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Exiting the European Union
Committee

**The progress of the
UK's negotiations
on EU withdrawal
(March to May 2018)**

Fifth Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

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Exiting the European Union Committee

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Conclusions

Draft Withdrawal Agreement

1. There has been a successful effort on both sides to prioritise the protection of citizens' rights and we welcome the progress that has been made on this part of the draft Withdrawal Agreement. However, statements from the Government and European Commission to the effect that the draft Withdrawal Agreement's citizens' rights chapter is concluded has led to uncertainty for UK and EU citizens. Both sets of negotiators have failed to explain clearly whether outstanding issues will form part of the negotiations on the future partnership, such as ongoing free movement rights for UK citizens in the EU or protection for groups of people not currently covered by the draft Withdrawal Agreement. The Government and Commission were more transparent on their citizens' rights objectives in the phase 1 negotiations. We again call on the Government and the Commission to publish a new Joint Technical Note that sets out their negotiation objectives on citizens' rights for Phase 2, together with the respective UK and the EU positions on each. We also encourage the Government to publish the process for EU citizens applying for Settled Status in more detail as soon as possible and to continue its engagement with EU citizens in the UK on their outstanding concerns. (Paragraph 10)
2. The treatment of the Windrush generation was an appalling scandal and it has undermined trust in the ability of the Home Office competently to register EU citizens living in the UK and to process their applications for temporary or Settled Status within the limited time available. We also note that the European Parliament, which has the power to veto any deal between the UK and the EU, has prioritised the protection of the rights of both EU and UK citizens in its resolutions. We will take further evidence on the citizens' rights part of the Withdrawal Agreement and its implementation which will cover both EU citizens living in the UK and UK citizens living in the EU. (Paragraph 11)
3. While the Home Office faces a number of significant challenges in delivering an orderly transition for EU citizens living in the UK, the Government has at least set out the general, overarching structure of the Settled Status application process. It is important that the process is quick, simple and available to people using a variety of technological platforms. There is little sign, however, that the same level of organisational planning has started in many EU Member States. Member States must set out what UK citizens should do to regularise their residential status, and communicate this information clearly. We recommend that the Government seek urgent clarification from the EU27 on their work on this, the operational requirements for any registration systems and what timeframes UK citizens will be required to meet. The Government should then publish and disseminate this information to UK citizens in the European Union. It would be unacceptable for these outstanding matters to be left to bilateral negotiations. (Paragraph 12)

4. The Commission and the Government have said that the draft Withdrawal Agreement chapter on the financial settlement has been finalised. However, the Government has left open the possibility that provisions could be included in the draft Withdrawal Agreement to link payment of the financial settlement to agreement of the future partnership. Any link between the financial settlement and the content of the Political Declaration on the future partnership is a matter for the negotiations and the Government should consider what specific text in the Withdrawal Agreement might achieve the best financial deal for the United Kingdom. (Paragraph 16)
5. It is highly unsatisfactory that nearly two years after the referendum, Ministers have yet to agree, and set out in detail, what kind of trading and customs arrangements they wish to seek in negotiations with the European Union. The Secretary of State has said that the EU's dismissal of the UK's original proposals for its future customs arrangements was an opening negotiating position. However, the Government admits that further work is required to make both the maximum facilitation proposal and the new customs partnership proposal viable propositions. Moreover, trade in goods currently regulated through the Customs Union is not the only challenge that must be resolved in order to secure frictionless trade. Significant elements of intra-EU trade are also regulated through Single Market legislation that sits alongside the Customs Union. As the December text agreed between the Government and the European Union makes clear, agreement on solutions to maintain frictionless trade on the Northern Ireland/Republic of Ireland border cannot wait until the transition/implementation period. The European Council, the UK Parliament and the European Parliament will need absolute clarity on the UK's future customs arrangement before being asked to approve the Withdrawal Agreement and Political Declaration. (Paragraph 20)
6. The Government has indicated that neither the maximum facilitation proposal nor the new customs partnership, if agreed, is likely to be ready in time during the agreed 21-month transition/implementation period. Each option will have to be judged against the commitment repeatedly made by the Government to have no hard border in Northern Ireland, no infrastructure at the border and to uphold in full the Good Friday/Belfast Agreement. The Prime Minister has alluded to "contingencies" that can be triggered in this eventuality but has not set them out. The Secretary of State has ruled out any extension of the Customs Union but in the absence of any other plan, such an extension will be the only viable option. The Committee calls on the Government to set out clearly its proposals on customs beyond 2020, and any contingency plans as a matter of urgency. This should include whether it is likely that an extension of the transition/implementation period will be required and whether it intends to seek to include the option for such an extension in the Withdrawal Agreement. It is also highly likely that any special contingencies that are necessary at the border will have to be replicated in other Member States if they are to be effective. (Paragraph 21)

7. We welcome the Secretary of State's commitment to publishing the joint mapping exercise on areas of North/South cooperation but we note that no timetable for this has been provided. We request that the Government set out what work on the exercise is ongoing along with a timetable for when it will be concluded and the results published. This is important because this mapping exercise will show us exactly what is needed to meet the commitment made in the agreement reached between the UK and the EU in December 2017. (Paragraph 23)
8. The Government and the Commission have agreed that there must be a backstop Protocol in the draft Withdrawal Agreement relating to the Northern Ireland border but any backstop must be acceptable to all sides. The Commission's current proposal would undermine the constitutional integrity of the United Kingdom by effectively drawing an economic border in the Irish Sea. We support the Government's rejection of this because whatever solution is reached to resolve issues around the Northern Ireland/Republic of Ireland land border it must involve the whole of the UK. The Government has said that it will set out its alternative backstop and we call upon it to do so as a matter of urgency, while making it clear that it will be seeking a permanent solution. (Paragraph 27)
9. During the transition/implementation period the UK will continued to be fully subject to the jurisdiction of the CJEU. Despite this, Article 6 of the Draft Withdrawal Agreement, which seems to have been agreed, provides that the term of office of British judges on the CJEU will cease on 29 March 2019. On the understanding that nothing is agreed until everything is agreed, we urge the Secretary of State for Exiting the European Union to address this anomaly before the Withdrawal Agreement is finalised. (Paragraph 29)
10. It is likely that different types of dispute resolution bodies will be needed to enforce the provisions in the Withdrawal Agreement. We agree that the CJEU should not be the final arbiter after the transition/implementation period is concluded. However, we do not see how dispute resolution can be left to the Joint Committee for technical and political arbitration alone. The only pragmatic and acceptable solution is a final arbiter whose composition is balanced between representatives from the UK and the EU's institutions. We recommend that the Government urgently publish an update to its August 2017 position paper which sets out its preferences for dispute resolution, both across all of the relevant provisions in the draft Withdrawal Agreement and in respect of the future partnership. (Paragraph 34)

Negotiation timetable

11. There is a great deal of continuing uncertainty about the Government's plans for providing Parliament with its meaningful vote, the type of analysis that will be provided to aid scrutiny and the length of time that Parliament will have to consider the deal. We are undertaking a separate piece of work on the process of Parliament's consideration of the Withdrawal Agreement and the Political Declaration. We will report our findings in due course. (Paragraph 40)

12. We note the Government's assurances that the Political Declaration will be detailed and substantive. This is important in order to give Parliament the maximum possible information before voting on the Withdrawal Agreement. This objective is shared by the Commission, the European Parliament and some Member States but we also note the Secretary of State's confirmation that the Political Declaration will not be a draft treaty. We are also not convinced that the Government will be able to negotiate a full trade and market access agreement, along with a range of other agreements, including on foreign affairs and defence cooperation, by 29 March 2019 not least because such negotiations have not apparently even begun. The Government has indicated it will publish a White Paper setting out its proposals. We welcome this and hope it provides much needed clarity on the Government's intentions for citizens, business, institutions and the UK's partners in the EU27 and enables the Government to set the terms of the ongoing phase 2 negotiations, in the same way that the Commission was able to do when it published its version of the Withdrawal Agreement in February. (Paragraph 41)

1 Introduction

The negotiations

1. A substantial part of the draft UK-EU Withdrawal Agreement has been agreed.¹ Chapters on citizens' rights, the financial settlement, and a 21-month transition/implementation period have all been agreed in principle. However, as the Rt Hon. David Davis MP, the Secretary of State for Exiting the European Union, has said, "we are at 75%, but the last 25% is the hardest."² The parts of the Agreement that have not been agreed include Commission proposals for maintaining a frictionless border on the island of Ireland, governance arrangements for the Withdrawal Agreement and a wide range of other separation issues.³

2. Twenty three months after the referendum and fourteen months since Article 50 was triggered, the Government is still to decide its negotiating position on future customs policy,⁴ which the Government says must maintain a frictionless border between Northern Ireland and the Republic of Ireland, with no "physical infrastructure or related checks and controls."⁵ Agreement on this point will have significant implications for the UK's future economic relationship with the European Union as well as for the scope of any future trade agreements that the UK wishes to strike with other countries. The Government and Commission agreed in the Joint Report of December 2017 that the Withdrawal Agreement would include a backstop solution for the Northern Ireland/Republic of Ireland border.⁶ This means resolving the border issue in a Phase 1 Withdrawal Agreement as it cannot be left until after the UK has left the EU. However, the Prime Minister has rejected the Commission's proposal for this on the grounds that it would threaten the constitutional integrity of the UK by creating an economic border in the Irish Sea.⁷ The Government has said that it will set out its own proposal for a backstop "shortly". Any proposal will need to be agreed with the European Union.⁸

3. If negotiators are to meet their agreed October 2018 deadline, then only five months remain to agree the outstanding withdrawal issues as well as the framework for the future EU-UK partnership, including detailed arrangements for the future security and trade relationship. In March 2018, the European Council gave a mandate to begin negotiations on the future partnership.⁹ Talks on how those should be structured have begun.¹⁰

1 Commission, [European Commission Draft Withdrawal 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

2 House of Lords Select Committee on the European Union, [Scrutiny of the Brexit negotiations](#), 1 May 2018, [Q1](#)

3 According to the Secretary of State, the remaining separation issues relate to intellectual property, customs arrangements, Euratom, procurement, ongoing judicial cooperation and civil commercial matters. The Secretary of State said that he expected these separation issues to be agreed by the June European Council. See, House of Lords Select Committee on the European Union, [Scrutiny of the Brexit negotiations](#), 1 May 2018, [Q1](#)

4 Two potential structures were identified in the Department for Exiting the European Union August 2017 [future partnership paper on future customs arrangements](#). See, p7 onwards for more detail

5 Commission & Department for Exiting the European Union, [Joint report on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU](#), 8 December 2017, para 43

6 Commission & Department for Exiting the European Union, [Joint report on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU](#), 8 December 2017, paras 49 & 50

7 HC Deb 28 February 2018, Vol. 636, [Col. 823](#)

8 Reuters, [PM May says Britain will leave customs union, to offer Ireland backstop](#), 17 May 2018

9 European Council (Art. 50), [Guidelines on the framework for the future EU-UK relationship](#), 23 March 2018

10 Commission, [Topics for discussions on the future framework at forthcoming meetings](#), 4 May 2018. See also, Commission, [Slide on the EU/UK Possible Framework for the Future Partnership Discussions](#), 15 May 2018

This report

4. In this short report we examine the state of the Article 50 negotiations, drawing upon evidence from the Rt Hon. David Davis MP, Secretary of State for Exiting the European Union. We will continue to publish reports on the progress of the negotiations at regular intervals.

2 Draft Withdrawal Agreement

5. Substantial parts of the draft Withdrawal Agreement have been agreed in principle by the Government and the European Commission. In this chapter, we examine two aspects of that Agreement that have been agreed—citizens' rights and the financial settlement. We then turn to the two main areas that have not been agreed—measures to maintain a frictionless Northern Ireland/Republic of Ireland border and the governance of the Withdrawal Agreement.

Citizens' rights

6. On 19 March 2018, the Secretary of State and Michel Barnier said that the chapter on citizens' rights in the Commission's draft Withdrawal Agreement had been finalised.¹¹ However, there are a number of areas of uncertainty. For example:

- Article 32, which prohibited ongoing free movement rights for UK citizens who live in the EU, was omitted in the latest version of the Commission's draft.¹² On 24 January 2018, the Secretary of State said that ongoing free movement of UK citizens had been "a sticking point, but the impression one was given was that the sticking point is a future matter and [the EU] want to hold back on it." Furthermore, he said that ongoing free movement would "interact quite closely with whatever deal we do on services, professional services in particular. The right to move around will be quite an important part of that."¹³
- The Commission's draft does not remove the uncertainty for EU nationals over how the requirement to have comprehensive sickness insurance will be applied. This issue is important to many EU nationals who have been residing in the UK unaware that they are subject to the requirement. Brandon Lewis, then Minister of State for Immigration, has said that the UK has unilaterally offered to forego this requirement but this is not reflected in the text.¹⁴ We will be taking further evidence on this and on the position relating to UK citizens living in other Member States.
- It is not clear whether certain categories of people would be covered by the Commission's draft. The text suggests that carers for minors who are unable to exercise free movement rights without their non-EU national parents ('Chen children') are covered but third country national carers for minors who have not left their Member State of birth ('Zambrano children') are not covered. In evidence to the Home Affairs Committee, Philip Rutnam, Permanent Secretary

11 Department for Exiting the European Union, [David Davis' statement: EU-UK Article 50 negotiations Brussels](#), 19 March 2018 & Commission, [Press statement by Michel Barnier following the latest round of Article 50 negotiations](#), 19 March 2019

12 Article 32 stated, "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." In the latest version of the draft Withdrawal Agreement the number sequencing jumps from Article 31 to Article 33

13 [Q763](#)

14 House of Lords Select Committee on the European Union, Justice Sub-Committee, Oral evidence, Brexit: Citizens' Rights, 12 December 2017, [Q12](#)

to the Home Office, was asked about specific EU-derived rights groups who are not covered. He said, “they are not covered by the Withdrawal Agreement but we are still considering the position on those groups.”¹⁵

- An agreement on reciprocal voting rights for citizens is not included. The Secretary of State told us that the Commission’s draft “does not include everything we would necessarily like... voting rights we may never resolve with respect to the Union. We may have to do all of that bilaterally”.¹⁶

Advocacy groups such as the British in Europe and the3million have highlighted these and other issues to be resolved.¹⁷ Now that the citizens’ rights chapter has been marked as agreed, it is unclear if more time will be found in the draft Withdrawal Agreement negotiations on these issues or whether they will be a matter for the future partnership negotiations.

7. There are also concerns about how provisions of the Withdrawal Agreement on citizens’ rights will be implemented in the UK. The Government expects the online application system for Settled Status to be ready by the end of 2018.¹⁸ It will be necessary for the Home Office to process potentially 3 million applications.¹⁹ The Secretary of State told us that an appeal will be available when an application is refused, and that the process will be overseen by an independent monitoring authority.²⁰ On 30 April 2018, Guy Verhofstadt MEP, the European Parliament’s Brexit coordinator, wrote to Rt Hon. Sajid Javid MP, the Home Secretary, to outline a number of concerns relating to the Home Office’s application system, following a Home Office demonstration to MEPs. The letter expressed particular concern for vulnerable citizens who may have difficulties in using the application system or in providing the necessary documentation. The letter then set out a range of requests for making the application system more accessible and listed some specific technical issues of concern. This included the fact that “a device with an iOS operating system will not support all of the envisaged functionalities and that to complete a registration it was suggested that an applicant simply borrow an Android device.”²¹ On 15 May 2018, the Home Secretary responded to Mr Verhofstadt’s letter, to provide reassurance on a number of the concerns raised by MEPs. The Home Secretary confirmed that the ID verification element of the application process “only works on Android devices, but the Home Office and Apple continue to engage to see if we can achieve the same outcome for those with Apple devices.”²²

15 Home Affairs Committee, Oral evidence: Work of the Home Secretary, HC 434, 28 March 2018, [Qq219–220](#)

16 [Q1414](#)

17 British in Europe, [Where does the March agreement leave me?](#) & the3million, [Comments by the3million on Part II of the draft Withdrawal Agreement](#). the3million submitted further questions to the Home Office on 10 April 2018 and updated in May, concerning the UK Government’s proposals for settled status to which they are seeking answers.

18 Home Affairs Committee, The work of the Home Secretary, oral evidence 17 October 2017, [Qq21–22](#)

19 Home Affairs Committee, The work of the Home Secretary, oral evidence 17 October 2017, [Q23](#)

20 [Q1484](#)

21 Guy Verhofstadt MEP, [Letter to the Home Secretary](#), 30 April 2018

22 Home Office, [Home Secretary letter to Guy Verhofstadt MEP](#), 16 May 2018. The Home Secretary also said that the Home Office’s ambition is for straightforward applications for Settled Status to be turned around in no more than two weeks. He set out provisions to support vulnerable citizens to complete applications. Furthermore, he said that the Government would, in the coming months, set out registration fees for EU citizens who arrive in the UK after March 2019

8. The Windrush scandal has caused a great deal of concern in the European Parliament and amongst Member States about whether EU citizens could face similar treatment by the Home Office. In his letter, Guy Verhofstadt MEP, requested the Home Secretary to “go to all lengths to dispel any fears that what was visited on the Windrush generation will not be repeated in respect of EU citizens living in the UK.”²³ Sandro Gozi, Italy’s Europe Minister, has said, “It is very, very important that commitments that have been made are respected, and on citizens’ rights this recent Windrush issue is not reassuring. In the future, our nationals could be in exactly the same position”.²⁴ On 24 January 2018, before news of Windrush broke, the Secretary of State told us that the Government was aware of concerns over Home Office competence, “real or imagined” and that “there has been a lot of completely unwarranted suspicion, in my view, about the approach to this.”²⁵ On 25 April 2018, he told us that the “treatment of the European citizens in the UK will be a moral issue. It is a moral imperative and that is how we have treated it.”²⁶

9. While there has been a great deal of attention given to how the UK will administer applications from EU citizens living here, there is currently little clarity about what the approximately one million²⁷ UK citizens living in EU Member States will need to do to regularise their status after the UK withdraws from the European Union. The draft Withdrawal Agreement said that any Member State can introduce a system for individuals to apply for a status that confers the right of residence—as the UK is doing with Settled Status.²⁸ In April 2018, the Migration Policy Institute and Goldsmiths, University of London, published a report that noted, “many EU countries have yet to begin planning for issues likely to affect their UK nationals after Brexit, with officials interviewed in a number of Member States reporting they are unsure of whose remit these Britons will fall under.” The report found that there is a lack of clarity at a national level which has led to there being little formal direction provided to local officials and agencies responsible for dealing with employment and administrative issues for UK citizens.²⁹ In the Home Secretary’s 16 May 2018 letter to Guy Verhofstadt MEP, he said, “It is currently unclear what systems other EU Member States are creating to ensure the rights of UK nationals in their countries are protected after the end of the implementation period and we would welcome it if the European Parliament were also willing to focus attention on Member States’ plans.”³⁰

23 Guy Verhofstadt MEP, [Letter to the Home Secretary](#), 30 April 2018

24 Guardian, [Windrush bodes ill for citizens’ post-Brexit rights, says Italy](#), 2 May 2018

25 [Q766](#)

26 [Q1486](#)

27 The number of UK nationals resident in other EU countries is difficult to establish with certainty. A Government White Paper estimates that “around 1 million UK nationals are long-term residents of other EU countries.” See, HM Government, CM 9417, [The United Kingdom’s exit from and new partnership with the European Union](#), February 2017, page 29. On 16 April 2018, the ONS estimated that there were around 784,900 UK nationals living in other EU countries. See, ONS, [Living abroad: British residents living in the EU: April 2018](#). In January 2017 the ONS estimated that there were around 1.14 million people born in the UK living in other EU countries in 2011. See ONS, [What information is there on British migrants living in Europe?](#), 27 January 2017

28 Commission, [European Commission Draft Withdrawal 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, Article 17

29 Migration Policy Institute, [Next Steps: Implementing a Brexit Deal for UK Citizens Living in the EU-27](#), April 2018. See also, UK in a Changing Europe [Dr Michaela Benson], [Here’s how we should help expats through Brexit no man’s land](#), 30 April 2018

30 Home Office, [Home Secretary letter to Guy Verhofstadt MEP](#), 16 May 2018

10. There has been a successful effort on both sides to prioritise the protection of citizens' rights and we welcome the progress that has been made on this part of the draft Withdrawal Agreement. However, statements from the Government and European Commission to the effect that the draft Withdrawal Agreement's citizens' rights chapter is concluded has led to uncertainty for UK and EU citizens. Both sets of negotiators have failed to explain clearly whether outstanding issues will form part of the negotiations on the future partnership, such as ongoing free movement rights for UK citizens in the EU or protection for groups of people not currently covered by the draft Withdrawal Agreement. The Government and Commission were more transparent on their citizens' rights objectives in the phase 1 negotiations. We again call on the Government and the Commission to publish a new Joint Technical Note that sets out their negotiation objectives on citizens' rights for Phase 2, together with the respective UK and the EU positions on each. We also encourage the Government to publish the process for EU citizens applying for Settled Status in more detail as soon as possible and to continue its engagement with EU citizens in the UK on their outstanding concerns.

11. The treatment of the Windrush generation was an appalling scandal and it has undermined trust in the ability of the Home Office competently to register EU citizens living in the UK and to process their applications for temporary or Settled Status within the limited time available. We also note that the European Parliament, which has the power to veto any deal between the UK and the EU, has prioritised the protection of the rights of both EU and UK citizens in its resolutions. We will take further evidence on the citizens' rights part of the Withdrawal Agreement and its implementation which will cover both EU citizens living in the UK and UK citizens living in the EU.

12. While the Home Office faces a number of significant challenges in delivering an orderly transition for EU citizens living in the UK, the Government has at least set out the general, overarching structure of the Settled Status application process. It is important that the process is quick, simple and available to people using a variety of technological platforms. There is little sign, however, that the same level of organisational planning has started in many EU Member States. Member States must set out what UK citizens should do to regularise their residential status, and communicate this information clearly. We recommend that the Government seek urgent clarification from the EU27 on their work on this, the operational requirements for any registration systems and what timeframes UK citizens will be required to meet. The Government should then publish and disseminate this information to UK citizens in the European Union. It would be unacceptable for these outstanding matters to be left to bilateral negotiations.

Financial settlement

13. The Government has estimated that the financial settlement will amount to between £35 and £39 billion.³¹ However, on 20 April 2018 the NAO published a report that found the total amount the UK will pay remains uncertain. The NAO said that while the figures are a reasonable estimate, future events are likely to impact on the total. For example, the total cost of the financial settlement will not be known until there is greater certainty about the UK's economic performance in 2019 and 2020, how much EU funding UK organisations will continue to receive after the UK leaves, the future cost of the EU pension liability and

potential changes to the exchange rate, as the UK will settle its payments in euros. The NAO said, “Relatively small changes to some assumptions about future events could push the cost outside of HM Treasury’s £35 billion to £39 billion range.”³²

14. In our second report on the progress of the negotiations, we noted that in March 2017 the House of Lords EU Select Committee published a report entitled *Brexit and the EU Budget*. The Lords Committee report examined whether the UK had a legal obligation to pay a financial settlement, particularly if the EU and UK failed to reach a Withdrawal Agreement under Article 50. It concluded that on the balance of legal opinion that was presented, the UK was not liable legally to pay a financial settlement on exiting the European Union:

Article 50 allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget and related financial instruments, unless a Withdrawal Agreement is concluded which resolves this issue.

The Committee also concluded:

Individual EU Member States may seek to bring a case against the UK for the payments of outstanding liabilities under principles of public international law, but international law is slow to litigate and hard to enforce. In addition, it is questionable whether an international court or tribunal could have jurisdiction.

However, the political and economic consequences of the UK leaving the EU without responding to claims under the EU budget are likely to be profound. If the UK wants a preferential trading relationship with the EU, including a transitional arrangement, the EU partners may well demand a financial contribution post-Brexit.³³

15. The Secretary of State has said previously that the financial settlement is “conditional” on the UK securing a free trade agreement.³⁴ This conditionality is not specified in the draft Withdrawal Agreement. We were told by Jill Barrett, Visiting Reader at Queen Mary University Law School, that under the current draft, the financial obligations will become binding when the UK leaves the European Union at the end of March 2019, before the envisaged free trade agreement is finalised.³⁵ However, the Secretary of State has left open the possibility that the Government may seek to add conditions in the draft Withdrawal Agreement to link the financial settlement to the future partnership negotiations. On 1 May 2018, the House of Lords European Union Select Committee asked whether he agreed with Amyas Morse, Comptroller and Auditor General of the National Audit Office, who had said to the Treasury Committee that “The treaty, once approved, will pass into law in time for us to leave the EU and then will become legally binding. Therefore, the payments would fall to be paid no matter what, under international law.”³⁶ The Secretary of State replied:

32 NAO, [Exiting the EU: The financial settlement](#), 20 April 2018, para 12

33 House of Lords European Union Select Committee, [Brexit and the EU Budget](#), 15th Report of Session 2016–17, HL Paper 125, paras 135 - 137, 4 March 2017

34 [Q813](#)

35 Qq1520–1522

36 Treasury Committee, oral evidence: The UK’s economic relationship with the European Union, HC 473, 24 April 2018, [Q522](#)

Generally speaking, I would advise people, when making legal judgments, to read the contract first, and we have not yet concluded the legal text. It depends on what conditionalities are in the legal text. At this stage I do not know what they are. Somewhere in there will be a reference to the future framework. It depends on what the text says.³⁷

On 3 May 2018, the Secretary of State was asked in the House to confirm that once the Withdrawal Agreement comes into effect, the UK will be committed to paying the financial settlement. The Secretary of State replied, “what will be binding in international law is what is written into the Withdrawal Agreement, and I would therefore expect Parliament to have views on what conditions should be in it.”³⁸

16. The Commission and the Government have said that the draft Withdrawal Agreement chapter on the financial settlement has been finalised. However, the Government has left open the possibility that provisions could be included in the draft Withdrawal Agreement to link payment of the financial settlement to agreement of the future partnership. Any link between the financial settlement and the content of the Political Declaration on the future partnership is a matter for the negotiations and the Government should consider what specific text in the Withdrawal Agreement might achieve the best financial deal for the United Kingdom.

Northern Ireland/Republic of Ireland border

Government proposals

17. In August 2017, the Government published two options for the end-state customs arrangements that it wants. These were designed for the whole of the UK border, including the land border on the island of Ireland. The first option is known as ‘maximum facilitation’. This is a streamlined customs arrangement between the UK and the European Union which would use technology, a trusted trader scheme and international best practice to reduce the need for physical checks in relation to the UK/EU border. This would, however, appear still to entail some checks and infrastructure. The second option is a ‘new customs partnership’ with the EU which would align the UK approach to the customs border in a way that would remove the need for a UK-EU tariff border. Under this proposal, the UK would operate a regime for imports that aligns with the EU’s external customs border for goods consumed in the EU market and requiring the same tariffs and rules of origin as the EU to be applied.³⁹ The Government has not stated officially which option it prefers, despite this being absolutely integral to the future EU-UK relationship and the UK’s trade relationship with the rest of the world.⁴⁰ There is disagreement in Cabinet over which option to pursue,⁴¹ while it has been reported that the European Union has rejected both

37 House of Lords Select Committee on the European Union, Scrutiny of the Brexit negotiations, 1 May 2018, [Q4](#)

38 HC Deb 2 May 2018, Vol. 640, [Col. 455](#)

39 Department for Exiting the European Union, [Future customs arrangements](#), 15 August 2017. See also, Department for Exiting the European Union, [Northern Ireland and Ireland](#), 16 August 2017

40 European Scrutiny Committee, European Scrutiny Committee, Oral evidence: EU Withdrawal, HC 763, 6 March 2018, [Q290](#). The Prime Minister’s [Mansion House speech](#) in March also made reference to both options without stating a preference

41 For example, on 7 May 2018 Boris Johnson, the Foreign Secretary, said, “If you have the new customs partnership, you have a crazy system whereby you end up collecting the tariffs on behalf of the EU at the UK frontier.” See, Daily Mail, [Boris goes to war with May over her ‘crazy’ Brexit trade plan: Foreign Secretary warns the customs partnership would leave Britain tied to EU with ‘new web of bureaucracy’](#), 7 May 2018

proposals on the grounds that they are seen as unworkable.⁴² The Secretary of State told us that “the Commission has taken an open negotiating position. That is where it is at the moment. You must not assume that every statement from the Commission lasts forever.”⁴³ Nevertheless, the Government has appeared to accept that each model is deficient, as it has conceded that more work on both is required. On 11 May 2018, it was reported that the Prime Minister has appointed two new working groups on each of the rival solutions comprised of senior Ministers on the Brexit sub-Committee.⁴⁴

18. The Commission's draft Withdrawal Agreement includes a 21-month transition/implementation period.⁴⁵ In this time, the Government intends to implement the UK's end-state customs arrangements. However, it has not yet decided which of the two untested customs proposals it favours, and therefore it is not clear whether there will be sufficient time to implement either of them once a decision has been made because of the technology involved, were one or both to be agreed with the European Union. On 29 November 2017, Jon Thompson, Chief Executive and Permanent Secretary, HM Revenue and Customs, told us that the new customs partnership “would take approximately five years to implement.”⁴⁶ On 6 May 2018, the Rt Hon. Greg Clark MP, Secretary of State for Secretary of State for Business, Energy and Industrial Strategy, said on the Andrew Marr Show that “it's possible” that the infrastructure that is necessary for either proposal might not be ready for two or three years after the end of the transition/implementation period.⁴⁷ On 27 March 2018, the Prime Minister told the Liaison Committee that:

It is fair to say that, as we get into the detail and look at the arrangements, what becomes clear is that sometimes the timetables that have originally been set are not the timetables that are necessary when you start to look at the detail and when you really delve into what it is that you want to be able achieve. It is important that we have been able to get on to that point of looking in that greater practical, pragmatic detail at what it would take.⁴⁸

19. The Government has not set out its view on what customs arrangements would be needed if it is necessary to bridge a gap between the end of the transition/implementation period and the start date of any new customs arrangement. The Prime Minister said to the Liaison Committee:

First of all, we are working to ensure that at the end of the implementation period we are able to have customs arrangements in place that are suitable for our future economic partnership... Obviously, as we look through these issues, we will look at all the contingencies that would need to be put in place, but there will be two sides to those contingencies. There are decisions that we could take, but we need to look at decisions that might be taken by European partners.⁴⁹

42 Politico, [EU rejects UK's post-Brexit customs fixes for Northern Ireland](#), 24 April 2018

43 [Q1400](#)

44 Times, [Theresa May splits up squabblers as Brexit customs deal eludes cabinet](#), 11 May 2018

45 Commission & Department for Exiting the European Union, [Joint report on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU](#), 8 December 2017, Article 121

46 [Q245](#)

47 Andrew Marr Show, [Greg Clark interview \[transcript\]](#), 6 May 2018

48 Liaison Committee, oral evidence: The Prime Minister, HC 905, 27 March 2018, [Q71](#)

49 Liaison Committee, oral evidence: The Prime Minister, HC 905, 27 March 2018, [Q72](#)

The Secretary of State ruled out any extension of UK membership of the Customs Union. He told us, "I would view that, on my part, as a failure."⁵⁰

20. It is highly unsatisfactory that nearly two years after the referendum, Ministers have yet to agree, and set out in detail, what kind of trading and customs arrangements they wish to seek in negotiations with the European Union. The Secretary of State has said that the EU's dismissal of the UK's original proposals for its future customs arrangements was an opening negotiating position. However, the Government admits that further work is required to make both the maximum facilitation proposal and the new customs partnership proposal viable propositions. Moreover, trade in goods currently regulated through the Customs Union is not the only challenge that must be resolved in order to secure frictionless trade. Significant elements of intra-EU trade are also regulated through Single Market legislation that sits alongside the Customs Union. As the December text agreed between the Government and the European Union makes clear, agreement on solutions to maintain frictionless trade on the Northern Ireland/Republic of Ireland border cannot wait until the transition/implementation period. The European Council, the UK Parliament and the European Parliament will need absolute clarity on the UK's future customs arrangement before being asked to approve the Withdrawal Agreement and Political Declaration.

21. The Government has indicated that neither the maximum facilitation proposal nor the new customs partnership, if agreed, is likely to be ready in time during the agreed 21-month transition/implementation period. Each option will have to be judged against the commitment repeatedly made by the Government to have no hard border in Northern Ireland, no infrastructure at the border and to uphold in full the Good Friday/Belfast Agreement. The Prime Minister has alluded to "contingencies" that can be triggered in this eventuality but has not set them out. The Secretary of State has ruled out any extension of the Customs Union but in the absence of any other plan, such an extension will be the only viable option. The Committee calls on the Government to set out clearly its proposals on customs beyond 2020, and any contingency plans as a matter of urgency. This should include whether it is likely that an extension of the transition/implementation period will be required and whether it intends to seek to include the option for such an extension in the Withdrawal Agreement. It is also highly likely that any special contingencies that are necessary at the border will have to be replicated in other Member States if they are to be effective.

Joint mapping exercise

22. Negotiators have conducted a joint mapping exercise of the areas of north-south cooperation on the island of Ireland. This mapping exercise was mentioned in paragraph 47 of the December Joint Report on the Phase 1 Agreement and in the Protocol on Ireland/Northern Ireland in the Commission's draft Withdrawal Agreement.⁵¹ When the Committee visited Dublin in January 2018, we heard that 142 areas of north-south cooperation had been identified. In our last report on the progress of the negotiations, we

50 [Q1440](#)

51 Commission, [Draft Withdrawal 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, Protocol on Ireland/Northern Ireland. See also, Commission & Department for Exiting the European Union, [Joint report on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU](#), 8 December 2017, para 47

called for the results of the mapping exercise to be published.⁵² In response to a letter from us, the Secretary of State said that he was committed to publishing the results as soon as they are available. However, he said that the joint mapping exercise “remains part of ongoing negotiations with the European Commission and further work has been agreed to finalise it.” He also said that as the work was a joint UK-EU exercise it would be necessary to coordinate any release of information with the Commission and the Irish Government. The Secretary of State did not provide any timetable for when this would happen but said that he was hopeful it would be “soon” and that he would keep the Committee updated on progress.⁵³ At the time at which this report was agreed, the Committee has received no update since that letter of 24 April 2018.

23. We welcome the Secretary of State's commitment to publishing the joint mapping exercise on areas of North/South cooperation but we note that no timetable for this has been provided. We request that the Government set out what work on the exercise is ongoing along with a timetable for when it will be concluded and the results published. This is important because this mapping exercise will show us exactly what is needed to meet the commitment made in the agreement reached between the UK and the EU in December 2017.

Backstop

24. The Government's preferred option for maintaining a frictionless border on the island of Ireland is through the overall future EU-UK partnership.⁵⁴ Should this not be possible, the Government and the Commission agreed that a legally operative ‘backstop’ be included in the Withdrawal Agreement, in line with what was agreed in December 2017 in the Joint Report and will apply unless and until another solution is found. The Joint Report described the backstop option in the following terms:

In the absence of agreed solutions, the United Kingdom will 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.

In the absence of agreed solutions, as set out in the previous paragraph, the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland. In all circumstances, the United Kingdom will continue to ensure the same unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market.⁵⁵

On 30 April 2018, Michel Barnier said in a speech, “we need substantive progress on the backstop before the June European Council”,⁵⁶ and that seems to be the view of the Irish

52 Exiting the European Union Committee, [The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018, Third Report of Session 2017–19](#), HC 884, 18 March 2018, para 50

53 Exiting the European Union Select Committee, [Letter to the Chair from the Secretary of State on the joint mapping exercise](#), 24 April 2018

54 Liaison Committee, Oral evidence: The Prime Minister, HC 637, 20 December 2017, [Q3](#)

55 Commission and Department for Exiting the European Union, [Joint Report](#), 8 December 2018, paras 49–50

56 Commission, [Speech by Michel Barnier at the All-Island Civic Dialogue](#), 30 April 2018

Government.⁵⁷ However, the Secretary of State said that the Government views June as an artificial deadline. He told the House of Lords EU Select Committee, “Whether we can do that by June, I am not at all sure, but we certainly aim to complete it easily by October.”⁵⁸

25. The Commission has put forward a proposal for the backstop in its draft Withdrawal Agreement. It proposed a “common regulatory area” which constitutes “an area without internal borders in which the free movement of goods is ensured and North-South cooperation protected”.⁵⁹ Under this proposal, Northern Ireland would be considered “part of the customs territory” of the European Union and would be required to follow European Union law on goods, agriculture and fisheries, the Single Electricity Market, certain environmental standards and state aid.⁶⁰ The Prime Minister rejected this proposal because it would “undermine the UK common market and threaten the constitutional integrity of the UK by creating a customs and regulatory border down the Irish Sea”, telling the House, “no UK Prime Minister could ever agree to it”.⁶¹ The Prime Minister stressed that the Joint Report had “made it clear that there should continue to be trade between Northern Ireland and the rest of the United Kingdom, as there is today.”⁶² Nevertheless, since the Prime Minister’s rejection of the Commission’s backstop proposal, Michel Barnier has repeated his support for the proposal and maintained that it was “drafted in full respect of the UK’s red lines.”⁶³

26. The Government has not yet set out a detailed counter-proposal for the backstop, although it has said that it will do so “shortly”.⁶⁴ On 25 April 2018, the Secretary of State told us, “We are working on that as we speak and we will come up with our own wording on it”.⁶⁵ The Secretary of State said, “We will share it with everybody at some point, but not in the first round of negotiations. We have to have some of the negotiation first.”⁶⁶ In response to a letter from the Lords European Union Select Committee, which asked whether the Government envisaged the backstop applying to the whole of the UK or to Northern Ireland only, the Secretary of State said that in the absence of an agreed solution, the backstop would apply to the UK. He also said:

There are some aspects of the Commission’s proposals which we agree with—particularly the preservation of the Common Travel Area. The Prime Minister has made our position on the other elements of the draft text clear, and said that we could never accept this. There is agreement that the scope of the issues covered by the draft Protocol—focusing on goods and agriculture—reflects the right set of issues.⁶⁷

57 Reuters, [PM May says Britain will leave customs union, to offer Ireland backstop](#), 17 May 2018. See also, BBC, [Cabinet agrees Brexit customs ‘backstop’ option](#), 17 May 2018

58 House of Lords Select Committee on the European Union, Scrutiny of the Brexit negotiations, 1 May 2018, [Q2](#)

59 Commission, [Draft Withdrawal 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, Article 3

60 Commission, [Draft Withdrawal Agreement, European Commission Draft Withdrawal 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, Articles 4–9 The draft Withdrawal Agreement states that with regards to State Aid, “only measures that affect trade between the territory of Northern Ireland and the Union shall be considered as aid within the meaning of Article 107(1) TFEU.”

61 HC Deb 28 February 2018, Vol. 636, [Col. 823](#)

62 HC Deb 28 February 2018, Vol. 636, [Col. 823](#)

63 Commission, [Speech by Michel Barnier at the All-Island Civic Dialogue](#), 30 April 2018

64 Reuters, [PM May says Britain will leave customs union, to offer Ireland backstop](#), 17 May 2018

65 [Q1462](#)

66 [Q1463](#)

67 House of Lords EU Select Committee, [Letter from Rt Hon David Davis, ref Withdrawal Agreement](#), 19 April 2018

27. **The Government and the Commission have agreed that there must be a backstop Protocol in the draft Withdrawal Agreement relating to the Northern Ireland border but any backstop must be acceptable to all sides. The Commission's current proposal would undermine the constitutional integrity of the United Kingdom by effectively drawing an economic border in the Irish Sea. We support the Government's rejection of this because whatever solution is reached to resolve issues around the Northern Ireland/Republic of Ireland land border it must involve the whole of the UK. The Government has said that it will set out its alternative backstop and we call upon it to do so as a matter of urgency, while making it clear that it will be seeking a permanent solution.**

Governance of the Withdrawal Agreement

28. There are questions over what legal mechanisms will be used to monitor and implement the Withdrawal Agreement and how disputes will be resolved. The Government and the Commission have not agreed on what these dispute resolution mechanisms should be. The Secretary of State told the House of Lords EU Select Committee that this area, "sounds bland but is quite controversial because of the wish on one side for the European Court to be involved and our wish for it to be impartial."⁶⁸

29. **During the transition/implementation period the UK will continued to be fully subject to the jurisdiction of the CJEU.⁶⁹ Despite this, Article 6 of the Draft Withdrawal Agreement, which seems to have been agreed, provides that the term of office of British judges on the CJEU will cease on 29 March 2019. On the understanding that nothing is agreed until everything is agreed, we urge the Secretary of State for Exiting the European Union to address this anomaly before the Withdrawal Agreement is finalised.**

30. The Commission has set out its proposals for dispute resolution, most recently in the draft Withdrawal Agreement. Article 126, which has been agreed, appears to give the Court of Justice the full jurisdiction as currently provided in the EU Treaties during the transition/implementation period in respect of the interpretation and application of the Agreement. Article 157, which has been agreed, establishes a Joint Committee, co-chaired by the UK and EU, which will be responsible for the implementation and application of the Agreement. Under Article 159, the Joint Committee would have the power to adopt decisions which would be "binding on the Union and the United Kingdom" and "have the same legal effect as this Agreement". All decisions by the Joint Committee would be made by mutual consent. The draft Withdrawal Agreement also establishes specialised committees, on citizens' rights, other separation provisions, the island of Ireland, Sovereign Base Areas, and on the financial provisions. Recommendations by the specialised committees would be referred for adoption to the Joint Committee. Article 162, which has not yet been agreed, and does not come into force until the end of the

68 House of Lords Select Committee on the European Union, Scrutiny of the Brexit negotiations, 1 May 2018, [Q1](#)

69 It should also be noted that the European Parliament and the European Council have stated repeatedly that "transition can only consist of the prolongation of the EU acquis and the continued application of existing EU regulatory, budgetary, supervisory, judicial and enforcement instruments and structures to the UK." See, European Parliament, Motion for a Resolution, 28 September 2017. This citation seems to be based on: European Council, European Council (Art. 50), guidelines for Brexit negotiations, 29 April 2017. Michael Barnier favourably cited the same wording (from the Council's press release of 29 April 2017) in his statement following Theresa May's Florence speech, 22 September 2017. See also, Exiting the European Union Committee, The progress of the UK's negotiations on EU withdrawal, Second Report of Session 2017–19, HC 372, 1 December 2017, para 82

transition/implementation period, sets out the Commission's view that any disputes in relation to the Withdrawal Agreement that cannot be resolved politically by the Joint Committee will ultimately be settled by the CJEU at the request of either party. Article 163, also not yet agreed, provides for enforcement of a judgment by giving the Court of Justice the power to impose a lump sum or penalty payment.

31. Article 151, which has also been agreed, provides for a preliminary reference procedure from a UK courts or tribunal to the Court of Justice in respect of the Citizens Right's Part of the Withdrawal Agreement for a period of eight years. Where a preliminary reference is made, the view of the Court of Justice will be binding.

32. In August 2017, the Government published a paper entitled 'Enforcement and Dispute Resolution' which looked at how the provisions of the Withdrawal Agreement and any future partnership agreement might be overseen once the UK has left the European Union.⁷⁰ The Government said that the CJEU is the ultimate arbiter of EU law within the EU and its Member States. As such, there are strict legal limitations on the extent to which the EU will allow itself to be bound by other international judicial bodies.⁷¹ However, the Government rejected the idea that this means that the CJEU must be given the power to enforce and interpret international agreements between the EU and third countries. The Government's paper states:

There is no precedent, and indeed no imperative driven by EU, UK or international law, which demands that enforcement or dispute resolution of future UK-EU agreements falls under the direct jurisdiction of the CJEU.⁷²

33. In the paper, the Government cites the examples of free trade agreements between the EU and third countries in which disputes are resolved through binding arbitration or through political mediation, such as CETA, the recent EU-Singapore free trade agreement and the EFTA court; all of which are compliant with EU law.⁷³ The Government believes that after the UK exits the European Union, enforcement of rights and obligations for individuals and businesses guaranteed under any EU/UK agreements should be conducted under the EU's and UK's respective legal orders. In the UK, those rights or obligations will be enforced by the UK courts and ultimately by the Supreme Court.⁷⁴ The Secretary of State said:

My expectation, and this applies to Euro warrants, privacy issues and data, is that in essence we will have to have a choice of forum... which will be dictated by where the issue arises. I would expect the ECJ to have a say on data gathered in Europe. I would expect data gathered here to be a Supreme Court issue. Basically, we have to have a divider there somewhere.

And

First, it means that in practice it needs to be impartial; it cannot be the court of one or another. It could not be the Supreme Court and it could not be the European Court. So it has to be a Joint Committee and some sort of specialist support committees.⁷⁵

70 This would now be most salient to the period after the end of the transitional/implementing phase

71 Department for Exiting the EU, [Enforcement and dispute resolution](#), 23 August 2017, para 19

72 Department for Exiting the EU, [Enforcement and dispute resolution](#), 23 August 2017, para 67

73 Department for Exiting the EU, [Enforcement and dispute resolution](#), 23 August 2017, para 21

74 Department for Exiting the EU, [Enforcement and dispute resolution](#), 23 August 2017, para 22 & 23. For Scottish criminal cases, the High Court of Justiciary (sitting as an appeal court) is the final court of appeal

75 House of Lords Select Committee on the European Union, Scrutiny of the Brexit negotiations, 1 May 2018, [Q2](#)

34. It is likely that different types of dispute resolution bodies will be needed to enforce the provisions in the Withdrawal Agreement. We agree that the CJEU should not be the final arbiter after the transition/implementation period is concluded. However, we do not see how dispute resolution can be left to the Joint Committee for technical and political arbitration alone. The only pragmatic and acceptable solution is a final arbiter whose composition is balanced between representatives from the UK and the EU's institutions.⁷⁶ We recommend that the Government urgently publish an update to its August 2017 position paper which sets out its preferences for dispute resolution, both across all of the relevant provisions in the draft Withdrawal Agreement and in respect of the future partnership.

76 However, it should be noted that the CJEU has rejected a similar proposal for a joint EU-EFTA court in the past. See, Institute for Government, [Options for dispute resolution after Brexit](#)

3 Negotiation timetable

Political Declaration

35. By October 2018 the Government and the European Union intend to have reached agreement on the draft Withdrawal Agreement and the Political Declaration on the Framework for a Future Relationship ('the Political Declaration'). The Withdrawal Agreement will be a treaty that will set out the terms of the UK's withdrawal from the European Union. The Agreement could be referred to the CJEU prior to EU ratification and this could have implications for the timetable for the ratification and implementation of the Agreement. Once it has been ratified it will have the force of international law. The Political Declaration will set out the terms of the EU-UK future partnership but will not be legally binding. The Secretary of State has said:

we will have to manage the transition from the political agreement to the legal agreement. Some of it will have hiccups, but I think that, broadly speaking, we will have a very, very good idea of where we are going to be at the end.⁷⁷

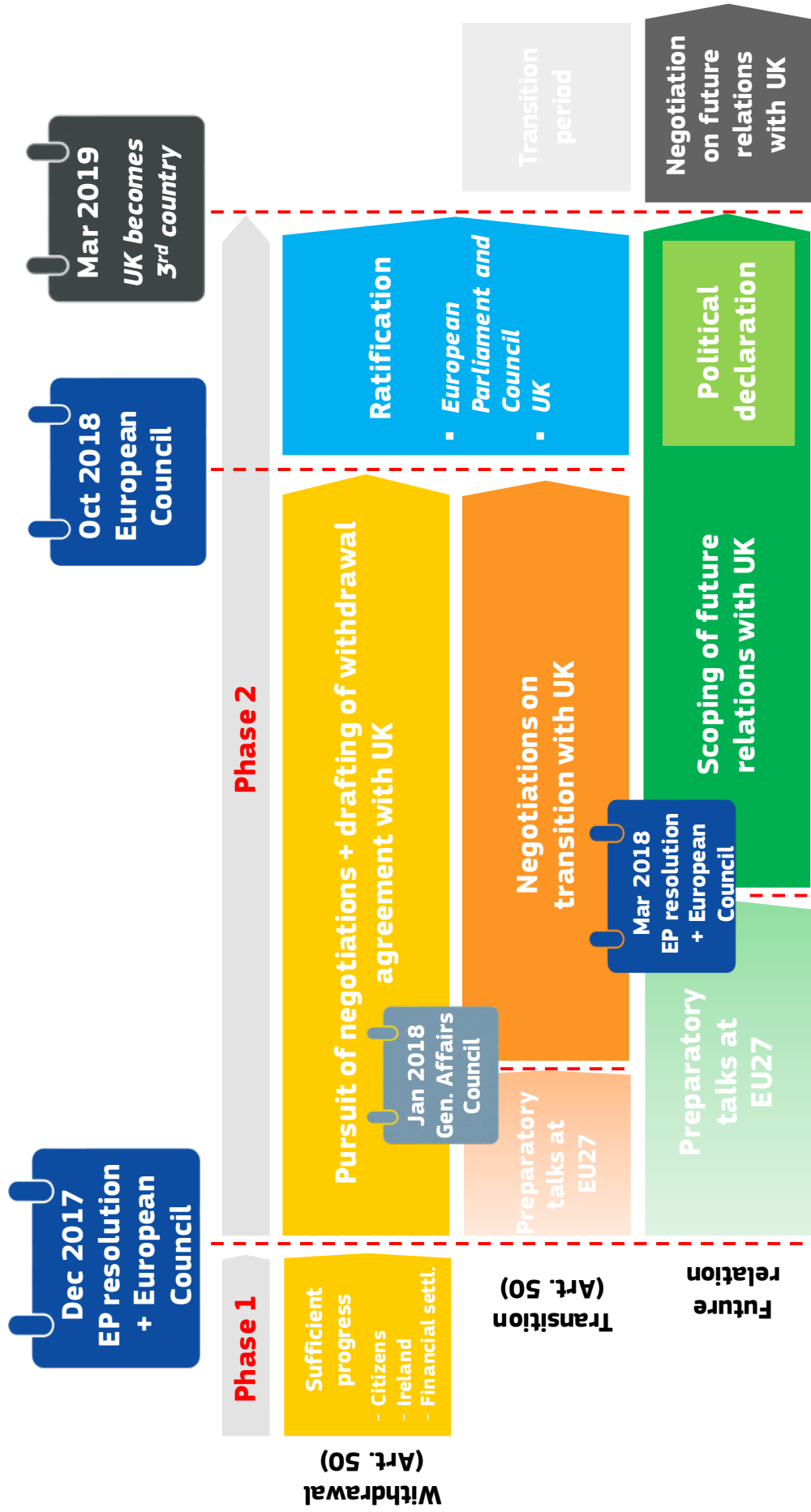
The Secretary of State also told us that in the six months between the agreement of the Political Declaration and exit day on 29 March 2019, it may be possible to negotiate the UK's end state relationship with the European Union. He said, "there is no reason why we cannot turn a very detailed substantive arrangement into a treaty before the end of the Article 50 period."⁷⁸ The Commission disagrees with the Government's interpretation of the timetable and has said that negotiations on the treaties that will establish the future relationship will not begin until after the UK has left the institutions of the European Union.

⁷⁷ House of Lords Select Committee on the European Union, Scrutiny of the Brexit negotiations, 1 May 2018, [Q13](#)

⁷⁸ [Q1396](#)

The Commission's timetable for UK withdrawal

Brexit – Next steps



36. The Government has committed to negotiating a Political Declaration that is highly detailed. The Secretary of State told us:

It is going to be substantive. It has to be substantive. It has to be substantive from the British Parliament's point of view. The British Parliament, when voting for the withdrawal agreement, will be voting for a bill of £35 billion to £39 billion. It will want to know, on the other side, what we are getting in exchange... The free trade agreement, mutual recognition of standards and how you deal with rules of origin are central to the future economic partnership. We have to have that substantively resolved by October.⁷⁹

When we visited Brussels in February 2018, we heard that both the Commission and the European Parliament would also like the Political Declaration to be detailed. Furthermore, the Secretary of State told us, “various important players—not in the negotiating team—made it very plain that they want the substantive future partnership to be very detailed. Angela Merkel, for example, said that even in October [2017].”⁸⁰ The Secretary of State has also told us previously that it was important that material aspects of the future partnership are not negotiated during the transition/implementation period as, “the balance of power in the negotiation alters and the aim then, on the part of the Commission, will be to spin out the negotiation.”⁸¹

37. Neither the Government nor the Commission has commented on the likely format of the Political Declaration, although the Secretary of State confirmed that it will not be a draft treaty. He told us, “It will be at that stage a statement of the Council. I would not imagine we will have legal text at that point.”⁸² On 15 May 2018, the Government announced that it would publish a White Paper on the future EU-UK relationship. According to reports, the Secretary of State said that the White Paper would be the “most significant” publication on the European Union since the referendum and that “It will communicate our ambition for the UK's future relationship with the EU, in the context of our vision for the UK's future role in the world.”⁸³

38. If the Withdrawal Agreement and the Political Declaration are agreed in October there will be six months available for scrutiny and approval. The Withdrawal Agreement and the Political Declaration require ratification by the European Parliament and will need to be agreed by the UK Parliament.

39. We note that 2019 will be a year of change in Brussels, with European Parliament elections in May and in a new Commission due to come into office in the Autumn. This may place considerable additional pressure on negotiations on the future EU-UK partnership being completed and where necessary ratified by the end of the transition/implementation period in December 2020.

79 [Q1444](#)

80 [Q1396](#)

81 [Q707](#)

82 [Q1388](#)

83 [Guardian, Post-Brexit blueprint to be published before EU summit, says May](#), 15 May 2018

40. There is a great deal of continuing uncertainty about the Government's plans for providing Parliament with its meaningful vote, the type of analysis that will be provided to aid scrutiny and the length of time that Parliament will have to consider the deal. We are undertaking a separate piece of work on the process of Parliament's consideration of the Withdrawal Agreement and the Political Declaration. We will report our findings in due course.

41. We note the Government's assurances that the Political Declaration will be detailed and substantive. This is important in order to give Parliament the maximum possible information before voting on the Withdrawal Agreement. This objective is shared by the Commission, the European Parliament and some Member States but we also note the Secretary of State's confirmation that the Political Declaration will not be a draft treaty. We are also not convinced that the Government will be able to negotiate a full trade and market access agreement, along with a range of other agreements, including on foreign affairs and defence cooperation, by 29 March 2019 not least because such negotiations have not apparently even begun. The Government has indicated it will publish a White Paper setting out its proposals. We welcome this and hope it provides much needed clarity on the Government's intentions for citizens, business, institutions and the UK's partners in the EU27 and enables the Government to set the terms of the ongoing phase 2 negotiations, in the same way that the Commission was able to do when it published its version of the Withdrawal Agreement in February.

Formal minutes

Tuesday 22 May 2018

Members present:

Hilary Benn, in the Chair

Joanna Cherry	Mr Pat McFadden
Stephen Crabb	Craig Mackinlay
Mr Jonathan Djanogly	Seema Malhotra
Richard Graham	Mr Jacob Rees-Mogg
Peter Grant	Emma Reynolds
Wera Hobhouse	Stephen Timms
Stephen Kinnock	Mr John Whittingdale
Jeremy Lefroy	Hywel Williams

Draft Report (*The progress of the UK's negotiations on EU withdrawal (March to May 2018)*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 agreed to.

Paragraph 17 read.

Amendment proposed, to leave out from "be applied." to the end of the paragraph and insert "The Government will shortly confirm which option it intends to pursue, doubtless with some fine-tuned elements."—(Richard Graham)

Question put, That the amendment be made.

The Committee divided.

Ayes, 3

Mr Jonathan Djanogly
Richard Graham
Mr John Whittingdale

Noes, 9

Joanna Cherry
Peter Grant
Stephen Kinnock
Jeremy Lefroy
Mr Pat McFadden
Seema Malhotra
Emma Reynolds
Stephen Timms
Hywel Williams

Question accordingly negatived.

Paragraph agreed to.

Paragraphs 18 to 41 agreed to.

Ordered, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134)

[Adjourned till Wednesday 23 May at 9.00am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 25 October 2017

Question number

Rt Hon David Davis MP, Secretary of State, Department for Exiting the European Union

[Q1–153](#)

Wednesday 29 November 2017

Peter Hardwick, Head of Exports, Agriculture and Horticulture Development Board; **James Hookham**, Deputy Chief Executive, Freight Transport Association; **Sian Thomas**, Communications Manager, Fresh Produce Consortium; **Duncan Brock**, CIPS Group Director, Chartered Institute of Procurement and Supply

[Q154–188](#)

Jon Thompson, Chief Executive and Permanent Secretary, HM Revenue and Customs; **John Bourne**, Policy Director of Animal and Plant Health, Department for Environment, Food and Rural Affairs; **Richard Everitt**, Chairman, Port of Dover; **Richard Ballantyne**, Chief Executive, British Ports Association

[Q189–251](#)

Wednesday 7 December 2017

Simon York, Director, HMRC Fraud Investigation Service; **Mike O'Grady**, Deputy Head, Organised Crime Operations North, HMRC Fraud Investigation Service; **Deputy Chief Constable Drew Harris**, PSNI; and **Assistant Chief Constable Stephen Martin**, Head of Crime Operations, PSNI

[Q252–301](#)

Wednesday 13 December 2017

Professor Alexander Türk, Professor of Law, King's College London; **John Cassels**, Partner, Competition, Regulatory and Trade Law, Fieldfisher LLP; and **Dr Scott Steedman**, Director of Standards, BSI and Vice President (policy), International Standards Organisation

[Q302–324](#)

Katherine Bennett, Senior Vice President, Airbus UK; **Rod Ainsworth**, Director of Regulatory and Legal Strategy, Food Standards Agency; **Angela Hepworth**, Director of Corporate Policy and Regulation, EDF UK; and **Dr Ian Hudson**, Chief Executive, Medicines and Healthcare Products Regulatory Agency

[Q325–375](#)

Wednesday 20 December 2017

Professor Michael Dougan, Professor of European Law and Jean Monnet Chair in EU Law, University of Liverpool; **Professor Anand Menon**, Director, UK in a Changing Europe; **Stephen Booth**, Director of Policy and Research, Open Europe

[Q376–454](#)

Wednesday 10 January 2018

Professor Richard Whitman, Head of School, Professor Politics and International Relations, University of Kent; **Fredrik Erixon**, Director, European Centre for International Political Economy; **Dr Stephen Woolcock**, Associate Professor in International Relations, London School of Economics

[Q455–545](#)

Wednesday 17 January 2018

Christophe Bondy, Public International Lawyer at Cooley (UK) LLP and former senior counsel to Canada on the CETA negotiations; **Dr Lorand Bartels**, University of Cambridge and Senior Counsel, Linklaters; **William Swords**, President, UK-Canada Chamber of Commerce

[Q546–633](#)

Wednesday 18 January 2018

Professor Greg Hannon, Director, Cancer Research UK Cambridge Institute; **Professor Eilís Ferran**, Pro-Vice Chancellor for Institutional International Relations, Cambridge University; **Dr Andy Williams**, Vice President Cambridge Strategy & Operations, AstraZeneca; and **Michael Lawrence**, Business Development Director, Deimos Space UK

[Q634–690](#)

Wednesday 24 January 2018

Rt Hon David Davis MP, Secretary of State, Department for Exiting the European Union

[Q691–835](#)

Wednesday 31 January 2018

Dmytro Tupchiienko, Data Protection Lawyer, EY, London; **Michael Emerson**, Associate Senior Research Fellow, Centre for European Policy Studies, Brussels; **Dr Tamara Kovziridze**, Co-founder, Reformatics, Tbilisi

[Q836–905](#)

Wednesday 6 February 2018

John Springford, Deputy Director, Centre for European Reform; **Professor Clive Church**, Emeritus Professor of European Studies, University of Kent; and **Professor René Schwok**, University of Geneva

[Q906–964](#)

Wednesday 7 February 2018

Professor George Yarrow, Chair of the Regulatory Policy Institute, Emeritus Fellow, Hertford College, Oxford, and visiting professor; **Ulf Sverdrup**, Director, Norwegian Institute of International Affairs; and **Professor Alla Pozdnakova**, Law Faculty, University of Oslo

[Q965–1022](#)

Professor Carl Baudenbacher, Judge of the EFTA Court

[Q1023–1048](#)

Wednesday 21 February 2018

Emanuel Adam, Director of Policy and Trade, BritishAmerican Business; **Dr Peter Holmes**, Reader in Economics, University of Sussex; **Dr Pinar Artiran**, Assistant Professor, Bilgi University, Istanbul; **Sam Lowe**, Research Fellow, Centre for European Reforma

[Q1049–1100](#)

Wednesday 27 February 2018

Pascal Lamy, former Director-General, World Trade Organization

[Q1101–1162](#)

Tuesday 20 March 2018

Dr Lars Karlsson, President of KGH Border Services, former Director of World Customs Organisation, Deputy Director General of Swedish Customs

[Q1163–1197](#)

Wednesday 21 March 2018

David Campbell-Bannerman MEP

[Q1198–1240](#)

Jessica Gladstone, Partner, Clifford Chance LLP; **David Henig**, UK Trade Policy Specialist

[Q1241–1284](#)

Thursday 22 March 2018

Iona Crawford, Associate, Freshfields Bruckhaus Deringer LLP; **Sally Jones**, Director for International Trade Policy, Deloitte; **Mike Regnier**, Chief Executive, Yorkshire Building Society; and **Glynn Robinson**, Managing Director, BJSS

[Q1285–1310](#)

Thursday 19 April 2018

Andrew Bailey, Chief Executive, Financial Conduct Authority, and **Sam Woods**, Deputy Governor Prudential Regulation, Bank of England

[Q1311–1339](#)

Huw Evans, Director General, Association of British Insurers, **Chris Cummings**, Chief Executive, the Investment Association, **Stephen Jones**, CEO of UK Finance, and **Nikhil Rathi**, CEO of London Stock Exchange Plc and Director of International Development

[Q1340–1377](#)

Thursday 25 April 2018

Rt Hon David Davis MP, Secretary of State, Department for Exiting the European Union

[Q1378–1488](#)

Wednesday 2 May 2018

Jill Barrett, Visiting Reader, Queen Mary University Law School; **Sir Jonathan Faull**, former Director General, European Commission; **Agata Gostynska-Jakubowska**, Senior Research Fellow, Centre for European Reform; **Lord Lisvane**, former Clerk, House of Commons

[Q1489–1561](#)

Wednesday 9 May 2018

Giles Derrington, Head of Policy: Brexit, International and Economics, techUK; **Elizabeth Denham**, Information Commissioner; **Stephen Hurley**, Head of Brexit Planning and Policy, British Telecom; **James Mullock**, Partner, Bird & Bird

[Q1562–1633](#)

Dr Bleddyn Bowen, University of Leicester; **Colin Paynter**, Managing Director, Airbus Defence and Space UK; **Patrick Norris**, Secretary of the European Affairs Group, UK Space

[Q1634–1692](#)

Wednesday 16 May 2018

Dr Sarah Main, Executive Director, Campaign for Science and Engineering; **Dr Beth Thompson MBE**, Head of Policy (UK and EU), Wellcome Trust; **Professor Richard Brook OBE**, President, Association for Innovation, Research and Technology Organisations; **Professor Michael Arthur**, Chair, EU Advisory Group, Russell Group

[Q1693–1758](#)

Published written evidence

Written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

NEG numbers are generated by the evidence processing system and so may not be complete.

- 1 Association of British Insurers ([NEG0007](#))
- 2 British Retail Consortium ([NEG0010](#))
- 3 Dr Charlotte O'Brien ([NEG0008](#))
- 4 Finance & Leasing Association ([NEG0018](#))
- 5 Freight Transport Association ([NEG0004](#))
- 6 Freshfields Bruckhaus Deringer LLP ([NEG0019](#))
- 7 Investment Association ([NEG0009](#))
- 8 London First ([NEG0001](#))
- 9 Michael Emerson Centre for European Policy Studies (CEPS) ([NEG0012](#))
- 10 Port of Dover ([NEG0005](#))
- 11 Professor Dr. iur. Dr. rer. pol. h.c. Carl Baudenbacher ([NEG0014](#))
- 12 Professor Graham Virgo Pro-Vice-Chancellor University of Cambridge ([NEG0017](#))
- 13 Professor René Schwok Global Studies Institute University of Geneva ([NEG0016](#))
- 14 Rail Delivery Group ([NEG0003](#))
- 15 Rob Dickinson ([NEG0013](#))
- 16 Stephen Woolcock LSE ([NEG0011](#))
- 17 TheCityUK ([NEG0002](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	European Union (Withdrawal) Bill	HC 373 (HC 771)
Second Report	The progress of the UK's negotiations on EU withdrawal	HC 372 (HC 862)
Third Report	The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018	HC 884 (HC 1077)
Fourth Report	The future UK-EU relationship	HC 935
First Special Report	European Union (Withdrawal) Bill: Government Response to the Committee's First Report	HC 771
Second Special Report	The progress of the UK's negotiations on EU withdrawal: Government response to the Committee's Second Report	HC 862
Third Special Report	The progress of the UK's negotiations on EU withdrawal (December 2017 to March 2018): Government response to the Committee's Third Report	HC 1077