



Department  
for Exiting the  
European Union

# Legislating for the Withdrawal Agreement between the United Kingdom and the European Union





# **Legislating for the Withdrawal Agreement between the United Kingdom and the European Union**

Presented to Parliament  
by the Secretary of State for Exiting the European Union  
by Command of Her Majesty

July 2018



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# Foreword from the Secretary of State for Exiting the European Union



On 29 March 2019, the United Kingdom will leave the European Union. The Withdrawal Agreement we are negotiating with the EU will provide a smooth and orderly exit for people, businesses and organisations across our country. The Government's recent publication on our future relationship with the EU set out a bold and innovative vision for an agreement that will underpin our shared prosperity and security.

We are making good progress in these negotiations. We have agreed a reciprocal deal protecting the rights of our citizens, the structure of a financial settlement and a time-limited implementation period which will smooth the path to our future relationship but also offer people reassurance on the finality of negotiations and the Brexit process. In the UK-EU joint statement

on progress published on 19 June, both parties committed to make progress as quickly as possible on all aspects necessary to reach agreement.

These arrangements will require new domestic legislation to deliver them in UK law. Last November, we announced our intention to bring forward the European Union (Withdrawal Agreement) Bill which will be introduced once the negotiations have concluded and Parliament has approved the terms of the final deal. The Bill will provide legal certainty to people and businesses here in the UK and in the EU, while sending a clear and strong signal to the EU that the UK is a dependable negotiator, delivering on the commitments already agreed in the negotiations.

The content of the European Union (Withdrawal Agreement) Bill will ultimately depend on the final terms of the Withdrawal Agreement. This White Paper sets out our early expectations for this legislation. Its publication is part of the Government's ongoing commitment to proper parliamentary scrutiny of our exit from the EU.

I hope that people across the country will welcome the Bill's principled but pragmatic approach to maximising certainty, providing clarity and allowing for parliamentary scrutiny as we leave the EU.

A handwritten signature in blue ink, appearing to read 'Dominic Raab', with a stylized flourish at the end.

**RT HON DOMINIC RAAB MP**

**SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION**

## Chapter 1: Introduction

1. In June 2016, the people of the United Kingdom (UK) made a historic decision in voting to leave the European Union (EU). Parliament subsequently passed the EU (Notification of Withdrawal) Act 2017 to begin the process of the UK's departure. Since that point, the UK and the EU have been negotiating to agree the terms of the UK's withdrawal and of its future relationship with the EU. At the same time, the UK has introduced a number of pieces of legislation to prepare the UK statute book for life outside the EU.
2. The UK and the EU are confident of reaching an agreement on the terms of the UK's withdrawal and on the framework for our future relationship with the EU. This will deliver on the will of the people as expressed in the 2016 referendum. The Withdrawal Agreement will require UK legislation to implement it in domestic law. That is why, in November 2017, the Government announced its intention to introduce the EU (Withdrawal Agreement) Bill ('the Bill').
3. The Bill will be the primary means of legislating for the Withdrawal Agreement and a vital tool in delivering a smooth and orderly exit. The UK's future relationship with the EU, which will not be finally concluded until after the UK's exit from the EU, will be implemented as necessary in separate legislation.
4. This Bill will only be introduced once Parliament has approved the final deal under the terms of the EU (Withdrawal) Act 2018. The Bill will be a necessary step in implementing the referendum result, the outcome of the Government's negotiations with the EU and Parliament's approval of the final deal. The Bill must pass before the UK leaves the EU on 29 March 2019 in order for the Withdrawal Agreement to have domestic legal effect.
5. This paper sets out the Government's current plans for that legislation. It focuses in particular on the provisions required to deliver the three parts of the Withdrawal Agreement which were agreed at the March European Council: citizens' rights (chapter 2), the implementation period (chapter 3) and the negotiated financial settlement (chapter 4). The final part of the paper sets out the procedures for Parliament's approval of the terms of our withdrawal, including the vote on the final deal (chapter 5).
6. On 12 July 2018 the Government published its White Paper on the future relationship between the UK and the EU.<sup>1</sup> Recognising that the EU is only able legally to conclude agreements giving effect to the future relationship once the UK has left the EU, the future relationship will necessarily be provided for in separate legislation as required. This is not covered in this document, which focuses on the legislation required to implement the Withdrawal Agreement.

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<sup>1</sup> 'The future relationship between the United Kingdom and the European Union', HM Government, July 2018



7. The UK and the EU have made substantive progress on the other parts of the Withdrawal Agreement, as set out in the UK-EU joint progress statement published in June.<sup>2</sup> Given that negotiations on these areas are ongoing, they are not covered in this paper:
- a. There has been agreement to establish a Joint Committee of UK and EU representatives to oversee and discuss the implementation and application of the Withdrawal Agreement.<sup>3</sup> The UK and the EU are engaging constructively to finalise the outstanding governance issues in the Withdrawal Agreement. The Government does not expect the Joint Committee to require implementing legislation.
  - b. While the UK and the EU have made progress in the negotiations on the Northern Ireland and Ireland Protocol, discussions continue and consideration is being given to areas that may require domestic legislation. Throughout the process of negotiations, the Government has been clear about its steadfast commitment to the Belfast Agreement.
  - c. At the end of the implementation period, it will be important that the application of the EU legal order in the UK is brought to an orderly conclusion. This will be particularly important in respect of ongoing processes and arrangements, such as administrative cooperation procedures. These measures are known as “Other Separation Issues”,<sup>4</sup> distinct from citizens’ rights, the Northern Ireland and Ireland Protocol and the financial settlement. There are thirteen parts<sup>5</sup> to the Other Separation Issues contained within Part Three of the draft Withdrawal Agreement.

The Government has, however, been clear since the start of the negotiations, and as set out in the White Paper on the future relationship, that in the majority of cases the future relationship will provide for a smooth transition to a comprehensive future economic and security partnership for business and citizens.

This means that, with the exception of a small number of Other Separation Issues (for example cases pending before the Court of Justice of the European Union (CJEU)),<sup>6</sup> the Government’s view is that the future economic and security partnership will supersede the individual positions the UK and the EU reach for Other Separation Issues. For example, the arrangements the UK and the EU put in

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<sup>2</sup> ‘Joint statement from the negotiators of the European Union and the United Kingdom Government on progress of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union’, June 2018

<sup>3</sup> Part Six, Title II, Articles 157-159, Draft agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 19 March 2018 (“Draft Withdrawal Agreement”)

<sup>4</sup> Part Three, Draft Withdrawal Agreement

<sup>5</sup> Goods placed on the market; Ongoing customs procedures; Ongoing value added tax and excise duty matters; Intellectual property; Ongoing police and judicial cooperation in criminal matters; Ongoing judicial cooperation in civil and commercial matters; Data and information processed or obtained before the end of the transition period, or on the basis of this agreement; Ongoing public procurement and similar procedures; Euratom related issues; Union judicial and administrative procedures; Administrative cooperation procedures; Privileges and immunities; and Other issues relating to the functioning of the institutions, bodies, offices and agencies of the Union

<sup>6</sup> Article 82, Draft Withdrawal Agreement

place as part of the future relationship for goods will determine whether any provisions put in place in the Withdrawal Agreement are required for goods that are already on the market.<sup>7</sup> The Government therefore envisages putting in place the substantive arrangements for a smooth transition to a new legal order at the point of agreeing the detailed arrangements that will form the future relationship.

The Government will ensure that provision for these Other Separation Issues is made as required in domestic law, along with the rest of the Withdrawal Agreement.

8. This paper is part of the Government's ongoing commitment to ensuring that there is proper parliamentary scrutiny of the UK's process of withdrawal from the EU. That is why the Government has chosen to publish this paper while negotiations are ongoing, providing parliamentarians and others with early detail on the likely contents of the Bill in those areas where agreement with the EU has been reached. The final provisions in the Bill will, however, be dependent on the outcome of negotiations which have not yet concluded.
9. The Withdrawal Agreement will place binding obligations on the whole of the UK, including the devolved administrations. This paper identifies a number of areas in which the implementation of the Withdrawal Agreement in domestic legislation may touch on devolved matters. The UK Government is committed to working effectively with the devolved administrations. In developing the Bill, the Government will continue to follow the established practices and conventions to seek the consent of the devolved legislatures where it is relevant to do so. Based on the Government's current view on the content of the Bill, as set out below, it is expected those practices and conventions will apply in this instance.
10. After the UK has left the EU, power will sit closer to the people of Scotland, Wales, and Northern Ireland than ever before. The devolved institutions will see a significant increase in their decision making powers as a result of the UK's exit. The UK Government remains committed to ensuring that our exit does not take any decision-making powers away from the devolved institutions and the Bill will continue this approach, so that the existing competence of the devolved institutions will be preserved. The Government remains committed to restoring devolved government in Northern Ireland so that a Northern Ireland Assembly and Executive can exercise these powers. The Government will work closely with the devolved administrations to ensure that the approach for the Bill works for the whole of the UK.
11. The Agreement will apply to the whole of the UK, and to the extent applicable to the Crown Dependencies, Gibraltar and the other UK Overseas Territories.<sup>8</sup> The Government is working closely with these governments to ensure their priorities are taken into account in the UK-EU negotiations on withdrawal, the implementation period and future relationship. The Government will continue to engage with and keep these jurisdictions informed as the Bill is developed. The Crown Dependencies, Gibraltar and the other UK Overseas

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<sup>7</sup> Part Three, Title I, Draft Withdrawal Agreement

<sup>8</sup> Article 3, Draft Withdrawal Agreement

Territories will implement the Withdrawal Agreement as required in their own legislation,<sup>9</sup> in line with their ordinary legislative processes.

12. The Government is confident that it is in the interests of both sides to reach a deal and so anticipates a successful conclusion of the negotiations. The UK is negotiating with the EU at pace to reach a substantive agreement on the Future Framework alongside the Withdrawal Agreement later this year.
13. As set out in the Government's statement from Chequers on 6 July 2018, it remains our firm view that it is in the best interests of both sides to reach agreement on a good and sustainable future relationship. But it is responsible to step up preparations for a range of potential outcomes, including the possibility of 'no deal'.
14. While it is not the subject of this paper, the Government will therefore also continue to bring forward legislation that would take account of a 'no deal' outcome of negotiations and prepare for the end of the implementation period. Parliament is already scrutinising the Taxation (Cross-border Trade) and Trade Bills, and has passed the Sanctions and Anti-Money Laundering, Nuclear Safeguards and Haulage Permits and Trailer Registration Acts. It is anticipated that secondary legislation will continue to be made under the EU (Withdrawal) Act 2018 in the run up to exit day.
15. The Government welcomes feedback on this paper. Comments can be sent to [WAB@dex.eu.gov.uk](mailto:WAB@dex.eu.gov.uk).

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<sup>9</sup> As required by Article 4 (2), Draft Withdrawal Agreement read in conjunction with Article 3 (1)

## Chapter 2: Citizens' rights

16. A key step in providing a smooth and orderly exit from the EU is to provide certainty for EU citizens living in the UK, and UK nationals living in other EU countries. EU citizens are valued members of their communities and play an integral part in the economic, cultural and social fabric of the UK, as do UK nationals living in the EU who are equally valued by their host countries and communities. That is why the UK's first priority in negotiating its withdrawal from the EU was to reach agreement on the rights of citizens.
17. The UK and the EU reached such an agreement in December 2017, detailed in 'Part Two: Citizens' Rights' of the Withdrawal Agreement. It means that UK nationals living in the EU and EU citizens living in the UK will be able to continue contributing to their communities and to carry on with their lives broadly as they do now until such time as their circumstances change in a relevant way. The agreement will cover all EU citizens legally resident in the UK before the end of the implementation period.<sup>10</sup> Around 3.5m EU (excluding Irish) nationals were estimated to be resident in the UK from January 2017 to December 2017<sup>11</sup> and around 0.8m UK citizens were resident in other EU nations (excluding the Republic of Ireland) on 1 January 2017.<sup>12</sup> The rights of those within scope of the Withdrawal Agreement will be protected and the implementation of these rights will be independently monitored. The Bill will be the primary means by which this agreement is given effect in UK law.
18. This chapter of the paper sets out the content of Part Two of the Withdrawal Agreement and the legislation required to implement the agreement in the UK. It covers:
  - a. rights related to residence;<sup>13</sup>
  - b. equal treatment;<sup>14</sup>
  - c. mutual recognition of professional qualifications;<sup>15</sup>
  - d. coordination of social security systems;<sup>16</sup> and
  - e. protections for rights and monitoring authority.<sup>17</sup>
19. The Government is acutely aware that individuals who fall within scope of the agreement require assurance that their rights will be robustly implemented, monitored and protected. It is therefore entirely appropriate that the rights agreed under the Withdrawal Agreement are underpinned by primary legislation. This includes the necessary domestic legislation to enable consistent interpretation of the Withdrawal Agreement.

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<sup>10</sup> Article 9, Draft Withdrawal Agreement

<sup>11</sup> 'Population of the UK by country of birth and nationality, January 2017 to December 2017', ONS, May 2018

<sup>12</sup> 'Living abroad: British residents living in the EU: April 2018', ONS, April 2018

<sup>13</sup> Part Two, Title II, Chapter I, Draft Withdrawal Agreement

<sup>14</sup> Article 21, Draft Withdrawal Agreement

<sup>15</sup> Part Two, Title II, Chapter 3, Draft Withdrawal Agreement

<sup>16</sup> Part Two, Title III, Draft Withdrawal Agreement

<sup>17</sup> Article 152, Draft Withdrawal Agreement

20. This commitment to provide assurance extends to legislating for the substantive provisions of the Agreement in a way that is accessible and understandable for those citizens who rely on their rights under it.
21. The rights agreed in the citizens' rights part of the Withdrawal Agreement are without prejudice to the reciprocal rights of British and Irish citizens in each other's countries as associated with the Common Travel Area arrangements between the UK and Ireland.<sup>18</sup> These rights pre-date the UK's membership of the EU.
22. The Government's position is that the Withdrawal Agreement should recognise that the people of Northern Ireland will continue to have — as set out in the Belfast Agreement — a birthright to hold either Irish or British citizenship, or both. As such, the people of Northern Ireland who are Irish citizens will continue to enjoy rights as EU citizens.
23. The Government is also in discussions with Norway, Iceland, Liechtenstein and Switzerland regarding their relationship with the UK following our exit from the EU. These countries are particularly closely tied to the UK by virtue of the European Economic Area (EEA) Agreement and EU-Swiss bilateral agreements. The UK's relationship with these countries will therefore also need to be addressed as part of the UK's exit from the EU. The Government 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. These will also require domestic legislation to be implemented, which could be done at the same time as legislating for the UK's Withdrawal Agreement with the EU.

## 2A: Rights related to residence

24. All UK nationals lawfully residing in a Member State by 31 December 2020 will be able to stay, as will all EU citizens lawfully residing in the UK.<sup>19</sup> The Bill, as a piece of domestic UK legislation, will only legislate for EU citizens lawfully resident in the UK. The Agreement requires EU Member States to implement arrangements around residence for UK citizens currently living in the EU. They must do so in conformity with the terms of the Withdrawal Agreement, ensuring that the rights of UK citizens in the EU will be protected.
25. The Statement of Intent on the settlement scheme for EU citizens and family members published on 21 June 2018<sup>20</sup> sets out the detail of how this will work in the UK, but in summary:
  - a. EU citizens who, by 31 December 2020, have been continuously and lawfully living here for at least five years will be able to apply to stay indefinitely by getting 'settled status'.<sup>21</sup> That means they will be free to live here, have access to public funds and services and go on to apply for British citizenship.

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<sup>18</sup> Article 34 (2), Draft Withdrawal Agreement

<sup>19</sup> Part Two, Title II, Chapter 1

<sup>20</sup> 'EU Settlement Scheme: Statement of Intent', Home Office, 21 June 2018

<sup>21</sup> Articles 14 and 17, Draft Withdrawal Agreement

- b. EU citizens who arrive by 31 December 2020, but haven't been living here continuously and lawfully for five years when they apply for residence status, will be able to apply to stay until they have reached the five-year threshold. They can then also apply for settled status.<sup>22</sup>
  - c. Family members who are living with, or join, EU citizens in the UK by 31 December 2020 will also be able to apply for settled status, usually after five years in the UK. They will otherwise be able to apply to stay until they have reached the five-year threshold.<sup>23</sup>
  - d. Close family members (spouses, civil partners, unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) will be able to join EU citizens in the UK after 31 December 2020, where the relationship existed on that date.<sup>24</sup> The agreement also confers rights for children who are born to, or legally adopted by, any citizen within scope of the agreement, whether they were born in the UK or not.<sup>25</sup> Other family members wishing to join EU citizens here after 31 December 2020 will need to do so under the UK Immigration Rules in force when they apply.
26. The Agreement protects those working as frontier workers<sup>26</sup> at the end of the implementation period, and will maintain their right to enter and work in the country of their employment.<sup>27</sup> A UK citizen residing in one EU Member State but working in another EU Member State will have their right to continue working in this way protected, for as long as they remain a frontier worker. This will also apply to EU citizens who are not resident in the UK, but are currently working here.
27. Once permanent residence, or settled status, has been acquired in line with the Agreement, it can only be lost through an absence from the country of more than five years<sup>28</sup> or removed by the Home Office. For example this could be on the grounds of fraud or other criminality.<sup>29</sup>
28. In the UK, the administration of this system will be smooth, transparent and simple, avoiding any unnecessary administrative burdens. This is a commitment that the UK is making as part of the Withdrawal Agreement.<sup>30</sup> This application process – the EU Settlement Scheme – is being developed with users in mind, and the UK Government has been engaging with EU citizens at every step of the way.

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<sup>22</sup> Articles 14 and 17, Draft Withdrawal Agreement

<sup>23</sup> Article 9 (e) (i), Draft Withdrawal Agreement

<sup>24</sup> Article 9 (e) (ii), Draft Withdrawal Agreement

<sup>25</sup> Article 9 (e) (iii), Draft Withdrawal Agreement

<sup>26</sup> A "frontier worker" is a person who pursues an economic activity in accordance with Article 45 or 49 TFEU. For the purposes of social security coordination (2D), the definition in the relevant EU Regulation will apply

<sup>27</sup> Article 9 (1) (c) and (d) and Article 22, Draft Withdrawal Agreement

<sup>28</sup> Article 14 (3), Draft Withdrawal Agreement

<sup>29</sup> Article 18, Draft Withdrawal Agreement

<sup>30</sup> Article 17 (1) (e), Draft Withdrawal Agreement

29. These rights of residence for EU citizens living in the UK will be legislated for by the Bill and through appropriate secondary legislation. Provisions to protect UK nationals living in the EU will need to be implemented by individual Member States. Member States are likely to need to take similar legislative steps to implement the Agreement. We are seeking details on how they intend to do so, to help offer UK nationals further reassurance. In the UK:
- a. The EU Settlement Scheme, including the administrative procedures, will generally be legislated for through Immigration Rules. These are a form of secondary legislation made under the Immigration Act 1971.
  - b. The EU (Withdrawal Agreement) Bill will underpin the rights of residence in UK law, and will provide a means of redress where these rights are not properly implemented or where other legislation is inconsistent with the Withdrawal Agreement (see section 2E).<sup>31</sup>
  - c. The Bill will also give effect to provisions that require primary legislation to deliver the Withdrawal Agreement, such as a right of appeal.<sup>32</sup>
30. The Government has decided to use the Immigration Rules to deliver the EU Settlement Scheme because:
- a. It will provide greater assurance and certainty for EU citizens currently resident in the UK to start this work now, under the Immigration Act 1971. The alternative would be to take a wholly new power in the Bill for this purpose. This would, however, mean that the EU Settlement Scheme was not established until the Bill had received Royal Assent. The Immigration Rules are the best form of secondary legislation for this task as they are already the mechanism for granting leave to enter or remain in the UK under the Immigration Act 1971 for those who require it, as EU citizens and their family members will after the end of the implementation period.
  - b. The Immigration Rules will form the basis for decisions made by caseworkers in individual cases. Substantially more detail can be provided to cover the full range of individual circumstances covered by the Agreement if this is done through secondary legislation than is practical through primary legislation.
  - c. The Bill will ensure that individuals can rely directly on their rights under the Withdrawal Agreement in UK courts.<sup>33</sup> Should the courts find that the UK's implementation of the EU Settlement Scheme needs to be modified to more accurately reflect the citizens' rights agreement, these changes can be made much more quickly through secondary legislation than through primary legislation.

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<sup>31</sup> Article 4 (1), Draft Withdrawal Agreement

<sup>32</sup> Article 19 and Article 17 (1) (r), Draft Withdrawal Agreement

<sup>33</sup> In accordance with Article 4 (1), Draft Withdrawal Agreement



31. Further to the Statement of Intent on the EU Settlement Scheme published on 21 June 2018, the Home Office laid before Parliament on 20 July 2018 the Immigration Rules<sup>34</sup> for a private beta phase, involving the EU citizen employees and students, who choose to take part, of 12 NHS Trusts and three Universities in the North West of England. This will enable the Home Office to test the relevant processes for the Scheme before it is rolled out on a phased basis from later this year. The Scheme will allow individuals to gain immigration status in UK law. This status will not affect in any way the rights of EU citizens and their family members under the free movement directive which will continue to apply during the implementation period. Other aspects of the agreement will be delivered through administration and do not require legislation, such as the commitment for forms to be "short, simple, [and] user friendly"<sup>35</sup> which will be implemented through the Home Office's streamlined digital application process for the EU Settlement Scheme.
32. The Bill will also make provision where required to deliver the Agreement on residence rights. This includes the right of appeal which is set out in the Withdrawal Agreement,<sup>36</sup> meaning EU citizens and their family members will be able to appeal if their application under the EU Settlement Scheme is unsuccessful.
33. The Government will also make modifications to other legislation which is inconsistent with the Withdrawal Agreement. For example, the Bill will make an amendment to deportation arrangements as set out in the UK Borders Act 2007. Legislation under existing powers will provide for other amendments, for example, that once a person obtains indefinite leave to remain under the EU Settlement Scheme, that right is not lost by absences from the UK of up to five years, as provided for in the Withdrawal Agreement.<sup>37</sup>

## 2B: Equal treatment

34. The Withdrawal Agreement protects the existing rights to equal treatment and non-discrimination for EU citizens residing or working in the UK, UK citizens residing or working in the EU, and their family members.<sup>38</sup> This will mean that after the implementation period those persons will be able to continue to live their lives much as before. They will have broadly the same entitlements to work, study and access public services and benefits as now, insofar as these entitlements have derived from our membership of the EU. Those within scope of the Withdrawal Agreement cannot be discriminated against on grounds of nationality. This includes any discrimination in relation to employment, the exercise of the right to be self-employed and to the setting up and managing an undertaking. These protections extend to those who are eligible for, but have not yet acquired, settled status.
35. The UK already provides significant equal treatment protections. The Bill may include additional provisions required for those in scope of the Withdrawal Agreement. These changes are likely to be technical in nature.

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<sup>34</sup> 'Statement of changes to the Immigration Rules: CM 9675', Home Office, 20 July 2018

<sup>35</sup> Article 17 (1) (f), Draft Withdrawal Agreement

<sup>36</sup> Article 17 (1) (r), Draft Withdrawal Agreement

<sup>37</sup> Article 14 (3), Draft Withdrawal Agreement

<sup>38</sup> Article 21, Draft Withdrawal Agreement



## 2C: Mutual recognition of professional qualifications

36. The UK and the EU have agreed that there will be a continued recognition of professional qualifications for those resident in a host Member State and for frontier workers.<sup>39</sup> This arrangement will protect the livelihoods of EU and UK regulated professionals. Since 1997, over 142,000 decisions have been made to successfully recognise EU qualifications in the UK, and over 27,000 UK professionals have had their qualifications recognised in the EU.<sup>40</sup> Almost half of UK recognitions are in three health-related professions (nurses, doctors and dentists) and over a quarter of decisions are in school teaching professions.<sup>41</sup> EU doctors, auditors and other professionals who are residing or frontier working in the UK at the end of the implementation period will be able to continue doing so and making valued contributions to society. A UK nurse or doctor residing or frontier working in France, for example, will be given the same assurance.
37. The Withdrawal Agreement will apply where recognition decisions regarding the qualification were received, or where recognition procedures were ongoing, before the end of the implementation period.<sup>42</sup> This will cover qualifications recognised under the Professional Qualifications Directive (including the sectoral professions<sup>43</sup>), but not where the decision is related to the temporary and occasional provision of services. The Withdrawal Agreement will also cover decisions enabling lawyers to practise under the host state's professional title under the Lawyers Establishment Directive, audit qualifications recognised under the Audit Directive, and decisions enabling persons to be engaged in the trade and distribution of toxic products.
38. As above, it will be for the EU and its Member States to implement these arrangements as they relate to UK citizens living in the EU and they must do so in conformity with the Withdrawal Agreement. In the UK, the directives referred to have been implemented in UK legislation, including The EU (Recognition of Professional Qualifications) Regulations 2015. The rights of lawyers are provided for under The EU Establishment of Lawyers Directive 98/5/EC and have already been implemented in UK law under The European Communities (Lawyer's Practice) Regulations 2000 and The European Communities (Lawyer's Practice)(Scotland) Regulations 2000. Likewise, the rights of approved statutory auditors are implemented in domestic law under Part 42 of the Companies Act 2006.
39. The Bill will make provision so that EU citizens and their family members within the scope of the Withdrawal Agreement who have had a qualification recognised under UK legislation before the end of the implementation period will be able to continue to rely upon that decision in the UK. If such a person has made an application but not completed it before the end of the implementation period, the Bill will ensure that the application will be completed and that the applicant will be able to rely upon the decision made.

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<sup>39</sup> Part Two, Title II, Chapter 2, Draft Withdrawal Agreement

<sup>40</sup> 'Regulated professionals database', European Commission, accessed April 2018

<sup>41</sup> 'Regulated professionals database', European Commission, accessed April 2018

<sup>42</sup> Articles 25 and 26, Draft Withdrawal Agreement

<sup>43</sup> Nurses, midwives, doctors, dentists, pharmacists, architects and veterinary surgeons

40. As set out in the Government's recent White Paper on the future relationship, the UK has proposed that, after the implementation period, there should be a system for the mutual recognition of professional qualifications, enabling professionals to provide services across the UK and the EU. This system would be broad in scope, covering the same range of professions as the Mutual Recognition of Qualifications Directive. These arrangements will be provided for, as necessary, in separate legislation. The recognition of professional qualifications is devolved in Scotland, Wales and Northern Ireland, except where the regulation of the profession is reserved to Westminster. As set out above, the UK Government is committed to working closely with the devolved administrations on these matters.

## 2D: Coordination of social security systems

41. The scope of individuals defined under the coordination of social security systems part of the Withdrawal Agreement (Title III of Part 2), is different to the scope defined for the rest of the citizens' rights part (as in Article 9). For those within the principal scope of this section of the citizens' rights agreement, the EU Regulations on social security coordination will continue to apply across the whole of the UK at the end of the implementation period.<sup>44</sup> This will ensure that citizens who have moved between the UK and the EU before that date are not disadvantaged in their access to pensions, benefits and other forms of social security. The agreement also provides protections in a number of other circumstances, such as where a UK national, although not living in the EU at the end of the implementation period, has nevertheless paid contributions in another Member State in the past.<sup>45</sup>
42. The EU Regulations on social security coordination were designed to ensure that citizens are not hindered by the application of different social security systems across the EU. The rules coordinate but do not harmonise the social security systems of each state. The features of the Regulations are:
- a. determining which state's legislation is applicable to a person, so that social security contributions are only paid in one country at a time;
  - b. equality of treatment with a Member State's own nationals;
  - c. the principle of aggregation, by which a person's previous social security contributions or periods of insured residence in another Member State are taken into account for the purpose of meeting domestic entitlement conditions for a benefit or pension;
  - d. rules around benefit and state pension export;
  - e. reciprocal healthcare rights including the European Health Insurance Card (EHIC) scheme and planned treatment (S2) rights. There are approximately 27m active UK EHIC cards in circulation as of September 2017;<sup>46</sup> and
  - f. a system of administrative cooperation between Member States to ensure the effective operation of the regulations, dispute resolution and data sharing.

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<sup>44</sup> Articles 28 - 29a, Draft Withdrawal Agreement

<sup>45</sup> Article 29 (1) (a), Draft Withdrawal Agreement

<sup>46</sup> 'Department for Health and Social Care - Written Evidence (BRH0021) to EU Home Affairs Sub-Committee', EU Home Affairs Sub-Committee, 19 March 2018

43. The agreement reached between the UK and the EU on social security coordination means that for EU citizens living in the UK and UK nationals living in an EU Member State at the end of the implementation period, these rules will continue to apply in full for as long as they remain in scope.<sup>47</sup> As above, it will be for the EU and its Member States to implement these arrangements as they relate to UK citizens living in the EU in line with the Withdrawal Agreement. The Bill will likely need to make directly applicable the relevant sections of the Withdrawal Agreement, which are underpinned by EC Regulations 883/2004 and 987/2009 and EEC Regulations 1408/71 and 574/72. This will ensure that these Regulations have the same legal effect in the UK as they do in Member States for the purposes of the Withdrawal Agreement.
44. Following the end of the implementation period, the UK will adopt updates made to the social security coordination regulation(s) at EU level to ensure the operational effectiveness of the system. Examples of updates that could apply in the UK with regard to those within scope of the citizens' rights agreement are:<sup>48</sup>
- a. changes at EU-level to social security entitlement documents;
  - b. changes to how the system of reimbursement of reciprocal healthcare costs between countries operates;
  - c. amendments to the system that governs reimbursement between countries of the overpayment of benefits; and
  - d. rules governing the exchange of data between relevant authorities in individual countries.
45. More substantive changes will be considered by the Joint Committee process to assess whether to maintain alignment. Any updates to the social security coordination regulations will be reflected as additions to an Annex to the Withdrawal Agreement. The Bill will need to provide for these additions to the Agreement to be implemented in the UK. It will do this by also giving effect to the Annex, so that any updates are automatically reflected in UK law.

## 2E: Protections for rights and monitoring authority

### Protections

46. It is important that rights provided for EU citizens living in the UK are protected. EU citizens need confidence that these rights will have an enduring effect and will be properly implemented. The Bill will therefore introduce overarching protections for the rights described above:
- a. The Bill will enable EU citizens within scope of Part 2 of the Withdrawal Agreement to rely directly on the rights set out in the Withdrawal Agreement.
  - b. The Bill will reflect the principle that the rights conferred on individuals by the Withdrawal Agreement will take precedence over any inconsistent provision in domestic law.

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<sup>47</sup> Article 29, Draft Withdrawal Agreement

<sup>48</sup> Article 31, Draft Withdrawal Agreement

- c. The Bill will make provision to ensure that the Withdrawal Agreement, including EU law underpinning it, is interpreted consistently in the UK and the EU. The Withdrawal Agreement sets out that, for the eight years following the end of the implementation period, UK courts will be able to make references to the CJEU in relation to the citizens' rights agreement. As well as being time-limited, this continuing role for the CJEU will be narrowly defined. It will apply only where courts consider that a CJEU ruling on a question is necessary for the UK court or tribunal to be able to give judgment in a case. Where such references are made, the CJEU will only be able to provide a ruling on the interpretation of Part Two of the Withdrawal Agreement, rather than deliver judgment in the case itself. Such references can be made in relation to an application for settled status from exit day in March 2019, again limited to a period of eight years.<sup>49</sup> The UK made 11 references to the CJEU in 2017 and 23 in 2016 across the whole spectrum of EU law.<sup>50</sup> The legal effects in the UK of preliminary rulings will be the same as the legal effects in Member States but it is for UK courts to make final judgments in the individual cases before them, not the CJEU.
- d. If a future Parliament decides to repeal any part of the primary legislation implementing the citizens' rights part of the Agreement, the Bill will provide that Parliament must activate an additional procedural step. This approach is consistent with other procedural steps introduced by Parliament, such as the referendum locks of the European Union Act 2011, and creates an additional layer of reassurance to EU citizens in the UK that their rights will be protected.

## Monitoring

- 47. The Withdrawal Agreement sets out that the UK's implementation of the citizens' rights agreement will be monitored by an independent authority.<sup>51</sup> This will be a new authority that the UK will establish in the Bill. Its powers will have effect from the end of the implementation period.
- 48. The European Commission will perform the equivalent role of monitoring compliance in Member States. This arrangement will ensure that the citizens' rights agreement is faithfully implemented in both the UK and the EU, providing additional assurance for EU citizens living in the UK and UK nationals living in other EU countries.
- 49. In the UK, the Independent Monitoring Authority (IMA) will have the power to receive complaints from citizens and take appropriate action if they believe there has been a failure on the part of the authorities to implement the terms of the Withdrawal Agreement. The IMA, once established, will additionally:
  - a. report annually to the Joint Committee on the implementation and application of Part Two of the Withdrawal Agreement in the UK;<sup>52</sup> and
  - b. conduct inquiries into systemic problems with implementation in the UK.<sup>53</sup>

<sup>49</sup> Where preliminary rulings pursuant to Article 267 TFEU in the Union and its Member States are made, national courts are to be bound by a ruling of the CJEU in this context

<sup>50</sup> '2017 Annual Report: Judicial Activity', Court of Justice of the European Union, 2018

<sup>51</sup> Article 152, Draft Withdrawal Agreement

<sup>52</sup> Article 152 (2), Draft Withdrawal Agreement

50. The Commission will have analogous powers with respect to the Member States. This will ensure parity of treatment for our respective citizens. Both the UK's IMA and the Commission will publish an annual report to the Committee for Citizens' Rights, which will sit under the Joint Committee established to govern the Withdrawal Agreement.<sup>54</sup> This report will set out how the parties are complying with and implementing the Agreement.
51. The statutory functions of the IMA are expected to be set out in the Bill. Where its functions intersect with areas of devolved competence, the Government will work with the devolved administrations to determine the most appropriate approach.

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<sup>53</sup> Article 152 (1), Draft Withdrawal Agreement

<sup>54</sup> Article 158 (1) (a), Draft Withdrawal Agreement

## Chapter 3: The implementation period

52. 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.<sup>55</sup> 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.<sup>56</sup> 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.
53. The majority of provisions related to the implementation period are covered in 'Part Four: Transition' of the Withdrawal Agreement. This chapter sets out the content of the agreement and the required legislation as it relates to:
- a. the duration and scope of the implementation period;<sup>57</sup>
  - b. the UK's relationship to EU law;<sup>58</sup>
  - c. governance, enforcement and safeguards;<sup>59</sup>
  - d. institutional arrangements, including participation in EU institutions;<sup>60</sup>
  - e. external action and international agreements;<sup>61</sup>
  - f. fishing opportunities;<sup>62</sup> and
  - g. justice, home affairs and foreign and security cooperation arrangements.<sup>63</sup>
54. It will be for the EU and its Member States to make their own arrangements for the application of the implementation period. This chapter focuses only on the legislation required to give effect to the implementation period in UK law.

### 3A: Duration and scope

55. The Withdrawal Agreement states that the implementation period will run from the moment of exit until 31 December 2020, a period of 21 months.<sup>64</sup> This strictly time-limited period is intended to provide an opportunity for businesses and public authorities in the EU and the UK to prepare for a smooth and orderly transition to our future relationship. The relevant provisions in the Bill will be sunsetted so that they cease to apply from 31 December 2020.

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<sup>55</sup> Article 121, Draft Withdrawal Agreement

<sup>56</sup> Article 122, Draft Withdrawal Agreement

<sup>57</sup> Articles 121 and 122, Draft Withdrawal Agreement

<sup>58</sup> Article 122, Draft Withdrawal Agreement

<sup>59</sup> Article 126, Draft Withdrawal Agreement

<sup>60</sup> Article 123, Draft Withdrawal Agreement

<sup>61</sup> Article 124, Draft Withdrawal Agreement

<sup>62</sup> Article 125, Draft Withdrawal Agreement

<sup>63</sup> Article 121 (1) and (2), Draft Withdrawal Agreement

<sup>64</sup> Article 121, Draft Withdrawal Agreement

At the end of the implementation period, the current application of common rules will come to an end, as will the existing arrangements under which EU law applies in the UK.

## 3B: Relationship to EU law

### Application of EU law in the UK

56. During the implementation period, there will be common rules across the UK and the EU. This means that EU law will continue to have effect in the UK in the same way as now for this 21-month period.<sup>65</sup> The differences in the application of EU law, reflecting the UK's exit from the EU, are covered below.

### Box 1: How is EU law currently brought into the UK statute book?

While the UK has been a Member State of the EU, the European Communities Act 1972 (ECA) has been the primary means by which EU law is given legislative effect in the UK. The ECA gives effect in UK law to the EU treaties. It incorporates EU law into the UK domestic legal order. It provides for the supremacy of EU law which means that national laws must give way and be disapplied by domestic courts if they are found to be inconsistent with EU law. The ECA also requires UK courts to follow the rulings of the CJEU.

#### Directly applicable

Some types of EU law (such as EU regulations and certain decisions) are directly applicable in the UK's legal system. This means that once they are adopted by the EU under its own legislative processes, they are binding in all Member States and can be relied on directly. Member States do not generally have to do any additional legislating to give effect to directly applicable EU law. In the UK, this is provided for by section 2(1) of the ECA.

#### Requiring implementation

Other types of EU law, such as directives, have to be given effect in domestic law through domestic legislation, although Member States may choose the form and method of achieving the required result. Section 2(2) of the ECA provides ministers in the UK with a power to make secondary legislation for the purpose of implementing these EU obligations, although primary legislation has also been used for this purpose.

<sup>65</sup> Article 122 (1), Draft Withdrawal Agreement



57. During the implementation period, EU law will continue to apply to and in the UK under the terms set out in the Withdrawal Agreement.<sup>66</sup> New pieces of directly applicable EU law that are introduced will continue to apply automatically within the UK; other new EU measures introduced during the implementation period will need to continue to be implemented domestically.
58. Given the way the EU's legislative process works, 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.
59. As there will still be a flow of EU legislation affecting the UK during the implementation period, the Government recognises that there is a continuing need for effective scrutiny by the UK Parliament and of close engagement by Government with this scrutiny process. The Government supports the UK Parliament's strong scrutiny function, and will continue to support and facilitate this for as long as EU legislation will continue to affect the UK. The Government will work with Parliament to ensure the right approach during the implementation period.
60. On exit day (29 March 2019) the EU (Withdrawal) Act 2018 will repeal the ECA. It will be necessary, however, to ensure that EU law continues to apply in the UK during the implementation period. This will be achieved by way of transitional provision, in which the Bill will amend the EU (Withdrawal) Act 2018 so that the effect of the ECA is saved for the time-limited implementation period. Exit day, as defined in the EU (Withdrawal) Act 2018, will remain 29 March 2019. This approach will provide legal certainty to businesses and individuals during the implementation period by ensuring that there is continuity in the effect that EU law has in the UK during this time. The Bill will make provision to end this saving of the effect of the ECA on 31 December 2020.
61. The Bill will also modify the parts of the 1972 Act whose effect is saved to reflect the fact that the UK has left the EU, and that the UK's relationship with EU law during this period is determined by the UK's commitments in the Withdrawal Agreement, rather than as a Member State. The Bill will take a selective approach to saving the effect of the ECA; the Government will not, for example, seek to save the effect of section 2(3) of the ECA, which provides the authority for Government to make payments to the EU. All payments to the EU as part of the negotiated financial settlement will instead be conducted under a new financial authority taken in the Bill (chapter 4).
62. Our view is that repealing and saving the effect of the ECA, for the time-limited duration of the implementation period, is the most effective way to provide continuity and certainty to businesses and individuals.

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<sup>66</sup> See in particular Article 122 (1) and Article 122 (3), Draft Withdrawal Agreement



### Correcting the UK statute book

63. The UK will no longer be a Member State during the implementation period but, as above, it will continue to have a relationship with EU law. Changes will be required to the way that EU law has effect so that this new status is reflected.
64. On the EU side, the terms of the Withdrawal Agreement will ensure that the UK is treated in the same way as Member States during the implementation period insofar as matters like the functioning of EU law, the purview of EU agencies or bodies, and other matters critical to the functioning of EU law in a Member State are concerned.<sup>67</sup>
65. On the UK side, directly applicable EU law will continue to function in the UK during the implementation period, through the saved effect of section 2(1) of the ECA.
66. Domestic legislation implementing EU law in the UK will need to be amended, however, to reflect the fact the UK is no longer a Member State during the implementation period. For example, throughout the statute book there are references to the obligations on “Member States”. During the implementation period, these references will need to be read as “Member States and the UK.” The Bill will make sure that such EU-related terminology in existing legislation can continue to operate effectively on the UK statute book.
67. The Government will discuss with the devolved administrations how to make sure that EU-related legislation made by the devolved institutions likewise continues to function for the duration of the implementation period.

### Interaction with the EU (Withdrawal) Act 2018 and related secondary legislation

68. On 26 June 2018, the EU (Withdrawal) Act 2018 received Royal Assent. This is a vital piece of legislation that will ensure that there is certainty and continuity at the point that EU rules and regulations no longer apply in the UK. This Act was passed without prejudice to the outcome of the negotiations.
69. As above, 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.
70. None of the Bill’s proposed amendments to the EU (Withdrawal) Act 2018 would change the purpose of that Act. All of the Bill’s proposed amendments to the EU (Withdrawal) Act 2018 are technical changes to ensure that this vital piece of legislation can operate in the way that Parliament intended at the end of the implementation period.
71. The Bill will also amend the correcting powers in the EU (Withdrawal) Act 2018 to allow them to correct deficiencies arising from withdrawal *and* the end of the implementation period.

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<sup>67</sup> Article 122 (1) and (6), Draft Withdrawal Agreement

72. These powers are currently sunsetted to two years after exit day (29 March 2021). The powers will therefore be available to the Government during the implementation period, allowing secondary legislation to be made during this time to correct deficiencies. The existing sunset would, however, provide Ministers only three months to correct any deficiencies in retained EU law that became apparent *after* that conversion of EU law has taken place. This would include any changes required to EU legislation which were only introduced shortly before the end of the implementation period. This arrangement would also reduce the time available for scrutiny by Parliament of any changes.
73. Whilst the Government would hope to make any corrections before the end of the implementation period, it is possible that some deficiencies will only become apparent after the conversion of EU law has taken place. The Bill will therefore amend the sunset on the correcting power at section 8 of the EU (Withdrawal) Act 2018 so that the power expires on 31 December 2022. This arrangement will preserve Parliament's intention when it passed the EU (Withdrawal) Act 2018 to give the UK Government and the devolved administrations two years beyond the end of the application of EU rules and regulations in the UK to ensure that the UK has a functioning statute book.
74. The powers conferred on devolved administrations under section 11 of and Schedule 2 to the EU (Withdrawal) Act 2018 will enable them to modify retained EU law in devolved policy areas (except, in the case of direct retained EU law, where regulations are made under section 12 of the Act so that existing frameworks are temporarily maintained in specific areas). As will be the case for the UK Government, the correcting power will remain available to the devolved administrations until two years after the end of the implementation period.
75. Whilst the Government has every confidence that the implementation period will be in place, it has a duty to continue to plan for all eventualities, including a 'no deal' scenario, until the agreement is in place. Therefore the UK Government and the devolved administrations must continue to make sensible contingency preparations. This is also happening in the EU. As such, Statutory Instruments (SIs) will continue to be laid to prepare the UK for its exit from the EU. While many of these may not be needed until the end of the implementation period, the Government's aim is to ensure a functioning statute book for exit day in the unlikely event that no agreement is reached. In order to prepare for an agreement, it may be that provision is needed to defer, revoke or amend those SIs. This would likely be achieved through the Bill.
76. The Government will engage the devolved administrations to determine an appropriate approach to equivalent SIs made by them.
77. The Government does not expect that the Bill will have to make significant amendments to the existing schedule of exit-related bills that have been introduced in Parliament this session. The implementation period will mean that most policy changes, and subsequent regulatory changes under the powers in these bills, will not be required until the end of the implementation period on 31 December 2020. The effect of these bills can therefore be deferred.

### 3C: Governance, enforcement and safeguards

#### Court of Justice of the European Union

78. In leaving the European Union, the Government has been clear that the direct jurisdiction of the CJEU in the UK will end. As part of delivering a smooth and orderly exit, the UK and the EU have agreed that during the implementation period, the existing EU mechanisms for supervision and enforcement will continue to apply to the UK.<sup>68</sup> This will ensure that EU rules are interpreted and applied consistently in the UK and the EU during this time, providing certainty for businesses and citizens. The UK will no longer have the right to nominate CJEU judges, who do not in any case represent the UK; it will however maintain the same rights as Member States to intervene in cases before the Court and UK-based lawyers will maintain their rights of audience before the Court.
79. During the implementation period, the UK will maintain the same recourse to the EU's judicial review structures as a Member State.<sup>69</sup> Should the UK have concerns about the implementation or application of EU law during the implementation period, it will retain the same formal ability to challenge such action as a Member State.
80. The binding nature of CJEU rulings is currently given effect through the ECA. By saving the effect of the ECA for the time-limited implementation period, the role of the CJEU will also be preserved during this period. This will also be facilitated by amendments in the Bill to the EU (Withdrawal) Act 2018, so that sections of that Act which end the jurisdiction of the CJEU in the UK take effect at the end of the implementation period.

#### Safeguards

81. One of the UK's key objectives in agreeing the terms of the implementation period has been to ensure that the UK's voice continues to be heard and that its interests are protected. The UK and the EU have therefore agreed a number of safeguard mechanisms in the Withdrawal Agreement.
82. The Withdrawal Agreement will establish a Joint Committee which will be made up of representatives from both the UK and the EU.<sup>70</sup> Joint committees are common features of many international agreements, such as the Schengen Association Agreements, the EU-Canada Comprehensive Economic and Trade Agreement (CETA), the free trade agreement between the EU and South Korea, all US free trade agreements and the EEA Agreement.
83. This Committee will meet at the request of either party,<sup>71</sup> and will have the mandate to discuss any issues that arise with the interpretation, implementation and application of the Withdrawal Agreement.<sup>72</sup> This Committee can be established by the UK and the EU without the need for any UK legislation.

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<sup>68</sup> Article 126, Draft Withdrawal Agreement

<sup>69</sup> Article 122 (6), Draft Withdrawal Agreement

<sup>70</sup> Article 157, Draft Withdrawal Agreement

<sup>71</sup> Article 157 (2), Draft Withdrawal Agreement

<sup>72</sup> Article 157 (3), Draft Withdrawal Agreement

84. The UK and the EU have agreed an obligation for both parties to act in 'Good Faith' through the application of the Withdrawal Agreement.<sup>73</sup> This reflects that both the UK and the EU should approach the Agreement with fairness, consistency and sincerity. The principle of 'Good Faith' is well established in international law and 'Good Faith' commitments are well-precedented in international agreements. Examples of 'Good Faith' provisions can be found in EU agreements such as the European Common Aviation Area, the EEA Agreement and the EU-Ukraine Association Agreement. The 'Good Faith' commitment, as with all of the Withdrawal Agreement, will be legally binding in international law on both parties.
85. The typical timescales for the passage of new EU legislation mean the UK will have had the full or significant input of a Member State on the vast majority of significant new EU legislation that comes into force during the implementation period. It usually takes around two full years for major legislation to make its way through the EU system into law. The UK and the EU have, however, agreed specific safeguards and consultation mechanisms in individual areas, for example on fisheries.<sup>74</sup> In addition the UK has maintained its Justice and Home Affairs opt-in and Schengen opt-out for measures which amend, build upon or replace the EU measures in which the UK already participates, and has negotiated a mechanism by which it may not apply certain Common Foreign and Security Policy (CFSP) decisions (these are covered in more detail below).<sup>75</sup>
86. These safeguards will take effect in the international relationship between the UK and the EU and so are not likely to require any domestic legislation.

### 3D: Participation in EU institutions, agencies and bodies

87. It is important that the UK and the EU are able to continue to cooperate through the EU's institutions, agencies and bodies. The UK and the EU have agreed that representatives or experts from the UK will therefore be able to continue to attend certain Commission-led EU meetings, and meetings of EU entities where the presence of the UK is necessary and is in the interests of the Union, or where the discussion concerns acts addressed to the UK and its citizens.<sup>76</sup> The UK will also retain access to specific networks, information systems and databases on current terms for the duration of the implementation period.<sup>77</sup>
88. This ongoing participation will support businesses, regulators and individuals to continue to fulfil their obligations, have access to vital information, and allow the UK to continue to influence decision-making in EU bodies in the areas that affect it. This will allow the UK to continue to collaborate closely with the EU on a number of important issues, where it is in the national interest to do so.
89. Ongoing UK participation in EU institutions, agencies and bodies is unlikely to require any provisions in the Bill to have effect.

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<sup>73</sup> Article 4a, Draft Withdrawal Agreement

<sup>74</sup> Article 125, Draft Withdrawal Agreement

<sup>75</sup> Article 122, Draft Withdrawal Agreement

<sup>76</sup> Article 123, Draft Withdrawal Agreement

<sup>77</sup> Article 7, Draft Withdrawal Agreement

90. Guidance is being worked up on the consistent interpretation and application of the criteria for UK participation in EU bodies during the implementation period. These arrangements are again unlikely to require any provision in the Bill.

### 3E: International agreements, trade negotiations and external representation

91. The UK participates in a number of international agreements as a result of or relevant to its membership of the EU. These agreements cover a wide range of policy areas, such as trade, aviation, data-sharing, and security, climate change, international development, energy and judicial cooperation.
92. These agreements form an important part of the body of EU law which will continue to apply to the UK during the implementation period. At the March European Council the UK and the EU agreed that the UK is to be treated as a Member State for the purposes of international agreements during the implementation period.<sup>78</sup> Third parties to the agreements will be notified of this approach by the EU. This will enable a smooth process of transition. It provides a basis for continuity and gives businesses and citizens the necessary certainty that there will be no disruption to existing relationships underpinned by international agreements as the UK leaves the EU and moves into the implementation period.
93. It is in everyone's interests - the UK, the EU and third countries - that international agreements continue to apply to the UK during the implementation period. There is a willingness to find a pragmatic way to ensure continuity of international agreements and thereby minimise the impact of the UK's departure on them. A number of countries have already welcomed this approach publicly, which is encouraging.
94. The continued participation of the UK in these international agreements will need to be provided for by the Bill. To the extent international agreements are considered a part of EU law under the Withdrawal Agreement,<sup>79</sup> they would be given effect in the UK through the saved and repurposed ECA mechanisms.
95. Where the UK currently participates in international bodies in its own right it will continue to do so. In international bodies where the EU currently represents the UK, the EU may invite the UK to participate as part of its delegation, where the presence of the UK is necessary and is in the interests of the Union.<sup>80</sup> This arrangement is unlikely to require any provision in the Bill.
96. The Withdrawal Agreement also explicitly states that the UK will be able to negotiate, ratify and sign international agreements - including new free trade agreements - during the implementation period.<sup>81</sup> These new agreements can be brought into force immediately after the implementation period. These new agreements will not be covered in this Bill, but

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<sup>78</sup> Article 2 (a) (iv), Article 122 (1) and Article 122 (6), Draft Withdrawal Agreement

<sup>79</sup> Article 2 (a) (iv), Draft Withdrawal Agreement

<sup>80</sup> Article 124 (2) (b), Draft Withdrawal Agreement

<sup>81</sup> Article 124 (4), Draft Withdrawal Agreement

will be provided for in separate legislation as appropriate. This means that the UK will be able to lead an independent trade policy for the first time in over 40 years.

97. The UK has a long and proud history as a great trading nation and champion of free trade with all parts of the world. As the European Commission's "Trade for All Strategy" suggests, 90% of global economic growth in the next two decades will come from outside the EU<sup>82</sup> so it is likely that a greater proportion of UK trade will continue to be with non-EU countries. For that reason, the UK would push for greater liberalisation of global services, financial services, investment and procurement markets, and seek ambitious digital trade packages.<sup>83</sup> This includes provisions supporting cross-border data flows, underpinned by appropriate domestic data protection frameworks. Any new trade arrangements and trade deals will ensure markets remain open and fair behind the border. The high level of protection for intellectual property, consumers, the environment, and employees will be maintained. The Government will also ensure that decisions about how public services, including the NHS, are delivered for UK citizens are made by the UK Government or the devolved administrations.

### 3F: Fisheries policy

98. Under the Withdrawal Agreement, EU fisheries policy will continue to apply for the duration of the implementation period.<sup>84</sup> In 2020, however, the UK will be negotiating fishing policy for 2021 as an independent coastal state. As set out in detail in the White Paper on sustainable fisheries for future generations, the Government will introduce a Fisheries Bill so that by the end of the implementation period the necessary powers to control access to the UK's waters and to set fishing quotas are in place.<sup>85</sup>
99. During the implementation period, the UK and the EU have agreed mechanisms by which UK fishermen's interests will be properly safeguarded in annual negotiations for fishing opportunities with third countries and the EU.<sup>86</sup> For the whole of 2019, the UK will apply the agreement reached at the Fisheries Council in December 2018. The UK will have been fully involved in this agreement as a Member State. For 2019 negotiations, the Withdrawal Agreement is clear that the UK will be consulted on fishing opportunities related to the UK and that the UK can attend international delegations as part of the EU delegation. The agreed text makes clear that the UK's share of quotas will not change during the implementation period. In 2020, the UK will be negotiating fishing opportunities as an independent coastal state and equal partner, deciding who can access its waters and on what terms. These arrangements will not require specific provisions in the Bill - the application of relevant EU law during the implementation period will be implemented by the general saving of the effect of the ECA described above.

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<sup>82</sup> 'Trade for All - Towards a more responsible trade and investment policy', European Commission, October 2015

<sup>83</sup> 'The future relationship between the United Kingdom and the European Union', HM Government, July 2018

<sup>84</sup> Article 125, Draft Withdrawal Agreement

<sup>85</sup> 'Sustainable fisheries for future generations', Department for Environment, Food and Rural Affairs, July 2018

<sup>86</sup> Article 125, Draft Withdrawal Agreement

### 3G: Justice, home affairs and foreign policy, security and defence

100. The UK will continue to be able to choose whether to participate in additional Justice and Home Affairs (JHA) and Schengen measures during this period, where these measures amend, build upon or replace an existing measure in which the UK already participates.<sup>87</sup> In order to support continuing cooperation, the UK can also be invited by the EU to cooperate in relation to entirely new measures; this will allow for continuity of cooperation, whilst ensuring that the UK cannot be bound by any measures that it does not deem to be in the national interest.<sup>88</sup>
101. The UK and the EU have agreed distinct provisions in the Withdrawal Agreement permitting the future relationship on foreign, security and defence policy to come into effect during the implementation period.<sup>89</sup> When an agreement on the future relationship in this area comes into effect, the relevant areas of existing EU law (Chapter 2 of Title V of the Treaty on European Union (TEU) and acts adopted on the basis of those provisions) will cease to apply to the UK.
102. The UK and the EU will maintain regular dialogue and consultation on foreign, security and defence policy, and the consultation mechanisms agreed for CFSP during the implementation period will be an important part of maintaining our ongoing effective cooperation, including on sanctions policy.
103. Until future arrangements come into effect, an abstention mechanism has also been agreed for use in exceptional circumstances, through which the UK can make a formal declaration that it will not apply a CFSP decision.<sup>90</sup> The UK and the EU will continue to share the same values and in most areas will continue to pursue similar foreign policy objectives. This provision of the Withdrawal Agreement, however, allows the UK to diverge from EU CFSP decisions where necessary.
104. The Withdrawal Agreement makes clear that the UK can continue to participate in EU programmes during the implementation period. The UK and the EU have agreed that there can be a derogation from this approach in exceptional cases, where information exchanges, procedures or programmes run beyond the implementation period and where participation would provide access to security related sensitive information that only EU Member States (or nationals of Member States, or natural or legal persons residing or established in a Member State) are able to access. The EU will need to notify the UK when it applies this provision and Government will continue to monitor any potential application of this provision.<sup>91</sup>

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<sup>87</sup> Article 122, Draft Withdrawal Agreement

<sup>88</sup> Article 122 (5), second paragraph, Draft Withdrawal Agreement

<sup>89</sup> Article 122 (2), Draft Withdrawal Agreement

<sup>90</sup> Article 124 (6), Draft Withdrawal Agreement

<sup>91</sup> Article 122 (6) and (7) (b), Draft Withdrawal Agreement



## Chapter 4: The negotiated financial settlement

104. The Government has always been clear that any agreement on financial matters should represent a fair settlement of the UK's rights and obligations as a departing Member State, in accordance with the law and in the spirit of the UK's continuing partnership with the EU. The financial settlement has been agreed in the context of agreeing an implementation period and the framework for our future relationship, which will be finalised and published at the same time as the Withdrawal Agreement.
105. The negotiated financial settlement covers the UK's financial commitments to the EU and the EU's financial commitments to the UK. The UK and the EU have reached agreement on the components of the settlement, the methodology for calculating the UK's share and the payment schedule. The Bill will include a provision that allows Government to make payments due under the financial settlement and meet its international commitments.
106. This chapter of the paper covers:
  - a. the scope of the financial settlement;
  - b. underlying principles;
  - c. components of the settlement;
  - d. process for making payments; and
  - e. provisions in the Bill.
107. The majority of issues related to the financial settlement are covered in 'Part 5: Financial Provisions' of the Withdrawal Agreement. A definitive value on the financial settlement in relation to the UK's withdrawal from the EU will, by its nature, be dependent on future uncertain events. However, following the outline agreement on the financial settlement in December 2017, the Government used publicly available European Commission data to set out a reasonable central estimate of the settlement of £35-39 billion.<sup>92</sup> The National Audit Office (NAO) subsequently produced a report concluding that this was a reasonable estimate.<sup>93</sup>

### 4A: The scope of the financial settlement

108. The aim of the negotiated financial settlement is to address mutual obligations that arose primarily as a consequence of the UK's participation in the EU budget, and also commitments related to the UK's broader membership of the EU. The financial settlement does not address any other costs arising as a consequence of the UK exiting the EU, such as the costs of new administrative arrangements that may need to be put in place by either the UK or the EU. In addition, there is no obligation in the financial settlement to pay for the relocation of EU bodies previously located in the UK.

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<sup>92</sup> 'Correspondence from the Chancellor of the Exchequer to the Chair of the Treasury Select Committee relating to the UK's EU Withdrawal financial settlement', dated 24 January 2018

<sup>93</sup> 'Exiting the EU: The financial settlement', National Audit Office, April 2018



109. The financial settlement does not cover any costs that might be associated with the UK's future relationship with the EU, as these will be part of our future relationship. For example, as the recent White Paper on the future relationship set out, there are some specific European programmes in which the UK may want to participate, such as Horizon Europe. If so, and this will be for the UK to decide, it is reasonable that an appropriate contribution should be made. These decisions are subject to negotiations on our future relationship with the EU, and future decisions of Parliament.

## 4B: Underlying principles

110. As stated in the December Joint Report, the settlement has been put forward by the UK on the condition of an overall agreement under Article 50 on the UK's withdrawal, taking into account the future relationship, including an agreement on transitional arrangements.<sup>94</sup> The settlement is based on three principles agreed that will ensure a fair deal for UK taxpayers:
- a. The UK will not finance any commitments that do not require funding from Member States, and will receive a share of any financial benefits that would have fallen to it had it remained a Member State. In relation to the EU budget, the UK's share will be based on actual budget implementation and exclude those parts in which the UK already has an opt-out. In relation to liabilities, contingent liabilities and assets, the UK will not have to pay for liabilities that remaining Member States would not have to pay for. The UK will also receive a share of funds that accrue to the EU budget from activities that were agreed during the period of membership.
  - b. The second principle establishes the UK's share of the EU's obligations where they are a component of the settlement. For 2019-20, the UK's share of EU contributions will be based on the methodology currently used for determining the UK's annual contributions to the EU budget. For payments after the end of the implementation period, it will be based on an average of the UK's share of EU contributions during the current Multiannual Financial Framework – in other words, the UK's share will be the average of its share of the EU budget (taking into account the rebate) over 2014-20.
  - c. The third principle is that the UK will only be required to make payments as they fall due. The UK will not be required to incur expenditure earlier than would have been the case had it remained a Member State, except for a few specific cases where it might be in the interest of both sides to settle these early. This is particularly relevant for pensions, given that the costs will decline steadily over a long-term period.

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<sup>94</sup> Joint Report from the negotiators of the European Union and United Kingdom Government on phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union, 8 December 2017

## 4C: Components of the financial settlement

111. The financial settlement has three main components:
- a. The UK will participate in the EU's annual budgets over 2019-20, covering the implementation period and the remainder of the Multiannual Financial Framework, and get its fair share of receipts. The UK will also receive its rebate in 2019 and 2020.<sup>95</sup>
  - b. The UK will pay its share of outstanding EU budget commitments as at end-2020, and again will get its fair share of receipts from those commitments.<sup>96</sup>
  - c. Third, the UK will pay its share of the EU's liabilities as at end-2020, and benefit from a share of EU assets.<sup>97</sup>
112. Within each component of the settlement, the UK will get its share of receipts. Once the Withdrawal Agreement has been ratified, the terms of the negotiated financial settlement will become international commitments and displace the Government's guarantee given after the referendum,<sup>98</sup> which would have come into effect in the absence of these financial commitments. This commitment in the Withdrawal Agreement provides certainty to current recipients of EU funding, including farmers, businesses and academics, with the UK continuing to get receipts due under the current EU budget plan.
113. Each of these components is described in further detail below. In addition to these components, there are a number of areas where bodies or organisations have been established outside the EU Treaties through separate international agreements, but are managed by EU institutions or in close alignment with EU policies. The Withdrawal Agreement also makes provision for these to ensure that there is certainty on how they will be treated.
114. The largest of these is the European Development Fund (EDF). The UK will continue to participate in the current EDF, which covers the period from 1 January 2014 to 31 December 2020.<sup>99</sup> The majority of the current EDF has already been committed and forms part of the UK's overall commitment on Overseas Development Assistance, supporting low income countries. UK Overseas Territories referred to in Article 3 (1) will benefit from the current EDF until its closure, and from previous EDFs until their closure. The UK will also honour commitments it made for the EU Trust Funds and the Facility for Refugees in Turkey.<sup>100</sup>

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<sup>95</sup> Article 128, Draft Withdrawal Agreement

<sup>96</sup> Article 133, Draft Withdrawal Agreement

<sup>97</sup> Article 135, Draft Withdrawal Agreement

<sup>98</sup> 'Further certainty on EU funding for hundreds of British projects', HM Government, 3 October 2016

<sup>99</sup> Part Five, Chapter 5, Draft Withdrawal Agreement

<sup>100</sup> Part Five, Chapter 6, Draft Withdrawal Agreement

## Participation in the European Union annual budgets in 2019 and 2020

115. Under the financial settlement, the UK will contribute to the EU's budget in 2019 and 2020, which covers the implementation period following the UK's withdrawal. The UK will also benefit from the implementation of the budget as if it had remained a Member State over this period.<sup>101</sup> This means that the UK will continue to draw advantages from the normal management of projects and programmes funded through the current Multiannual Financial Framework until their closure, whether they are managed by the UK Government (such as the European Regional Development Fund) or directly allocated to beneficiaries from EU institutions (such as Horizon 2020).
116. The Withdrawal Agreement guarantees that any amendments made to the Multiannual Financial Framework after the UK's exit date (29 March 2019) will not apply to the UK, and the UK will not be required to contribute any additional funding to what is set out in the Withdrawal Agreement.<sup>102</sup> The UK will also be unaffected by any changes to the core rules on budget revenue.<sup>103</sup> This is one of the key mechanisms to ensure that the UK does not pay more than it would have done had it remained a Member State.

## EU outstanding budget commitments

117. A normal consequence of the EU's multiannual approach to spending is that many of the EU's spending commitments are paid some years after they are originally made. As a result, at any given time there is a stock of outstanding commitments that are yet to be paid – referred to as *reste à liquider* or RAL. The Withdrawal Agreement sets out that the UK will pay its share of these commitments as at 31 December 2020 as these commitments fall due. The UK will continue to receive related receipts as well.<sup>104</sup>

## Liabilities and contingent liabilities

118. The UK will pay its share of the EU's liabilities as at 31 December 2020. At the same time, the settlement ensures that the UK benefits from a share of EU assets, in a number of ways. In some cases, for example property and buildings, the asset reduces or removes a liability that otherwise might have fallen to the UK. In others, for example investment assets, the UK will get a share of the profits and original investment as they mature.<sup>105</sup>
119. The most significant residual liabilities are in relation to the pensions and other employee benefits of the members and staff of the European institutions. The UK will contribute towards those pensions rights accrued on or before 31 December 2020. The UK will pay its share of these pension rights as the costs fall due to the EU, unless the UK decides to settle this early.<sup>106</sup>
120. The UK will also maintain a share of the EU's contingent liabilities. In most cases these will be limited to those that the EU has taken on up to the date of withdrawal. The exception will

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<sup>101</sup> Articles 128 and 130, Draft Withdrawal Agreement

<sup>102</sup> Article 128 (2), Draft Withdrawal Agreement

<sup>103</sup> Article 128 (2), Draft Withdrawal Agreement

<sup>104</sup> Article 133, Draft Withdrawal Agreement

<sup>105</sup> Article 135, Draft Withdrawal Agreement

<sup>106</sup> Article 135 (2) and (5), Draft Withdrawal Agreement

be costs associated with legal cases related to the budget and linked policies and programmes, which will be limited to cases where the facts relate to the period of the UK's participation in the EU budget (for example, before the end of 2020).

121. Most contingent liabilities relate to guarantees on EU and European Investment Bank (EIB) financial operations, and are currently reported to Parliament in the UK's Consolidated Fund accounts as having a remote probability of crystallising.
122. The UK's EIB paid-in capital of over €3.5bn will be returned over 12 years, starting in 2019.<sup>107</sup> This will be made in 11 yearly instalments of €300m and the final reimbursement will cover the balance of €195,903,950. The UK will maintain a two-part contingent liability in respect of the stock of outstanding EIB operations at the point of UK withdrawal, which will decrease in line with the stock.
123. The Withdrawal Agreement also sets out that the UK will be reimbursed for its paid-in capital in the European Central Bank. The date of this reimbursement and other practical details will be decided in accordance with Protocol (No. 4) on the Statute of the European System of Central Banks and of the European Central Bank. The sums involved in relation to the European Central Bank are smaller than they would have been had the UK been a member of the Euro area.

#### 4D: Process for making payments

124. The Withdrawal Agreement includes a clear timeline for honouring mutual financial commitments, which includes the Commission providing information for upcoming payments and the payment plan for reimbursing the UK, for example, related to the EIB paid-in capital.
125. For the majority of financial commitments after the end of the implementation period (31 December 2020), Article 141 of the Withdrawal Agreement specifies that the payment reference dates are 30 June and 31 October each year. In advance of the reference dates, the EU will inform the UK of the required payments, which will be made in four equal monthly instalments for payments with a reference date of 30 June or eight equal monthly instalments for payments with a reference date of 31 October.
126. The Government has negotiated arrangements to provide assurance on payments made under the financial settlement. This includes the right to appoint auditors working on the Government's behalf to assure the implementation of the financial settlement. On the UK's request, the EU will provide these auditors with information and assistance to allow them to accomplish their task. The use of auditors will play an important role in ensuring the UK only pays what it should under the terms of the agreement.
127. In addition to the Joint Committee that governs the whole of the Withdrawal Agreement, there will be a specialised committee on the financial provisions co-chaired by the UK and the EU, and bringing together experts from the UK and the EU. This committee will meet at

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<sup>107</sup> Article 143 (4), Draft Withdrawal Agreement

least yearly, and support the Joint Committee to implement the provisions of the Withdrawal Agreement appropriately.<sup>108</sup>

## 4E: Legislating for the financial settlement

128. The Bill will need to include a provision that allows Government to make payments due under the financial settlement, honouring its international commitments as set out in Part Five of the Withdrawal Agreement. Any provisions relating to the enforcement of these obligations will also be made in domestic legislation as required.
129. After the Joint Report was agreed in December 2017, the Government set out a central estimate of the settlement of £35-39 billion.<sup>109</sup> A number of technical factors could affect the size of payments due and, therefore, the ultimate value of the settlement.<sup>110</sup> The financial settlement does not provide for variance in the methodology for calculating the payments made after withdrawal, other than the possible early settlement of certain commitments. This means that the payment authority in the Bill will need to be sufficiently flexible to enable the UK to make payments due under the financial settlement.
130. The provision will therefore take the form of a standing service provision in the Bill, which will allow the UK to fulfill its financial commitments due under the Withdrawal Agreement.
131. While the amounts to be paid will vary and are a function of the terms of the settlement, the Bill will only allow payments to meet financial commitments that are required by the Withdrawal Agreement. This finance authority will not be able to be used for payments relating to any future agreements between the UK and the EU.
132. It is important for Parliament to have assurance and clarity about the nature and scale of these payments. For that reason, Government has assisted the NAO in their work on the financial settlement, and ministers have given evidence to the Public Accounts Committee, the Treasury Select Committee and the European Scrutiny Committee on the nature of the settlement.
133. It will be important to ensure the payment mechanism balances the Government's legal responsibility to pay the financial settlement with Parliament's duty to scrutinise the financial settlement and ensure that the payments are consistent with the terms set out in the Withdrawal Agreement. The Government currently lays an annual statement before Parliament on European Union Finances that presents information on our contributions and receipts. The Government will follow this best practice as it seeks to update Parliament and taxpayers on payments under the settlement.

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<sup>108</sup> Article 158, Draft Withdrawal Agreement

<sup>109</sup> [Correspondence from the Chancellor of the Exchequer to the Chair of the Treasury Select Committee relating to the UK's EU Withdrawal financial settlement, dated 24 January 2018](#)

<sup>110</sup> Technical factors include the sterling-euro exchange rate, the success of UK entities in bidding for EU funding and the UK's financing share (which is affected by the UK's economic performance relative to the rest of the EU)

134.    To strengthen the role of Parliament in scrutinising the payments made to the EU as part of the Withdrawal Agreement, the Bill could include a statutory requirement on the Government to provide regular updates on payments over the past year and on forecast payments and receipts to and from the EU. This could be in the form of a Ministerial Statement providing Parliament with an analysis of the required payments and the UK receipts from the EU. This would provide a greater degree of transparency than has existed with payments made during our membership. In addition to a potential statutory reporting requirement in the Bill, Government would work with Parliament to identify the most effective option for scrutinising these updates.
135.    The Bill will also specify that reimbursements from the EU as set out in the Withdrawal Agreement, for example related to European Steel and Coal Community, European Investment Fund or European Investment Bank, are to be paid into the Consolidated Fund or the National Loans Fund. Legislation often specifies the destination of government receipts. Without this provision, these receipts would have to be paid into the Consolidated Fund. However, if sums were originally paid out of the National Loans Fund, standard practice would be for the reimbursement from the EU to return to that fund. This provision in the Bill would facilitate that arrangement.
136.    The financial settlement provisions related to the UK's contribution on international development programmes (European Development Fund, EU Trust Funds and Facility for Refugees in Turkey) are separate from the EU budget, and are currently paid through powers provided in the International Development Act 2002. The Government expects this to continue to apply for any future contributions related to these elements of the Withdrawal Agreement.

## Chapter 5: Procedures for approval and implementation of the Withdrawal Agreement and framework for our future relationship

137. The preceding chapters have set out the Government's intention to give domestic legal effect to the Withdrawal Agreement through this Bill. This chapter describes the process by which Parliament will be asked to give its approval to the Withdrawal Agreement and to the framework for our future relationship. The chapter covers:
- a. an overview of sequencing;
  - b. approval of the final deal;
  - c. the EU (Withdrawal Agreement) Bill;
  - d. the Constitutional Reform and Governance Act; and
  - e. ratification process.
138. The Government has an ongoing commitment to parliamentary scrutiny of our process of withdrawal. Scrutiny improves the quality of legislation and Government action. Indeed, it is our responsibility as Government to provide both Houses with ample opportunities for scrutinising both the approach to EU exit and any implementing exit legislation.
139. Recognising that the EU is only able legally to conclude agreements giving effect to the future relationship once the UK has left the EU in March 2019, the Withdrawal Agreement should include an explicit commitment by both parties to finalise these legal agreements as soon as possible in accordance with the parameters set out in the Future Framework, in order to achieve a smooth transition out of the implementation period and into the future relationship.

### 5A: Overview of sequencing

140. In order for the Withdrawal Agreement to come into force once the UK has left the EU, three parliamentary processes will have to have taken place by exit day:
- a. The first step is approval of the final deal as negotiated under the Article 50 process. This will be Parliament's opportunity to have its say on the withdrawal package the Government has negotiated, comprising the Withdrawal Agreement as well as the framework for our future relationship with the EU. The process for the vote is set out in the EU (Withdrawal) Act 2018.
  - b. The second step will be for the Government to introduce a bill to implement the Withdrawal Agreement in UK law, as also referenced in the EU (Withdrawal) Act 2018. The EU (Withdrawal Agreement) Bill, described above, will be introduced as soon as possible after Parliament has approved the final deal.



- c. Before ratification takes place, there will be a final scrutiny process provided for by the Constitutional Reform and Governance Act 2010 (CRAG). Under this Act, the Withdrawal Agreement must be laid before both Houses of Parliament for a period of 21 sitting days. Provided that the treaty is not resolved against, the Government may proceed to ratification.

141. After the Bill has been enacted and the necessary process under the CRAG Act 2010 has been completed, the Government will then be able to ratify the Withdrawal Agreement. The next section of the paper considers each of these stages in detail.

## 5B: Approval of the final deal

- 142. The Government's longstanding commitment to providing Parliament with a vote on the final deal as soon as possible after the negotiations have ended has been confirmed in statute by section 13 of the EU (Withdrawal) Act 2018.
- 143. Under section 13 of the EU (Withdrawal) Act 2018 the House of Commons must vote to approve the Withdrawal Agreement and Future Framework before the Withdrawal Agreement can be ratified. Section 13 also provides that the Withdrawal Agreement and Future Framework must be considered by the House of Lords. The Government expects and intends to achieve a deal that Parliament can support.
- 144. Section 13 also sets out that the Withdrawal Agreement cannot be ratified until an Act of Parliament has been passed which contains provision for the implementation of the Withdrawal Agreement. This is a condition that will be satisfied by the EU (Withdrawal Agreement) Bill.
- 145. The EU (Withdrawal) Act 2018 also sets out that the Government must, so far as practicable, hold the vote to approve the final deal in the House of Commons before the European Parliament votes on the Agreement.<sup>111</sup>
- 146. The Withdrawal Agreement will be an international treaty which, subject to the processes described in this chapter, will come into force at 11pm on 29 March 2019. The framework for the future relationship will set out the terms of our future relationship with the EU. The EU is not legally able to conclude new treaties with the UK relating to that future relationship until after the UK has left the EU in March 2019, but by providing Parliament with the Future Framework agreed under the Article 50 process, the Government will ensure that Parliament is able to make an informed decision on the entirety of our proposed set of agreements with the EU before the UK ratifies the Withdrawal Agreement.
- 147. Given the vital role that Parliament will play in approving the terms of our withdrawal from the EU and the framework for our future relationship, the Government has committed to providing Parliament with appropriate analysis prior to the vote being held. This information

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<sup>111</sup> The Act also specifies the process in the event of: Parliament rejecting the deal; if the Prime Minister makes a statement before the end of 21st January 2019 that no agreement in principle can be reached in negotiations under Article 50; and if by the end of 21st January 2019 there is no agreement in principle in negotiations under Article 50



will ensure that Parliament can make an informed decision about the implications of our new relationship with the EU in all areas.

## 5C: European Union (Withdrawal Agreement) Bill

148. If Parliament approves the Withdrawal Agreement and the framework for our future relationship, the Government will bring forward the EU (Withdrawal Agreement) Bill to give the Withdrawal Agreement domestic legal effect, as provided for in the EU (Withdrawal) Act 2018.
149. As set out in the preceding chapters of this paper, the Bill will be the primary means of implementing the Withdrawal Agreement in UK law, to ensure the Government meets its international obligations as set out in the treaty, as well as providing a further opportunity for parliamentary scrutiny. As set out in paragraph 9, the Government will continue to follow the established practices and conventions to seek the consent of the devolved legislatures where it is relevant to do so.

## 5D: Constitutional Reform and Governance Act 2010

150. The Withdrawal Agreement will be subject to the provisions of the CRAG Act 2010. This is a codification of the non-statutory Ponsonby Rule, a constitutional convention that most international treaties would be laid before Parliament for 21 sitting days prior to ratification.
151. Under the 2010 Act, the Withdrawal Agreement must be laid before both Houses of Parliament for a period of 21 sitting days before it can be ratified.<sup>112</sup>
152. The Withdrawal Agreement may be laid before Parliament after it is signed by both the UK and the EU. The 21 sitting day period may take place in parallel with the passage of implementing legislation in the form of the EU (Withdrawal Agreement) Bill, but this Bill must be enacted before the Withdrawal Agreement can be ratified.
153. The procedure for laying a ratifiable treaty before Parliament is set out in detail in section 20 of the CRAG Act. Once the treaty has been published and laid before Parliament for 21 sitting days, and provided that the treaty has not been resolved against, the Government may then proceed with the ratification process.<sup>113</sup>

## 5E: Ratification process

154. Once the final deal has been approved by the House of Commons, the necessary process has taken place in accordance with the CRAG Act, and implementing legislation in the form of the EU (Withdrawal Agreement) Bill has passed, the Government may proceed to ratification of the Withdrawal Agreement.

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<sup>112</sup> Section 20, Constitutional Reform and Governance Act 2010

<sup>113</sup> Sitting days are days when both the Commons and the Lords sit at the same time

155. Ratification is the act which establishes as a matter of international law the UK's consent to be bound by the treaty.
156. This is a technical process, and will involve depositing an instrument of ratification with the Secretary General of the Council, as laid out in Article 167 of the Withdrawal Agreement.
157. Once the Withdrawal Agreement has been ratified by the UK and concluded by the EU it will enter into force at 11pm on 29 March 2019.



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