



BRIEFING PAPER

Number 8408, 26 September 2018

Brexit Unknowns (update)

By Library Subject
Specialists

Contents:

1. Do we know more or less than we did 18 months ago?
2. The Brexit process in the EU and UK
3. The UK's future relationship with the EU
4. Trade relations
5. The Irish border question
6. Free movement of people
7. Money matters
8. Security, law enforcement and criminal justice cooperation
9. Food and Farming
10. Fisheries
11. International and defence relations
12. Official statistics
13. Further reading



Contents

Summary	5
1. Do we know more or less than we did 18 months ago?	8
2. The Brexit process in the EU and UK	9
2.1 How long will Brexit take?	9
2.2 The transition/implementation period	9
2.3 Implementing the transition in the UK	10
2.4 Revocability of Article 50 TEU	11
2.5 UK ratification of the withdrawal agreement	12
2.9 Converting the framework on the future relationship into a ratifiable treaty	17
<i>The Constitutional Reform and Governance Act 2010</i>	17
2.11 Parliamentary scrutiny of EU SIs	19
Sifting Committees	19
2.12 Devolution	19
New restrictions on competence	19
UK common frameworks: fundamentals and consent	20
Trade Bill and consent	20
EU (Withdrawal Agreement) Bill and consent	21
Scottish Continuity Bill	21
3. The UK's future relationship with the EU	23
3.1 What sort of relationship will it be?	23
3.2 What mechanisms will govern the future relationship between the UK and the EU?	24
Governance	24
3.3 Dispute Resolution	25
The future relationship/partnership	26
4. Trade relations	28
4.1 UK trade relations with the EU	28
The Chequers proposals	28
4.2 UK trade agreements outside the EU	29
Will rollover of trade agreements be completed by Brexit day?	30
Will the EU's external trade agreements apply during the transition period?	31
5. The Irish border question	32
6. Free movement of people	36
6.1 Citizens' rights in the draft Withdrawal Agreement	36
6.2 Free Movement and the future relationship	40
7. Money matters	42
What will influence the size of the settlement?	42
UK participation in EU programmes and agencies	43
Close integration with the Single Market	45
8. Security, law enforcement and criminal justice cooperation	47
8.1 EU measures in security and criminal justice	47
8.2 Data protection	50
9. Food and Farming	52
9.1 Future trading environment?	52
9.2 Farm Support	53

10. Fisheries	55
11. International and defence relations	57
11.1 The EU's international agreements	57
How many international agreements does the EU have?	57
Will parts of mixed agreements apply after Brexit?	57
Will non-trade agreements be rolled over?	58
11.2 Defence and external security	58
11.3 The EU position	58
11.4 The UK position	59
12. Official statistics	60
12.1 Statistics from the EU institutions	60
12.2 Eurostat	60
13. Further reading	61

Contributing Authors: Elena Ares, Lorna Booth, Sarah Coe, Graeme Cowie, John Curtis, Joanna Dawson, Stefano Fella, Ilze Jozepa, Matthew Keep, John Lunn, Sylvia de Mars, Vaughne Miller, Claire Mills, John Woodhouse

Summary

The Brexit process

The Article 50 process stipulates a broad sequence of events and a two-year period in which time a withdrawal agreement must be agreed or a State leaves the EU without one. We do not know whether a withdrawal agreement will be agreed within this time limit or what will happen if the UK ‘crashes out’ in March 2019. Article 50 does not make clear whether the withdrawal process can be reversed if the leaving State changes its mind.

Constitutional issues

Constitutionally, there are several aspects of the Brexit process in respect of which there is considerable uncertainty. Although the *European Union (Withdrawal) Act 2018* provides a Parliamentary process for approval of the Withdrawal Agreement, it cannot be said with confidence, for instance, what the implications would be if the Commons purported to give “qualified approval”. We do not know the extent to which Parliament will have opportunities to scrutinise the Withdrawal Agreement before voting on it. There is considerable ambiguity as to the extent to which Parliament can influence the Government’s approach in the event that a deal is rejected, or that no deal can be reached. Most notably, we do not know whether the UK’s notification of intent to withdraw is revocable, although the Government maintains it will not request this.

Devolution

In terms of the devolution settlement, there is still considerable uncertainty as to the impact Brexit will have. We do not yet know how the UK Government will go about temporarily ‘freezing’ devolved powers returning from the EU; nor do we know much, if anything, about the long-term proposals for what should replace EU “common frameworks”. Much of the detail of these new arrangements will only become fully apparent after exit day.

Future trade relations

Although there is agreement in principle that current EU agreements with third countries will be ‘rolled over’ for the UK, at least for the transition period, we do not yet know whether the UK will be able to transition the existing EU FTAs into its own bilateral trade agreements on time. After leaving the EU, the UK plans to pursue an independent trade policy and sign its own free trade agreements (FTAs) with non-EU countries. The biggest unknown is still that we do not know what the trade arrangements between the UK and the EU will be after Brexit; their scope and depth will also depend on whatever trade deal the UK agrees with the EU.

We do not yet know what the trade arrangements between the UK and the EU will be after Brexit. If there is a transition/implementation period, trade relationships will remain more or less the same and the UK and the EU will retain access to one another’s markets on current terms. The UK and the EU will have time to work out the details of their future trade agreement in the transition period. Before that, however, both sides still need to find a compromise on basic principles of future trade or put at risk the ratification of a withdrawal agreement, which might mean the UK leaving the Single Market without a deal.

The Irish border issue

The fate of the Northern Irish border remains one of the greatest sources of Brexit unknowns. This is because despite forming a key plank of the Withdrawal Agreement, its final status can only be understood in reference to the future relationship between the UK and the EU, which is yet to be agreed.

Free movement of people

While Part Two of the draft Withdrawal Agreement on Citizens' Rights has been largely agreed, there is still uncertainty over whether certain categories of beneficiaries of EU law rights are covered by it. The UK Government's Statement of Intent for its 'settled status' process has not been reciprocated with a detailed process from the EU27 for UK nationals to register their status in EU27 countries.

Regarding the future relationship, EU and UK nationals who do not benefit from the Withdrawal Agreement will be covered by rules other than the existing 'free movement' rules. This could mean either a new negotiated regime or respective 'standard' migration rules as applicable to third country nationals. So it is not clear whether UK nationals living in the EU after Brexit will be subject to a general third country national regime, or whether there will be a more generous 'movement agreement' that continues to facilitate working and living in the UK or the EU27 for respective nationals. The EU27 have not yet indicated their preferences.

Settling financial commitments: the 'exit bill'

While estimates have been produced about how much the financial settlement might cost the UK (roughly £35 billion - £39 billion) the true cost will not be known until the UK has made the final payment. The UK will pay for items in the settlement based on the actual outcome of EU budgets, which will be affected by future events, and won't be required to pay earlier for items than if it had remained in the EU.

The UK Government would like to take part in some EU programmes and agencies as a third country after Brexit and expects to make a financial contribution towards those it participates in. Participation and the costs involved will be discussed in negotiations on the future UK-EU relationship. At this stage we don't know what the UK will participate in nor how much it would cost.

Security, law enforcement and criminal justice cooperation

The UK currently participates in around 40 EU measures that aim to support and enhance internal security and police and judicial cooperation in criminal matters. The extent to which the UK will continue to be able to participate in these measures post-Brexit is currently unclear.

Data protection and data sharing

We do not know on what basis the UK will be able to exchange data with the EU and EEA after Brexit. The European Council's March 2018 guidelines state that, on data protection, a future EU-UK relationship should be governed by the EU's adequacy framework. However, the UK wants to "go beyond" this.

Food and farming

The biggest unknown in the agri-food sector is the future trading environment in which farmers and the wider food supply chain will be operating, and the kinds of plant and animal health regimes and checks which will apply. However, farmers across the UK have had some indication of the future farm support systems that are likely to be introduced after EU Exit.

Fisheries

While the EU and the UK have both set out their position on what they want a deal on fisheries to look like, fisheries have not yet been part of the detailed withdrawal negotiations, and there are disagreements over future fisheries arrangements.

Defence

The Government has said UK support for European defence and security is unconditional and the March 2018 draft withdrawal agreement raised the possibility of an agreement in security and defence matters being implemented before the end of the transition period. While that remains the aspiration on both sides, many of the details of UK participation in EU defence matters are still to be negotiated and agreed upon.

Statistics

While the Government has [said](#) that the UK will continue to play an active role in the international statistical community, the UK's future relationship with the European Statistical System is largely unknown.

1. Do we know more or less than we did 18 months ago?

Some of the 'unknowns' flagged up in our first [Brexit Unknowns](#) briefing paper in November 2016 have now been somewhat or largely clarified, while others are still unknown or largely unknown, or have given rise to further 'sub-unknowns'. There are now also more 'known unknowns' and there are likely to be many other 'unknown unknowns'.

Possibly the biggest unknown of all is whether there will be a withdrawal agreement at all. The general premise of this paper is that there will be a withdrawal agreement based on the Joint Report of December 2017 and subsequent agreements.

The passing of the [European Union \(Withdrawal\) Act](#) (which received Royal Assent on 26 June 2018) clarified some of the UK procedural unknowns in the last paper but has given rise to other procedural questions to which there is currently no answer. We do look at some of the procedural unknowns, including in the event of there being no deal. The possible consequences of a no-deal Brexit are discussed in Commons Briefing Paper 8397, [What if there's no Brexit deal?](#) 10 September 2018.

The following matters covered by the previous paper are now known, partially or largely known, or still unknown or largely unknown:

How long Brexit will take	partially known
The withdrawal process	largely known
UK Parliament's role in triggering Article 50	known
UK Parliament's role in scrutinising negotiations	largely known
UK Parliament's role in scrutinising the withdrawal agreement	known
UK Parliament's role in scrutinising future relations agreement(s)	partially known
Role of the Devolved Legislatures	partially known
Can an Article 50 notification be withdrawn?	unknown
Will there be a referendum on the terms of Brexit?	unknown
What will happen to EU law in the UK?	largely known
Economic impact of Brexit	partially known
Rights of UK expats and EU citizens in UK	partially known
Northern Ireland border issues	unknown
UK staff in the EU institutions	partially known
UK participation in 2019 EP elections	largely known
UK contribution to EU budget	largely known
Structural funds from EU	partially known
What will happen to agriculture funding?	largely known
EU-UK trade relations after Brexit	largely unknown
What will happen to EU and UK students?	partially known

2. The Brexit process in the EU and UK

2.1 How long will Brexit take?

We know ...

The technical process by which an EU Member State can leave the EU is time-limited and is set out in Article 50 of the Treaty on European Union (TEU). Article 50 TEU stipulates that the EU Treaties “shall cease to apply to” the leaving State from the entry into force of a withdrawal agreement or, “failing that, two years after the notification” of the intention to leave the EU. The Prime Minister delivered the notice of withdrawal on 29 March 2017, so the default withdrawal date is 11pm on 29 March 2019. This is included in the [draft Withdrawal Agreement](#), which states in Article 168 that it enters into force on 30 March 2019.

Most commentators acknowledge that although the UK is due to leave the EU on 29 March 2019, the entire Brexit and post-Brexit process could take years, if not decades.

We don't know ...

It is possible, if both sides believe more time is needed, the EU27 would agree, if the UK Government asked, to extend the negotiations beyond 29 March 2019. This would require a unanimous decision of the EU27. Or the negotiators might agree to set a different date for the entry into force of the Withdrawal Agreement.¹ As this would be included in the Withdrawal Agreement, it would have to be endorsed by the European Parliament (EP) and a qualified majority of the other 27 EU Member States (20 of the EU27). It is not clear:

- whether more time will be needed to agree a withdrawal agreement;
- whether the UK Government would ask for more time or for a later entry into force of the withdrawal agreement; or
- whether the EU27 would grant any form of extension if asked.

2.2 The transition/implementation period

We know ...

A transition (implementation) period starting on exit day and lasting for 21 months has been agreed by both sides. Its terms are set out in [Article 121](#) of the March 2018 draft Withdrawal Agreement, which states that the transition period ends on 31 December 2020. During the transition period the UK will continue to apply and be bound by EU law and the jurisdiction of the Court of Justice of the EU (CJEU).

¹ Article 50 TEU states that the “Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement, or failing that, two years after notification”

We don't know ...

It is not clear:

- whether the EU and the UK will finalise future relations agreements based on the political declaration on the framework for the future relationship;
- how the transition period could be extended if necessary;
- whether this would go beyond the legal base of the Withdrawal Agreement;
- how the period might be extended by a separate treaty after Brexit day.

2.3 Implementing the transition in the UK

We know ...

We now know from the draft Withdrawal Agreement what the UK's obligations will be during the transition period and how the Government intends to implement them.

The Government's White Paper, [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#)² sets out its broad intentions as to legislating for transition. It has confirmed, for instance, that it intends to delay the repeal of part (but not all) of the *European Communities Act 1972* (ECA – the Act which is the basis for the UK's membership of the EU) beyond exit day by means of a new Bill to amend the *EU (Withdrawal) Act 2018* and implement the Withdrawal Agreement. Some parts of the ECA, including those relating to financial commitments, however, will be repealed, effective on exit day, as the Withdrawal Agreement itself would govern post-exit arrangements in that regard, rather than the EU Treaties.

We don't know ...

We don't know what the legislation for the domestic arrangements to implement the transition period will look like. This will need to form part of the forthcoming *European Union (Withdrawal Agreement) Bill* (EUWA Bill), setting out, among other things:

- the basis for the continuing force and effect of EU law, including the implementation of any EU law coming into force after exit day; and
- the constitutional arrangements for devolved authorities in relation to EU law.

The breadth of unknowns in relation to the EUWA Bill remains potentially very wide, because we do not know yet what the final Withdrawal Agreement (which it will implement) will look like. Elements of the substance have been settled, but significant parts are still the subject of further negotiation.

² Cm 9674, 24 July 2018

2.4 Revocability of Article 50 TEU

We know ...

We know that it is not Government policy to seek to revoke the Article 50 notification, whether unilaterally or otherwise, even in the event that no withdrawal agreement is reached.

Ultimately, it would be for the Court of Justice of the EU to decide on the revocability question. The CJEU has acknowledged in several cases that the Vienna Convention on the Law of Treaties may still be relevant to the extent that its provisions reflect customary international law.³ A Scottish question to the CJEU is discussed below.

We don't know ...

The debate about revocability has not been resolved. It is still not clear whether Article 50 could be revoked in the event of the UK changing its mind about Brexit; or whether, if Article 50 is revocable, it would mean the UK staying in the EU on the same terms of membership as at present (with opt-ins and opt-outs etc) or whether the EU would exact conditions for allowing revocation.

Article 68 of the 1969 Vienna Convention on the Law of Treaties (VCLT) provides for the revocation of a notice of withdrawal in certain circumstances but there does not appear to be a basis for the application of Article 68 here unless it is a general principle of international law.

The UK Supreme Court confirmed in *R (Miller) v Secretary of State for Exiting the European Union* that an Act of Parliament was required to confer the authority on a Minister of the Crown to notify the European Council (under Article 50(2) TEU) of the UK's intention to withdraw from the EU. This authorisation was provided by the *European Union (Notification of Withdrawal) Act 2017* and the Prime Minister made the notification on 29 March 2017 which started the Brexit process.

But what is not known about this notification process is:

- whether, as a matter of EU law, a Member State can unilaterally revoke a notification that has validly been made; or
- whether there are any domestic legal requirements (including, possibly, further primary legislation) to authorise the exercise of any such right of revocation.⁴

Revocability sidestepped in the Miller case

The revocability of Article 50 was the subject of academic comment in the immediate aftermath of the referendum result. That legal question was potentially relevant to legal arguments as to whether primary legislation was required to make a notification in the first place. In the

³ E.g. see [Case C-162/96, Racke GmbH & Co v Hauptzollamt Mainz \[1998\]](#) and [Case C-386/08, Brita GmbH v Hauptzollamt Hamburg-Hafen \[2010\]](#).

⁴ See e.g. R. Craig, [Why an Act of Parliament Would Be Required to Revoke Notification under Article 50](#), U.K. Const. L. Blog, 16 October 2017

event, the UK Government did not seek to argue that Article 50 was revocable and the UK Supreme Court proceedings in *ex parte Miller* assumed that it was not.⁵

Legal advice to the Government on revocability?

We do not know whether the Government has received legal advice on the question of revocability. There have been [reports](#) that it did receive legal advice stating that Article 50 can be withdrawn. The Government has not confirmed that it received such advice, insisting it is in any case a matter of Government policy not to revoke Article 50.

Lord Callanan [was pressed](#) during the EUW debate to indicate whether the Government had taken legal advice on the revocability of Article 50, and if so, whether this was something the Government was prepared to share with the House. [He replied](#) (c 1945) that he was “not in a position to share confidential government legal advice on this matter”.⁶

The [answer](#) to a PQ from Tom Watson on 10 September 2018 asking DExEU whether it had “sought legal advice on (a) holding a second referendum on EU membership and (b) reversing Article 50” also did not clarify.

Legal challenge as to revocability in Scottish courts

Several MPs and MSPs have sought to have the CJEU clarify the question of unilateral revocability. Their attempts to secure a reference to the CJEU from the Scottish courts had until very recently been unsuccessful; the Court of Session originally concluded that such a reference would be “hypothetical and academic”.⁷ However, on appeal, the Inner House concluded that a request for a preliminary reference should be made to the CJEU. We do not know whether the CJEU will take the case, or if it does what it will conclude about the revocability of Article 50.

2.5 UK ratification of the withdrawal agreement

We know ...

Constitutional Reform and Governance Act 2010 and EU (Withdrawal) Act 2018

The *Constitutional Reform and Governance Act 2010 (CRAGA)* sets out a procedure for the ratification of treaties in the UK, which allows the House of Commons (theoretically) to block ratification indefinitely by passing repeated resolutions against it. The [European Union](#)

⁵ Lord Carnwarth (in his dissenting judgment) said that this shared assumption was “possibly controversial” [2017] UKSC 5, para 261. See also S. Douglas-Scott, [Miller: Why the Government Should Still Lose in the Supreme Court \(even with new arguments\)](#), U.K. Const. L. Blog, 15 October 2016, R. McCrea, [Arguing that Article 50 Notification Is Reversible Involves Risks for the Government](#), U.K. Const. L. Blog, 15 November 2016

⁶ Mr Brake is aware of the question of publication of legal advice because he [mentioned it](#) in the Chamber in December 2017 in relation to an e-petition debate.

⁷ [Wightman and Others v Secretary of State for Exiting the European Union](#) [2018] CSOH 61

[\(Withdrawal\) Act 2018](#) (EUWA) places additional requirements on the ratification of the EU Withdrawal Agreement over and above the constraints in CRAGA.

The *EUWA* requires Parliament to undertake an approval process for **both** a withdrawal agreement and a framework for the future EU-UK relationship. Ministers are to table (a) a resolution to approve both the Withdrawal Agreement and framework for the future relationship in the House of Commons, and (b) a motion taking note of the outcome of negotiations in the House of Lords. Unless the resolution is approved by the Commons, and the Lords has been given an opportunity to debate its motion, the Withdrawal Agreement cannot be ratified.

We don't know ...

Timing of UK's 'ratifying' legislation

A further prerequisite for ratification is that the anticipated EU (Withdrawal Agreement) Bill has also first been passed. But what we do not yet know for certain is:

- how much time will be made available for Parliament, including its Committees, to scrutinise the draft Withdrawal Agreement and framework for the future relationship;
- whether the House of Commons will in fact be able to amend the Minister of the Crown's motion before voting on whether to adopt it as a resolution; and
- if the Commons **can** amend the motion, what the implications would be of it successfully doing so.

It is also not known whether the approval of a resolution that was first amended would constitute approval or rejection of the two agreements. This may depend on the wording of an amendment and whether it places procedural or substantive conditions on that approval.

David Davis, the (then) Secretary of State for Exiting the EU, indicated in oral evidence to the Exiting the European Union Committee that the motion on the two agreements was likely to be amendable, but refused to say what the implications of an amended motion being approved would be: "I am not going to speculate on amendments that have not even yet been laid, let alone passed by the House".⁸

In its report on [Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship](#), the Exiting the EU Committee said of the approval process:

Parliament cannot directly amend the content of either the Withdrawal Agreement or the Political Declaration, but can instruct the Government to seek a different outcome with the EU. This could include instructing the Government to negotiate a new

⁸ [Oral evidence](#): The progress of the UK's negotiations on EU withdrawal, 25 April 2018, Q1383, Q1454 and Q1455

Withdrawal Agreement and Political Declaration based on different terms.⁹

The Institute for Government has argued that the potential range of permissible amendments could be very wide, covering questions of both process and substance:

It is highly likely that amendments on any substantive issues in the withdrawal agreement or the framework for a future partnership would be considered in scope. That would include amendments directing the Government to renegotiate the length of transition, the financial settlement or 'divorce bill', provisions on citizens' rights, and the UK's future trading relationship with the EU. Amendments to the procedure for approving the UK's departure from the EU – for instance, by requiring a further referendum or a different kind of parliamentary vote – would also be likely to be in scope.¹⁰

2.6 EU ratification of the Withdrawal Agreement

We know ...

The UK process should take place before the EP has voted on whether to consent to the Withdrawal Agreement.

We don't know ...

We don't know exactly when the EP will vote on the draft Withdrawal Agreement. Guy Verhofstadt, the EP's Brexit coordinator, told the Exiting the EU Committee in June 2018 that the EP "normally" needed "three months in our procedures to go from an agreement that is put on the table to a vote in plenary".¹¹ This would mean the negotiators agreeing a final draft text before the end of 2018 for the EP to be assured of a vote in plenary in March 2019.

The aim for agreeing the final draft at the October European Council has now been pushed back to mid-November 2018, but we cannot know for certain whether this will happen or whether the EP will then have enough time for its consideration.

We also do not know if the EP will endorse the withdrawal agreement.

At least 20 of the other 27 EU Member States representing 65% of the EU27 population must also endorse the draft Agreement for it to be 'concluded' (or ratified) by the EU. We do not know if this will be achieved, although last-minute surprises from the EP or the EU27 would be surprising.

⁹ Exiting the European Union Committee, [Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship](#), HC 1240, 28 June 2018, para 18

¹⁰ Institute for Government, [Voting on Brexit](#), April 2018, p. 10

¹¹ Guy Verhofstadt, [oral evidence](#) to Exiting the EU Committee, Q2047 and Q2748, 20 June 2018

2.7 How meaningful will the 'meaningful vote' on the deal be?

We know ...

The former Secretary of State for Exiting the EU, David Davis, made a political commitment in a [Written Statement](#) on 13 December 2017 to hold a vote in Parliament on the Withdrawal Agreement. As noted above, [Section 13](#) of the EUW Act created a binding legal obligation for the Commons to approve the deal (both the Withdrawal Agreement and the Political Declaration on the framework for the future EU-UK relationship) by a resolution before the Withdrawal Agreement can be ratified, and further, codified the commitment to hold the vote before the European Parliament gives its verdict under Article 50 TEU. To summarise, there will be:

- A vote on a resolution in both Houses of Parliament;
- A resolution that covers two agreements: it will ask each House to approve the Withdrawal Agreement and the Political Declaration on the framework for the future relationship;
- The vote will be held before the EP votes on the withdrawal agreement and "as soon as possible after negotiations are concluded";
- It will be followed by the EU (Withdrawal Agreement) Bill announced in the White Paper.

We don't know ...

- how much time there will be between the publication of the final agreements and the vote in the House of Commons;
- whether committees will be able to take evidence and publish reports on the final agreements;
- how long there will be between the vote and exit day;
- what additional documentation will be published by the Government to accompany the Agreement and Declaration;
- how the resolution will be worded;
- whether the resolution will be amendable;
- how long the debate will be.

After the 'meaningful vote' we don't know:

- how much primary or secondary UK legislation will be required before exit day;
- what role, if any, Parliament will have in scrutinising the negotiations on the future relationship;
- whether there will be another 'meaningful vote' in each House to approve the final text of the agreement on the future relationship.

2.8 Consequences of Parliament rejecting the deal or there being no deal

We know ...

The EUW Act provides for the possibility of Parliament voting against the Withdrawal Agreement or there being no Agreement, setting out a process for the Government to outline its proposed next steps and for Parliament to consider them in three scenarios:

- the rejection by Parliament of a deal (including, potentially, a qualified approval of the Agreement and Declaration taken to be a rejection);
- if the Prime Minister concludes, before 21 January 2019, that no agreement in principle can be reached; and
- the absence of an agreement in principle by 21 January 2019.

In each of these three cases, the Government must make a statement as to its proposed next steps; the Commons must have the opportunity to consider a “motion in neutral terms” on that statement, and the Lords must have the opportunity to consider a motion taking note of the statement.

We don't know ...

We don't yet know what the UK Parliament's role will be in practice in the event that either a withdrawal agreement (and/or the framework for the future relationship) is rejected, or agreement is not reached.

In the event such a scenario arises we do not know for certain:

- what the Government's proposed course of action would be;
- whether the motion tabled by the Government would be amendable; or
- what the consequences would be if that motion were to be rejected or amended.

The Exiting the EU Committee's June 2018 report said this about a scenario in which Parliament rejects a deal or no deal is reached:

In the circumstances that a deal is not reached (or a deal is not reached that Parliament is prepared to approve), it is important that Parliament is able to express its view clearly and advise the Government on how to proceed. The provisions in the European Union (Withdrawal) Act 2018 provide a framework for Parliament's role in that scenario. Were this situation to arise, we would expect the Government to provide an opportunity for both Houses to express their views, as the Secretary of State told the House they would. In such circumstances, the country would expect more than that its elected representatives simply “took note” of the situation.¹²

¹² Exiting the European Union Committee, [Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship](#), HC 1240, 28 June 2018, para 46

The Institute for Government looked at five Brexit scenarios and the respective roles of Government and Parliament in each. The fifth scenario was the least clear:

Scenario 5: No deal/no/renege: the Prime Minister fails to reach a deal with the EU and Parliament sends the Government back to renegotiate

The final scenario sees Parliament intervening to reject “no deal” and sending the Government back to renegotiate. Precisely how Parliament would intervene is less clear. One of the battles over the so-called Grieve amendment during the passage of the European Union (Withdrawal) Act 2018 was about Parliament’s role if there is no deal – the Government had originally promised during the passage of the Withdrawal from the European Union (Article 50) Bill 2016–17 that Parliament would vote on a deal, but made no parallel commitment in the case of no deal. The fudge at the end of the parliamentary process for the Act committed the Government to lay a motion in January

2019 if there was no deal. This might well be a ‘take note’ motion, which would not be amendable but the final decision would be up to the Speaker of the House of Commons (as ‘take note’ motions are generally unamendable). It is likely that if the motion is neutral (as required in the legislation), the Speaker would try to find another way to allow Parliament to express its opinion on what should happen next. In this scenario there would be the same issues around renegotiation as in scenario 3, although potentially on a much more compressed timetable.¹³

2.9 Converting the framework on the future relationship into a ratifiable treaty

We know ...

The UK Government has decided that the Withdrawal Agreement cannot be ratified unless Parliament also approves the Political Declaration on the future relationship.

We don’t know ...

It is very unlikely that that latter text will take the form of an international treaty (with legally enforceable obligations) at the point at which Parliament decides whether to approve it – there simply will not be enough time to reach agreement on the details of the future relationship. The detail as to the terms and enforcement of the future relationship will still need to be agreed and codified into treaty form, which is likely to happen at some point during the agreed transition period (although even this is uncertain – see above).

The Constitutional Reform and Governance Act 2010

We know ...

The *CRAGA* procedure would apply to any treaties codifying or developing the future relationship between the UK and EU.

¹³ IfG, [Autumn surprises: possible scenarios for the next phase of Brexit](#), Jill Rutter, Joe Owen, August 2018

We don't know ...

It is not known (yet) whether the EUWA Bill or other legislation would make special arrangements for the ratification of those agreements, in the same way that the *EUW Act* has done for any withdrawal agreement.

The Exiting the EU Committee has said that it does not believe the *CRAGA* process provides enough opportunity for Parliament to scrutinise the international agreement(s) defining the future relationship. It would like to see further opportunities for Parliamentary input:

CRAG provisions are inadequate, denying Parliament the right to information during negotiations, and not even guaranteeing a debate or vote on a treaty before it is ratified. The Government must ensure that the UK Parliament is given a meaningful vote on the final text of the agreements with the EU that will comprise the future UK-EU relationship. The Government must also commit to scheduling a vote in Parliament if a resolution is tabled against any of the future relationship agreements during the 21-day CRAG process.¹⁴

2.10 Implementation of the *European Union (Withdrawal) Act 2018*

We know ...

The *European Union (Withdrawal) Act 2018* provides some clarity as to the extent to which EU law will be transposed or retained on exit day. The Act provides for the general retention of direct EU legislation, domestic derived EU legislation, principles of EU law and elements of tertiary EU law, subject to a range of stipulated exceptions (e.g. in relation to the supremacy of EU law and the Charter of Fundamental Rights).

We don't know ...

We don't know the extent to which regulations under the Act (or other legislation) will "modify" this body of law in anticipation of, and immediately following, exit day. The Act's "correcting power" allows Ministers to modify domestic law (including retained EU law) by Statutory Instrument (SI). A Minister can do this where he or she considers it "appropriate" to do so for certain purposes.

Those purposes include preventing, remedying or mitigating perceived "deficiencies" or failures of retained EU law to "operate effectively" arising from withdrawal.¹⁵ Until the (by the Government's estimate) 800-1000 SIs under the Act are published over the coming months, we cannot say for certain how widely the "correcting" power will be exercised in practice.¹⁶

¹⁴ Ibid, para 105

¹⁵ s. 8 (for UK Ministers) and Part 1 Schedule 2 (for devolved authorities)

¹⁶ Commons Procedure Committee, [Scrutiny of delegated legislation under the European Union \(Withdrawal\) Act 2018](#), HC 1395, 9 July 2018, paras 62-66

The Government is expected to recommend that some of these SIs should be subject to parliamentary approval through the affirmative procedure. However, for those that it proposes to make by way of a negative instrument (most of them), the *EUW Act* provides a sifting mechanism. Committees in both Houses will identify instruments of particular significance and recommend whether they should be approved by Parliament before being made by a Minister.

2.11 Parliamentary scrutiny of EU SIs

Sifting Committees

We know ...

The sifting committees of the two Houses have started to review proposals for negative SIs: those the Government wishes to make under the negative procedure. The committees can recommend (though not insist) that they should instead be relaid under the draft affirmative procedure.

We don't know ...

Given the expected high volume of SIs being tabled under the *EUW Act*, especially ahead of exit day, it is not clear how much opportunity Parliament will have in practice to debate the Government's plans for transposing EU law into a functioning system of domestic law.

It is not clear whether there will be time for the sifting committees to process all Brexit-related SIs in time for exit day.

2.12 Devolution

New restrictions on competence

We know ...

The *EUWA* allows UK Ministers to impose (by regulations) temporary restrictions on the competence of devolved institutions to prevent them from modifying parts of retained EU law. This can be achieved using powers under section 12 of the Act.

We now know that these restrictions will need to be approved by both the Commons and Lords, though not the devolved legislature(s). There are also procedural mechanisms to allow Parliament to scrutinise a Minister's decision to proceed without devolved consent. The regulations also cannot be made more than two years after exit day and they cannot stay in force for longer than five years.

We don't know ...

We don't yet know the intended scope of these regulations and whether any of the devolved legislatures are likely to withhold consent for them. The UK Government has indicated that their primary focus will be in 24 areas of intersection between devolved competence and EU powers, where it has identified a need for "legislative common frameworks". We do not know if those 24 areas will be restricted in full or in part. The Act does not legally restrict these "protective" powers to

those 24 areas, so we also do not know for certain that other areas will not be affected by those regulations.

UK common frameworks: fundamentals and consent

We know ...

We know the UK Government intends to use primary legislation to create a range of UK-wide “common frameworks” where EU law previously ensured uniformity or alignment in areas that included devolved areas of responsibility. We also know that the objectives for these frameworks are focused on protection of a UK internal market, facilitating trade deals with other countries, and common resource and security interests.

We don't know ...

We know almost nothing about what these common frameworks will look like in practice and how decisions will be taken about their content. We do not know, for instance, whether the detailed constraints and obligations placed on devolved governments by a common framework will be contained wholly in primary legislation or if they will be able to be amended or supplemented subsequently by delegated legislation.

We also do not know what role the Joint Ministerial Committees (or any new intergovernmental machinery) will play in the administration and enforcement of common frameworks, or what dispute resolution mechanisms will be in place in the event of non-compliance.

Perhaps most fundamentally, we do not know whether key decisions about the rules in a common framework will be taken “by agreement” between the four Governments of the UK or whether devolved authorities will only be consulted. We also do not know if these frameworks will be imposed by the UK Government in the event that one or more devolved legislature withholds consent for the primary legislation creating it.

Until those aspects of UK common frameworks are settled, we also cannot ascertain how and to what extent the legislatures (both UK and devolved) will scrutinise decisions made in relation to them.

Trade Bill and consent

We know ...

Under the Sewel convention, the UK Parliament, by self-denying ordinance, will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. The *Trade Bill 2017-19*, for similar reasons to the then *EUW Bill*, is an example of a Bill that engages the convention. Both the Scottish and Welsh Governments recommended in December 2017 that legislative consent should not be granted for the *Trade Bill* unless key changes were made to its devolution provisions.

We don't know ...

It is not yet known whether changes will be made to the *Trade Bill* in order to try to secure the legislative consent of the devolved authorities. The Bill is closely related in its provisions to the *EUW Bill*, which was passed with legislative consent from the Welsh Assembly but without that of the Scottish Parliament. At the time of writing, changes of the kind demanded by the devolved authorities have not been made.

EU (Withdrawal Agreement) Bill and consent

We do not know if that consent would be forthcoming or how the UK Government would respond to a blanket or partial withholding of that consent.

We know ...

Assuming there is a Withdrawal Agreement, it is inevitable that further primary legislation will have to address the relationship between devolved authorities and EU law in relation to transition. Even if the substance of the proposed *EUWA Bill* relates mostly to reserved matters (and that is itself not yet known) this means that legislative consent will almost certainly be required for this legislation.

We know that the devolved institutions will not have a formal role in the Parliamentary approval of the Withdrawal Agreement and framework for the future relationship. We also know that, legally, the *EUWA Bill* can be passed without the devolved legislatures' consent. However, the Sewel convention will provide the devolved legislatures with an opportunity to express their view on the arrangements for implementing the final deal before the Withdrawal Agreement can be ratified.

We don't know ...

We don't know what opportunities the devolved legislatures will have to scrutinise the terms on which legislative consent for the *EUWA Bill* is being sought. The devolved Governments and legislatures had, effectively, an 11-month window to scrutinise the *EUW Bill* between its introduction and Royal Assent. It has already had over seven months to consider the *Trade Bill*. By contrast, even if the Withdrawal Agreement is approved by Parliament in October-November, the maximum time the devolved institutions will have to scrutinise the *EUWA Bill* will be 4-5 months.

Scottish Continuity Bill

We know ...

The Scottish Parliament approved its own legislation for legal continuity in devolved areas in March 2018. The *UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* was prevented from gaining Royal Assent in April because the UK Government exercised its Supreme Court reference power. It contends that the Bill is outside the legislative competence of the Scottish Parliament and should therefore be declared void: "not law".

The UK Supreme Court considered the legal arguments over two days (24-25 July) and is expected to decide in October whether the

“Continuity Bill” can go forward for Royal Assent. If the Continuity Bill is cleared for Royal Assent, this will have implications for legal continuity regardless of whether the UK reaches a deal with the EU. Having two parallel schemes of legal continuity could cause some legal and constitutional uncertainty, unless working arrangements or further legislative changes are put in place to reconcile the two.

The arrangements in both the *EUW Act* and any *Continuity Act* could change if a deal is reached between the UK and the EU. The implementing legislation for the Withdrawal Agreement (the *EU (Withdrawal Agreement) Bill*) will, regardless, have to address the devolved relationship with EU law during the transition period.

We don't know ...

Among the arrangements in the *Continuity Bill* is a power for Scottish Ministers to “keep pace with” developments in EU law after exit day. No such power exists in the *EUW Act* for either UK or devolved ministers. If there is no deal such a power could prove particularly important, since there will be no transition period. It would also have implications for the UK's internal market, as some parts of the UK might continue to follow the substance of EU law more closely than others.

3. The UK's future relationship with the EU

3.1 What sort of relationship will it be?

We know ...

Both the European Parliament and the UK would like the future UK-EU relationship to be based on the EU's Association Agreement model. The EP proposed this model in a [resolution](#) on 14 March 2018, while the Government's July [White Paper](#) envisaged that an Association Agreement "would ensure the new settlement is sustainable – working for the citizens of the UK and the EU now and in the future".

DExEU's May 2017 White paper, [The United Kingdom's exit from, and new partnership with, the European Union](#), thought a "deep and comprehensive economic partnership between the UK and the EU" would have "distinct benefits for both sides". Deep and comprehensive trade agreements are a part of three recent EU association agreements and do offer a possible model for a future relationship between the UK and EU.

We don't know ...

While the UK Government set out its vision for a future relationship with the EU in its July White Paper, the EU has yet to publish proposals for future EU-UK relations beyond the Commission's slide on the [EU/UK Possible Framework for the Future Partnership Discussions](#) of May 2018.

The Political Declaration on the framework for future relations will "accompany" and be referred to in the Withdrawal Agreement.¹⁷ It will be the basis for detailed negotiations on the future EU-UK relationship once the UK has left the EU in March 2019 and the transition period has ended. But detailed agreement (or agreements) cannot be concluded until the UK has left the EU and it is looking increasingly unlikely that there will be enough time to discuss the details of the future relationship before the UK leaves the EU. The Exiting the EU Committee [concluded](#) in its report, [The progress of the UK's negotiations on EU withdrawal \(June to September 2018\)](#), published on 18 September (para. 17):

The differences between the two sides on the future economic relationship are significant but formal negotiations on the future EU-UK relationship will not start until after the UK has withdrawn from the European Union on 29 March 2019. While Parliament will want to see a detailed Political Declaration, with clarity on the shape of the future economic relationship including customs, trade and services, the Government's urgent priority must be to secure a Withdrawal Agreement.

It is still far from clear how the Government's vision of a future relationship as set out in the July White Paper (the Chequers agreement)

¹⁷ European Council (Art. 50) [Guidelines](#), 23 March 2018

can be reconciled with the EU's 'red lines' with regard to the Irish border question, the 'common rulebook' and proposed Facilitated Customs Arrangement.

In Salzburg on 20 September the EU rejected much of the Chequers blueprint, while in a [statement](#) on 21 September Theresa May appeared not to understand the EU's rejection: "Donald Tusk said our proposals would undermine the single market. He didn't explain how in any detail or make any counter-proposal. So we are at an impasse".¹⁸

It is not clear how both sides will progress from here.

3.2 What mechanisms will govern the future relationship between the UK and the EU?

Governance

We know ...

Articles 157 – 159 of the draft Withdrawal Agreement set out the institutional arrangements specific to the Withdrawal Agreement. In line with UK proposals (as contained in a footnote in the amended transition text of 21 February 2018), the draft Withdrawal Agreement proposes in Article 157 setting up a Joint Committee for the oversight of the Agreement. The proposed Joint Committee would meet annually; Article 157(3) describes its jurisdiction as covering all interpretation, application and implementation concerns that either party may have concerning the Withdrawal Agreement.

Article 159 makes clear that the Joint Committee, not the parties to the Withdrawal Agreement, is intended to govern the Agreement once concluded. It can take decisions that are binding on both parties and issue recommendations to the parties. This is less controversial than it sounds, however, as the Joint Committee is composed of representatives of both parties, and per Article 159(3) is intended to take all decisions "by mutual consent".

We don't know ...

In its [20 March report](#) the European Scrutiny Committee flagged up the following matters yet to be clarified:

- Is the UK seeking a similar unilateral right to that under the EEA Agreement to refuse to implement new EU law?
- What safeguards will be available (unilaterally) to the UK if it had to apply new EU law it considers to be detrimental?
- How will the Joint Committee ensure a high level of transparency and accountability in its decision-making?
 - The EP has called for EU representatives to be subject to "appropriate accountability mechanisms".¹⁹ It is not

¹⁸ Statement, 21 September 2018

¹⁹ [EP Resolution](#) on the framework of the future EU-UK relationship, 14 March 2018

clear if UK representatives will be accountable to Parliament.

- How will the Joint Committee deal with the large volume of tertiary EU legislation the UK will have to implement during transition, given the short time periods between the adoption and entry into force of such acts?
 - Will Parliament be given a meaningful opportunity for scrutiny of these measures when it can no longer rely on UK representation in Comitology and the Council of Ministers to make its views known?

3.3 Dispute Resolution

We know ...

Title III of Part 6 of the draft Withdrawal Agreement (Articles 160 – 165) covers dispute settlement. After setting out a general provision promising cooperation and (de facto) good faith negotiation between the parties in Article 160, it makes further provisions on the intended future jurisdiction of the CJEU.

Article 162(1) makes clear that either party can refer a dispute to the Joint Committee. Article 162 sets out a three-step dispute resolution procedure for any conflicts arising under the Withdrawal Agreement, should consultation and cooperation (as in Article 160) not lead to a mutually agreed solution.

First, both the UK and the EU can take any disputes to the Joint Committee administering the Withdrawal Agreement and ask it to resolve a dispute the parties are having. Under Article 162(2), the Joint Committee may issue a 'recommendation'. The procedure outlined sounds like non-binding mediation: Article 162(2) does not suggest that the 'recommendation' is binding on either party, but only that the Joint Committee will seek a solution acceptable to both parties.

The rest of Article 162 and subsequent Articles conflict with a clear UK 'red line' - the ending of the jurisdiction of the CJEU in the UK. Under the EU's proposals, the 'appeals' mechanism the Withdrawal Agreement will function under will always be the CJEU: the Joint Committee or the parties will refer a dispute to the CJEU where it cannot be resolved otherwise, and its rulings will be binding.

We don't know ...

Although the UK and the EU have reached broad agreement on a wide variety of institutional matters set out in the draft Withdrawal Agreement, the provisions on dispute resolution in particular were not agreed at the time of the June European Council summit. Beyond a general agreement to attempt consultations before seeking more formal dispute resolution in Article 160, and that the only possible means of dispute resolution applicable to the Agreement will be found in the agreement in Article 161, none of the other provisions on dispute resolution have been agreed in principle.

Dispute resolution

Here, the unknown element is what the UK proposes instead of the EU proposals to involve the CJEU in dispute resolution under the Withdrawal Agreement.

- Rejection of the draft Withdrawal Agreement text could mean a rejection of any role for the CJEU, or the rejection of the role as currently described;
- Alternatives to the CJEU could include a separate tribunal set up to rule on Withdrawal Agreement issues, or a binding form of arbitration to settle disagreements. But it is not clear if this would be acceptable to the EU, as the CJEU's case law explicitly requires the CJEU to be the only interpreter of provisions of EU law, and the draft Withdrawal Agreement echoes significant portions of EU law.

The future relationship/partnership

We know ...

The European Council's March guidelines set out the governance framework for the future relationship with the UK in Article 15:

The governance of our future relationship with the UK will have to address management and supervision, dispute settlement and enforcement, including sanctions and cross-retaliation mechanisms. Designing the overall governance of the future relationship will require to take into account:

- i) the content and depth of the future relationship;
- ii) the necessity to ensure effectiveness and legal certainty;
- iii) the requirements of the autonomy of the EU legal order, including the role of the Court of Justice of the European Union, notably as developed in the jurisprudence.

This was complemented by European Commission [slides](#) (January 2018) which set out the Commission's position in general terms on the governance of international agreements. The slides identify three basic components for the governance of all international agreements:

1. ongoing management and oversight – usually undertaken by a Joint Committee;
2. dispute settlement – usually undertaken initially via a political process (in the Joint Committee) first, and by a judicial (or arbitral) process second;
3. enforcement after dispute settlement – dealt with by a sanctions mechanism.

Dispute settlement will be the most difficult aspect of governance to manage. In a series of opinions on the EU's powers in external relations, the CJEU has made clear that it alone has the power to determine the meaning of EU law concepts and, by proxy, the division of competences

between the EU and its Member States, as the EU's external relations cannot affect the 'autonomy of EU law'.²⁰

The closer the relationship the UK wants to have with the EU, and the more EU law it continues to subscribe to, the more likely it is that the EU will insist the CJEU be involved in dispute resolution.

In her [Mansion House speech](#), the Prime Minister only addressed dispute settlement as a governance matter, stating that:

[...] in the future, the EU treaties and hence EU law will no longer apply in the UK. The agreement we reach must therefore respect the sovereignty of both the UK and the EU's legal orders. That means the jurisdiction of the ECJ in the UK must end. It also means that the ultimate arbiter of disputes about our future partnership cannot be the court of either party.²¹

She also identified an independent arbitration mechanism as one of the five foundations underpinning the future relationship.

We don't know ...

There are many 'unknowns' about the future relationship's governance structures:

- Are both parties happy with a Joint Committee for management and oversight functions, and if so, what will those functions be?
- Will political dispute settlement mirror the arrangements agreed in the Withdrawal Agreement and thus fall to the Joint Committee?
- What form of judicial dispute resolution will exist under the future relationship – will it be arbitration or a more formal 'tribunal' system?
 - If a basic FTA or an Association Agreement not involving significant volumes of EU law, arbitration might be an acceptable dispute resolution mechanism to both parties.
 - If a more advanced FTA or Association Agreement involving more aspects of the EU *acquis*, the EU (and existing CJEU case law) will demand a role for the CJEU as the sole interpreter of EU law.
 - A third option is the establishment of a tribunal like the EFTA Court, which interprets EU law in line with CJEU jurisprudence but is independent of it.
- What sanction/retaliation mechanisms will exist under the future relationship, and how will sanctions and retaliation be supervised/enforced?

²⁰ See, seminally, [Opinion 2/13 ECLI:EU:C:2014:245](#)

²¹ PM's [Mansion House speech](#), 2 March 2018

4. Trade relations

4.1 UK trade relations with the EU

We know ...

The draft Withdrawal Agreement envisages a transition period during which EU-UK trade relationships will remain the same. The Government's Chequers proposals on the future economic partnership, set out in the [White Paper](#) on future relations, have as of September 2018 not been well-received by other EU leaders.

The draft Withdrawal Agreement provides that during the transition period EU law will continue to apply in and to the UK, the *status quo* in trade relations will be preserved and "the UK and the EU would continue to have access to one another's markets on current terms".²² During this period, the EU and the UK will negotiate their future economic relationship with a view to completing a future trade deal by the end of 2020.

Although official trade negotiations have not been opened, the UK and the EU are trying to reach an understanding of the framework for the future relationship, including the basic principles of trade, which will be written into the Political Declaration accompanying the Withdrawal Agreement and which Parliament will be asked to approve.

We don't know ...

As the EU has insisted on opening formal negotiations on the future trade agreement only when the UK has officially left the EU, the details of any future UK-EU trade deal are still unclear. So is still unknown what kind of trade deal, if any, will be agreed. Will it be a tailor-made, deep and comprehensive agreement covering trade in goods and to a certain extent also services? Or is it going to be a Canada-style free trade agreement (FTA)? And crucially, will there be a transition or implementation period to prepare for the new trade regime?

If there is no Agreement in place before 29 March 2019, there will be no transition period and no future relations framework. The Government has published several batches of [guidance](#) for businesses on how to prepare for this eventuality. The European Commission has done the same with its [preparedness notices](#). It is very difficult to provide certainty as to what a no-deal scenario would entail for many aspects of trade, including customs processes and mutual recognition of standards.

The Chequers proposals

We know ...

The Government's current proposals in the [White Paper on future EU-UK relations](#) of 12 July sets out the Government's principles for the future economic partnership between the UK and the EU. The

²² HM Government, [Trade White Paper: Preparing for our future UK trade policy - government response](#), 5 January 2018, para 2.1

partnership would evolve based on ‘bilateral autonomy’. There would be frictionless trade in goods and agri-foods through a new free trade area, based on the so-called “common rulebook”. The UK would commit by treaty to ongoing harmonisation of standards and regulations with the EU, covering “only those rules necessary to provide for frictionless trade at the border”.²³

For trade in services the UK is seeking regulatory freedom and is preparing to accept mutually reduced access to services markets as a consequence.

We don’t know ...

While the Chequers White Paper is a proposal for a tailor-made deal, which keeps the UK aligned to the EU in terms of trade in goods but not as much in services, the EU position has been from the outset that the UK should go either for a Canada-style FTA or accept a much closer trade relationship, such as that available to members of the European Economic Area.²⁴

At this point we do not know where the negotiations on the future trade relationship will lead and which crucial choices both sides will make. For further information, see Commons Briefing Paper 7694, [The Brexit White Paper on future relations and alternative proposals](#), 28 August 2018.

4.2 UK trade agreements outside the EU

We know ...

After leaving the EU, the UK will pursue an independent trade policy and sign its own free trade agreements (FTAs) with non-EU countries. Currently the UK is a part of the EUs FTAs and it will remain so during the transition/implementation period. EU and UK negotiators have agreed in the draft Withdrawal Agreement that the UK would be free to sign and ratify FTAs during the transition period and to bring them into force from 1 January 2021.²⁵ To secure the continuation of present trade relationships with non-EU countries, the UK is preparing to transition or roll over existing EU trade deals into bilateral UK-third country agreements.

In addition to its work on existing EU trade agreements, the Government is exploring options for new 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.²⁶

In July 2018 the Department for International Trade announced consultations on the UK’s intention to seek future trade agreements

²³ HM Government, [White Paper on The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, Chapter 1, para 25

²⁴ [“Where does May go from here?”](#) *Financial Times*, 24 September 2018

²⁵ [Draft Withdrawal Agreement](#), 19 March 2018, Article 124

²⁶ Department for International Trade, [Trade White Paper: Preparing for our future UK trade policy – Government Response](#), January 2018, Chapter 2.1

with Australia, New Zealand and the USA, as well as the option of joining the Trans-Pacific Partnership.

We don't know ...

We don't yet know what the trade arrangements between the UK and non-EU countries will be. Their scope and depth will also depend on any trade deal the UK agrees with the EU. The UK's trade talks with non-EU countries are at a very early stage. As trade negotiations are time-consuming and complex, we cannot say if and when agreements will be reached with which countries. We cannot say how technical aspects like Most Favoured Nation (MFN) clauses and the preferential rules of origin in the EU's current trade agreements will influence the UK's future trade deals.

Will rollover of trade agreements be completed by Brexit day?

We know ...

The Government's Impact Assessment for the Trade Bill published in November 2017 referred to 88 third countries covered by EU trade agreements, accounting for 13% of UK trade. 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 in relation to its objective of ensuring continuity in these trading relationships.

We don't know ...

We don't know if all these third countries will roll over their agreements in time for Brexit. A report from the International Trade Committee (ITC) 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 also said there was an urgent need for clarity "over the number, type, scope, extent and importance of the EU's trade-related agreements".

In evidence to the ITC in July 2018, International Trade Secretary Liam Fox said that agreements in principle had been reached with third countries on continuing trading arrangements, but that 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. How many agreements had been reached, and with which countries, was still unclear.

Asked about the EU's FTAs, Trade minister George Hollingbery said in evidence to the ITC on 4 September 2018 that although good progress was being made: "it is not an absolute given that we can get them all transitioned".²⁷

²⁷ International Trade Committee, [Trade and the Commonwealth: developing countries](#), 4 September 2018, HC 667vii, Q370 and Q396

Will the EU's external trade agreements apply during the transition period?

We know ...

The Government's Technical Note of February 2018 said it would seek continued application of EU international trade and other related agreements during the transition phase by agreement of all the parties concerned. The Technical Note referred to EU agreements covering a wide range of other policy areas including nuclear cooperation and aviation, and said that action was required to clarify the application of these agreements during the transition period.

At the March 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.

We don't know ...

This remains a request and the position of the third countries concerned in relation to this request is not yet clear.

5. The Irish border question

We know ...

The December 2017 Joint Report stated that if the UK cannot propose specific solutions to preventing a hard border between Northern Ireland and Ireland, or prevent one through its future relationship with the EU, then the UK would:

Maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.

This third solution has become known as the 'backstop'.

We don't know ...

The EU fleshed out its vision of how the backstop would operate in legal terms in a Protocol to its draft Withdrawal Agreement published in February 2018. But the Prime Minister rejected the EU's approach saying "no Prime Minister [of the UK] could ever agree" to what was proposed in the Protocol.²⁸ In May the UK Government [said](#) it would propose its own version of the backstop but it has yet to publish this.

In response to the Government's opposition to the EU's backstop text, Michel Barnier said in September: "we are ready to improve this proposal".²⁹ The Commission has yet to publish any amendments to the draft Withdrawal Agreement that reflect their improved offer.

There are, therefore, two sets of Irish border unknowns – ones that relate to the general post-Brexit UK-EU relationship and ones that relate to how the backstop will operate.

The major source of uncertainty about what will happen in Northern Ireland and to its border with Ireland is that while the region's status should largely be resolved in the Withdrawal Agreement, it also rests on the future relationship - which will be negotiated after the UK leaves the EU.

General unknowns

- **How can there be no checks at the Irish border or checks in the Irish sea if the UK maintains its commitment to leaving the Single Market and the Customs Union?** No EU external border operates on these principles, and the Northern Irish Affairs Committee concluded:

We have had no visibility of any technical solutions, anywhere in the world, beyond the aspirational, that would remove the need for physical infrastructure at the border.³⁰

²⁸ BBC News, ['Theresa May: No UK PM could ever agree with EU draft'](#), 28 February 2018.

²⁹ BBC News, ['Brexit: Theresa May tells EU leaders their plans must 'evolve''](#), 19 September 2018.

³⁰ Northern Irish Affairs Committee, [The land border between Northern Ireland and Ireland](#), 13 March 2018, HC 329, 2017-19, Page 54 para 8

The UK government argues its Chequers proposal of a common rulebook for goods and Facilitated Customs Arrangement (FCA) removes the needs for checks, but this solution has been rejected by the EU, and the FCA has no legal, operational or technical precedent.

- **What will the future customs relationship** be between Northern Ireland and Ireland, Great Britain and Ireland/the EU, and Northern Ireland and Great Britain?
- **What level of regulatory alignment will there be** between Northern Ireland and Ireland, Great Britain and Ireland/the EU, and Northern Ireland and Great Britain?
- **What force do the commitments the UK and EU made in the December Joint Report have, if there is no withdrawal agreement?**
- **Will a temporary UK-wide customs union and goods regulation alignment** while the UK tries to formulate a more lasting customs solution for the Irish border **be a sufficient guarantee for the EU to sign off the Withdrawal Agreement?**
- **Are the legislation and international agreements that form the Common Travel Area sufficient** to ensure Irish and British citizens can travel and work as freely between the two countries as they do now?
- **Would there be a Parliamentary majority to remove the provision in the *Taxation (Cross-border Trade) Act 2018* preventing Northern Ireland from forming a different customs territory from the UK**, if this was required as part of the Withdrawal Agreement?³¹

Backstop unknowns

Even though the backstop envisaged by the EU is set out in a fair amount of detail in the draft Withdrawal Agreement, there are still unanswered questions as to how it will operate, in part because the Agreement refers to annexes which remain unpublished. The questions below are based on the assumption that the backstop comes into operation.

- **Is the backstop UK-wide or specific to Northern Ireland?** The EU is clear that it would apply only to Northern Ireland, but the language of the Joint Report is somewhat ambiguous, and the Government maintains it should apply to the whole of the UK.
- **What does “full alignment” as set out in the Joint Report mean?** The UK has argued that it means ‘outcome alignment’, whereas the EU believes it means adopting the relevant EU *acquis*.
- **What is the exact scope of the areas that need to be fully aligned in Northern Ireland?** The Good Friday Agreement identified six areas for cross-border cooperation: transport, agriculture, education, health, environment and tourism. Article 8 of the draft Withdrawal Agreement Protocol extends the areas of

³¹ [Taxation \(Cross-border Trade\) Act 2018](#), Section 55.

coordination to energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport. The measures will only be required to “maintain the necessary conditions for continued North-South cooperation”. Therefore, the full EU *acquis* will not need to apply in these areas. There are no specific obligations as to how this cooperation should operate.

- **Will alignment in some areas of services be extended to Northern Ireland**, as justice and security, for example, encompass lawyers’ services?³²
- **Will Northern Ireland remit a proportion of customs duties and tariff revenue to the EU?** Will Northern Ireland retain its proportion of these duties or will the revenue go to the UK Treasury?
- **Will some elements of trade policy be devolved to the Northern Ireland Executive (as and when it is functioning)?**
- **How will the rules of origin apply to goods produced in Northern Ireland?** While it seems clear that if Northern Ireland forms part of the EU customs territory, and therefore NI goods will count under the rules of origin as EU content, will NI goods be able to count also as UK content? This will likely rest on whether the future UK-EU trade agreement will allow for ‘diagonal cumulation’. If not, then NI goods manufacturers who supply parts, e.g. for cars assembled in Britain, might be disadvantaged, as their parts would not count towards UK ‘originating content’ that may be required in the UK’s FTAs with other countries.
- **To what extent can the UK choose to not impose checks on Northern Irish goods entering Great Britain**, and will it seek an exemption from the WTO to do so?
- **How will state aid rules work in Northern Ireland?** Article 9 of the draft Withdrawal Agreement Protocol states that EU state aid rules will still apply to Northern Ireland. What would the effects be on the Northern Irish economy if Britain has a different state aid regime? The UK Government has proposed a ‘level playing field’ with the EU post-Brexit, and in its July White Paper committed to “apply a common rulebook for state aid”. However, it then goes on to say the UK’s proposed future relationship will “not fetter its sovereign discretion on tax, including to set direct or indirect tax rates, and to set its own minimum tax rates”. Even under EU state aid rules, proposals to lower NI corporation tax to 12.5% should be able to go ahead, as long as there is a functioning Executive.³³
- **Will fish caught in UK waters around Northern Ireland** (which are excluded in the draft Withdrawal Agreement from the EU customs territory) **be treated as UK customs goods or EU customs goods?**
- **How will Northern Irish interests be represented at the EU where regulatory changes might impact the territory,**

³² For more detail see [‘The island of Ireland and the UK’s withdrawal from the EU – a legal political critique of the draft withdrawal agreement.’](#) Professor Dagmar Schiek, Queen’s University Belfast, March 2018, Page 7.

³³ See [‘Corporation tax in Northern Ireland’](#), CBP 7078, 16 May 2018, pp14-15.

especially if these changes created barriers between Northern Ireland and Great Britain which might cause economic harm? For example, if the EU decided to harmonise electronic plug sockets across the bloc, might Northern Ireland receive a dispensation, as having different plug sockets from the rest of the UK would create such a barrier.

- **Will Northern Ireland [have representation](#) in the European Parliament?**
- **Will the draft Withdrawal Agreement be updated to call for consent from the Northern Ireland Executive and Assembly, as outlined in paragraph 50 of the December Joint Report?**
This committed the UK to requesting consent from the devolved institutions if the backstop had to come into play. Theresa May brought up this commitment in her [post-Salzburg speech](#). The EU is [reported](#) to have rejected any such role for the devolved institutions.
- **How can this consent be granted if there is no functioning Executive and only they can bring business to the floor of the Assembly? If an Executive were formed, might a political party, most likely the DUP, use the Petition of Concern mechanism to effectively veto the use of the backstop?**
- **Would Irish citizens living in Northern Ireland enjoy rights, such as the right of business establishment, that British citizens would not be able to exercise in Ireland?**³⁴ The definition of the “people of Northern Ireland” used in the draft Withdrawal Agreement comes from the Belfast Agreement:

All persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.³⁵

Would this mean that people who had moved away from Northern Ireland and come back could exercise their rights as Irish/EU citizens and/or UK citizens?³⁶

For questions relating to what would happen to the Irish border in the event of a no-deal scenario, see Section 8, of our [‘What if there’s no Brexit deal’](#) briefing paper.

³⁴ ‘Bordering Two Unions’, de Mars, Murray, O’Donoghue, Warwick, 2018. Page 66.

³⁵ Annex 2 of the Anglo-Irish Agreement- part of the [Belfast Agreement](#).

³⁶ Commentary on the Protocol on Ireland/Northern Ireland in the Draft Withdrawal Agreement, A ‘Constitutional Conundrums: Northern Ireland, the EU and Human Rights’ Project Report, by Sylvia de Mars (Newcastle University), Aoife O’Donoghue (Durham University), Colin Murray (Newcastle University), Ben Warwick (Lecturer, University of Birmingham)

6. Free movement of people

6.1 Citizens' rights in the draft Withdrawal Agreement

We know...

Part Two of the draft Withdrawal Agreement sets out the so-called 'Citizens' Rights' provisions that will be applicable to EU and UK nationals who have exercised free movement rights at the *end* of the transition period.

During the transition period, Part Two of the draft Withdrawal Agreement makes clear that all EU citizenship rights will continue to apply to EU nationals and their family members (as defined by EU law). As UK nationals will be treated as EU nationals until the end of the transition period - much like the UK will be treated as if it were a Member State - this covers both EU and UK nationals in full.³⁷

As such, those having exercised continuous lawful residence in accordance with EU law for a period of five years (or the shorter period specified in Directive 2004/38/EC for some categories of mobile EU nationals) will continue to acquire 'permanent residence' rights, even during and after the transition period, providing their lawful residence commenced before the end of the transition period.³⁸ In terms of losing 'permanent residence', the draft Withdrawal Agreement is more generous than Directive 2004/38/EC: where the directive has EU nationals losing 'permanent residence' status after two years of absence from their state of residence, the Withdrawal Agreement in Article 14 says they will only lose this right after five years.

Article 17 of the draft Withdrawal Agreement specifies the conditions and protections that any national registration system must adhere to. These would apply, for example, to the UK's proposed process for issuing 'temporary' or 'settled' status documentation to EU citizens and their family members living in the UK. The draft now confirms that such documentation "may be in a digital form", and that application processes must be user-friendly, so host State authorities must "help the applicants prove their eligibility and avoid any errors or omissions in the application; ...give the applicants the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omission". The deadline for applying for such documentation must be no less than "6 months from the end of the transition period", and where the host State experiences technical difficulties in issuing such documentation, this period is to be automatically extended by a year.

The draft Withdrawal Agreement guarantees the ongoing recognition of professional qualifications of those EU and UK nationals covered by Part Two, Articles 25-27.

³⁷ Articles 8 and 9 of the draft WA.

³⁸ Article 14 of the draft WA.

Article 32, meanwhile, states that continued free movement rights will not be provided for UK nationals who live in an EU Member State at the end of the transition period:

In respect of United Kingdom nationals and their family members, the rights provided for by this Part shall not include further free movement to the territory of another Member State, the right of establishment in the territory of another Member State, or the right to provide services on the territory of another Member State or to persons established in other Member States.

Article 34(2) sets out a general expectation of equal treatment between all UK and EU nationals covered by the draft Withdrawal Agreement (and its included rights and benefits), though with the caveat that this does not preclude special arrangements stemming from the Common Travel Area.

Finally, Part Two concludes with Article 35:

The persons covered by this Part shall enjoy the rights provided for in relevant Titles of Part Two for their lifetime, unless they cease to meet the conditions set out in those Titles.

The draft Withdrawal Agreement may generally be superseded by a 'future relationship' treaty between the UK and the EU following transition and withdrawal, but the citizens' rights provisions will remain in force until the last EU/UK national benefitting from 'acquired' EU law rights passes away.

Settled Status: the proposed UK 'Part Two' regime

The Government set out a Statement of Intent for its intended 'Settled Status' system on 21 June 2018. To acquire Settled Status, applicants will need to:

- access the digital application process;
- pay a required fee;
- provide proof of identity; and
- upload a facial image.

The online application form will be "short, simple and user-friendly" and applicants will need to:

- (1) prove that they are an EU citizen or family member;
- (2) prove their continuous residence in the UK;
- (3) pass criminal checks. The application will ask people to self-declare convictions which will be checked against the UK's crime databases.

The application form will *not* enquire whether the applicants hold so-called 'comprehensive sickness insurance', which is a precondition for the exercise of rights under Directive 2004/38/EC as an economically inactive EU national.

Subject to criminality and security checks, applicants who can demonstrate five years' residence will be granted Settled Status (indefinite leave to remain). Otherwise, they will be granted pre-settled

status (limited leave to remain) subject to criminality and security checks, while they accumulate the necessary five years' residence.

The Government's Statement of Intent explains that the grant of Settled Status or pre-Settled Status will enable the applicant "to continue their lives in the UK much as before" including to work, study and access public services and benefits.

EU citizens in the UK who are successful in securing Settled Status will be able to demonstrate this with a digital code and no physical document will be issued to them. The Statement notes that the UK has started using digital status to allow non-EEA citizens to prove their right to work, and that the Home Office "will monitor this and the digital status issued under the scheme". In contrast, non-EU family members who are successful in acquiring Settled Status will receive the "digital means of evidencing their status" and "will also be issued with a biometric residence document" which will provide them with a convenient way of evidencing their status to those who may need to see confirmation of it, such as an employer, landlord or service provider.

We don't know ...

Full extent of coverage of the Withdrawal Agreement

While Part Two of the draft Withdrawal Agreement has been largely agreed, there is still uncertainty over whether certain categories of beneficiaries of EU law rights are covered by it. The 19 March agreed [text](#) suggests that those carers of minors who are unable to exercise movement rights without their non-EU national parents (so-called '*Chen*' children) are covered by the draft WA, but third-country national carers of minors who have not left their Member State of birth ('*Zambrano*' children) are not covered by the draft Agreement, and EU nationals returning to their home country with a third-country family member on the basis of having exercised Treaty rights ('*Surinder Singh*' family members) also appear not to be covered.

The EU Rights Clinic [notes](#) that the Statement of Intent on settled status also does not guarantee the eligibility of *Zambrano* carers or *Surinder Singh* family members to settled status, although the Home Office has assured them that they are intended to be covered.

Process for UK nationals in the EU

While the UK Government has made available a Statement of Intent for its 'settled status' process, the EU27 have not reciprocated by setting out a detailed process for UK nationals to register their status in the EU27. These UK nationals will continue to benefit from EU law as it currently stands, and so registration processes will be available already; but they may need to be altered in light of the specificities inherent in the Withdrawal Agreement, such as the ability to leave the host State for five years following Brexit and still retain 'permanent residency'.

Home Secretary Sajid Javid [has been critical](#) of the EU27's lack of communication on the post-Brexit 'settlement' processes for UK nationals, as has Guy Verhofstadt.

Onward Movement of UK nationals

Earlier versions of the draft Withdrawal Agreement contained Article 32, which stated that continued free movement rights would not be provided for UK nationals who lived in an EU Member State at the end of the transition period:

In respect of United Kingdom nationals and their family members, the rights provided for by this Part shall not include further free movement to the territory of another Member State, the right of establishment in the territory of another Member State, or the right to provide services on the territory of another Member State or to persons established in other Member States.

The full implications of this Article are as follows:

- UK nationals resident in an EU Member State before the end of transition (as covered by Part Two of the draft Withdrawal Agreement, Article 9(b)), as well as UK nationals resident in an EU Member State who are exercising rights as frontier workers in one or more Member States (under Article 9(d)), would continue to hold the rights they were exercising at the moment the transition period ends: but *only* with respect to the Member State that they reside in (if covered by Article 9(b)) or are 'frontier workers in' at that time (if covered by Article 9(d)). What this would mean in practice is that any UK national in those positions would have all EU citizenship rights (including the right to work, access to benefits on equivalent terms as nationals of the state they live in/work in, and so forth) but only in the Member State they reside in or work in *at the end of the transition period*. Within that Member State they would be free to change status (e.g. go from employed to studying or retiring) without a loss of the rights the Withdrawal Agreement extended to them (according to Article 16(1)) – but these 'acquired' EU rights would not travel with them to a new Member State.
- In terms of moving as an individual to work or simply live in a new Member State, the UK nationals in question would be subject to domestic immigration law (incorporating the limited EU rules on third country national – TCN - immigration) in that Member State. [These laws](#) are generally significantly less generous than the EU free movement of workers/persons rules, and so it is likely that these UK nationals – if wishing to move to a new EU Member State – would need to meet conditions such as having secured employment and meeting earning or savings thresholds. Their stay in the new Member State may also be time-limited.
- Regarding the establishment of businesses and the provision of services, domestic law again governs the rules applicable to TCNs. The WTO rules on provision of services that the EU has signed up to as a minimum requirement of what the EU Member States must enable regarding TCNs wishing to engage in the provision of services or setting up businesses, [are highly](#)

[complicated but significantly less generous](#) than the EU rules on establishment and services. Without further clarity on the future relationship, at most it can be noted that the ability to work and engage in business in other EU Member States will be as limited or open to UK nationals already resident in an EU Member State as they will be to UK nationals who did not exercise their free movement rights while the UK remained a member of the EU.

6.2 Free Movement and the future relationship

We know...

The UK has maintained as one of its 'red lines' during the negotiations that 'free movement' of EU nationals to the UK will end. If the UK ends 'free movement', the Commission has [made clear](#) that it will also stop being available for UK nationals wishing to move to and work in the EU27, for the simple reason that the Single Market *acquis* cannot be 'cherry-picked'.

We don't know...

EU and UK nationals who do not benefit from the Withdrawal Agreement will be covered by rules other than the existing 'free movement' rules (as adapted for the Withdrawal Agreement). This could mean either a new negotiated movement regime, as part of the future relationship, or respective 'standard' migration rules as applicable to third country nationals.

The European Parliament has [advocated](#) for "specific provisions concerning the movement of citizens from the EU to the UK and from the UK to the EU after the transition period, which should be at least commensurate to the degree of cooperation" in the other dimensions of the future relationship.

The Commission's [slides](#) on 'mobility' as part of the future relationship set out what will happen to EU nationals moving to the UK, and UK nationals moving to the EU, who are not covered by the Withdrawal Agreement, unless further agreement is struck:

Consequences of the UK becoming a third country - summary

EU citizens → UK

- Third country nationals
- Will be subject to UK immigration rules (*future UK immigration rules are unknown today*)
- No coordination or equal treatment regarding social security rights/benefits

UK nationals → EU

- Third country nationals
- Will be subject to entry requirements under the Schengen Borders Code
- Will be subject to EU & national legal migration rules
- No coordination regarding social security rights/benefits (*but: some portability rights in relation to pensions*)

The significant 'unknowns' regarding UK nationals in the EU post-Brexit are whether the EU27 will subject them to a *general* third country national regime, or whether the negotiations with the UK will result in a more generous 'movement agreement' that continues to facilitate working and living in the UK or the EU27 for respective nationals. The EU27 have to date not indicated what their preferences are. However, in light of the UK position set out in September 2018, it appears more likely that the general third country regime will apply.

Regarding EU nationals in the UK, the UK is reviewing its immigration policy as part of the Brexit negotiations. The Migration Advisory Committee in September 2018 published a [report on EEA migration](#) that suggests there is no inherent reason to subject EEA nationals to a *different* migration regime to all other third country nationals post-Brexit, although it does note that such a different regime may be desirable as part of an overall negotiating strategy with the EU. The *Guardian* [reports](#) that the Cabinet has adopted an end to preferential migration for EU nationals policy which it will present at the Conservative Party Conference, advocating instead for a general 'skills and wealth' oriented immigration policy, on which details will follow.

7. Money matters

7.1 The financial settlement (the exit bill)

We know ...

In the first phase of withdrawal negotiations the UK Government and the EU agreed an approach for settling their outstanding financial commitments in a financial settlement.³⁹ The agreement reached on the financial settlement – labelled by the media as the ‘exit bill’ or ‘divorce bill’ – is being translated into legal text in the Withdrawal Agreement.⁴⁰ The Library briefing [Brexit: the exit bill](#) provides further details about what has been agreed and how the negotiations proceeded.

We don't know ...

Using various assumptions, HM Treasury and the Office for Budget Responsibility (OBR) – the UK's public finances watchdog – have both estimated that the net cost of the settlement to the UK could be somewhere in the region of £35 billion-£39 billion.⁴¹ However, the actual final cost of the settlement to the UK is unknown. The amount paid by the UK will be based on the actual outcome of EU budgets, rather than the forecasts used by HM Treasury and the OBR to produce estimates. While it is expected that 70% of the settlement will have been paid by 2022, some annual payments may extend until the 2060s. This is because the UK does not need to make payments any earlier than if it had remained in the EU.

The Public Accounts Committee scrutinised the Treasury's estimate of the financial settlement and concluded that the “estimate does not provide Parliament and the taxpayer with a sufficient understanding of the uncertainty attached to the settlement's value”.⁴²

What will influence the size of the settlement?

We don't know

Most aspects of the financial settlement are exposed to some future events. Here we consider some aspects that could potentially have the biggest impact and are potential unknowns.

The UK's economic performance relative to EU Member States

The UK's relative economic performance is important as Member States' contributions to the EU's annual budgets are partly determined by the size of their economy. This affects the size of the settlement because:

³⁹ *ibid*

⁴⁰ [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 19 March 2018

⁴¹ NAO, [Exiting the EU: The financial settlement](#), 20 April 2018; OBR, [Economic and Fiscal Outlook – March 2018](#), Appendix B

⁴² Public Accounts Committee, [Exiting the EU: The financial settlement](#), HC973 2017-19, 20 June 2018, [para 3](#)

- the UK will contribute to the EU budget during the transition period (2019 and 2020), and its relative economic performance will influence the size of these payments;
- the UK has agreed to contribute to a share of the EU's existing financial commitments that remain outstanding at the end of the transition period, including pension liabilities. The UK's share of these commitments will be determined by its percentage share of contributions to the EU budget between 2014 and 2020, which will have been influenced by its relative economic performance.

Impact of future events on the EU's pension liabilities

The future pension payments of the EU and the UK's share of these will depend on future events such as mortality and salary increases of the scheme members. The National Audit Office (NAO) suggested that the UK's contribution to the pension scheme "is a particularly uncertain part of the settlement", especially as the liability is expected to be paid over such a long period of time.⁴³ The UK's payments are forecast to extend until 2064, although the draft Withdrawal Agreement includes some flexibility for the UK to settle by paying a lump sum.⁴⁴

Exchange rate

All payments will be calculated and paid in euros. The cost in pounds will depend on the exchange rate prevailing at the time of payment.

7.2 Payments related to the future EU-UK relationship

UK participation in EU programmes and agencies

It is likely that a negotiated future relationship will result in some costs for the UK. The size of any future costs will depend on the extent to which the UK continues to participate in EU programmes and agencies and its level of integration with the Single Market. Negotiations on the future EU-UK relationship will determine which EU programmes and agencies the UK will participate in and how it will contribute financially to them.

We know ...

The Government has said it will seek to stay involved in some EU programmes and agencies after Brexit, such as the next research and innovation programme (Horizon 2020 is the current programme) and the European Defence Fund.⁴⁵ The UK would participate as a third country and would make a financial contribution to the programmes.

Some programmes are already open to third countries – often these are programmes with cross-border or collaborate elements. There is a precedent for determining the size of third countries' contributions to

⁴³ NAO. Exiting the EU: The financial settlement, 20 April 2018, [para 2.19](#)

⁴⁴ [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 19 March 2018, para 135(5(b))

⁴⁵ HM Government's white paper on the [future relationship between the UK and the EU](#) proposes the UK's continued membership in a range of EU programmes and agencies.

EU programmes. Broadly speaking, third countries make contributions based on the EU's budget for the programme and the size of the third country's economy relative to the size of the EU economy plus the third country's economy. Negotiations will determine whether the UK contributes according to this precedent.

We don't know ...

Clearly there is uncertainty about which EU programmes the UK may participate in and how the associated costs will be calculated. The European Scrutiny Committee believes that negotiating participation in any of the regulatory agencies integral to the architecture of the Single Market will be "especially difficult".⁴⁶ For illustrative purposes the European Scrutiny Committee has estimated the potential gross cost of the UK participating in six EU programmes, all of which the Government has shown some interest in participating.⁴⁷

The estimates – which the Committee say are "necessarily extremely provisional" – are based on the precedent for third countries' contributions described above. The estimates should be treated with some caution as:

- the UK has not yet negotiated third party participation in any of the programmes;
- they are based on provisional EU budgets for the programmes during 2021 – 2027, which may change;
- the UK and EU may agree alternative approaches for calculating the UK's contribution;
- the estimates are gross contributions – they don't account for funding the UK might receive from the programmes, which would mean a lower net contribution. For instance, the UK has a strong record in securing funding from the EU's research and innovation programmes,⁴⁸ which if continued would mean a significantly smaller net contribution.⁴⁹

⁴⁶ European Scrutiny Committee, Thirty-fourth Report of Session 2017-19, HC301-xxxiii, 10 July 2018, [para 6.8](#)

⁴⁷ *ibid*

⁴⁸ Commons Library briefing, [Brexit: UK Funding from the EU](#), has data on the funding received by the UK from EU programmes.

⁴⁹ The [European Commission has proposed](#) a mechanism for the 2021-2027 framework programme for research that would ensure that the UK does not become a net recipient from the programme if it participates as a third country

The European Scrutiny Committee estimates that the UK's participation in six EU programmes could result in average gross payments of £4 billion per year

Potential gross UK contribution to select EU programmes, 2021-2027

	€ billion	£ billion
Framework Programme for Research	2.20	1.90
Euratom Research Programme	0.06	0.05
ITER nuclear fusion project	0.14	0.12
EU Space Programme (Galileo & Copernicus)	0.04	0.03
European Defence Fund	0.30	0.27
Neighbourhood & International Cooperation Instrument	2.00	1.79
Total per annum	4.8	4.2

notes:

The UK's gross payment is calculated by using the provisional EU budget for each programme and applying a 16% proportionality factor. The 16% relates to the UK's share of EU+UK GDP

source:

European Scrutiny Committee. Thirty-fourth report of session 2017-19, Table 2

Close integration with the Single Market

We know ...

Norway, Iceland and Liechtenstein, which are part of the European Economic Area (EEA) but not the EU, contribute funding to the [EEA grants](#) as a condition of their participation in the Single Market. Norway also provides [Norway grants](#). Switzerland, which is not part of the EEA, but has bilateral trade agreements with the EU, makes [enlargement contributions](#)

We don't know ...

If the UK-EU future relationship results in the UK remaining closely integrated with the Single Market, or even part of the Single Market, then it is likely that the EU will request a financial contribution to the economic development of the poorer EU Member States. The size of any contribution will depend on the extent to which the UK remains integrated with the Single Market. The Government has stated on many occasions that the UK will leave the Single Market. If the UK were required to make payments, it is unlikely these would go to the EU budget – the EEA, Norwegian and Swiss programmes are managed by their governments.⁵⁰

7.3 Overseas aid spending

We know ...

The Government spent £884 million in aid through the EU in 2017, around 6% of all aid spending.⁵¹ If the UK stops contributing to the EU's budget and paying into the European Development Fund, this will not result in it spending less money on aid (because it is legally obliged

⁵⁰ op cit, [page 71](#)

⁵¹ DFID, [Statistics on International Development: Provisional UK Aid Spend 2017](#), 5 April 2018

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.

We don't know ...

In the White Paper on the future EU-UK relationship, the UK Government proposed that the two parties make a series of cooperative accords, one of which would cover international development and international action.⁵² This would provide a framework under which the UK could continue to participate in EU programmes, 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 at some level.

A more detailed explanation of the UK's aid spending, and a discussion of the possible ways in which it could change after Brexit, is covered in a House of Commons briefing, [UK aid: frequently asked questions](#).

⁵² DExEU, [The future relationship between the United Kingdom and the European Union](#), 12 July 2018

8. Security, law enforcement and criminal justice cooperation

8.1 EU measures in security and criminal justice

We know ...

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. The measures are listed in the Government's [Technical Note: Security, law enforcement and criminal justice](#). They cover the mutual recognition of decisions, cooperation between agencies, and the sharing of law enforcement data. Measures identified as being of particular significance include the following:

- European Arrest Warrant (EAW): a legal framework that facilitates the extradition of individuals between EU member states to face prosecution or to serve a prison sentence;
- Second Generation Schengen Information System (SIS II): a database of alerts about individuals and objects of interest to EU law enforcement agencies;
- European Criminal Records System (ECRIS): a secure electronic system for the exchange of information on criminal convictions between member states' authorities;
- Passenger Name Records (PNR): information collated by air carriers;
- Europol: an agency that supports law enforcement authorities and facilitates cooperation between them by processing data and providing access to law enforcement intelligence from other EU countries.

The UK position

The Government position on ongoing law enforcement and criminal justice cooperation is set out in the future relations [White Paper](#):

The UK ... proposes an ambitious partnership with the EU that goes beyond existing precedents in this area, covering:

- a) Mechanisms for rapid and secure data exchange;
- b) Practical measures to support cross-border operational cooperation; and
- c) Continued UK cooperation with EU law enforcement and criminal justice agencies.⁵³

The White Paper concedes that leaving the EU will have consequences for the nature of the security relationship between the UK and the EU. However, it suggests that the mutual interest in avoiding operational gaps and the existence of closely aligned operational processes mean that operational cooperation can continue on a different legal basis.

⁵³ Para 13

According to the Paper, this partnership should take the form of a “coherent and legally binding agreement on internal security that sets out respective commitments and reflects the integrated operation capabilities that the UK and the EU share”. Cooperation should continue on the basis of existing tools and measures, and legislation and operational practices should be amended as required in order to ensure consistency between the EU and the UK.

The partnership agreement would allow for new areas of cooperation to be added where beneficial, and would set out agreed safeguards to underpin the future relationship. Safeguards would include governance arrangements, a dispute resolution mechanism, data protection arrangements and a mutual commitment to individuals’ rights, fulfilled by the UK’s continued membership of the European Convention on Human Rights (ECHR).

The agreement should also include strategic and operational dialogues that allow the exchange of expertise and experience.

The White Paper then goes on to identify the specific measures that it proposes should be included in the agreement at a minimum (existing measures in brackets):

- Data exchange measures:
 - Information about airline passengers (PNR data);
 - Alerts to police and border forces with access to systems that allow for efficient responses (SIS II);
 - Efficient, accurate and reliable exchanges of criminal record information (ECRIS); and
 - DNA, fingerprint and vehicle registration (Prüm)
- Practical cooperation:
 - The efficient extradition of criminals and wanted individuals between Member States and the UK (EAW);
 - Cooperation of judicial, police and customs authorities in different States (Mutual Legal Assistance);
 - Delivering cross-border criminal investigations and prosecutions (Joint Investigation Teams)
- Agencies engaged in:
 - Preventing serious and organised crime and terrorism, via access to analytical capabilities and databases (Europol); and
 - Enabling prosecutors, magistrates and law enforcement officers to assist national authorities in investigations and prosecutions of serious cross-border criminal cases (Eurojust)

The EU position

The European Commission’s Article 50 Taskforce published slides outlining the EU’s negotiating position on 18 June 2018.⁵⁴ They set out the factors determining the EU approach:

⁵⁴ TF50(2018)51, [Police and judicial cooperation in criminal matters](#)

- EU-27 security interest
- Non-member states cannot have the same benefits as Members
- Taking into account that the UK will be a third country outside Schengen
- Balance of rights and obligations
- Autonomy of the EU decision-making process
- Effective enforcement and dispute settlement
- Strong safeguards to ensure full respect of fundamental rights, adequacy of data

And from the UK position:

- No free movement of people
- No CJEU jurisdiction
- The UK's professed "long standing commitment to human rights"
- Bespoke arrangements on data protection

The following components of the future relationship were identified:

- Effective exchanges of information
- Support for operational cooperation between law enforcement authorities
- Judicial cooperation in criminal matters
- Measures against money laundering and terrorism financing

The slides also set out necessary safeguards, including that the UK remains party to the ECHR and abides by judgments of the European Court of Human Rights in the areas concerned, a data adequacy decision and a mechanism for ensuring the reciprocal application of the agreement.

In a speech elaborating on the slides,⁵⁵ Michel Barnier suggested the UK should be more realistic about what was possible as a third country outside the EU's Area of Freedom, Security and Justice and Schengen; in particular, the UK could not retain direct access to EU or Schengen-only databases after Brexit or take part in the EAW, and would be unable to shape the strategic direction of Europol.

We don't know ...

The extent to which the UK will continue to be able to participate in these measures post-Brexit is unclear. Both parties have emphasised the importance of ongoing cooperation in this area, but as things stand, the EU is offering access on the basis of existing third-country precedents, which the UK has stated will lead to significant capability gaps.

If the EU softens its negotiating stance and permits the UK access to existing measures on a basis that is currently unprecedented for third

⁵⁵ [Speech by Michel Barnier at the European Union Agency for Fundamental Rights](#), 19 June 2018

countries, then it is possible that the future relationship might broadly resemble the current relationship. The White Paper indicates that the Government has conceded that there will be some differences, even in the most favourable scenario. For example, some Member States are barred by their constitutions from extraditing their own nationals. Therefore, it is unlikely to be possible to continue to operate the EAW on the same basis in the future.

If the UK were to soften its red lines on the free movement of people and the jurisdiction of the CJEU, it might be possible to negotiate better access. However, without significant concessions from the EU, this is unlikely to be equivalent to current arrangements.

8.2 Data protection

We know ...

Under the EU's [data protection framework](#), any country other than EU and EEA Member States is classed as a 'third country'. Personal data can only be transferred to a third country when an adequate level of protection is guaranteed. One option is for the EU to make an [adequacy decision](#) so that data can flow from EU/EEA Member States to third countries (or one or more specific sectors in those countries).

The UK position

On 23 May 2018, the Government published a [presentation](#) on data protection and the future EU-UK partnership. This proposed a "new agreement" building on the "standard adequacy arrangement" that should include, among other things:

- an appropriate ongoing role for the [Information Commissioner's Office](#) (ICO) on the [European Data Protection Board](#);
- effective representation of UK businesses and consumers under the EU's 'One Stop Shop' mechanism for resolving data protection disputes when doing business in the EU.

The EU position

Article 14 of the European Council's March 2018 [Guidelines](#) stated that the protection of personal data "should be governed by Union rules on adequacy with a view to ensuring a level of protection essentially equivalent to that of the Union". Michel Barnier spoke against any new agreement at an International Federation for European Law [conference](#) on 26 May 2018, referring to the Guidelines and saying the UK had to "understand that the only possibility for the EU to protect personal data is through an adequacy decision". He confirmed this in a [speech](#) on 19 June 2018.

We don't know ...

Mr Barnier's position that a future relationship based on strong data protection must be "confirmed" by an adequacy decision, and that this

decision can only be taken once the EU had assessed the new legal framework in the UK (i.e. the Data Protection Act 2018), means the situation is still uncertain.

Also, although the July 2018 [White Paper](#) says that the EU's adequacy framework provides the right starting point for a future relationship, the UK Government wants to "go beyond" the framework in stability and transparency and in regulatory cooperation.⁵⁶ The Government is "ready to begin preliminary discussions on an adequacy assessment so that a data protection agreement is in place by the end of the implementation period at the latest" and it would like to continue ongoing cooperation between the ICO and EU data protection authorities.⁵⁷ But it is still not clear what will be agreed in this area.

For further information on the issues, see Commons Briefing Paper 8339, [Brexit: Negotiations Update \(March-June 2018\)](#), 20 June 2018 (in particular page 5 and section 2.1).

⁵⁶ HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, July 2018, p74

⁵⁷ *Ibid*, pp75-6, footnotes removed

9. Food and Farming

Currently, the biggest unknown in the agri-food sector is the future trading environment in which farmers and the wider food supply chain will be operating. However, farmers across the UK have had some indication of the future farm support systems that are likely to be introduced after EU Exit.

9.1 Future trading environment?

We know....

The Chequers proposals include establishing a “common rule book” for goods including agri-food covering only those rules necessary to “provide for frictionless trade at the border”.⁵⁸

For agricultural products, food and drink this includes relevant plant and animal health checks (Sanitary and Phytosanitary -SPS -rules) but excludes those relating to wider food policy, e.g. those that set marketing and labelling requirements.⁵⁹

The UK Government has said that It intends to preserve high standards in food products and animal welfare, as well as preserving legal protections against the imitation of named UK regional and traditional foods (Geographical Indications - GIs).⁶⁰ Michel Barnier has noted that GIs are still one of the “important points of disagreement regarding an orderly withdrawal”.⁶¹

We don't know ...

The level of tariffs that will apply to EU-UK trade in agri-food tariffs are unknown, as these will depend on whether a trade deal is agreed with the EU and the terms of that deal. Levels for agri-food products can be very high. The average charge imposed by the EU on agricultural produce that is not granted preferential access to the European market is 13.6% but can be up to 67% for some meat products.⁶²

The UK has submitted proposed tariffs to the WTO to apply to trade outside of free trade agreements when the UK leaves the EU. However, it is not known if these will be accepted.⁶³

We also do not know the kinds of plant and animal health regimes and checks that would apply beyond those applicable as part of a ‘common rulebook’, if agreed, or if EU standards change after the rulebook is agreed.

⁵⁸ Cm 9593, [The UK's Exit from and new partnership with the EU](#), 12 July 2018

⁵⁹ [PQ 163784](#) 25 July 2018

⁶⁰ Cm 9593, [The UK's Exit from and new partnership with the EU](#), 12 July 2018, para 39 and [HC Deb 20 July 2017 c959](#)

⁶¹ HC 372, [Oral evidence to the House of Commons Exiting the EU Committee. The Progress of the UK's negotiations on EU Withdrawal](#), 3 September 2018

⁶² WTO, [World Tariff Profiles 2018](#), p79

⁶³ Trade Knowledge Exchange, [The UK submits schedules of post-Brexit goods to the WTO – What that means](#), 8 August 2018

The degree of potential future divergence from the EU is unknown in terms of animal welfare, pesticides approval, plant and animal health regulation, and food labelling requirements and protections.⁶⁴

9.2 Farm Support

We know ...

The EU's Common Agricultural Policy (CAP) will no longer be providing farm support under any Brexit scenario. However, the UK Government has committed to maintaining the "same cash total funding" for the sector until "the end of this parliament, expected in 2022".⁶⁵ This includes direct subsidies and payments under rural development programmes e.g. for agri-environment schemes.

Agriculture and the implementation of the CAP is devolved, so each part of the UK already has a different approach tailored to its particular needs. The UK Government, Welsh Government, Scottish Government and Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland (in the absence of the Northern Ireland Assembly) have all set out their plans for supporting their farm sectors post-Brexit. Commons Library briefing, [Brexit: UK Agriculture Policy](#) provides further details on the related consultations.

These plans all broadly include moving away from payments largely based on the area farmed, towards payments for 'public goods' such as improving the environment and supporting public access to the countryside.

Following its consultation, the UK Government introduced an [Agriculture Bill](#) on 12 September 2018 to provide the legal framework for the UK to leave the CAP and phase out direct payments over a seven year "agricultural transition" period from 2021 in England.

The Bill includes provisions for Wales and Northern Ireland to give powers to Ministers in those administrations to create their own farm support systems. The Scottish Government has chosen not to take up these powers in the Bill and so will need to introduce its own legislative provisions to do this as agriculture is a devolved matter.⁶⁶

We don't know ...

It is not clear who will be the winners and losers in the new farm support systems that will apply after Brexit. This is because some key elements are still unknown:

- The Agriculture Bill provides the necessary powers to make reductions in current farm payments (by regulation) in the transition to the new payment scheme. The UK Government has set out how it will initially apply reductions to those receiving the highest payments in 2021. However, it is not clear what

⁶⁴ See for example, [PO 1510](#) 4 July 2017 and HC Deb 13 October 2016 c428

⁶⁵ Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement](#), 14 September 2018

⁶⁶ Defra, [UK Government Agriculture Bill Scotland myth-buster](#), 13 September 2018

reductions will follow, as they are dependent on “wider decisions about government spending”.

- The shape of the future replacement farm support schemes, which will make payments for public goods, is still being developed.
- The Agriculture Bill gives the Secretary of State powers to ensure the UK’s compliance with WTO rules on agricultural subsidies. However, the details of an overall intra-UK approach to agriculture and trade are not clear.
- The EU is still negotiating the form of the CAP for the 2021-2027 budget period for EU farmers, so the basis on which EU farmers will be supported and operating is not yet fully settled. Member States all get different settlements. Farmers are therefore not clear on what basis they will be competing with EU farmers.
- It is not clear how far access to migrant and seasonal labour will be maintained (which affects costs). In September 2018, the UK Government announced a pilot scheme for 2019 and 2020 allowing up to 2,500 migrant workers from non-EU countries to work in seasonal agricultural jobs.⁶⁷ This could fill some of the reported shortages.
- It is hard to predict how far the UK’s highly competitive supermarket sector and food processors will manage/absorb pricing impacts post-Brexit, which has knock-on effects for farmers and consumers. Food prices already fluctuate considerably because of a number of factors such as weather, geo-politics, exchange rates, pests and disease.

⁶⁷ Defra, [UK farmers given support for seasonal labour with new pilot scheme](#), 6 September 2018

10. Fisheries

We know ...

After Brexit the UK will no longer be part of the [Common Fisheries Policy \(CFP\)](#). It will become an [independent coastal state](#) and 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 in UK waters.⁶⁸

The UK and EU have provisionally agreed that during the transition period the UK will comply fully with the CFP.⁶⁹ The March 2018 [draft Withdrawal Agreement](#) included agreement to consult the UK when setting fishing quotas for 2020, in December 2019. It also set out that the EU may "exceptionally" invite the UK to be part of the EU delegation at international negotiations (Article 125.3). It stipulated the intention to maintain quota allocation based on the relative stability principle during the transition period.⁷⁰

The UK position on fisheries was set out in the [Fisheries White Paper *Sustainable fisheries for future generations*](#), published in July 2018. This made clear 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 to negotiate "any decisions about giving access to our waters for vessels from the EU, or any other coastal states including Norway".⁷¹

The EU position on a future trade deal is that the existing principles for access to fisheries should be maintained. The sharing of fisheries of resources was referred to in the European Council March [draft negotiating guidelines for a future trade deal](#). This referred to continued reciprocal access to fisheries as part of the proposal for a zero-tariff trade agreement.⁷²

We don't know ...

Whilst the EU and the UK have both stated their position on what they would like a deal on fisheries to look like, fisheries have not yet been part of the detailed withdrawal negotiations, and there are disagreements over future fisheries arrangements.

⁶⁸ 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."

⁶⁹ The Guardian, [EU to hold Britain to fishing quotas during Brexit transition](#), 11 January 2018

⁷⁰ Relative stability allocates a fixed percentage of total allowable catches (TACs) to Member States based mainly on their agreed historic fishing activity

⁷¹ Defra, [Fisheries White Paper *Sustainable fisheries for future generations*](#), published July 2018

⁷² EU Commission, [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 \(2018\) 33/2](#), 15 March 2018

The UK Government proposes increasing the amount of fishing quota that will be retained year on year by the UK during annual exchanges of quota with the EU and other neighbouring countries.⁷³ In the [Fisheries White Paper](#) it rejected the EU's position, stating that access to fisheries should not be linked to any trade agreement, referring to the latter as "a separate question".⁷⁴

To date no detailed discussions on fisheries have taken place between the UK Government and the EU.⁷⁵ Because of this, and the need to reach agreement in a number of other areas, there is little clarity as yet on what the outcome of any negotiations for fisheries may be. But, as the House of Lords EU Committee report on Brexit and fisheries noted in December 2016, the impact of disruptions in the fisheries trade could be significant: "trade in fish and seafood is essential to the wider seafood industry" and "any disruptions to the current trading patterns could have profound effects on both the catching and processing sectors".⁷⁶

⁷³ EFRA Select Committee [Evidence Session](#), 17 July 2018, Fisheries, Q363

⁷⁴ Defra, [Fisheries White Paper](#), 4 July 2018

⁷⁵ EFRA Select Committee [Evidence Session](#), 17 July 2018, Fisheries, Q403

⁷⁶ House of Lords Committee on the European Union, [Brexit: Fisheries](#), December 2016

11. International and defence relations

11.1 The EU's international agreements

How many international agreements does the EU have?

We know ...

The UK is currently party to numerous international agreements with third countries as a member of the EU. The Europa online treaties database lists 1,256 international agreements to which the EU is party.

We don't know ...

How many of these treaties are pertinent to the UK is as yet unclear and information on the Government's preparations to replace or address arrangements covered by the numerous EU international agreements on non-trade issues has so far been lacking.

A report in the *Financial Times* in May 2017 suggested that there were 759 separate EU international agreements with potential relevance to Britain. This included 295 agreements related to trade, as well as agreements related to regulatory co-operation, fisheries, agriculture, nuclear co-operation and transport co-operation (including aviation). 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 amending or adding to an earlier agreement which could be understood as one agreement.

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." No figures have as yet been released on the number of agreements that would be affected and would require action.

Will parts of mixed agreements apply after Brexit?

We know ...

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 EU Member States as well as approved at EU level.

We don't know ...

While EU-only agreements will cease to apply to the UK once it leaves the EU and the EU has stated that all agreements will cease to apply,

some legal experts have suggested that aspects of mixed agreements could continue to apply.

Will non-trade agreements be rolled over?

We know ...

The Government has indicated that it is seeking the transitional adoption or 'rollover' of all the EU's free trade agreements and other preferential trade arrangements with third countries (see section on trade, above). This will enable trade arrangements with third countries that the UK is currently party to through the EU 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.

We don't know ...

The Government has not provided any details on how it intends to address arrangements covered by the numerous EU international agreements on non-trade issues.

11.2 Defence and external security

11.3 The EU position

We know ...

The EU has long expressed the hope "for an ambitious partnership in the interests of the Union". Yet it has also been keen to stress that no third country "may lay claim to a status that is equivalent to or superior to that of a Member of the Union", and that the EU's decision-making autonomy must be respected. Michel Barnier has consistently expressed the view that "any voluntary participation of the United Kingdom in European defence will confer rights and obligations in proportion to the level of this participation".

[Recent proposals presented by the EU](#) for a Framework Participation Agreement set out a differentiated approach to the Common Security and Defence Policy (CSDP), which appeared to bring the EU and UK closer together in some respects, such as the scope of the future relationship, but not in others. As expected, the EU considered there were outstanding differences in the EU and UK's negotiating positions with respect to third party rights and obligations and what an appropriate level of participation in CSDP and EU defence industrial initiatives should be for the UK.

We don't know ...

One specific issue of contention is the level of UK involvement in EU planning for military operations.⁷⁷ The paper suggested that there was an "asymmetry" between the "privileged access to information"

⁷⁷ This has long been considered as one of the main stumbling blocks in negotiations on defence matters. Further details are available in Library Briefing CBP 8216, [European defence: where is it heading?](#)

requested by the UK and the degree of concrete commitments by the UK. Overall the paper concluded that while there is a “joint commitment to a strong EU-UK cooperation in foreign, security and defence policy...a number of UK requests are contrary to the parameters set in the European Council guidelines”.⁷⁸

11.4 The UK position

We know ...

At the core of the UK’s aspiration is the desire to see an unprecedented UK-EU defence and security relationship that goes beyond any existing third-country arrangements with the EU. The UK is looking to secure what the July 2018 White Paper terms an “enhanced” Framework Participation Agreement that would enable:

- Cooperation and the commitment of military assets to EU crisis management operations, on a case-by-case basis, where it is mutually beneficial. The UK also expects that any decision to deploy UK military capabilities in support of EU operations “must be taken on the basis of adequate information and consultation”, including access to planning documents. The White Paper states that the UK “could bring its significant expertise to support EU operational planning”.

By adopting an approach which suggests consultation and access to EU planning and an offer of support, the Government appears to have softened its tone, acknowledging that “this [approach] does not undermine the important principle that only EU Member States have a formal role in the decision-making process and a vote over the launch of EU operations”. But the UK is requesting a level of access in operational planning going far beyond current third-party arrangements.

- A collaborative and inclusive approach to military capability development and planning, underpinned by a new ‘Cooperative Accord’ that would take a more strategic approach and would allow UK participation in EU programmes on a case-by-case basis, including specific projects under the remit of the European Defence Agency, Permanent Structured Cooperation and through the European Defence Fund.
- A “flexible and scalable” partnership that respects the sovereignty of the UK and the autonomy of the EU and its Member States.

We don’t know ...

Given the divergence of opinion between the EU and UK, particularly on third-party rights and obligations across CSDP and EU defence industrial initiatives, there is much still to be discussed and negotiated, and the outcome is uncertain.

⁷⁸ EU, ‘Foreign, security and defence policy’ (slides), TF50 (2018) 50, 15 June 2018

12. Official statistics

12.1 Statistics from the EU institutions

We know ...

Most official statistics for the UK are produced by UK institutions.⁷⁹ European legislation requires the production of certain statistics following certain methods and definitions – for example on agriculture, the economy or transport or in the census.⁸⁰

We don't know ...

Brexit has the potential to affect the availability, comparability and accessibility of certain statistics. Often such EU legislation reflects or builds on wider international standards (for example from the OECD or UN bodies), which the UK might be expected to continue to follow even after Brexit. But Brexit opens up the possibility that the UK could move away from common European standards for some statistics. This might affect the comparability of statistics across countries in the future.⁸¹ The UK might also choose to produce certain statistics less often or to stop producing certain series at all.

12.2 Eurostat

We know ...

Certain statistics for the UK are published alongside those for other EU/EEA/EFTA countries on European websites – notably the [Eurostat site](#). While the Eurostat site does contain figures for some non-EU/EEA/EFTA countries, for some series, these are often candidate countries that may in future join the EU.

We don't know ...

Brexit could mean that figures for the UK may no longer be available on central European websites, making certain international comparisons harder.

⁷⁹ There are exceptions – for example the UK series in the [Economic Sentiment Indicator](#) (used by the Library in its [business and consumer confidence key economic indicators page](#)) or the measures of UK public opinion captured in the [Eurobarometer survey](#). Both of these are produced by the European Commission.

⁸⁰ See Eurostat, [Legislation in force](#), for a full list.

⁸¹ This might even affect statistics within the UK, if a move away from common EU standards and the need to send figures for the whole of the UK to EU bodies, means that England, Scotland, Wales or Northern Ireland have more freedom to produce different statistics to each other.

13. Further reading

House of Commons Library papers on Brexit are all on the [Brexit: research and analysis](#) webpage. Recent general Brexit papers are:

- Commons Briefing Paper 8339, [Brexit: Negotiations Update \(March-June 2018\)](#), 20 June 2018
- Commons Briefing Paper 8401, [Brexit and Governance of the UK-EU Relationship](#), 14 September 2018
- Commons Briefing Paper 8387, [The Brexit White Paper on future relations and alternative proposals](#), 28 August 2018
- Commons Briefing Paper 8397, [What if there's no Brexit deal?](#) 10 September 2018
- Commons Briefing Paper 7912, [Brexit: a reading list of post-EU Referendum publications by the UK Parliament and the Devolved Assemblies](#), 14 September 2018

UK in a Changing Europe, [Sub-national government must plan for the 'known unknowns' of Brexit](#), Professor Tony Travers, 8 March 2018

Steve Peers, EU Law Analysis, [EU27 and UK citizens' acquired rights in the Brexit withdrawal agreement: detailed analysis and annotation](#), 13 March 2018

LSE blog, [Known Unknowns: How to ensure Europe's security after Brexit](#), Benjamin Martill (LSE) and Monika Sus (Hertie School of Governance), 14 March 2018

[British Expats Real Estate Market. The unknowns of "Brexit"](#) (Mercado inmobiliario de los emigrados británicos. Las incertidumbres del "Brexit"), Cristina Benlloch Domènech, Universidad Carlos III, Spain, May 2018

[The "Known Unknowns" of Brexit. A Flowchart Chronicle of a Mess Foretold](#), Glyn Morgan, Dublin City University, 4 July 2018

European Consortium for Political Research, ['Known Unknowns': EU External Action after Brexit – Answering Four Big Questions](#), Benjamin Martill and Monika Sus, 2018

Politics.co.uk, [War-gaming the Brexit chaos: What the hell happens now?](#) Ian Dunt blog, 12 July 2018

EuroChoices, Volume 17, Issue 2, pp 4-11, Food, Farm and Rural Policies after Brexit? Some Knowns, and Known Unknowns, Alan Swinbank, 23 August 2018 (summary at <https://onlinelibrary.wiley.com/doi/full/10.1111/1746-692X.12197>)

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](#).