister Reyes Maroto this week announced a series of actions aimed at “helping companies prepare contingency plans” for Brexit, including informational meetings with business leaders and a public website.

“We have to inform companies that any scenario can occur,” she told reporters. “Some [companies] still convey to us hopes that nothing will happen, and the reality is that something is going to happen.”

In the Spanish Parliament Prime Minister Sánchez and Foreign Minister Borrell have emphasised the need for public administration and business leaders to make “their own contingency plans” to face “any kind of scenario that can occur after March 29, 2019”. Deputy Prime Minister Carmen Calvo has been “coordinating plans across all government departments”, preparing to hire extra customs officers and “laying out urgent regulations on trade protocols or phytosanitary standards”.756

On 28 December Prime Minister Sánchez reassured British citizens living in Spain (estimated at 300,000) that their rights would not change after Brexit, and would be preserved “whatever the scenario” on condition that Spaniards living in the UK (estimated at 116,000) had the same reassurances.757

On 15 January 2019 the Spanish Government launched a new page on its Brexit website to provide information for citizens and economic

---

754 Open Europe, *The view from Brussels: How are the EU27 preparing for a ‘No Deal’ Brexit?* 30 August 2018

755 *Politico*, *Madrid tells businesses to get ready for (any) Brexit*, 2 November 2018

756 *Politico*, ibid

757 Reuters, *Brexit won’t affect Spain-based Britons’ rights*, PM Sanchez says, 28 December 2018
operators on how to prepare for a no-deal UK exit and on the contingency measures adopted at national and international levels.\textsuperscript{758}

On 21 January the UK and Spain signed a treaty giving UK citizens living in Spain and Spanish citizens living in the UK the right to vote and stand for office in local elections after Brexit.

The Government (and later Parliament) is due to approve a decree in February which will include regulations to be activated in the event of a no-deal Brexit.

**Sweden**

In 2017 the Swedish Government asked four expert agencies to analyse the consequences of Brexit in a few specific areas. Their conclusions are summarised on the [Swedish Government website].(https://www.government.se/en/directory-of-government-agencies/publications/201806/3640850497) It has established a ‘preparedness group’ to look into the potential consequences of no deal, but is hopeful of a deal.\textsuperscript{759}

Sweden’s financial regulator, Finansinspektionen (FI), has called on “investors clearing derivatives through London “to prepare for their counterparties to be considered unauthorised after the UK leaves the EU in March”.\textsuperscript{760} The FI analysis, [Consequences of Brexit for the Swedish Financial Market](https://www.fi.se/en/publications/201806/3640850497) (21 June 2018) recommended that investors “assess the likely consequences for liquidity and solvency, and take capital and liquidity planning into account”, and that companies should the possible effects of Brexit on their business models and strategies, and how to “manage potential adverse effects”.\textsuperscript{761} The Swedish Chamber of Commerce for the UK has issued guidance, *Brexit – what is it, and how will it affect my business?* (30 October 2018) on its website.


---


\textsuperscript{759} *The Guardian*, ibid

\textsuperscript{760} IPE, [Swedish watchdog urges preparation for ‘hard’ Brexit](https://www.ipe.com/news/special-reports/brexit/swedish-watchdog-urges-preparation-for-hard-brexit), 24 October 2018

\textsuperscript{761} Ibid
About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the conditions of the Open Parliament Licence.