



DEBATE PACK

Number CDP 2018/0203, 7 September 2018

Legislating for the withdrawal agreement

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Summary

On Thursday 6 September 2018, the Leader of the House announced that there would be a General Debate on Monday 10 September 2018 concerning legislating for the withdrawal agreement. This debate relates to the Government White Paper [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#) (Cm9674) which was published on 24 July 2018.

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The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

1. Background

On Thursday 6 September 2018, the Leader of the House announced that there would be a General Debate on Monday 10 September 2018 concerning legislating for the withdrawal agreement. This debate relates to the Government White Paper [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#) (Cm9674) which was published on 24 July 2018 (the final sitting day before summer recess). The Secretary of State for Exiting the European Union [made a statement to the House](#) and a debate followed.¹

In her Business Statement announcing the debate, Andrea Leadsom said:

I am sure that she will agree that it is important the House has the opportunity next week to discuss the withdrawal agreement White Paper in advance of the time pressures that are likely on this House when we actually come to consider the withdrawal agreement Bill.²

This debate pack provides an overview of what the White Paper says about the Government's plans to legislate to give effect to the Withdrawal Agreement should it be reached between the UK and EU.

¹ [HC Deb 24 July 2018, Vol 645 cc891-907](#)

² [HC Deb 6 September 2018 Vol 646 c327](#)

2. The Withdrawal Agreement

Summary

A withdrawal agreement is a treaty entered into between a departing Member state of the European Union and the EU itself. It makes arrangements for the terms on which the EU Treaties are to be disapplied. A withdrawal agreement must be reached either within two years of a Member state notifying its intention to withdraw under Article 50 TEU, or before the expiry of any longer period as all current Member states may unanimously agree. The UK and EU have been attempting to negotiate the terms of a withdrawal agreement as an alternative to the default position of a “no-deal Brexit”. That default position would see the Treaties automatically cease to apply to the UK on 29 March 2019.

On 24 July 2018, the Government published a white paper, [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#).³ That paper sets out the Government’s domestic legislative plans in the event that a withdrawal agreement is reached between the UK and the EU27 Member states.

Most of the structure, and some of the substance, of any such agreement, has been known since March 2018, when the EU published [a draft Withdrawal Agreement](#).⁴ Any withdrawal agreement is expected to address a range of issues, most of which concern arrangements that will immediately follow the disapplication of the EU Treaties to the United Kingdom.

Among the most high-profile issues a withdrawal agreement will address are the:

- expected “transition” or “implementation” period between 29 March 2019 and 31 December 2020;
- rights of EU citizens after the expiration of the transition period;
- negotiated financial settlement ([the so-called “exit bill”](#));⁵ and
- Protocol on arrangements for Ireland/Northern Ireland.

The House of Commons Library produced a briefing paper, [Brexit: the draft Withdrawal Agreement](#) on 23 March 2018:⁶

2.1 Overview of the draft Withdrawal Agreement

On 19 March 2018, the European Commission published a draft Withdrawal Agreement, indicating the progress made in negotiations between the UK and EU27. This draft text provides the structure, and some but not all of the content, of what is likely to constitute any final withdrawal agreement reached between the parties.

Key issues that are covered by the draft Withdrawal Agreement include:

³ Department for Exiting the European Union, [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#), Cm 9634, 24 July 2018

⁴ [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 2019

⁵ Commons Library Briefing Paper, [Brexit: the exit bill](#), 18/8039, 30 July 2018

⁶ Commons Library Briefing Paper, [Brexit: the draft Withdrawal Agreement](#), 18/8269, 23 March 2018

- the adoption of a “transition” or “implementation” period between 29 March 2019 and 31 December 2020 before the Treaties are fully disapplied from the UK;
- citizens’ rights after transition;
- the financial settlement or “exit bill”;⁷ and
- a Protocol on special arrangements for Ireland and Northern Ireland (the so-called “backstop” proposal on the border).

However, it also covers arrangements across a range of “separation issues”, including among other things:

- cooperation on social security;
- treatment of goods, customs, VAT and excise duties immediately following the expiry of transition;
- intellectual property;
- police and judicial cooperation in criminal and civil matters;
- data protection;
- public procurement processes commenced and/or concluded before the end of transition;
- Euratom and nuclear safeguarding;
- fisheries; and
- arrangements for UK and EU nationals employed by EU institutions or agencies after transition.

The specifics of those draft arrangements are set out in [the Commons Library Briefing paper on the draft text](#).⁸

2.2 What the Withdrawal Agreement will not cover

A withdrawal agreement takes the form of a treaty. It creates binding obligations in international law upon the UK and the EU. This treaty is principally concerned with matters directly connected to withdrawal: the eventual disapplication of the EU Treaties from the UK.

A withdrawal agreement is not designed to determine questions about the future relationship between the UK and the European Union. It will not contain, for instance, provisions amounting to a free trade agreement, like the Comprehensive Economic and Trade Agreement between the EU and Canada. These matters fall to be addressed, at first instance, in a Political Declaration on the Future Relationship (PDFR).

The PDFR will set out a framework – the basis for further negotiations – but will unlikely itself take the form of a treaty. The intention of such a declaration is to lay the groundwork for a Treaty on the Future Relationship. That Treaty, or series of agreements, would then need to be ratified and implemented ahead of the end of the transition period.

Two agreements: the Withdrawal Agreement and the Framework for the Future Relationship

⁷ [Brexit: the exit bill](#), 18/8039, 30 July 2018

⁸ [Brexit: the draft Withdrawal Agreement](#), 18/8269, 23 March 2018

Although the PDR is separate from a withdrawal agreement and not itself a treaty, the *European Union (Withdrawal) Act 2018* requires Parliament to approve both it **and** any withdrawal agreement before the latter can be ratified.⁹ The two agreements are therefore procedurally connected to one another.

⁹ s. 13(1)(b) *European Union (Withdrawal) Act 2018*

3. Legislating for withdrawal

Summary

Parliament has already legislated to implement the UK's withdrawal from the European Union and is continuing to do so.¹⁰ The most notable primary legislation is the *European Union (Withdrawal) Act 2018*. It will repeal and replace domestic arrangements currently giving effect to EU law. Its statutory framework operates, by default, to commence new arrangements from "exit day" on 29 March 2019.

The *Withdrawal Act* does not accommodate the possibility of a "transition" or "implementation" period. Moreover, although that Act contains a ministerial power (section 9) to implement any withdrawal agreement, further primary legislation must be passed before ministers can exercise that power.

It is that further primary legislation to which the Government's white paper, [Legislating for the Withdrawal Agreement \(etc.\)](#), relates. It sets out proposals for a *European Union (Withdrawal Agreement) Bill* should Parliament approve both agreements reached by the UK and EU negotiators.

That Bill will give domestic effect to the Withdrawal Agreement, predominantly by amending the *European Union (Withdrawal) Act 2018* to preserve parts of the *European Communities Act 1972* during transition. It would make separate institutional arrangements for citizens' rights, the financial settlement and any arrangements reached concerning the Protocol on Ireland and Northern Ireland.

The introduction of this primary legislation is wholly contingent on Parliament agreeing to the withdrawal agreement and the framework on the future relationship. If those are not approved, there is no agreement to implement in the relevant areas, and by necessary implication no transition period in respect of which the *Withdrawal Act* needs to be modified.

3.1 Steps already taken by Parliament

Parliament has already taken steps to legislate for withdrawal from the European Union. The *European Union (Withdrawal) Act 2018* provides a "default state" for what should happen when exit day (defined as 29 March 2019) arrives. In the absence of a withdrawal agreement, that statute, supported by major connected legislation like the *Trade Bill* and *Taxation (Cross-border Trade) Bill*, will form the domestic legal "starting point" from 29 March 2019 onwards.

What the EU (Withdrawal) Act cannot do

The *European Union (Withdrawal) Act 2018* partly, but incompletely, contemplates the possibility of a withdrawal agreement. Section 9 of the Act provides that ministers may use secondary legislation to "implement" a withdrawal agreement. However, because of a Government defeat in the Commons in November, section 9 powers can only be exercised:

¹⁰ In addition to the *EU (Withdrawal) Act 2018*, there are other Bills which purport to prepare the UK statute book for exit which have yet to receive Royal Assent. These include the *Trade Bill* and the *Taxation (Cross-border Trade) Bill*.

subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal of the United Kingdom from the EU.

This means that the *European Union (Withdrawal Agreement) Bill* must become an Act before this power can be used. Ministers cannot unilaterally begin to implement an agreement until Parliament has approved it and legislated for its implementation.

This is a general limitation of the *Withdrawal Act*. There is, however, a second, related, and more specific limitation. The white paper acknowledges that the 2018 Act cannot itself deliver a transition period between 29 March 2019 and 31 December 2020:

EU rules and regulations will continue to apply in the UK during the implementation period. This means that some provisions of the EU (Withdrawal) Act 2018 will not now be needed until the end of the implementation period. The Bill will therefore need to amend the EU (Withdrawal) Act 2018 so that the conversion of EU law into 'retained EU law', and the domestication of historic CJEU case law, can take place at the end of the implementation period.¹¹

The 2018 Act does allow a Minister of the Crown to change the date of exit day by regulations.¹² However, this can only be done to reflect a change to the date on which the Treaties cease to apply to the UK, whether brought about by a withdrawal agreement itself or by a unanimous agreement to "extend" Article 50's two-year period. This power would therefore apply to a situation whereby the UK's status as a Member state of the EU is preserved beyond 29 March 2019. This is not the same as the UK formally leaving but continuing to abide by (most of) EU law during a transition or implementation period.

¹¹ [Cm 9634](#), para 69

¹² s.20(3-4) *European Union (Withdrawal) Act 2018*

4. What would the EU (Withdrawal Agreement) Bill do?

Summary

The Government's white paper sets out in general terms how the *EU (Withdrawal Agreement) Bill* would give effect to a withdrawal agreement in domestic law. It focuses in particular on how the UK will give effect to:

- citizens' rights;
- the "transition" or "implementation" period between 29 March 2019 and 31 December 2020;
- the financial settlement; and
- other "separation issues".

Several of the key provisions in the *Withdrawal Agreement Bill* are expected to modify the *European Union (Withdrawal) Act 2018*, postponing key effects of that legislation from exit day to the end of transition.

There are some areas where we do not yet know what the *Withdrawal Agreement Bill* will do because negotiations on the withdrawal agreement text are ongoing. There are other areas where the Government does not envisage that primary legislation will be required to implement the UK's obligations under any withdrawal agreement.

The white paper sets out in high-level terms the legislative objectives of the *European Union (Withdrawal Agreement) Bill*. It says that it is:

the primary means of legislating for the Withdrawal Agreement and a vital tool in delivering a smooth and orderly exit.¹³

The white paper sets out the government's proposals for legislating to implement the withdrawal agreement **to the extent that its content has already been agreed**. It therefore focuses on domestic enforcement of citizens' rights, the "implementation" (or "transition") period and the negotiated financial settlement (the "exit bill").¹⁴

The white paper does not include any specific proposals to legislate for matters like the Protocol on Ireland-Northern Ireland, where the content of the final agreement has not yet been reached.¹⁵ It also indicates that in other areas, such as agreed institutional arrangements for the Joint Committee,¹⁶ that domestic implementing legislation will not be required.¹⁷

4.1 Citizens' rights

The white paper acknowledges the need for primary legislation to give effect to the citizens' rights provisions of a withdrawal agreement. It

¹³ [Cm 9634](#), para 3

¹⁴ [Cm 9634](#), para 5

¹⁵ [Cm 9634](#), para 7(b)

¹⁶ The Joint Committee is a shared UK-EU forum and decision-making body for raising implementation issues and resolving disputes about the Withdrawal Agreement.

¹⁷ [Cm 9634](#), para 7(a)

also commits to making these rights “accessible and understandable for those citizens who rely on their rights under it”.¹⁸ These rights relate to:

- residence;
- equal treatment;
- mutual recognition of professional qualifications; and
- coordination of social security systems.

European Economic Area and Swiss citizens

The white paper acknowledges the need to make arrangements for citizens of Norway, Iceland, Liechtenstein and Switzerland, who by virtue of agreements they have with the EU have certain rights under EU law that can be exercised in the UK at present. The Government indicated that it is:

currently working to conclude new agreements setting out the status of citizens from these countries living in the UK, and of UK nationals living in these countries.

It also anticipates that these agreements will need legislative implementation and says that this could be done “at the same time” as arrangements that are made under the Withdrawal Agreement. It is not explicitly stated in the white paper, however, whether this will be included in the *Withdrawal Agreement Bill* or in bespoke legislation.¹⁹

Residence rights

The intention is to use a combination of primary and secondary legislation to give effect to the Withdrawal Agreement’s substantive provisions on residence rights. The [EU Settlement Scheme](#)²⁰ will be given effect to through the Immigration Rules (a form of secondary legislation made under the *Immigration Act 1971*) rather than through the *Withdrawal Agreement Bill* itself.²¹ However, the rights of those citizens will be underpinned by the *Withdrawal Agreement Bill*, as will the means by which they can secure redress where they are not correctly implemented, including providing for rights of appeal.²²

The Government’s justification for this approach is that using the Immigration Rules will allow the scheme to be put in place before the *Withdrawal Agreement Bill* receives Royal Assent and avoids having to create a new power in the Bill to achieve the core objective of giving effect to those rights. It also believes this will allow any necessary future changes to be made more quickly than if delivered through primary legislation.²³

Consequential amendments are also expected to be made to the *UK Borders Act 2007* by the Bill, but other changes in connection with

¹⁸ [Cm 9634](#), para 20

¹⁹ [Cm 9634](#), para 23

²⁰ Home Office, [EU Settlement Scheme - Statement of intent](#), 21 June 2018

²¹ [Cm 9634](#), para 29(a)

²² [Cm 9634](#), paras 29(b-c)

²³ [Cm 9634](#), para 30

citizens' rights are expected to be delivered under existing legislative powers.²⁴

Equal Treatment

EU citizens and their family members presently enjoy rights to equal treatment and non-discrimination when living or working in the UK. The draft Withdrawal Agreement makes arrangements to protect those rights after the end of transition.

The Government says existing UK legislation already provides significant protection in this area, but acknowledges that some "technical" changes may need to be included in the *Withdrawal Agreement Bill* to reflect the rights contained in a final withdrawal agreement.²⁵

Mutual recognition of professional qualifications

The UK has implemented the EU's existing directives in relation to the mutual recognition of professional qualifications by way of regulations. Although the arrangements for mutual recognition after the expiry of transition are likely to be the subject of any Treaty on the Future Relationship, the protection of individuals whose qualifications have already been recognised before the end of transition is a matter for a withdrawal agreement. The Government intends that the Bill will legislate to provide the necessary guarantees in this area.

The withdrawal agreement, and the proposed Bill, will also affect individuals whose applications for mutual recognition of a qualification were lodged before the end of transition but had not yet been completed.²⁶

Coordination of social security systems

EU Regulations provide for coordination of social security systems, but not harmonisation, on a range of areas. These affect entitlement to benefits, avoid double payment in certain areas, facilitate the export of pensions and underpin the European Health Insurance Card (EHIC) scheme, of which there are 27 million active UK cards presently in circulation.²⁷

The draft Withdrawal Agreement provides for continuing cooperation in aspects of these areas. Although much of the relevant EU law will be "retained" by virtue of the *European Union (Withdrawal) Act 2018*, the Government acknowledges some of the provisions of a withdrawal agreement would need to be included in the *Withdrawal Agreement Bill* too. Where the Joint Committee agrees changes to social security coordination (given effect to by an updated "Annex" to a withdrawal

²⁴ [Cm 9634](#), para 33

²⁵ [Cm 9634](#), paras 34-35

²⁶ [Cm 9634](#), para 39

²⁷ [Cm 9634](#), para 42

agreement) the Bill is expected to give automatic effect to those changes.²⁸

Protection of Rights

The white paper explains that the Bill will include provisions to make the rights in the Withdrawal Agreement ones on which individuals can “rely directly”. Moreover, the Bill will “reflect the principle” that Withdrawal Agreement rights should take precedence over inconsistent domestic legal provisions.²⁹

This suggests that, for this class of rights in a withdrawal agreement, the *Withdrawal Agreement Bill* will include provisions similar to those in section 2 of the *European Communities Act 1972*. Section 2 of the 1972 Act requires courts to interpret domestic legislation “subject to” EU law.³⁰

Further, the draft Withdrawal Agreement (in Article 151) makes arrangements for the consistent interpretation of citizens’ rights. For eight years after the end of transition, UK courts will be able to make a preliminary reference to the Court of Justice of the European Union where it is necessary to clarify a question of interpretation of the Withdrawal Agreement provisions. The application of that binding interpretation will then be a matter for the UK courts. The Bill will need to make the necessary changes in domestic law to authorise such a reference procedure.³¹

The white paper says that if Parliament proposes to legislate to repeal the domestic protections on citizens’ rights, there will be an “additional procedural step” that must be cleared. The white paper does not explain in any detail what this will be or how it will work but draws a direct analogy to the “referendum lock” in the *European Union Act 2011*.³²

The Independent Monitoring Authority

The legislation, in addition to being concerned with the substance of those rights, will address the institutional arrangements for enforcement of them, including the arrangements for a “monitoring authority” that will be set-up for the UK. Article 152 of the draft Withdrawal Agreement expects the UK to set up an “independent authority” with:

equivalent powers to the Commission acting under the Treaties to conduct inquiries on its own initiative concerning alleged breaches of Part Two of this Agreement by the administrative authorities of the United Kingdom and to receive complaints from

²⁸ [Cm 9634](#), para 45

²⁹ [Cm 9634](#), paras 46(a-b)

³⁰ s.2(4) *European Communities Act 1972*

³¹ [Cm 9634](#), para 46(c)

³² [Cm 9634](#), para 46(d)

Union citizens and their family members for the purposes of conducting such inquiries.

This monitoring body will also need to:

have the right, following such complaints, to bring a legal action before a competent court or tribunal in the United Kingdom in an appropriate judicial procedure with a view to seeking adequate remedy.

Such a body in practice requires primary legislation to be created, both to define its domestic legal powers and to give domestic legal effect to its obligations. It will be required under Article 152 of the agreement, for instance, to report to the joint specialised Committee on citizens' rights.

The EU will also want legal assurances that the monitoring body will be protected from abolition, since Article 152 also provides that it can only be abolished by agreement not earlier than eight years after the expiry of the transition period.

4.2 The “Transition” or “Implementation” Period

Article 121 of the draft Withdrawal Agreement provides for a “transition period”, to commence on the entry into force of the Withdrawal Agreement and to end on 31 December 2020. The UK Government refers to this as an “implementation period”.

The Government sets out its main reasons for agreeing to such a period in the white paper:

The Government is committed to providing certainty to businesses as part of a smooth and orderly exit from the EU. Businesses and citizens should only have to plan for one set of changes as the UK moves to the future relationship with the EU. That is why the UK and the EU have agreed that the UK's exit will be followed by a time-limited implementation period, which will last from the moment of exit until 31 December 2020. During this time, common rules will remain in place, with EU law continuing to apply in the UK subject to the terms set out in the Withdrawal Agreement. This will mean that businesses will be able to trade on the same terms as they do now. The agreement is of mutual benefit, building an important bridge to our future relationship, and giving citizens and businesses in both the UK and the EU the time and confidence they need to plan for the UK's future relationship with the EU.³³

During this transition period, the expectation is that, although the UK will cease to be a Member state of the European Union, it will continue to give effect to EU law on the same basis as it does now, except to the extent that the Withdrawal Agreement otherwise provides. It is during this transition period that negotiations to agree a Treaty on the Future Relationship are expected to take place.

³³ [Cm 9634](#), para 52

Incompatibility of the Withdrawal Act with transition

The undertaking of a transition period requires not just that the UK continues to give effect to EU law as it is now, but also to give effect to EU law as it may change between the point of exit day and the end of the transition period.³⁴ This is incompatible with the *EU (Withdrawal) Act 2018*, which provides for the “switch-over” from EU law to retained EU law “on exit day”.³⁵

The implication of this is that the UK will have to give effect to certain rules made by the EU without necessarily having had the full powers of a Member state to influence their content. However, the Government points out in its white paper that:

most Council directives and regulations which will come into force during the time-limited implementation period have already been agreed or are being negotiated now, while the UK is still a Member State. The UK Parliament will therefore already have scrutinised in draft much of this new legislation that will apply to the UK during this period.³⁶

Aspects of the Withdrawal Act scheme which are connected to exit day

“Exit day” is the trigger point in the *Withdrawal Act* for several key changes. It is the reference point for, among other things:

- the date of repeal of the *European Communities Act 1972*;
- the point at which sources of EU law are converted into “retained EU law” and others are excluded from domestic law;
- the time limits in respect of which Ministers can exercise delegated powers to modify domestic law (including retained EU law); and
- the time limits in respect of which UK ministers may restrict devolved competencies by regulations.

Government’s proposals to change the Withdrawal Act

The Government intends to amend the *EU (Withdrawal) Act* in several specific ways, effectively to postpone the operation of certain provisions, or in other cases to extend them, so that their legal effects are anchored to 31 December 2020 rather than 29 March 2019.

Preserving the effect of the European Communities Act 1972

The white paper indicates that, although the 1972 Act will be repealed on exit day, there will be a “transitional provision” through which “the effect of the ECA is saved for the time-limited implementation period”. This will not alter the statutory definition of “exit day”.³⁷

³⁴ [Cm 9634](#), para 57 per Article 122 draft Withdrawal Agreement

³⁵ Commons Library Briefing Paper, [The status of “retained EU law”](#), 18/8375, 31 July 2018

³⁶ [Cm 9634](#), para 58

³⁷ [Cm 9634](#), para 60

This transitional provision will not save the *ECA* in its entirety. It will only protect parts of it until the end of transition. Further modifications will be proposed to the 1972 Act to reflect the fact of exit. The example the Government provides of this “selective” approach is that section 2(3) *ECA* will not be saved during transition. That provision deals with financial contributions to the EU. The Government maintains that saving this provision would be redundant as the Withdrawal Agreement itself will make separate arrangements for the negotiated financial settlement and that will be included in the *Withdrawal Agreement Bill* in its own right.³⁸

Corrections to UK law

The *Withdrawal Act* confers a “correcting power” (in section 8) which allows ministers to modify the UK statute book (including retained EU law) to remedy or prevent deficient operation of retained EU law. This power, however, likely could not be used to correct deficiencies as to the operation of EU law “proper” during transition. References to “Member states” for instance, would need to be read as “Member states and the UK”. The Bill is therefore expected to include a bespoke correcting power for transition, which will also need to address how changes are made to devolved legislation that references the EU and its institutions.³⁹

Domestication of EU law

The Government has indicated that the “domestication” of EU law will now take place at the end of transition and not on exit day. This means that retained EU law will include any of the changes that happen to EU law between 29 March 2019 and 31 December 2020.⁴⁰

Retained EU law will still include directly effective provisions of EU law, such as EU Regulations and Decisions, other directly effective rights and obligations, and related domestic legislation passed to give effect to EU law.

Delegated powers

The white paper states that the correcting power in section 8 of the *Withdrawal Act* will be modified to allow corrections to be made arising as a consequence of either or both withdrawal and the end of the transition period.⁴¹

This power has a sunset provision in the Act, which currently prevents Ministers from making changes by secondary legislation more than two years after exit day. The white paper proposes to amend the sunset clause so that the power expires instead two years after the end of transition.⁴²

³⁸ [Cm 9634](#), para 61

³⁹ [Cm 9634](#), paras 66-67

⁴⁰ [Cm 9634](#), para 69

⁴¹ [Cm 9634](#), para 72

⁴² [Cm 9634](#), para 73

Equivalent changes would be made for the powers of devolved authorities under Schedule 2 of the *Withdrawal Act*.⁴³

The Government intends to continue to lay Statutory Instruments to prepare for exit day even in the absence of a deal. It anticipates that, if a withdrawal agreement is reached, the *Withdrawal Agreement Bill* will include a sweeping power to “defer, revoke or amend” any SIs that may be laid between now and exit day. This approach would allow the Government to pursue legal continuity for either a deal or a no-deal scenario.⁴⁴

Restrictions on devolved competence

At the moment, the UK Government has a power under the *Withdrawal Act* to place temporary restrictions on the ability of devolved legislatures to modify retained EU law, by way of regulations. This power is the subject of a sunset clause. It both restricts the making of those regulations (to no later than two years after exit day) and the lifespan of those regulations (to five years from coming into effect). It is not clear from the white paper whether, if a withdrawal agreement is reached, the UK Government intends to anchor the time limit of those provisions to the end of transition (as it intends to with other regulation-making powers) or to keep it anchored to exit day.⁴⁵

Jurisdiction of the Court of Justice of the European Union

Section 6 of the *Withdrawal Act* ends the jurisdiction of the CJEU on exit day. The Government intends to use the *Withdrawal Agreement Bill* to postpone this change until the end of transition.⁴⁶

The main change to the UK’s relationship with the CJEU is that it will no longer be able to nominate judges to it during transition. It will, however, have the same rights as a Member state to refer a matter or to raise a case before the Court on the same basis as it does now, even though it will no longer be a Member state. This arrangement will apply until the end of transition.⁴⁷

4.3 The Negotiated Financial Settlement

The draft Withdrawal Agreement itself sets out the arrangements for the negotiated financial settlement. More information about the details of that arrangement can be found in the Library’s papers on the draft Withdrawal Agreement and the exit bill.⁴⁸ This section focuses on what the white paper has said about the domestic legislative arrangements for giving effect to that settlement.

⁴³ [Cm 9634](#), para 74

⁴⁴ [Cm 9634](#), para 75

⁴⁵ [Cm 9634](#), para 74

⁴⁶ [Cm 9634](#), para 80

⁴⁷ [Cm 9634](#), para 79

⁴⁸ Commons Library Briefing Papers, [Brexit: the draft Withdrawal Agreement](#), 18/8269, 23 March 2018 and [Brexit: the exit bill](#), 18/8039, 30 July 2018

A bespoke arrangement for payments

The negotiated financial settlement between the UK and EU is expected to supplant any obligations the UK has as a Member state. This is why the Government does not intend to preserve for transition section 2(3) of the *European Communities Act 1972*, which authorises payments to be made to the EU in connection with the UK's obligations as a Member state.

A “standing service provision”

The Government proposes to include in the *Withdrawal Agreement Bill* “a standing service provision” to enable payments to be made pursuant to the Withdrawal Agreement. The scope of such a power will only extend to the exit bill itself and not to any payments that may fall to be made in connection with the Treaty on the Future Relationship. Any final deal on the long-term political and trading relationship the UK has with the EU will need separate legislation.⁴⁹

Parliamentary scrutiny of payments

The Government intends to continue to provide Parliament with an annual statement giving information of the UK's contributions to and receipts from the EU. It has indicated that it “could” put a reporting duty on “regular” financial statements on a statutory footing as part of the Bill. It states that this level of transparency would go further than current practice does for the UK as a Member state.⁵⁰

Arrangements for reimbursements

The Bill is also expected to make arrangements for where any reimbursements from the EU are to be allocated within domestic finance arrangements. This will ensure that if reimbursements as a Member state would have been paid into the National Loans Fund rather than the Consolidated Fund, this can continue.⁵¹

International Development Programmes

The white paper indicates that resources committed to the European Development Fund, EU Trust Funds and Facility for Refugees in Turkey are already administered otherwise than under the *European Communities Act 1972* and are instead addressed under the *International Development Act 2002*. The Government anticipates those arrangements will continue to apply as they do now.⁵²

4.4 Other aspects of the Withdrawal Agreement

There are several aspects of the Withdrawal Agreement that the Government has indicated do not require domestic legislation. For

⁴⁹ [Cm 9634](#), paras 130-131

⁵⁰ [Cm 9634](#), paras 133-134

⁵¹ [Cm 9634](#), para 135

⁵² [Cm 9634](#), para 136

instance, it does not anticipate implementing legislation will be necessary for the arrangements connected to the establishment of the Joint Committee under the Agreement.⁵³

It does not anticipate that this Bill will need to include provisions for:

- continued UK participation in EU institutions, agencies and bodies;⁵⁴
- the fisheries component of the separation issues in the Withdrawal Agreement;⁵⁵ or
- the justice, home affairs, foreign policy, security and defence component of the Withdrawal Agreement.⁵⁶

In the case of fisheries issues, some matters may fall to be addressed in a specific *Fisheries Bill* the Government intends to introduce. In other respects, many areas will be implemented automatically by virtue of the saving provisions for the *European Communities Act 1972* that would be included in the *Withdrawal Agreement Bill*.

There are some areas which will require implementing legislation, but in respect of which the detail is not yet part of the Government's published plans. The most obvious example of this is the Protocol for Ireland-Northern Ireland, where agreement has yet to be reached on specific proposals.

The Government has indicated that the *Withdrawal Agreement Bill* is unlikely to make major changes to other major Brexit legislation. This might have included the *Trade Bill* and the *Taxation (Cross-Border Trade) Bill*, but could also have included the *Sanctions and Anti-Money Laundering Act 2018*.⁵⁷

⁵³ [Cm 9634](#), para 7(a)

⁵⁴ [Cm 9634](#), para 89

⁵⁵ [Cm 9634](#), para 99

⁵⁶ [Cm 9634](#), paras 100-104

⁵⁷ [Cm 9634](#), para 77

5. Parliamentary process for approving the Withdrawal Agreement

5.1 Two forms of approval

Constitutional Reform and Governance Act 2010

When the UK Government agrees the text of a treaty with another country or other international legal person, it cannot ratify that agreement until a statutory process has been undertaken. Under Part 2 of the *Constitutional Reform and Governance Act 2010* (CRAG) the House of Commons can (theoretically) delay the ratification of a treaty indefinitely by making time to debate a treaty and voting to reject it. The Library has a more detailed paper outlining this process, [Parliament's role in ratifying treaties](#).⁵⁸ This process is a "passive" one in the sense that if Parliament does nothing, the treaty can be ratified regardless, although its implementation would still require domestic legislation in most cases.

European Union (Withdrawal) Act 2018 (The "meaningful vote")

In addition to this process, however, there are special arrangements for the ratification of a withdrawal agreement. The *European Union (Withdrawal) Act 2018* provides a power for ministers to modify domestic law to implement a withdrawal agreement (section 9). However this power can only be used if Parliament has passed a further act approving the Withdrawal Agreement. Moreover, section 13 of the Act provides that a withdrawal agreement cannot be ratified until Parliament has undertaken an additional, proactive, approval process for the treaty in question, and legislated to implement it. This is what distinguishes it from the normal "CRAG" process.

Section 13's approval process requires:

- a Minister to lay a statement that political agreement has been reached on a withdrawal agreement (together with copies of the negotiated withdrawal agreement and the framework for the future relationship) before both Houses of Parliament;
- the House of Commons to pass a resolution approving **both** agreements;
- the House of Lords to have the opportunity to debate a motion that it has "taken note" of the two agreements; and
- the *European Union (Withdrawal Agreement) Bill* to receive Royal Assent.

⁵⁸ Commons Library Briefing Paper, [Parliament's role in ratifying treaties](#), 17/05855, 17 February 2017

5.2 If there is no agreement

In the event that Parliament is taken not to have approved the deal when voting on the relevant motions required by section 13, there are further arrangements in the *Withdrawal Act* setting out what the UK Government must do. Within 21 days of a decision not to approve the agreements by the Commons, a Minister must make a statement to the House:

setting out how Her Majesty's Government proposes to proceed in relation to negotiations for the United Kingdom's withdrawal from the EU.⁵⁹

A Minister of the Crown must then make arrangements for a "motion in neutral terms" to be debated by the House of Commons to the effect that the House has considered the statement of the Minister, to be moved within seven sitting days of when the statement has been made.⁶⁰ A similar motion must be arranged for the House of Lords, to the effect that it has "taken note of" the statement.

The Act makes similar arrangements for two other scenarios, in which by 21 January 2019 there is no political agreement on the withdrawal agreement and/or the framework for the future relationship, or if the Prime Minister concludes at any time before then that no political agreement can be reached.⁶¹

⁵⁹ s. 13(4) *European Union (Withdrawal) Act 2018*

⁶⁰ s. 13(6)

⁶¹ s. 13(7-13)

6. Press Articles

David Allen Green, [‘Saving’ the repeal of EU law really means ignoring Brexit day](#), Financial Times, 24 July 2018

ITV News Online, [Government publishes plans to legislate for smooth Brexit](#), 24 July 2018

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