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1st Report of Session 2019–21

Brexit: the revised Withdrawal Agreement and Political Declaration

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The European Union Committee

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SUMMARY

This report analyses the revised UK-EU Withdrawal Agreement, and the accompanying Political Declaration setting out the framework for future UK-EU relations, which were presented to Parliament on 19 October 2019. We have published this report at the first possible opportunity, in order to inform debate on the Withdrawal Agreement, and consideration by the House of Lords of the legislation that will implement the Agreement—the European Union (Withdrawal Agreement) Bill, which was published on 19 December 2019 and which is expected to complete its House of Commons stages at the end of the week beginning 6 January 2020.

This report updates our earlier report, published in December 2018, on the previous texts of the Withdrawal Agreement and Political Declaration. In some places, where the relevant text is unchanged, we have referred back to that report rather than reproducing our analysis in full.

We outline, in turn, the withdrawal provisions, the transition provisions, the Protocol on Ireland and Northern Ireland, and the Political Declaration on future relations. We identify areas where further information is needed, and we put questions to the Government. While our primary focus is the Withdrawal Agreement itself, rather than its implementation in domestic law, we refer in various places to the European Union (Withdrawal Agreement) Bill. We have also included in an annex the letter we sent to the Leader of the House, Baroness Evans of Bowes Park, on 4 November 2019, in which we commented on the Bill in the form in which it was then before Parliament.

We have sought to provide dispassionate analysis, to assist parliamentary and public debate—as we have done in the other 44 Brexit-related reports we have published since the 2016 referendum, all of which have been agreed by consensus.

Brexit: the revised Withdrawal Agreement and Political Declaration

CHAPTER 1: INTRODUCTION

Overview

1. On 19 October 2019 the Government laid before Parliament revised texts of the ‘Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and from the European Atomic Energy Community’¹ (hereafter referred to as the Withdrawal Agreement or the Agreement), and the associated ‘Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom’,² Earlier versions of both documents had previously been laid before Parliament on 26 November 2018.³
2. This report provides an analysis of both documents, in their latest versions. It draws heavily on the report we published on 5 December 2018, analysing the original texts, with a view to informing debates and votes that were then expected to take place over the following week.⁴ Despite the delay and controversy of the past year, much of the latest text is unchanged, and our original analysis of the provisions on citizens’ rights, the financial settlement, and governance and dispute resolution, remains largely valid. Where these sections of the Agreement are concerned, this report therefore reproduces much of the content of our 2018 report. Our analysis of the latest text of the Protocol on Ireland/Northern Ireland, on the other hand, is almost entirely new, and our comments on the revised Political Declaration have been substantially updated.
3. Under Section 13 of the European Union (Withdrawal) Act 2018, the House of Lords is required to ‘take note’ of the Agreement, whereas the House of Commons must give its approval if the Agreement is to be ratified. The Government originally scheduled these debates to take place the same day as the documents were laid, Saturday 19 October 2019, but while the House

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- 1 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, presented to Parliament pursuant to Section 1 of the European Union (Withdrawal) Act (No. 2) 2019 and Section 13 of the European Union (Withdrawal) Act 2018 (19 October 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf [accessed 25 October 2019]
 - 2 Political Declaration setting out the framework for the future relationship between the European union and the United Kingdom (19 October 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840656/Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf [accessed 25 October 2019]
 - 3 For the earlier text, dated 25 November 2018, see: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25_November_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf [accessed 6 November 2019].
 - 4 European Union Committee, *Brexit: the Withdrawal Agreement and Political Declaration* (24th Report, Session 2017–19, HL Paper 245)

of Lords duly agreed a ‘take note’ motion, the House of Commons voted for an amendment to the motion to approve the Agreement, which stated that the House of Commons “withholds approval unless and until implementing legislation is passed”. The Government then introduced the European Union (Withdrawal Agreement) Bill,⁵ clause 32 of which would have repealed the requirements contained in Section 13 of the 2018 Act. Clause 31 of the revised text of the Bill, published on 19 December 2019, again seeks to repeal section 13 of the 2018 Act, while clause 32 would waive the requirements for parliamentary scrutiny contained in Part 2 of the Constitutional Reform and Governance Act 2010.

4. The effect of these provisions is that no parliamentary procedure, beyond the enactment of the European Union (Withdrawal Agreement) Bill, will be required prior to ratification by the Government of the Withdrawal Agreement. That Agreement is, nevertheless, one of the most important international agreements that the United Kingdom has entered into in recent history, and this report has been prepared by the European Union Select Committee with a view to promoting informed debate on the Agreement, both in Parliament and beyond.
5. The report is necessarily selective. We comment on particularly significant elements of the Withdrawal Agreement and the Political Declaration. We signpost areas where further explanation might be required and pose questions to the Government. And while this report is not primarily focused on the European Union (Withdrawal Agreement) Bill, we touch on the Bill in various places, and include in an appendix the letter we sent to the Leader of the House, Baroness Evans of Bowes Park, on 4 November 2019, in which we raised a number of questions about the Bill in the form in which it was then before Parliament.

Timeline

6. On 29 March 2017 the then Prime Minister, Rt Hon Theresa May MP, notified the European Council of the UK’s intention to withdraw from the European Union, in accordance with Article 50 of the Treaty on European Union (TEU). Article 50 provides that, following notification, the European Union should, within two years, “negotiate and conclude an agreement with [the withdrawing] State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union”.⁶
7. In summer 2017 the two sides agreed the sequencing of the negotiations. They would first address withdrawal, beginning with three specific areas stemming from the UK’s withdrawal: the protection of citizens’ rights after Brexit, the financial settlement, and issues relating to the border between Ireland and Northern Ireland. They also agreed that “sufficient progress” would be needed on these withdrawal issues before discussions could begin on the second element referred to in Article 50, the framework for the future EU-UK relationship.
8. On 8 December 2017 the EU and the UK published a Joint Report, setting out areas of agreement on the three withdrawal issues, as well as on some

5 European Union (Withdrawal Agreement) Bill (Session 2019): <https://services.parliament.uk/Bills/2019-20/europeanunionwithdrawalagreement.html> [accessed 6 November 2019]

6 Treaty on European Union, Title VI—Final Provisions: Article 50, [OJ C 326](#), pp 43–44 (consolidated version of 26 October 2012)

other separation issues. This was a significant moment. Among other things, the parties agreed that they would respect the provisions of the Belfast/Good Friday Agreement of 1998 and avoid the creation of a hard border between Ireland and Northern Ireland, interpreting a hard border as “including any physical infrastructure or related checks and controls”.⁷

9. The Joint Report recorded the UK’s determination to resolve the issue of the Irish border within the context of an agreement on future relations; or, failing this, to propose technological solutions. But the two sides agreed that, “in the absence of agreed solutions”, the UK would “maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement”.⁸ This agreement was the genesis of what became known as the ‘Northern Ireland backstop’, the Protocol on Ireland/Northern Ireland that was attached to the November 2018 text of the Withdrawal Agreement.
10. On 28 February 2018 the European Commission published the first draft of a Withdrawal Agreement between the European Union and the United Kingdom, translating the December Joint Report into legal terms. On 19 March an amended text was published, highlighting areas of agreement and disagreement using green, yellow and white colour-coding.⁹
11. No further drafts of the Withdrawal Agreement were published between March and November, but on 19 June 2018 a Joint Statement was published, outlining further progress in the negotiations.¹⁰
12. A final draft Withdrawal Agreement was published on 14 November 2018 alongside an ‘outline’ of the Political Declaration on the future relationship.¹¹ A fuller, final, draft of the Political Declaration was published on 22 November. The two documents were endorsed by the European Council (Art. 50) at its meeting on 25 November 2018 and the final text (no longer a ‘draft’) was laid before Parliament the following day.
13. It was envisaged that the House of Commons would vote on the Withdrawal Agreement on 11 December 2018, but faced with the prospect of defeat the Government decided the day before the vote to withdraw its motion. The first ‘meaningful vote’ therefore took place only on 15 January 2019,

7 HM Government and European Commission, *Joint report from the negotiators of the European union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 EU on the United Kingdom’s orderly withdrawal from the European Union* (8 December 2017) para 43: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665869/Joint_report_on_progress_during_phase_1_of_negotiations_under_Article_50 TEU on the United Kingdom s orderly withdrawal from the European Union.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665869/Joint_report_on_progress_during_phase_1_of_negotiations_under_Article_50_TEU_on_the_United_Kingdom_s_orderly_withdrawal_from_the_European_Union.pdf) [accessed 25 October 2019]

8 *Ibid.*, para 49

9 European Commission and HM Government, *Draft agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community*, 14 March 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WITHDRAWAL_AGREEMENT.pdf [accessed 25 October 2019]

10 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 (19 June 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717697/Joint_Statement_-_19_June_2018.pdf [accessed 25 October 2019]

11 Outline of the Political Declaration (14 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756378/14_November_Outline_Political_Declaration_on_the_Future_Relationship.pdf [accessed 25 October 2019]

when the motion to approve the Agreement was defeated by 432 votes to 202. A second ‘meaningful vote’ on 12 March also resulted in defeat for the Government, as did a third, on 29 March.

14. On 19 August 2019 the new Prime Minister, Rt Hon Boris Johnson MP, sent a letter to the President of the European Council, Donald Tusk, indicating his wish to renegotiate elements of the Withdrawal Agreement. He confirmed that the changes sought by the Government related primarily to the Protocol on Ireland/Northern Ireland. But he noted also that the Government’s “desired final destination for a sustainable long-term relationship with the EU” had changed, making it clear that it excluded membership of the EU’s single market or customs union. He accordingly said that he could not “continue to endorse” the commitment in the December 2017 Joint Report to “full alignment”.
15. Following the Prime Minister’s letter negotiators from the EU and UK met, and on 17 October the new Protocol on Ireland/Northern Ireland was published. The full consolidated text of the Withdrawal Agreement and a revised Political Declaration on future relations were laid before Parliament on 19 October and, as we have noted, later that same day the House of Commons passed a motion declining to approve the Agreement until implementing legislation had been passed. The Government duly introduced that legislation, the European Union (Withdrawal) Bill, on 21 October. The House of Commons voted to give the Bill a second reading the following day, but then voted against the Government’s programme motion, after which progress on the Bill was paused. The dissolution of Parliament followed on 6 November 2019, and a revised Bill was published on the day of the State Opening of Parliament following the general election, 19 December 2019.

Government engagement

16. As we have noted, our report on the previous iteration of the Withdrawal Agreement and Political Declaration was published on 5 December 2018. By convention, the Government response to our report should have been provided within two months—no later than 5 February 2019. But no response has been forthcoming.
17. Government engagement has been of a variable standard throughout the Brexit process. There have been positive elements, and we are grateful to the current Secretary of State for Exiting the European Union, Rt Hon Stephen Barclay MP, for his constructive approach on the three occasions he has appeared before the Committee; we are also grateful to the Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP, for attending our meeting to discuss ‘no deal’ planning on 9 September 2019. Nevertheless, the Government’s failure to respond formally, in writing, to the many important points raised in our analysis of the Withdrawal Agreement and Political Declaration—documents of the highest importance to the future of the United Kingdom—is a matter of regret.

This report

18. This report is divided into four substantive chapters. Chapter 2 examines the withdrawal provisions, focusing primarily on issues relating to governance, citizens’ rights and the financial settlement. Chapter 3 considers the transition or implementation provisions. Chapter 4 analyses the Protocol on Ireland/Northern Ireland. Finally, Chapter 5 assesses the Political Declaration

setting out the framework for the future relationship between the European Union and the UK.

19. **We make this report for information**, with a view to assisting debates in both Houses, and more widely, on the Withdrawal Agreement and the accompanying Political Declaration on future relations, as well as on the implementing legislation, the European Union (Withdrawal Agreement) Bill.

CHAPTER 2: THE WITHDRAWAL AGREEMENT

Territorial scope

20. The Withdrawal Agreement states¹² that any reference to the United Kingdom covers:
- (a) the United Kingdom; and, to the extent that EU law applied before the Agreement comes into force;
 - (b) Gibraltar; and
 - (c) the Channel Islands and the Isle of Man (the Crown Dependencies).

It also applies to:

- (d) the UK's Sovereign Bases on Cyprus to the "extent necessary" to implement the arrangements set out in the relevant Protocol and
 - (e) the UK's Overseas Territories where the agreement relates to "special arrangements" for their association with the EU.¹³
21. The territorial scope of the Agreement has not changed in the latest text, and readers are invited to refer to the analysis in paragraphs 18–23 of our December 2018 report, which remains valid.¹⁴

Governance

The role of the Joint Committee

22. The main governance body that will be established by the Withdrawal Agreement is the Joint Committee.¹⁵ The rules of procedure for the Joint Committee (and any specialised committees established under the Withdrawal Agreement, discussed further below) are set out at Annex VIII to the Agreement.
23. The Joint Committee will be responsible for the implementation and the application of the Withdrawal Agreement. Annex VIII provides that the Joint Committee will be co-chaired by a member of the European Commission and a representative of the UK Government at ministerial level, but that this role can also be filled by "high level officials designated to act as their alternatives".¹⁶ Clause 34 of the European Union (Withdrawal Agreement) Bill would nonetheless require the functions of the UK's co-chair to be exercised personally by a Government Minister. The Explanatory Notes to the Bill state that "the aim of this provision is to ensure that there is ministerial oversight of the Joint Committee".¹⁷ Furthermore, while Rule 9 of Annex VIII allows the co-chairs of the Joint Committee, in the period between meetings, to adopt decisions "by written procedure", clause 35 of

12 [Withdrawal Agreement](#) (19 October 2019), Article 3

13 Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Montserrat; Pitcairn; Saint Helena; Ascension and Tristan da Cunha; South Georgia and South Sandwich Islands; and Turks and Caicos Islands.

14 European Union Committee, *Brexit: the Withdrawal Agreement and Political Declaration* (24th Report, Session 2017–19, HL Paper 245), paras 18–23

15 [Withdrawal Agreement](#) (19 October 2019), Article 164

16 [Withdrawal Agreement](#) (19 October 2019), Annex VIII, Rule 1

17 [Explanatory Notes to the European Union \(Withdrawal Agreement\) Bill](#) [Bill 1 (2019–20)-EN], para 325

the Bill precludes a Minister of the Crown from using this procedure. The Explanatory Notes state:

“This ensures that decisions made by the Joint Committee are made by a Minister in person. The purpose of this provision is to ensure there is full ministerial accountability, including to Parliament, for all decisions made in the Joint Committee.”¹⁸

24. Article 164 of the Withdrawal Agreement provides that the Joint Committee will meet at the request of the UK or the EU, and in any event at least once a year. Its meeting schedule will be adopted by mutual consent.
25. The Joint Committee’s decisions and recommendations will also be made by mutual consent and will be binding on the EU and the UK (which will be obliged to implement them).¹⁹ Article 166(2) makes plain that such decisions will have “the same legal effect as this Agreement”.
26. The Joint Committee will have a secretariat made up of “an official of the European Commission and an official of the Government of the United Kingdom”.²⁰ Meetings of the Joint Committee will be confidential, unless otherwise decided by the co-chairs. Moreover, the EU and UK will each be able to decide (individually) whether to publish the decisions and recommendations adopted by the Joint Committee in their respective official publication journals.²¹ While the secretariat will be responsible for minuting meetings of the Joint Committee, these minutes will not be made publicly available, although the co-chairs can opt to make summaries public.²²
27. The Joint Committee, in the latest iteration of the Agreement, will also have important functions in respect of the revised Protocol on Northern Ireland, which are considered in Chapter 4 of this report.
28. As well as supervising and facilitating the implementation and application of the agreement, the Joint Committee will oversee certain specialised committees (discussed below);²³ issue an annual report on the functioning of the Agreement; and, in some circumstances, adopt amendments to the Agreement.²⁴ Notably, Article 164(5)(d) will allow the Joint Committee, until the end of the fourth year following the end of the transition period, to adopt decisions amending the Withdrawal Agreement²⁵ where this is necessary to “address omissions or other deficiencies, or to address situations unforeseen when this Agreement was signed”, and provided that such changes do not “amend the essential elements of the Agreement”. These terms are not defined, so the extent of this widely drawn power remains uncertain, notwithstanding that it may be somewhat constrained by the requirement for decisions to be made by mutual consent.²⁶

18 [Explanatory Notes to the European Union \(Withdrawal Agreement\) Bill](#) [Bill 1 (2019–20)–EN], para 326

19 [Withdrawal Agreement](#) (19 October 2019), Article 166

20 [Withdrawal Agreement](#) (19 October 2019), Annex VIII, Rule 2

21 [Withdrawal Agreement](#) (19 October 2019), Annex VIII, Rule 10

22 [Withdrawal Agreement](#) (19 October 2019), Annex VIII, Rule 8(5)

23 [Withdrawal Agreement](#) (19 October 2019), Article 164(4)

24 [Withdrawal Agreement](#) (19 October 2019), Article 164(4)(f) and Article 164(5)(d)

25 Save in relation to Parts One (the Common Provisions, including definitions, scope etc.), Part Four (the Transition) and Part Six (the Institutional and Final Provisions) of the [Withdrawal Agreement](#) (19 October 2019).

26 [Withdrawal Agreement](#) (19 October 2019), Article 166(3)

29. Neither the Withdrawal Agreement nor the European Union (Withdrawal Agreement) Bill makes provision for parliamentary oversight of the Joint Committee. In our March 2019 report *Beyond Brexit: how to win friends and influence people*, we expressed concern both over “the lack of transparency in the work of the ... Joint Committee”, and over the lack of any provision for the UK Parliament to oversee or influence its work. We urged that “a new mechanism should be adopted” to enable either House to require the Government either to raise concerns in the Joint Committee about specific proposals that could have a detrimental impact upon the UK, or to place an issue on the Joint Committee’s agenda. To facilitate effective scrutiny, we also called for meeting schedules, agendas, decisions and recommendations of the Joint Committee to be made available to Parliament in timely fashion.²⁷

The role of the specialised committees

30. As well as the main Joint Committee, the Withdrawal Agreement will establish a number of specialised committees. Some are set out in the Agreement. These are the committees on:
- citizens’ rights;
 - “other separation provisions”;
 - the Protocol on Ireland/Northern Ireland;
 - the Protocol on the Sovereign Base Areas in Cyprus;
 - the Protocol on Gibraltar; and
 - the financial provisions.²⁸
31. The Joint Committee may also establish additional specialised committees, “in order to assist the Joint Committee in the performance of its tasks”.²⁹ The Joint Committee will decide on the tasks of specialised committees and supervise their work. It will also be entitled to change the tasks assigned to specialised committees and “dissolve any of those committees”.³⁰
32. Specialised committees will be made up of representatives of the EU and the UK with “appropriate expertise” in the issues under discussion.³¹ However, the fact that a specialised committee has been established will not preclude either the UK or the EU taking a matter directly to the Joint Committee.³²
33. The Joint Committee’s Rules of Procedure described in Annex VIII will also, broadly, apply to the specialised committees (unless the Joint Committee decides otherwise).³³
34. **The Joint Committee structure for governance of the Withdrawal Agreement should allow a collaborative approach to the supervision of the Withdrawal Agreement, as well as the delegation of specific**

27 European Union Committee, *Beyond Brexit: how to win friends and influence people* (35th Report, Session 2017–19, HL Paper 322), paras 122–125

28 [Withdrawal Agreement](#) (19 October 2019), Article 165

29 [Withdrawal Agreement](#) (19 October 2019), Article 164(5)(b)

30 [Withdrawal Agreement](#) (19 October 2019), Article 164(5)(c)

31 [Withdrawal Agreement](#) (19 October 2019), Article 165(3)

32 [Withdrawal Agreement](#) (19 October 2019), Article 165(4)

33 [Withdrawal Agreement](#) (19 October 2019), Annex VIII, Rule 13

functions, such as citizens' rights, financial provisions, Ireland/Northern Ireland and Gibraltar, to specialised committees.

35. **The Joint Committee also has significant responsibilities in relation to the Protocol on Ireland/Northern Ireland.**
36. **The Joint Committee will thus be critical in ensuring the smooth working of the Withdrawal Agreement. It will be a uniquely powerful and influential body. Decisions adopted by the Joint Committee will be binding on the EU and the UK and will have the same legal effect as the Withdrawal Agreement.**
37. **In particular, during the transition period and for four years thereafter, Article 164 of the Withdrawal Agreement provides that the Joint Committee will have power to amend aspects of the Agreement to take account of errors, omissions and deficiencies, and to address unforeseen situations. Even though changes that "amend the essential elements" of the Agreement are excluded, the extent of this widely drawn power is uncertain, and it is not subject to clear scrutiny procedures or parliamentary oversight.**
38. **Nor does it appear that the Joint Committee will operate in an open and transparent way. The relevant rules suggest that meetings will be confidential, decisions might not be published, and even summary minutes might not be made publicly available. This is an unsatisfactory state of affairs.**
39. **Against this backdrop, we note the Government's statement, in the Explanatory Notes to the European Union (Withdrawal Agreement) Bill, that clause 35 of the Bill, prohibiting the use of written procedure, is intended to ensure "full ministerial accountability, including to Parliament". It is unclear how this accountability will work in practice, and Members may wish to consider whether the Bill should in fact include provision both for appropriate parliamentary oversight of the Joint Committee, and for a proportionate level of transparency.**

Implementation and application of the Withdrawal Agreement

40. **Article 4 of the Agreement states that both the Agreement and any EU law applying to the UK under it should have the same effect as in EU Member States. This includes 'direct effect' (which allows private parties to invoke their rights under the Withdrawal Agreement before UK courts, as well as in EU Member States). The Government's Explanatory Note to the November 2018 text of the Agreement³⁴ states that Article 4 would also allow the UK court to make available certain remedies (including *Francovich* damages).³⁵**

34 HM Government, *Explainer for the agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union* (14 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756376/14_November_Explainer_for_the_agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_1.pdf [accessed 18 December 2019]

35 *Francovich v Italy* (1991) C-6/90 was a decision of the CJEU which established that EU Member States could be liable to pay compensation to individuals who suffered a loss by reason of that Member State's failure to transpose an EU directive into national law. This principle is sometimes known as the principle of state liability.

41. Article 4(2) will also ensure the primacy of EU law, where it has been made applicable under the Agreement.³⁶ Essentially, the UK will be required to allow domestic courts to disapply any other domestic legislation which is incompatible or inconsistent with the Agreement (and EU law applicable under the Agreement).
42. Article 4(4) will require the provisions of the Agreement referring to EU law, or “concepts or provisions thereof”, to be interpreted in conformity with any relevant case-law of the CJEU handed down before the end of the transition period. The UK judicial and administrative authorities will only be required to “have due regard” to case-law of the CJEU handed down after the end of transition.³⁷
43. It is hard to predict the effect of this provision, since many aspects of the Withdrawal Agreement (including some of the rules on citizens’ rights) will not come into force until the end of the transition period. However, Article 4, which provides for direct effect and supremacy, is not limited to the transition period. This means that the EU law principles of direct effect and supremacy will continue to apply to those provisions of the Withdrawal Agreement (and to the provisions of EU law to which the Agreement refers) once the UK has left the EU at the end of the transition period.
44. The European Union (Withdrawal Agreement) Bill contains several relevant clauses. Notably, Clause 5 will introduce new provisions into the European Union (Withdrawal) Act 2018, which will have the effect of giving primacy and direct effect to the relevant provisions of the Withdrawal Agreement and any EU law incorporated by the Withdrawal Agreement. The Constitution Committee has noted that this new provision employs a “formula similar to section 2 of the European Communities Act”, since all rights under the Withdrawal Agreement are “without further enactment to be given legal effect or used in the United Kingdom.”³⁸ It is not clear what would happen if the UK Parliament were subsequently to repeal this provision, although if the UK sought to resile from its obligations under the Agreement, this would probably lead to a breach of international law.

Good faith

45. Article 5 of the Withdrawal Agreement states that the UK and EU will, “in full mutual respect and good faith, assist each other in carrying out tasks which flow from this Agreement”. It imposes an obligation on the parties to “take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from this agreement and shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement”.
46. Should any disputes arise between the parties to the Agreement, they will fall to be determined against the background of this provision. The Government’s

36 For the principle of the primacy of EU law see for instance C-6/64, *Costa v. ENEL* [1964] ECR 585; C-106/77, *Simmmenthal* [1978] ECR 629; C-106/89 *Marleasing* [1991] ECR I-7321 and *R (Factortame Ltd) v Sec. of State for Transport (No 2)* [1991] 1 AC 603.

37 A duty to have “due regard” could be expected to mean that the domestic courts would be under an obligation to take the case-law of the CJEU into account. It is not the same as an obligation to follow the case-law on every occasion. However, when such words are used, it would usually require good reasons to depart from applying it.

38 Constitution Committee, *European Union (Withdrawal Agreement) Bill: interim report* (2nd Report, Session 2017–19, HL Paper 21), para 36

December 2018 paper *The Legal Position on the Withdrawal Agreement*³⁹ notes that “the principle of good faith is a rule of customary international law, as has been recognised by the CJEU and the International Court of Justice”.⁴⁰

The role of the Court of Justice of the European Union

47. In its 2017 Future Partnership Paper on *Enforcement and Dispute Resolution*, the Government stated its intention that “in leaving the European Union, we will bring about an end to the direct jurisdiction of the Court of Justice of the European Union”.⁴¹ This has remained Government policy, and the recent Conservative Party manifesto contained a renewed commitment to “end the role of the European Court of Justice”.⁴²
48. Under the Withdrawal Agreement, the CJEU will retain its jurisdiction “as provided for in the Treaties” during the transition period.⁴³ In our 2018 report *Dispute resolution and enforcement after Brexit* we concluded that “given that the transitional period will be relatively short, it would be too burdensome and time-consuming to establish a separate dispute resolution mechanism solely for the period of transition”.⁴⁴
49. The CJEU will also continue to have jurisdiction over cases that are pending before it at the end of the transition period (and over certain new enforcement actions brought within four years after the end of transition provided the UK’s violation occurred before then).⁴⁵
50. In relation to Part Two of the Withdrawal Agreement (citizens’ rights), UK courts will continue to be able to refer cases to the CJEU for eight years following the end of transition.⁴⁶ This is addressed in clause 26 of the EU (Withdrawal Agreement) Bill. Article 160 of the Withdrawal Agreement also allows for CJEU jurisdiction in respect of certain limited aspects of Part Five of the Agreement, relating to the financial settlement.⁴⁷
51. The provisions dealing with the jurisdiction of the CJEU in the Protocol on Ireland/Northern Ireland are discussed further in Chapter 4.

39 HM Government, *EU Exit: Legal position on the Withdrawal Agreement*, Cm 9747, December 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/761153/EU_Exit_-_Legal_position_on_the_Withdrawal_Agreement.pdf [accessed 18 December 2019]

40 See for instance *Opel Austria GmbH v Austria*, T-115/94, EU:T:1997:3 (para 90); *Portugal v Council*, C-149/96, EU:C:1999:574 (para 41); Nuclear Test cases (*Australia v France*), Judgment of 20 December 1994, ICJ Reports 1974, p. 253 (para 46)

41 HM Government, *Enforcement and dispute resolution: a future partnership paper* (2017) para 1: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/639609/Enforcement_and_dispute_resolution.pdf [accessed 3 December 2019]

42 Conservative Party, *Conservative and Unionist Party Manifesto 2019*, p 5: https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf [accessed 20 December 2019]

43 *Withdrawal Agreement* (19 October 2019), Article 131

44 European Union Committee, *Dispute resolution and enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130), para 146

45 *Withdrawal Agreement* (19 October 2019), Articles 86 and 87

46 *Withdrawal Agreement* (19 October 2019), Article 158

47 The specific provisions relate only to Articles 136 and 138(1) and (2) of the *Withdrawal Agreement* (19 October 2019). These are respectively, the provisions applicable after 31 December 2020 relating to the applicable law concerning the EU’s “own resources”; and the EU law applicable after 31 December 2020 relating to the UK’s participation in the implementation of the Union’s programmes and activities committed under the 2014–2020 MFF.

The proposed arbitration model

52. Article 170 of the Agreement sets out an arbitration procedure, which can be instituted in circumstances where no mutually agreed solution to a dispute has been reached within three months of a written notice being provided to the Joint Committee (or earlier if agreed by the parties). This procedure, which has not been changed in the latest text of the Withdrawal Agreement, is considered in paragraphs 53–66 of our December 2018 report.⁴⁸ It preserves a limited, but nonetheless important role for the CJEU, in that Article 174 provides that where a dispute raises a question of interpretation of EU law, including of a provision of EU law referred to in the Withdrawal Agreement, or a question of whether the UK has complied with its obligations under Article 89(2),⁴⁹ the arbitration panel should “request the Court of Justice of the European Union to give a ruling on the question”. Any such ruling will be binding on the arbitration panel. This is similar to the current procedure by which domestic courts can refer questions of EU law to the CJEU,⁵⁰ and suggests that the CJEU may retain a significant role.⁵¹
53. In our 2018 report *Dispute resolution and enforcement after Brexit* we noted a number of disadvantages to arbitration, as compared to a court-based process, including the fact that it is usually conducted in private; decisions do not create clear, binding precedent; and, that individual litigants (including companies) would not have access to any arbitral arrangements, but would instead have to lobby governments.⁵² Article 180 of the Withdrawal Agreement seeks to deal with one of these concerns, by providing that the Union and the UK should “make the arbitration panel rulings and decisions publicly available in their entirety”.⁵³ There is a proviso that this is “subject to the protection of confidential information”, and that “in no case dissenting opinions of an arbitration panel shall be published”.⁵⁴ Part IX of the Procedural Rules⁵⁵ also states that the parties can agree for hearings to be closed to the public. In such cases, the rule provides that the parties shall “maintain the confidentiality of the hearings of the arbitration panel”.
54. The arbitration model may also have some relevance to the dispute settlement provisions included in any future relationship, which are discussed in Chapter 5. These suggest that the CJEU could have a limited but continuing role in relation to questions of EU law arising in EU-UK disputes, even after its obligations under the Withdrawal Agreement fall away.

Conclusions

55. **The provisions relating to dispute resolution in the Withdrawal Agreement retain a limited role for the CJEU.**

48 European Union Committee, *Brexit: the Withdrawal Agreement and Political Declaration* (24th Report, Session 2017–19, HL Paper 245)

49 *Withdrawal Agreement* (19 October 2019), Article 89(2) relates to judgments and orders of the CJEU handed down before the end of the transition period

50 Article 267, *Treaty on the Functioning of the European Union*

51 Public Law for Everyone, *The Brexit Withdrawal Agreement: Taking back “control of our laws”?* (23 November 2018): <https://publiclawforeveryone.com/2018/11/23/the-brexit-withdrawal-agreement-taking-back-control-of-our-laws/> [accessed 18 December 2019]

52 European Union Committee, *Dispute resolution and enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130), paras 110, 156–162

53 *Withdrawal Agreement* (18 December 2019), Article 180(2)

54 *Withdrawal Agreement* (18 December 2019), Article 180(1)

55 *Withdrawal Agreement* (18 December 2019), Annex IX

56. **The arbitration mechanism, with input from the CJEU only in circumstances where questions of Union law arise, moves toward the Government's goal of ending the direct jurisdiction of the CJEU, while still respecting the autonomy of the European Union's legal order and the role of the CJEU.**
57. **We welcome the fact that the Agreement provides a longstop, or limitation period, for any claims that arise before, or during, the transition period. This will give parties involved in legal disputes greater certainty as to the legal regime which will apply to their case.**

Citizens' rights

58. The rights of EU citizens in the UK and UK nationals in the EU were one of the first issues that this Committee addressed after the referendum. They were explored in detail in our December 2016 report on *Brexit: acquired rights*,⁵⁶ and have been regularly revisited by our Justice Sub-Committee.⁵⁷ In June 2019 the Office for National Statistics estimated that there were 3.6 million individuals in the UK who were born elsewhere in the EU.⁵⁸ It is estimated that over a million UK nationals live in other EU states.⁵⁹ Despite appeals from across the political spectrum, and our own clear recommendations,⁶⁰ questions still remain over the rights of these individuals.
59. There was broad agreement between the UK and the EU on the parameters of the deal on citizens' rights as part of the Joint Report, published in December 2017. These commitments were transposed into a text which was agreed at negotiator level upon the publication of the March 2018 draft of the Withdrawal Agreement. The November 2018 version of the legal text was little changed, and has been reproduced in its entirety in the most recent text. However, not all of the issues have been resolved in the way sought by stakeholders.
60. In particular, there is no agreement on a lifelong right of return (where family or work obligations mean that an individual has to leave the country for five years and does not benefit from settled status). In addition, the UK Government has decided not to issue new residence documents for settled status free of charge.⁶¹ Nor has provision been made for EU citizens resident in the UK to retain their voting rights in elections for the European Parliament. This includes Irish citizens resident in Northern Ireland, notwithstanding the prospect that substantial elements of EU law will continue to apply in

56 European Union Committee, *Brexit: acquired rights* (10th Report, 2016–17, HL Paper 82)

57 EU Justice Committee, 'Brexit: Citizens Rights inquiry': <https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-justice-subcommittee/inquiries/parliament-2017/brexit-citizens-rights/> [accessed 18 December 2019]

58 Office for National Statistics, *Population of the UK by country of birth and nationality: July 2018 to June 2019*: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality> [accessed 18 December 2019]

59 Full Fact, 'Brits abroad: how many people from the UK live in other EU countries?' (1 February 2018): <https://fullfact.org/europe/how-many-uk-citizens-live-other-eu-countries/> [accessed 18 December 2019]

60 European Union Committee, *Brexit: acquired rights* (10th Report, Session 2016–17, HL Paper 82), para 47

61 See for instance British in Europe, *Letter to Theresa May* (21 November 2018): <https://britishineurope.org/wp-content/uploads/2018/11/PM-letter-21.11.18-FINAL-No-signs-.pdf> [accessed 18 December 2019] and The3million, 'Newsletter' (November 2018): <https://mailchi.mp/the3million/newsletter104-740353> [accessed 18 December 2019]

Northern Ireland.⁶² For their part, the EU and its Member States have not agreed to onward movement for UK citizens from one Member State to another within the EU.

Pre-Agreement implementation: the EU Settlement Scheme

61. In March 2019, following private and public test phases, the Government opened the EU Settlement Scheme (EUSS). The scheme was intended to implement the UK's obligations under the Withdrawal Agreement, but also to be applicable in the event of a 'no deal' Brexit. The EUSS has broadly been established in line with the provisions set out in the Withdrawal Agreement but has more favourable conditions than stipulated in some areas (for example, while the Government had originally intended to charge a fee for registration, this has since been waived).
62. The scheme grants eligible applicants either 'settled' or 'pre-settled' status. Settled status is also known as indefinite leave to remain under the EU Settlement Scheme, while pre-settled status is also known as five years' limited leave to remain. Applicants will be granted status depending on how long they have been living in the UK when the application is made. Both the EU Justice Sub-Committee and the House of Commons Home Affairs Committee have taken evidence on the roll-out of the scheme by the Home Office. While both Committees have expressed concerns,⁶³ by 30 November 2019 approaching 2.6 million EU, EEA and Swiss nationals had applied under the scheme and over 2.2 million applications had been 'concluded'. Of these 59% received settled status, 41% received pre-settled status, and 0.7% received "another outcome". As of 30 November 2019, the Home Office indicated that only five applications had been refused on suitability grounds.⁶⁴

Analysis of the citizens' rights provisions

63. Part Two of the Withdrawal Agreement,⁶⁵ which is unchanged in the latest text, protects EU citizens who are residing in the UK and UK nationals who were residing in one of the 27 EU Member States at the end of the transition period, provided that such residence is in accordance with the Free Movement Directive (the EU law relating to free movement).⁶⁶ Free movement itself will end at the conclusion of the transition period, unless (contrary to the Government's stated intention) the UK and EU sign a separate treaty extending it.
64. EU citizens and UK nationals arriving in a host state during the transition period will enjoy the same rights and obligations under the Withdrawal Agreement as those who arrived before exit day.

62 See also para 164.

63 See for instance: Home Affairs Committee, *EU Settlement Scheme* (Fifteenth Report, Session 2017–19, HC 1945) and the letter from the Chair of the EU Justice Sub-Committee to the Home Secretary on the EU Settlement Scheme (27 February 2019): <https://www.parliament.uk/documents/lords-committees/eu-justice-subcommittee/CWM/HKtoSJ-SettledStatus-260219.pdf> [accessed 18 December 2019]

64 Home Office, *EU Settlement Scheme Statistics, November 2019: Experimental Statistics* (17 December 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852619/eu-settlement-scheme-statistics-november-2019.pdf [accessed 18 December 2019]. All percentages are rounded.

65 *Withdrawal Agreement* (19 October 2019), Articles 9–39

66 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, *OJ L 158* (30 April 2004), pp 77–123

65. For those who fall within the scope of the citizens' rights provisions, the substantive conditions of residence will remain the same as under current EU law on free movement. Where the host state opts for a mandatory registration system, decisions for granting the new residence status under the Withdrawal Agreement will be made based on objective criteria (i.e. no discretion), and on the basis of exactly the same conditions as are set out in the Free Movement Directive. Articles 6 and 7 of that Directive confer a right of residence for up to five years on those who work or have sufficient financial resources and sickness insurance, and Articles 16, 17 and 18 of that Directive confer a right of permanent residence on those who have resided legally for five years.
66. Citizens will meet these conditions if they are:
- workers or self-employed; or
 - have sufficient resources and comprehensive sickness insurance; or
 - are family members of some other person who meets these conditions; or
 - have already acquired the right of permanent residence and are therefore no longer subject to any conditions.
67. In addition, those who would otherwise be protected by the Withdrawal Agreement, but who have not yet acquired permanent residence rights—if they have not lived in the host state for at least five years—will continue to be entitled to reside in the host state and acquire permanent residence rights even after Brexit. In the UK, as we have noted, such individuals (over 40% of total applicants) are being granted a domestic residence right of pre-settled status, entitling them to reside in the UK for a further five-year period in order to qualify for settled status. A person with pre-settled status is entitled to spend up to two years consecutively outside the UK without losing that status. But they will nonetheless have to demonstrate continuous residence to qualify for settled status.⁶⁷
68. Individuals covered by the Agreement can be joined by close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) at any point in the future, as long as the relationship existed on the last day of transition and still exists when the person wishes to come to the UK.
69. The Withdrawal Agreement provides for EU rules on social security coordination to apply to the beneficiaries of the citizens' part of the Withdrawal Agreement. Such persons will maintain their rights to healthcare, pensions and other social security benefits.⁶⁸

67 See HM Government, 'Settled and pre-settled status for EU citizens and their families': <https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means> [accessed 18 December 2019]

68 [Withdrawal Agreement](#) (19 December 2019), Articles 30–36. Article 33 is a new provision, which would extend the Articles on social security co-operation to Norway, Iceland, Liechtenstein and Switzerland, provided that each of those countries entered into a corresponding agreement with the UK and the EU. The 'explainer' published by the UK Government notes that agreements on citizens' rights and a small number of separation issues are also being negotiated by the UK with Norway, Iceland Switzerland and Liechtenstein (see: [Explainer for the agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#)).

70. There are also specific provisions covering workers (including frontier workers),⁶⁹ and the continuing recognition of professional qualifications of individuals who have taken up residence in a host state before the end of the transition period.⁷⁰
71. The right to reside permanently in the host state can only be lost through an absence of more than five years, unless it is restricted due to a person's conduct.⁷¹
72. The citizens' rights provisions have proved contentious due, in part, to concerns that they might exclude individuals who do not qualify under the Free Movement Directive (for example, people who are not economically active and are not in possession of comprehensive sickness insurance). Although the Government has indicated that it will not apply these rules strictly to individuals who apply for settled status, until individuals are granted such settled status they will remain, at least in principle, at risk of removal. Given the very low rates of refusal under EUSS thus far, it is unclear whether this is a serious concern. On the other hand, it is possible that some vulnerable applicants may not have made an application under the scheme at all. Some 40% of grants made so far to applicants for settled status have been for pre-settled status, and it is unclear whether this too is a significant issue. We also note that serious concerns have been expressed that individuals who are granted settled status are not given any physical form of proof which may cause difficulties for them as well for employers, banks and landlords.⁷²
73. Article 18(1)(p) will allow a host state to conduct systematic checks on criminality and security prior to issuing a residence document. Applicants can be required to declare past criminal convictions "in accordance with the law of the State of conviction at the time of the application".
74. Although applicants will have access to judicial and administrative redress if their applications for residence status are refused for any reason, under Article 20(4) the host state will be entitled to remove applicants who submit "fraudulent" or "abusive" applications prior to the final judgment in any appeal. Thus in effect appeals in such circumstances will not suspend the removal of the applicant.

Supervision and enforcement of the agreement on citizens' rights

75. The implementation and application of citizens' rights in the EU will be monitored in the EU by the European Commission, acting in conformity with the EU Treaties. In the UK, this role will be fulfilled by an "independent authority". This authority, which will be established under provisions contained in the EU (Withdrawal Agreement) Bill,⁷³ is to be granted "powers equivalent to those of the European Commission", to receive and investigate complaints from Union citizens and their family members, to conduct inquiries on its own initiative, and to bring legal actions before UK

69 [Withdrawal Agreement](#) (19 October 2019), Articles 24, 25, and 26 (a frontier worker lives in one EU member state and works in another, returning home daily or weekly).

70 [Withdrawal Agreement](#) (19 October 2019), Articles 27, 28 and 29

71 [Withdrawal Agreement](#) (19 October 2019), Article 20 sets out restrictions of the rights of residence which may be imposed due to conduct.

72 Letter dated 27 February 2019 from Baroness Kennedy of The Shaws, Chair of EU Justice Sub-Committee, to Rt Hon Sajid Javid MP, Home Secretary: <https://www.parliament.uk/documents/lords-committees/eu-justice-subcommittee/CWM/HKtoSJ-SettledStatus-260219.pdf> [accessed 9 January 2020]

73 [European Union \(Withdrawal Agreement\) Bill](#), clause 15 and Schedule 2 [Bill 1 (2019–20)]

courts concerning alleged breaches by the administrative authorities of the UK of their obligations under Part Two of the Withdrawal Agreement.⁷⁴

76. The Commission and the UK authority should each report annually to the specialised committee on citizens' rights, and the Joint Committee will assess, no earlier than eight years after the end of the transition period, the functioning of the independent authority. Following this assessment, the Joint Committee could decide to allow the UK to abolish the authority.
77. In its Fact Sheet on the Withdrawal Agreement, the European Commission notes:

“The text of the Withdrawal Agreement on citizens' rights is very precise, so that it can be relied upon directly by EU citizens in British courts, and by UK nationals in the courts of the Member States. Any national law provisions that are not consistent with the provisions of the Withdrawal Agreement will have to be disapplied.”⁷⁵
78. Moreover, as noted at paragraph 50, above, UK courts will continue to be able to refer cases to the CJEU for preliminary rulings over the interpretation of Part Two of the agreement for eight years following the end of transition.

What is not included in the citizens' rights provisions

79. The European Parliament, among others, has called for the citizens' rights provisions to ensure that any documents securing residence rights should be issued free of charge; that EU citizens granted settled status in the UK should enjoy a lifelong right of return; and that UK nationals in the EU should be entitled to move freely between Member States ('onward free movement').⁷⁶ These efforts have been unsuccessful. Under Article 18 of the Withdrawal Agreement charges for documents will be permissible, provided that they do not exceed those imposed on nationals of the host state for the issuance of similar documents (as noted above, such charges have been waived in the UK). Although the House of Commons Exiting the European Union Committee has proposed linking onward free movement rights for UK citizens to a right of unlimited return for EU citizens in the UK,⁷⁷ the Withdrawal Agreement addresses neither issue.⁷⁸ In the event, any discussion of onward free movement rights will now have to form part of the negotiations on future relations.

Conclusions

80. **One of the Government's primary aims in negotiating Brexit has been a desire to end free movement of people. A necessary consequence has been that the citizens' rights guaranteed under the Withdrawal Agreement fall short in some respects of those enjoyed during the**

⁷⁴ [Withdrawal Agreement](#) (19 October 2019), Article 159

⁷⁵ European Commission, 'Brexit Negotiations: What is in the Withdrawal Agreement' (14 November 2018): http://europa.eu/rapid/press-release_MEMO-18-6422_en.htm [accessed 18 December 2019]

⁷⁶ See European Parliament resolution on the framework of the future EU-UK relationship (2018/2573(RSP)) (14 March 2018): http://www.epgencms.europarl.europa.eu/cmsdata/upload/e9270809-8891-4d5d-bea4-1a764178e282/European_Parliament_resolution_on_the_framework_of_the_future_EU-UK_relationship_14_March.pdf [accessed 18 December 2019]

⁷⁷ See for instance House of Commons Exiting the European Union Committee, *The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizens* (Eighth Report, Session 2017–19, HC 1439), paras 6–13

⁷⁸ For commentary on this issue see for instance The3million, 'Newsletter' (November 2018): <https://mailchi.mp/the3million/newsletter104-740353> [accessed 18 December 2019]

UK's EU membership. Most notably, for UK citizens in the EU, onward free movement rights are not guaranteed. EU nationals applying to remain in the UK under the EU Settled Status Scheme face automatic criminal records checks.

81. **Nonetheless, the agreement on citizens' rights is fairly comprehensive and will allow individuals and families to continue with their lives and careers with a minimum of disruption. We therefore broadly welcome the citizens' rights provisions. At the same time, given that over 40 percent of applicants thus far have been granted 'pre-settled status', we emphasise that the Government will face a continuing challenge in ensuring a smooth transition to settled status.**

The financial settlement

82. The provisions relating to the financial settlement were agreed at negotiator level as early as March 2018. The relevant provisions are found at Part Five of the Agreement, between Articles 133–157.
83. The UK Government originally estimated that the settlement—which includes the UK's continuing contributions to the EU Budget during the transition period—would have a net cost of around £35–39 billion, while the Office of Budget Responsibility put the figure at £37.8 billion. But continuing UK contributions to the EU budget during the repeated extensions to the Article 50 period have been offset by a significant reduction in the cost of the post-exit financial settlement: the Office for Budgetary Responsibility (OBR) estimates that the extension to 31 January 2020 could reduce the settlement to around £29.8 billion. The cost of the settlement is also subject to other uncertainties: for example, it will be calculated and paid in euros, and the sterling figure is thus exposed to changes in exchange rates.⁷⁹
84. Thus, as the European Commission Fact Sheet sets out, “The agreement is not about the amount of the UK's financial obligation, but about the methodology for calculating it.”⁸⁰ Our recent report *Brexit: the financial settlement* provides a more detailed analysis of the methodology for calculating the UK's financial obligations, which will become legally binding in international law when the Withdrawal Agreement is concluded by the UK and the EU.⁸¹ We do not rehearse this analysis at length in this report.
85. Under the Agreement the UK will, among other things:
- contribute to and participate in the 2020 EU budget, during the transition period, on the same basis as if it were a Member State;⁸²
 - contribute towards some EU liabilities incurred before 31 December 2020 (for example pensions);
 - remain liable for certain EU contingent liabilities;

79 [Withdrawal Agreement](#) (19 October 2019), Article 133

80 European Commission, ‘Brexit Negotiations: What is in the Withdrawal Agreement’ (14 November 2018): http://europa.eu/rapid/press-release_MEMO-18-6422_en.htm [accessed 18 December 2019]

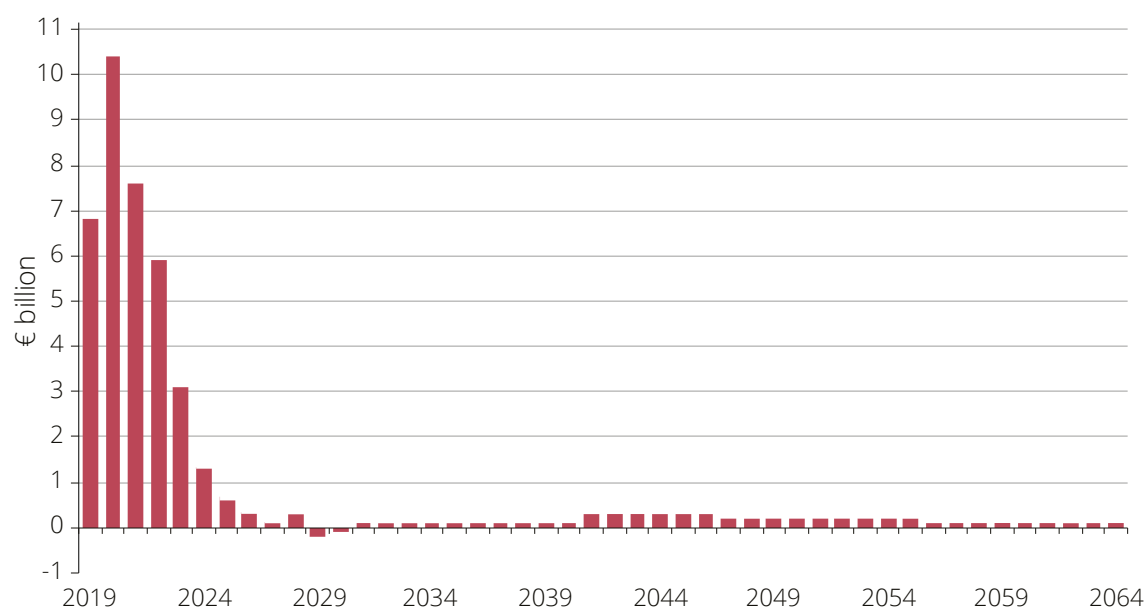
81 European Union Committee, *Brexit: the financial settlement* (2nd Report, Session 2019, HL Paper 7)

82 The scheduled end of the transition period, 31 December 2020, coincides with the end of the current (2014–2020) EU Multiannual Financial Framework, under which the UK's contributions have already been calculated.

- receive back the €3.5 billion of capital it has paid into the European Investment Bank (EIB) in 12 instalments from 2019; and
- continue to participate in some of the EU's overseas programmes, such as the European Development Fund, until the current round ends.

86. As set out in Figure 1, the Office for Budget Responsibility estimated in March 2019 that while the bulk of the payments under the settlement would be made by the mid-2020s, some elements of the settlement would still be payable until 2064.

Figure 1: Estimated path of settlement payments



Source: OBR, *Economic and fiscal outlook: March 2019*, CP50, March 2019, Supplementary fiscal table 4.16: <https://obr.uk/efo/economic-fiscal-outlook-march-2019/> [accessed 3 January 2020]. The OBR's projections were drawn up on the assumption that exit day would fall on 29 March 2019; in the event the extension of the UK's EU membership has meant that the UK continued to make contributions as a Member State throughout 2019 and up to 31 January 2020.

Conclusions

87. **The provisions on the financial settlement in Part Five of the Withdrawal Agreement set out not the amount of the UK's financial obligation, but the agreed methodology for calculating it. The precise amounts paid will be contingent upon future events, including fluctuations in exchange rates. Moreover, with each extension to the Article 50 period the UK has made further payments as a Member State, which will be offset against the payments due under the terms of the financial settlement.**
88. **Much of the sum payable relates to UK contributions to the 2020 EU budget, which will coincide with the transition period, during which the UK will continue to be subject to EU law and be part of the EU Single Market.**
89. **The payment of these sums does not depend upon a successful outcome to negotiations on future UK-EU relations. Once the UK and the EU conclude the agreement under Article 50 TEU, the UK's financial**

commitments will crystallise as legal obligations in international law, irrespective of the outcome of the future relationship negotiations.

Other provisions

90. Part Three of the Withdrawal Agreement broadly covers what are referred to as ‘separation issues’. These issues are not considered in detail in this report, but the list below gives an impression of the broad range of matters that are covered in Articles 40–125.
 - Title I: Goods placed on the market;
 - Title II: Ongoing customs procedures;
 - Title III: Ongoing value added tax and excise duty matters;
 - Title IV: Intellectual Property;
 - Title V: Ongoing police and judicial cooperation in criminal matters;
 - Title VI: Ongoing judicial cooperation in civil and commercial matters;
 - Title VII: Data and information processed or obtained before the end of the transition period or on the basis of this agreement;
 - Title VIII: Ongoing public procurement and similar procedures;
 - Title IX: Euratom related issues;
 - Title X: Union judicial and administrative procedures;
 - Title XI: Administrative cooperation procedures between Member States and the United Kingdom;
 - Title XII: Privileges and immunities; and,
 - Title XIII: Other issues relating to the functioning of the institutions, bodies, offices and agencies of the Union.
91. The Government’s Explanatory Memorandum makes clear that these provisions “aim to provide legal certainty”, providing the technical basis for the winding down of ongoing processes and arrangements “to ensure an orderly withdrawal”.⁸³

83 HM Government, *Explainer for the agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union* (14 November 2018) p.13: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756376/14_November_Explainer_for_the_agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_1.pdf [accessed 18 December 2019]

CHAPTER 3: THE TRANSITION OR IMPLEMENTATION PERIOD

The general principles of transition

92. Arrangements for the transition or implementation period are dealt with in Articles 126–132 of the Agreement.⁸⁴ The transition period will run from when the Agreement comes into force until 31 December 2020.⁸⁵ Article 132 of the Agreement provides for a single decision by the Joint Committee to extend the length of the transition period “for up to one or two years” (see paragraph 108).⁸⁶
93. The key objectives of transition, which we outlined in our December 2017 report *Brexit: deal or no deal*, are to create a time-limited ‘standstill period’, thereby giving reassurance to citizens and businesses that there will be no abrupt ‘cliff-edge’ at the point of Brexit, and to allow time for the two sides to negotiate, agree and implement the terms of their future relationship. To achieve these objectives, the Withdrawal Agreement provides that during the transition period, as a general principle, all EU law will apply to the UK⁸⁷ and produce “the same legal effects as those which it produces within the Union and its Member States”.⁸⁸ The EU’s institutions and agencies, including the Court of Justice of the European Union (CJEU), will continue to enjoy all their current powers to enforce, police, and review the application of EU law within the UK, including the application of the Withdrawal Agreement.⁸⁹
94. While EU law will continue to apply, several provisions deprive the UK Government, and its citizens, of the institutional and constitutional privileges of membership. For UK citizens, this includes the rights to vote and stand in European and/or municipal elections and to engage in European Citizens’ Initiatives.⁹⁰ UK citizens will also cease to be eligible for recruitment as officials and/or servants of the EU’s institutions, offices or agencies.⁹¹
95. Article 128, on institutional arrangements, works in conjunction with Article 7 to remove the UK’s right as an EU Member State to participate in the EU’s institutions and agencies during the transition period. The UK will also lose its limited right to initiate EU legislation;⁹² will no longer be able to participate in new legislation pursued via enhanced cooperation;⁹³ and will lose its current right to opt into new Justice and Home Affairs (JHA)

84 The Government has consistently described the period immediately following the UK’s exit from the EU on 29 March 2019 as an ‘implementation period’. Successive drafts of the Withdrawal Agreement, on the other hand, have referred to a ‘transition period’, and although Article 126 of the current text refers to “a transition or implementation period”, the term ‘transition’ is still used throughout the text. We therefore use the term ‘transition period’ in this report. See also para 129 of European Union Committee, *Brexit: deal or no deal* (7th Report, Session 2017–19, HL Paper 46).

85 [Withdrawal Agreement](#) (19 October 2019), Article 126

86 The original text said that the single extension could be until “31 December 20XX”.

87 [Withdrawal Agreement](#) (19 October 2019), Article 127

88 [Withdrawal Agreement](#) (19 October 2019), Article 127(3)

89 [Withdrawal Agreement](#) (19 October 2019), Article 131

90 [Withdrawal Agreement](#) (19 October 2019), Article 127(1)(b)

91 [Withdrawal Agreement](#) (19 October 2019), Article 127(7)(c)

92 [Withdrawal Agreement](#) (19 October 2019), Article 128(3)

93 [Withdrawal Agreement](#) (19 October 2019), Article 127(4)

measures, but will be able to opt into measures that “amend, build upon or replace existing [JHA] measures”.⁹⁴

96. The Agreement also states that during transition the UK Parliament will “not be considered a national Parliament of a Member State”, and will lose its privileges, for example to issue subsidiarity Reasoned Opinions.⁹⁵ The UK Parliament will continue, however, to receive consultation documents (Green and White Papers and Communications) directly from the Commission,⁹⁶ along with draft legislative acts placed in the public domain.⁹⁷

Exceptions to the general principles

97. There are few exceptions to the general principle that the UK should be excluded from the EU’s institutions and agencies during transition. The Agreement says that “upon invitation” the UK will be able to send national experts to “meetings or parts of meetings” of “Commission expert groups” and/or EU “bodies, offices or agencies”.⁹⁸ But this will only happen in exceptional circumstances and when the discussion involves legislation “to be addressed to the United Kingdom,⁹⁹ or where the presence of a UK expert “is necessary and in the interest of the Union”. UK experts will not be allowed to vote in these meetings.¹⁰⁰
98. With regard to fisheries and the negotiation and agreement of Total Allowable Catches (TACs) under the Common Fisheries Policy, the UK will be “consulted in respect of the fishing opportunities related to the United Kingdom”,¹⁰¹ and will be allowed to “provide comments” to the Commission ahead of the preparation of its annual Communication on fishing opportunities.¹⁰²
99. **The transition period embodied in the Agreement is intended to ensure stability, avoiding an abrupt change in the terms of UK-EU trade at the point of exit, while allowing the two sides time to negotiate, agree and implement the terms of their future relationship. The price the UK will pay for transition is that, save for a few minor exceptions, it will during the transition period carry all the responsibilities of EU membership without the institutional rights and privileges enjoyed by EU Member States. It will also remain subject to EU law and the EU institutions and agencies that oversee its application and operation, without any institutional say over the development, application and content of that law.**
100. **Despite the possibility of invitations being extended to UK officials to attend relevant meetings in exceptional circumstances, we remain**

94. [Withdrawal Agreement](#) (19 October 2019), Article 127(5). The UK can also be compelled to participate by the Council in such measures where the UK’s non-participation “in the amended version of an existing measure makes the application of that measure inoperable” for the other EU Member States (Article 4a of Protocol (No 21) of the [Treaty on the Functioning of the European Union](#)).

95. Under Protocol (No 2) to the [Treaty on the Functioning of the European Union](#) on the Application of the Principles of Subsidiarity and Proportionality

96. Article 1 of Protocol (No 1) to the [Treaty on the Functioning of the European Union](#) on the Role of National Parliaments in the European Union

97. [Withdrawal Agreement](#) (19 October 2019), Article 128(2)

98. [Withdrawal Agreement](#) (19 October 2019), Article 128(5)

99. [Withdrawal Agreement](#) (19 October 2019), Article 128(5)(a)

100. [Withdrawal Agreement](#) (19 October 2019), Article 128(5)(b)

101. [Withdrawal Agreement](#) (19 October 2019), Article 130(1)

102. [Withdrawal Agreement](#) (19 October 2019), Article 130(2)

concerned about the sudden removal of the UK's institutional privileges, particularly those relating to the EU's many executive agencies.

Free trade agreements

101. Specific provisions address the ramifications of the UK's withdrawal from the EU for the suite of international agreements to which the EU is party and in which the UK currently participates by virtue of its EU membership.
102. The Agreement confirms that the UK "shall be bound"¹⁰³ by all such agreements and must refrain, in this context, from any action "which is likely to be prejudicial to the Union's interests".¹⁰⁴ During transition, UK representatives will not be permitted to participate in the "work of any bodies set up by international agreements concluded by the Union", unless the UK participates in its own right or is invited to do so by the EU.¹⁰⁵
103. A footnote¹⁰⁶ confirms that the EU "will notify" all the other parties to these agreements (that is, third countries) "that during the transition period [the UK] is to be treated as a Member State for the purposes of these agreements".¹⁰⁷
104. The UK will be free to "negotiate, sign and ratify" its own international agreements in areas falling within the "exclusive competence of the Union" (such as free trade agreements) during the transition period. But such agreements cannot enter into force or apply to the UK during transition without prior authorisation from the EU.¹⁰⁸
105. **We broadly welcome Article 129, which leaves the UK free to pursue its own free trade agreements during the transition period, provided they do not enter into force before it expires.**
106. **Questions remain about the detailed operation of this provision. For example, it is silent about the extent of the UK's freedom to renegotiate during transition the myriad EU agreements dealing with matters where responsibilities are shared between the EU and the individual Member States.**
107. **Furthermore, Article 129, which attempts to carry over the application to the UK of the suite of existing EU international agreements, is one-sided and unclear. While it expressly binds the UK to its obligations under these international agreements, and calls on the Government to refrain from any action in this context deemed "prejudicial" to the Union's interests, the UK's status as a party to these agreements after exit day is dealt with by a footnote. We are concerned that the solution to such a significant question remains even in the latest text subject to a footnote of questionable legal status. The attitude of third countries to continuing UK participation in agreements with the EU remains unclear. We call on the Government to clarify these points urgently.**

103 [Withdrawal Agreement](#) (19 October 2019), Article 129(1)

104 [Withdrawal Agreement](#) (19 October 2019), Article 129(3)

105 [Withdrawal Agreement](#) (19 October 2019), Article 129(2)

106 [Withdrawal Agreement](#) (19 October 2019), Article 129(1)

107 A footnote to [Withdrawal Agreement](#) (19 October 2019), Article 132 providing for the extension of the Transition Period states: "In case of extension, the Union will notify other parties to international agreements thereof."

108 [Withdrawal Agreement](#) (19 October 2019), Article 129(4)

Extending the transition period

108. Article 132 of the Withdrawal Agreement provides that the Joint Committee (for which see paragraphs 21–28) will be entitled, before 1 July 2020, to adopt a single decision extending the transition period for “up to one or two years”.¹⁰⁹
109. As we note in Chapter 5, the breadth and complexity of negotiations on the future UK-EU relationship are such that it will be difficult to complete them by the end of 2020, let alone within the five months now left between exit day and the decision point at the end of June 2020. In circumstances where these negotiations are still continuing the provision to extend the transition period is, in the words of the then Prime Minister, in a debate on 15 November 2018, an “insurance policy”.¹¹⁰ Her successor as Prime Minister has, however, ruled out any extension, and clause 33 of the EU (Withdrawal Agreement) Bill states: “A Minister of the Crown may not agree in the Joint Committee to an extension of the implementation period.”
110. The key benefit of extending the transition period, if negotiations on the future relationship were to be incomplete at the end of 2020, would be to maintain continuity and stability: the UK could remain part of the EU Single Market, subject to the continuing application of EU rules, until such time as the new relationship was ready to be implemented. The downside is that the UK would remain subject to all the obligations described above (including those under new Regulations and Directives) and subject to the jurisdiction of the CJEU beyond 2020.
111. Moreover, under Article 132(2)(d), if the UK wished to extend the transition period, it would be required to make an additional contribution to the EU budget. The mechanism for calculating the actual payment for the extension is set out at Article 132(3), but the amount that would be payable is far from clear. The “status of the United Kingdom during that period” would be taken into account, as well as the “modalities of payment of the amount”.
112. The decision on extending transition will be made by the Joint Committee. This means that it will not be subject to veto by individual Member States in Council, but it will still need agreement with the EU and will be subject to “negotiation”.¹¹¹ The latest text of the EU (Withdrawal Agreement) Bill, in light of the prohibition in clause 33 on Ministers agreeing to an extension, includes no provision for parliamentary oversight of any extension decision.
113. **The previous Government described the option to extend the transition period as an “insurance policy” in case the negotiations on the future relationship are not completed by the end of 2020. The present Government, notwithstanding the fact that the transition period will now last only 11 months, has ruled out any extension. The timetable for achieving a satisfactory outcome is, as a result, extremely challenging.**
114. **Any decision by the Joint Committee to extend the transition period will have to be taken before 1 July 2020. Should that deadline pass without an extension being granted, we can see no other legal**

¹⁰⁹ The original text said that the single extension could be until “31 December 20XX”.

¹¹⁰ HC Deb, 15 November 2018, [col 432](#)

¹¹¹ HC Deb, 15 November 2018, [col 456](#)

mechanism, under the terms of the Withdrawal Agreement, whereby an extension could be achieved, even if the two sides so desired.

115. **We note that, were the Government to seek and be granted an extension ahead of the deadline, the cost to the United Kingdom is unclear and would be subject to negotiation.**
116. **An extension of the transition period would also mean that the UK would remain subject to EU law (including new Regulations and Directives and the jurisdiction of the CJEU) for an extended period, without any representation in the European Parliament, the Council, or the CJEU. The risk that is inherent in the UK becoming a ‘rule taker’ (subject to new EU laws, without having had any say in their preparation or adoption) would become more acute, the longer the transition period lasted.**

CHAPTER 4: PROTOCOL ON IRELAND/NORTHERN IRELAND

Basic principles and conditions

117. The aim underlying the Protocol, stated in terms recalling the December 2017 Joint Report by the EU and UK negotiators,¹¹² is to maintain “continued North-South cooperation” and avoid a “hard border” on the island of Ireland, while protecting the 1998 Belfast/Good Friday Agreement “in all its dimensions”.¹¹³
118. The opening provisions set out a number of basic principles and conditions. These include:
 - respect for the “essential state functions and territorial integrity of the United Kingdom”;¹¹⁴
 - recognition that any change to the status of Northern Ireland can “only be made with the consent of a majority of its peoples”;¹¹⁵ and
 - reference to the “unique circumstances on the island of Ireland”.¹¹⁶
119. These basic principles remain the same as in the December 2017 Joint Report, and in the Agreement published in November 2018.

Duration

120. The Secretary of State for Exiting the EU, Rt Hon Stephen Barclay MP, told us in October 2019 that the “indefinite nature” of the Protocol contained in the 2018 Withdrawal Agreement (the so-called ‘backstop’) had been Parliament’s “central concern”.¹¹⁷ Notwithstanding the references in the previous Protocol to its temporary nature, if the UK and the EU, acting in good faith, “simply could not come to an agreement on the future relationship”, there would have been no way to withdraw from it. This was compounded by “the lack of consent and the democratic issue”. He said that it was “clear, not only from the DUP but from other prominent voices within the unionist community”, that there was “concern with the backstop as it was constituted”.¹¹⁸
121. In the revised Protocol, accordingly, the requirement in the November 2018 text that both sides should consent to its termination, along with references to its temporary nature and the promise by both parties to use “their best endeavours” to replace it, have been removed.¹¹⁹ In their place there is a requirement for periodic democratic consent in Northern Ireland to the continued application of the relevant Articles of the Protocol.

112 Joint Report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of the negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union, (8 December 2017) https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf [accessed 26 November 2019], paras 42–56

113 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 1(3)

114 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 1(2)

115 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 1(1)

116 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 1(3)

117 Oral evidence taken on 21 October 2019 (Session 2019), [Q 1](#) (Rt Hon Stephen Barclay MP)

118 Oral evidence taken on 21 October 2019 (Session 2019), [Q 5](#) (Rt Hon Stephen Barclay MP)

119 See the [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Articles 1(4) and 2(1)

122. Dr Katy Hayward, Reader, Queen’s University Belfast, told us that the removal of the explicit commitment to replace the Protocol, given the “context of the sensitivities in Northern Ireland”, was “highly political and constitutionally significant”, because the “future status of Northern Ireland is being decided at this point”.¹²⁰

The rights of individuals and the Belfast/Good Friday Agreement

123. Article 2 of the Protocol, headed “Rights of individuals”, deals with the UK’s undertakings to ensure “no diminution of rights, safeguards and equality of opportunity”, as set out in Part 6 of the 1998 Belfast/Good Friday Agreement, including with respect to six EU Directives that implement the EU’s principle of equal treatment between men and women.¹²¹
124. The UK undertakes to “continue to facilitate” the work of the bodies created by the 1998 Agreement “in upholding human rights and equality standards”. These include the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commission of Northern Ireland and Ireland.¹²²
125. **We welcome Article 2 of the Protocol, on safeguarding the rights of individuals, as set out in the Belfast/Northern Ireland Agreement, and note that these provisions are unchanged from the November 2018 text.**

Common Travel Area

126. Our December 2016 report on *Brexit: UK-Irish relations* outlined the history and operation of the Common Travel Area (CTA) between the UK and Ireland. We stressed the vital importance of the full retention of its provisions post-Brexit.¹²³
127. Article 3 of the Protocol, also unchanged from the 2018 text, seeks to protect the CTA’s arrangements, “while fully respecting” the rights conferred on individuals by EU law. It provides that the UK will ensure that the CTA can continue to apply, in such a way as not to affect Ireland’s responsibilities under EU law to respect the free movement of EU citizens and their family members “to, from, and within Ireland”.¹²⁴
128. **We have repeatedly emphasised the importance of the Common Travel Area as a basis for cooperation between the UK and Ireland. We therefore welcome the explicit commitment to its retention contained in the latest iteration of the Withdrawal Agreement.**

Customs and the movement of goods

129. The latest text of the Protocol introduces new provisions dealing with the customs arrangements for Northern Ireland after the UK leaves the EU.

120 Oral evidence taken on 29 October 2019 (Session 2019), [Q 1](#) (Dr Katy Hayward, Ivor Ferguson and Aodhán Connolly)

121 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Annex 1 headed Provisions of Union Law Referred to in Article 2(1)

122 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 2(2)

123 European Union Committee, *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76)

124 [Withdrawal Agreement](#) (19 October 2019), the Protocol on Ireland/Northern Ireland, Article 3(2)

Customs territory of the UK and goods moving from Great Britain to Northern Ireland

130. Article 4 of the Protocol says that Northern Ireland is “part of the customs territory” of the UK, and can therefore be included within the territorial scope of any future free trade agreements concluded by the UK, “provided that [these agreements] do not prejudice” the application of the Protocol.¹²⁵ The Protocol also says that “nothing” it contains “shall prevent the United Kingdom from concluding agreements” with third Countries that “grant goods produced in Northern Ireland preferential access” to these countries’ markets, “on the same terms as goods produced” elsewhere in the UK.¹²⁶
131. Article 5, in part, deals with customs duties for goods moving into Northern Ireland from Great Britain and from outside the EU. For any good moving from Great Britain, the Protocol says that “no customs duties shall be payable”, unless the good “is at risk of subsequently being moved” into the EU either on its own or, “following processing”, as part of another product. Similarly, for goods moving into Northern Ireland from outside both the EU and the UK, UK customs duties will be applied unless the good is “at risk of subsequently being moved into the EU”, whether by itself or following processing. No duties will be payable on the movement of UK residents’ personal property.¹²⁷
132. Article 5(2) explains that goods brought into Northern Ireland from outside the EU will be considered at risk of subsequently being moved into the EU unless it can be established by the importer that:
 - (a) it will not be subject to commercial processing¹²⁸ in Northern Ireland; and
 - (b) it fulfils the criteria established by the Joint Committee tasked with overseeing the operation of the Withdrawal Agreement.
133. Before the end of the transition period the Joint Committee must establish criteria governing the operation of these provisions dealing with goods at risk of moving into the EU. In so doing, it must “have regard to the specific circumstances in Northern Ireland”, while taking into account, among other matters:
 - (a) The final destination and use of the good;
 - (b) The nature and value of the good;
 - (c) The nature of the movement; and,
 - (d) The incentive for undeclared onward-movement into the Union, in particular incentives resulting from the customs duties payable (a

125 A similar provision deals with the inclusion of Northern Ireland within the territorial scope of the UK’s Schedule of Concessions dealt with under the General Agreement on Tariffs and Trade 1994.

126 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 4

127 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(1)

128 Processing is defined as “any alteration of goods, any transformation of goods in any way, or any subjecting of goods to operations other than for the purpose of preserving them in good condition or affixing marks, labels, seals or any other documentation to ensure compliance with any specific requirements”. [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(2)

general catch-all term covering potential criminal activity such as smuggling).¹²⁹

134. **The precise rules governing the payment of customs duties on goods brought into Northern Ireland either from the rest of the UK or from outside both the UK and EU are yet to be determined by the Joint Committee. But the term “at risk” appears to cover a greater number and range of goods than would have been covered by terms such as “likely” or “potentially”.**
135. **We call on the Government to publish its assessment of the proportion, value, type and volume of goods entering Northern Ireland from the UK and from outside the EU on which customs duty will be payable in accordance with Article 5 of the Protocol.**

Implications of these rules

136. In October 2019 Jim Harra, Interim Chief Executive, HM Revenue and Customs, outlined the implications of these provisions to the House of Commons Treasury Committee. He explained that for goods moving from Great Britain to Northern Ireland there will be two potential hurdles. First, “Any goods going into Northern Ireland from Great Britain will have to comply with EU regulatory standards.”
137. Second, for goods categorised by the Joint Committee at risk of being subsequently moved into the EU, “The UK will [have to] make sure that a tariff equivalent to the EU tariff is applied to such goods.”¹³⁰ This requirement will “necessitate declarations being made for goods moving from Great Britain to Northern Ireland”, in order to “ensure that regulatory standards are being met” and, for goods at risk of being moved into the EU, that “the correct tariff is charged”—even if that tariff is set at zero.¹³¹
138. Mr Harra affirmed that this “does not mean Northern Ireland is part of the EU’s customs territory”, as the controls necessary to police the rules “will be administered by HMRC”. He accepted, however, that the rules did “mean administrative procedures, including a declaration, will be required for movements from Great Britain to Northern Ireland”.¹³²
139. Mr Harra was pressed on the practical implications of these rules for GB-based businesses exporting to Northern Ireland and was asked in particular whether these requirements would feel like a commercial border. He replied: “Yes, there will be declarations, which will feel like a customs declaration, because they will contain information that is used for regulatory purposes”. He added that HMRC did “not envisage ... a significant level of physical checks of goods” but warned that such checks “could be required ... to give effect to EU regulatory standards”.
140. **Notwithstanding the statement in Article 4 of the Protocol that Northern Ireland is part of the customs territory of the UK, the practical implication of the Protocol’s provisions on customs will**

129 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(2)

130 If and when the UK and EU agree a free trade agreement this may be zero. On goods coming from third countries a tariff may be payable.

131 Oral evidence taken before the Treasury Committee, 22 October 2019 (Session 2019), [Q 265](#) (Jim Harra, Penny Ciniewicz, Ruth Stanier)

132 Oral evidence taken before the Treasury Committee, 22 October 2019 (Session 2019), [Q 265](#) (Jim Harra, Penny Ciniewicz, Ruth Stanier)

be the introduction of a regulatory border for goods travelling from Great Britain to Northern Ireland. The introduction of such a border within the UK will have financial and political consequences.

EU Customs responsibilities applicable to Northern Ireland

141. The Protocol confirms that, for the purposes of future free trade agreements negotiated by the UK, Northern Ireland is part of the customs territory of the UK,¹³³ but Article 5(3) also imposes an obligation on the “UK in respect of Northern Ireland” to apply the EU’s customs legislation (the so-called EU customs code), as defined by Article 5(2) of Regulation 952/2013. The Joint Committee will, however, agree rules under which fisheries and aquaculture products brought into the Union by vessels flying the flag of the UK but registered in Northern Ireland will be exempt from duties.¹³⁴
142. The customs duties collected by the UK’s authorities pursuant to this provision “are not remitted to the Union”.¹³⁵ Scope is instead provided for the UK to reimburse duties on goods brought into Northern Ireland;¹³⁶ waive customs debts in respect of goods brought into Northern Ireland;¹³⁷ provide for the circumstances under which customs duties are reimbursed on goods “shown not to have entered the Union”;¹³⁸ and to “compensate undertakings to offset” the application of these provisions.¹³⁹

Implications for goods moving from Northern Ireland to Great Britain

143. Article 6 says that “nothing” in the Protocol will “prevent the UK from ensuring unfettered market access” for goods travelling from Northern Ireland to Great Britain. It adds that the provisions of EU law applied to Northern Ireland via the Protocol “which prohibit or restrict the exportation of goods” should “only be applied ... to the extent strictly required by any international obligations of the Union”.¹⁴⁰ The Article also requires the EU and the UK to “use their best endeavours” to facilitate the movement of goods from Northern Ireland into Great Britain, while taking “into account their respective regulatory regimes”.¹⁴¹
144. Again, the Joint Committee tasked with overseeing the operation and application of the Agreement, is enjoined to keep this matter “under constant review”, and can adopt “appropriate recommendations” to avoid controls at Northern Ireland’s ports and airports.¹⁴²
145. Jim Harra told the Treasury Committee on 22 October 2019 that the Agreement “explicitly provides that the UK can ensure unfettered access for goods” moving from Northern Ireland to Great Britain. He continued: “Article 6 ... provides that the only prohibitions and restrictions that will apply” on these goods “are those required to fulfil international obligations”. He recognised that there would be “some administrative process, an

133 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 4

134 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(3)

135 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(6)

136 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(6)(a)

137 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(6)(b)

138 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(6)(c)

139 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(6)(d)

140 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 6(1)

141 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 6(2)

142 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 6(2)

electronic form, which will apply to goods moving from Northern Ireland to Great Britain”, but said that the detail was yet to be settled: “In the coming months, we need to work both within the UK and together with the EU to understand precisely what those administrative processes will be.”¹⁴³

146. With regard to the cost of each of these declarations, Mr Harra said that HMRC had predicted “between £15 and £56 ... depending on the complexity of the declaration and the nature of the arrangement you use to make it”.¹⁴⁴ When it was put to him that HMRC did not know what the precise impact of these provisions would be, he replied “that is correct”, because during the transition period “we have to go through a process with the EU to agree what these procedures are ... it is impossible to be definitive”. He stated that it “will be intended to keep the paperwork as light as possible while addressing the obligations that we have agreed with the EU that we will meet in terms of protecting its market”.¹⁴⁵ But he confirmed that “we certainly will not know the detail of the practical operational procedures” until the Protocol is implemented.¹⁴⁶
147. Dr Katy Hayward, while acknowledging the Protocol’s statement that “Northern Ireland is part of the customs territory of the UK”, said that the provision requiring Northern Ireland to apply the EU’s customs legislation¹⁴⁷ meant that it was “*de facto* applying the Union customs code, with all that implies”. While there was scope in the Protocol for the UK to become the monitoring authority of this aspect of the Agreement,¹⁴⁸ she warned that “what that looks like and how it is all managed will need to be decided by 1 July 2020”. This was, she said, “an extraordinarily short period of time for basically changing an arrangement within the United Kingdom for the movement of goods within the United Kingdom”.¹⁴⁹
148. We also asked the Secretary of State whether Northern Ireland businesses would, in line with the EU’s customs code, have to complete export declarations when sending goods to Great Britain. The Minister initially replied: “No. We have said, in terms of from Northern Ireland to GB, that it will be frictionless.”¹⁵⁰ He later clarified his answer: “Exit summary declarations will be required in terms of Northern Ireland to GB.”¹⁵¹ We note the Prime Minister’s repeated statements that there will be no such controls.
149. **There is tension at the heart of the customs provisions of the Protocol. On the one hand, Northern Ireland is obliged to apply the EU’s customs code to the movement of goods from Northern Ireland to Great Britain. On the other, the Protocol says that it does not prevent the UK from ensuring unfettered access for goods moving from Northern Ireland into Great Britain’s market.**

143 Oral evidence taken before the Treasury Committee, 22 October 2019 (Session 2019), [Q 265](#) (Jim Harra, Penny Ciniewicz, Ruth Stanier)

144 Oral evidence taken before the Treasury Committee, 22 October 2019 (Session 2019), [Q 281](#) (Jim Harra, Penny Ciniewicz, Ruth Stanier)

145 Oral evidence taken before the Treasury Committee, 22 October 2019 (Session 2019), [Q 284](#) (Jim Harra, Penny Ciniewicz, Ruth Stanier)

146 Oral evidence taken before the Treasury Committee, 22 October 2019 (Session 2019), [Q 288](#) (Jim Harra, Penny Ciniewicz, Ruth Stanier)

147 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland Article 5(3)

148 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland Article 6(2)

149 Oral evidence taken on 29 October 2019 (Session 2019), [Q 6](#) (Dr Katy Hayward, Ivor Ferguson and Aodhán Connolly)

150 Oral evidence taken on 21 October 2019 (Session 2019), [Q 9](#) (Rt Hon Stephen Barclay MP)

151 Oral evidence taken on 21 October 2019 (Session 2019), [Q 10](#) (Rt Hon Stephen Barclay MP)

150. **Given the Janus nature of these customs arrangements, and HMRC's confirmation that much of the detail is yet to be settled or even fully understood by the two sides, it is perhaps not surprising that there have been conflicting statements from within Government.**
151. **In our view, as part of Northern Ireland's obligations under the Protocol to apply the EU's customs code, exit summary declarations are likely to be required for goods moving from Northern Ireland to Great Britain, unless and until the parties agree alternative arrangements to facilitate the movement of such goods. Although this requirement will be far less onerous than the requirements applying to goods moving in the other direction, it will have an economic cost for Northern Ireland-based businesses.**
152. **The agreement includes an undertaking by both parties to the Withdrawal Agreement to use their best endeavours to agree arrangements to facilitate the movement of goods from Northern Ireland to Great Britain. There remains, however, a risk that reaching agreement on the detailed operation of this aspect of the Withdrawal Agreement's arrangements will be time-consuming and, given the Government's insistence that there will be no extension of the transition period, particularly challenging.**
153. **We note that the potentially contentious arrangements for dealing with the duties applicable to fisheries and aquaculture products brought into the Union by vessels flying the UK flag but registered in Northern Ireland have been passed to the Joint Committee for resolution.**
154. **Notwithstanding these uncertainties, the proposed arrangements on the movement of goods contained in this iteration of the Protocol on Ireland/Northern Ireland will, when it comes into effect, achieve the key objective of avoiding a 'hard border' on the island of Ireland.**
155. **To achieve this aim, these new arrangements effectively keep Northern Ireland in the EU's single market for goods, with all that this implies for regulatory alignment, customs, institutional supervision and checks on the movement of goods between Great Britain and Northern Ireland. There is thus a price to be paid, in particular with regard to the integrity of the UK's internal market. How high a price remains to be seen, since the responsibility for sorting out the detail of these contentious issues has been conferred upon the Joint Committee.**
156. **The consequences, if the Joint Committee is unable to reach agreement on these issues, are not clearly spelled out in the Protocol. It is therefore critical that both the UK and the EU approach these issues with sensitivity, taking full account of the concerns of both unionist and nationalist communities in Northern Ireland.**

VAT and excise

157. The Protocol applies a range of EU rules on VAT and excise to Northern Ireland.¹⁵² It says that "in respect of Northern Ireland" the UK authorities will be responsible for the implementation of these rules, including the

152 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Annex 3

“collection of VAT and excise duties”, adding that “revenues resulting from transactions taxable in Northern Ireland shall not be remitted to the Union”. It also states that the UK may apply “VAT exemptions and reduced rates” that are applicable in Ireland to goods taxable in Northern Ireland.¹⁵³

158. The Joint Committee will discuss the implementation of this aspect of the Agreement “regularly”, including any excise reductions and/or VAT exemptions. Where it is “appropriate” the Joint Committee can adopt measures for the “proper application” of these rules. It can also review the application of this provision, “taking into account Northern Ireland’s integral place in the United Kingdom’s internal market” and adopt “appropriate measures” as necessary.
159. Aodhán Connolly, the Director of the Northern Ireland Retail Consortium, told us that VAT was a “great concern for our members”. The VAT provisions set out in the November 2018 Protocol had been “one of things we as business could actually say we got”, but he warned that “the situation is just not as clear” under the revised text. He argued that the latest VAT rules “were desperately complicated” and concluded that this aspect of the Agreement “falls into the ‘need more information and need it now’ category”.¹⁵⁴
160. HMRC Interim Chief Executive Jim Harra confirmed to the Commons that under these new arrangements “Northern Ireland would stay aligned with the EU’s VAT rules” in relation to goods.¹⁵⁵ The Secretary of State told us that “what has been agreed is the principle that the Joint Committee will consider reductions and exemptions to VAT”.¹⁵⁶ He confirmed in writing that the “specific practical arrangements” on VAT “will be the subject of discussions within the Joint Committee”.¹⁵⁷ Again, the consequences, if the Joint Committee is unable to agree on these issues by 31 December 2020, are unclear.
161. **The VAT and excise rules proposed in the Protocol, in particular the rules dealing with excise reductions and/or VAT exemptions, are complex, and we note the concern of witnesses that businesses in Northern Ireland urgently need further explanation of how they will operate in practice.**
162. **We acknowledge the Secretary of State’s statement that the specific practical arrangements governing this aspect of the Protocol on Ireland/Northern Ireland will be addressed by the Joint Committee, but are concerned that this key aspect of the post-Brexit arrangements for Northern Ireland’s interaction with both the EU and Great Britain will be left to the Joint Committee to resolve after the Withdrawal Agreement has been agreed and ratified.**

153 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 8

154 Oral evidence taken on 29 October 2019 (Session 2019), [Q 10](#) (Dr Katy Hayward, Ivor Ferguson and Aodhán Connolly)

155 Oral evidence taken before the Treasury Committee, 22 October 2019 (Session 2019), [Q 295](#) (Jim Harra, Penny Ciniewicz, Ruth Stanier)

156 Oral evidence taken on 21 October 2019 (Session 2019), [Q 10](#) (Rt Hon Stephen Barclay MP)

157 Letter from Rt Hon Steve Barclay MP, Secretary of State for Exiting the EU, to the Earl of Kinnoull, Chair of the European Union Committee (31 October 2019) : <https://www.parliament.uk/documents/lords-committees/eu-select/Correspondence-Jul-Oct/evidence-session-followup-october.pdf> [accessed 7 January 2020]

Other regulatory and technical responsibilities

163. A number of provisions in the Protocol impose additional regulatory and technical obligations on Northern Ireland. These will include:

- application to goods moving from the EU into Northern Ireland¹⁵⁸ of the EU's rules prohibiting quantitative restrictions on imports, and measures having equivalent effect;¹⁵⁹
- a provision binding Northern Ireland to a whole range of the EU's State aid rules;¹⁶⁰ and
- a requirement to introduce a "United Kingdom (Northern Ireland)" or "UK(NI)" marking for the labelling of goods produced in Northern Ireland.¹⁶¹

164. The Protocol will also require Northern Ireland's compliance with a host of EU technical rules and product standards set out in the 38 pages of Annex 2 to the Protocol and summarised in Box 1.¹⁶²

Box 1: List of technical rules and product standards dealt with in Annex 2 to the Protocol on Ireland/Northern Ireland

Annex 2 to the Protocol lists the areas in which Northern Ireland will be required to remain aligned with EU product/technical standards. These areas are as follows:

- general customs;
- the protection of the Union's financial interests;
- trade statistics;
- general trade related aspects;
- trade defence instruments;
- Regulations on bilateral safeguards;
- licensing of pharmaceutical products;
- goods—general provisions;
- motor vehicles, including tractors;
- lifting appliances;
- gas appliances;
- pressure vessels;

158 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 7(1)

159 Articles 34 and 36 of the [Treaty on the Functioning of the European Union](#)

160 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 10. The list of applicable EU legislation on State Aid is set out in Annex 5 to the Protocol.

161 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 7(2)

162 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(4)

- measuring instruments;
- construction products and machinery;
- electrical and radio equipment;
- textiles and footwear;
- cosmetics and toys;
- Recreational craft;
- explosives and pyrotechnics;
- medicinal products;
- medical devices;
- substances of human origin;
- chemicals;
- pesticides and biocides;
- waste;
- environment and energy efficiency;
- marine equipment;
- rail transport;
- food—general, hygiene, ingredients, contact material, and, other matters;
- animal feed—products and hygiene;
- Genetically Modified Organisms;
- live animals, germinal products and products of animal origin;
- animal disease and zoonosis control;
- animal identification;
- animal breeding;
- animal welfare;
- plant health;
- plant reproductive material;
- official controls and veterinary checks;
- sanitary and phytosanitary standards;
- intellectual property;
- fisheries and aquaculture;
- ‘other’, including provisions relating to crude oil, tobacco, cultural goods, medals and coins, crystal glass, weapons, rough diamonds, and goods used for capital punishment, torture or cruel and inhuman or degrading treatment.

Source: *Withdrawal Agreement* (19 October 2019), Annex 2 to the Protocol on Ireland/Northern Ireland

165. Article 9 of the Protocol, alongside Annex 4, will keep Northern Ireland within the Single Electricity Market on the island of Ireland.¹⁶³ In our 2017

¹⁶³ *Withdrawal Agreement* (19 October 2019), Protocol on Ireland/Northern Ireland, Article 9

report on *Brexit: energy security* we supported preservation of the Single Electricity Market, but noted that if EU energy legislation were to continue to apply in Northern Ireland, the Government would “need to consider whether to devolve additional powers to the Northern Ireland Assembly”.¹⁶⁴

Implementation, application, supervision and enforcement

166. As a Party to the Withdrawal Agreement, the UK will be responsible for implementing and applying the provisions of EU law that will be applied to Northern Ireland by the Protocol.¹⁶⁵ EU representatives will have a right to be present at “any activities of the United Kingdom related to the implementation and application of provisions of Union law made applicable” by the Protocol. EU and UK authorities will “exchange information ... on a monthly basis” on the customs arrangements pertaining to goods moving from Great Britain into Northern Ireland and those governing goods at risk of subsequently moving into the EU.¹⁶⁶
167. The Protocol will also confer full jurisdiction on the CJEU to oversee the operation of the EU law applying to Northern Ireland; including the power to hear applications for preliminary rulings¹⁶⁷ submitted by the courts of Northern Ireland;¹⁶⁸ the UK will enjoy the right to participate in these proceedings as if it were a Member State. The EU’s executive agencies will also enjoy their normal powers within Northern Ireland.¹⁶⁹
168. **The Protocol will bind Northern Ireland closely to the EU. Northern Ireland’s compliance with EU rules will be policed and enforced by the European Commission, the EU’s executive agencies and the CJEU, without the additional institutional privileges inherent in EU membership, save for the UK’s right to participate in Northern Ireland-based CJEU proceedings.**
169. **The introduction of different regulatory and technical rules on opposite sides of the Irish Sea would, like the proposed customs arrangements, carry risks for the UK’s internal market.**
170. **We have previously recommended that Northern Ireland should, as part of the future UK-EU relationship, remain part of the Single Electricity Market on the island of Ireland. We welcome the fact that the UK and EU negotiators have remained aware of the importance of this issue, but reiterate that such an outcome might require the devolution of additional powers to the Northern Ireland Assembly once the devolved institutions are reinstated.**
171. **In the event that the Northern Ireland Assembly does not consent to the continuation of the arrangements contained in the Protocol, Northern Ireland’s continued participation in the Single Electricity Market could be at risk.**

164 European Union Committee, *Brexit: energy security* (10th Report, Session 2017–19, HL Paper 63), para 150

165 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 12(1)

166 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 12(2)

167 Under Article 267 of the [Treaty on the Functioning of the European Union](#)

168 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 12(4)

169 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 12(5)

Other areas of North-South cooperation

172. Article 11 of the Protocol, which replicates Article 13 of the 2018 text, will require the Protocol, “in full respect of Union law”, to be implemented in such a way as to maintain the “necessary conditions for continued North-South cooperation” in the following areas: environment, health, agriculture, transport, education and tourism, energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport. The operation of this provision will be kept “under constant review” by the Joint Committee.
173. We have repeatedly highlighted the crucial importance to UK and Irish citizens, particularly those living in border areas, of maintaining North-South cooperation. For instance, in our report on *Brexit: UK-Irish relations* we called for a reaffirmation of the UK’s and Ireland’s “continued support for existing cross-border cooperation”,¹⁷⁰ and in our report on *Brexit: reciprocal healthcare*, we called on both sides “to treat healthcare as a priority in the final settlement of issues relating to the island of Ireland”.¹⁷¹ We also reflected on the potential obstacles to pursuing wanted criminals in Ireland without the European Arrest Warrant.¹⁷²
174. **Article 11 of the Protocol covers North-South cooperation in a wide range of areas of EU competence, including some areas where the EU’s competence is merely to support action by the Member States. The breadth of this provision underlines the vital importance of cross-border cooperation to the lives of UK and EU citizens, particularly those living close to the Irish land border.**

Common provisions and safeguards

175. Article 13 deals with Common Provisions and essentially addresses the practicalities of the Protocol’s operation. Matters covered include:
- territorial scope;¹⁷³
 - application and interpretation of the CJEU’s case law;¹⁷⁴
 - subsequent amendments to applicable Union law;¹⁷⁵
 - the Joint Committee’s role in dealing with the impact of subsequent amendments to applicable EU law that relate to the operation of the Protocol but are not specifically listed in its Annexes;¹⁷⁶
 - the exclusion of the UK from EU databases unless UK access is “strictly necessary”;¹⁷⁷ and

170 European Union Committee, *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76), para 262

171 European Union Committee, *Brexit: reciprocal healthcare* (13th Report, Session 2017–19, HL Paper 107), para 124

172 European Union Committee, *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76), para 144–152

173 *Withdrawal Agreement* (19 October 2019), Protocol on Ireland/Northern Ireland, Article 13(1)

174 *Withdrawal Agreement* (19 October 2019), Protocol on Ireland/Northern Ireland, Article 13(2)

175 *Withdrawal Agreement* (19 October 2019), Protocol on Ireland/Northern Ireland, Article 13(3)

176 *Withdrawal Agreement* (19 October 2019), Protocol on Ireland/Northern Ireland, Article 13(4)

177 *Withdrawal Agreement* (19 October 2019), Protocol on Ireland/Northern Ireland, Article 13(5)

- a provision dealing with the ramifications of any subsequent agreement between the EU and the UK and its impact on the operation of the Protocol.¹⁷⁸

176. Article 16, headed safeguards, enables either party to the agreement to take unilaterally “appropriate safeguards” if the application of the Protocol leads to “serious economic, societal or environmental difficulties”. Such safeguards must be “restricted” in their scope and “strictly necessary” to remedy the precise situation.¹⁷⁹ A procedure for the Joint Committee to resolve the imposition of safeguards¹⁸⁰ is set out in Annex 7 to the Protocol.
177. Article 17 imposes an obligation on both parties to counter fraud and other illegal activities affecting either’s financial interests.

Oversight of the Protocol

178. A “Specialised Committee” will facilitate the “implementation and application” of the Protocol;¹⁸¹ liaise with the institutions created by the 1998 Belfast/Good Friday Agreement dealing with North/South cooperation and the protection of rights;¹⁸² discuss any matters raised by the parties to the Agreement that “gives rise to a difficulty”;¹⁸³ and make recommendations to the Joint Committee regarding the functioning of the Protocol.¹⁸⁴
179. In correspondence, the Secretary of State, Rt Hon Stephen Barclay MP, explained that the Specialised Committee will “sit under” the Joint Committee, will “consider issues” arising under the Protocol and report them to the Joint Committee. He confirmed that it will be “attended by UK and EU representatives and it will be for each side to decide the composition of their delegation”.¹⁸⁵
180. A “Joint consultative working group” made up of EU and UK “representatives” will also be established, and will “serve as a forum for the exchange of information and mutual consultation”,¹⁸⁶ but without the power to issue “binding decisions”.¹⁸⁷ It must meet at least once a month.¹⁸⁸
181. As we have noted, various references throughout the Protocol confer upon the Joint Committee (which will oversee the implementation and application of the Withdrawal Agreement in its entirety) specific tasks with regard to the operation of the Protocol. These include:

178 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 13(8)

179 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 16(1)

180 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 16(3)

181 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 14(a)

182 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 14(b) and (c)

183 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland Article, 14(d)

184 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland Article, 14(e)

185 Letter from Rt Hon Steve Barclay MP, Secretary of State for Exiting the EU, to the Earl of Kinnoull, Chair of the European Union Committee (31 October 2019) : <https://www.parliament.uk/documents/lords-committees/eu-select/Correspondence-Jul-Oct/evidence-session-followup-october.pdf> [accessed 7 January 2020]

186 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 15(1)

187 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 15(2)

188 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 15(5)

- (a) Deciding the criteria under which goods moving into Northern Ireland from the UK, or outside the EU, will be considered at “risk of subsequently being moved into the Union”;¹⁸⁹
- (b) Keeping under “constant review”, in the context of goods moving West to East across the Irish Sea, the EU and the UK’s negotiation of the rules to protect the UK’s internal market;¹⁹⁰
- (c) Establishing the conditions under which fishery and aquaculture products will be exempt from duties;¹⁹¹
- (d) Discussing “regularly” and policing the implementation of the rules on VAT and excise;¹⁹²
- (e) Overseeing the impact of the Protocol’s operation on the “other areas of North-South cooperation” listed in Article 11 of the Protocol;¹⁹³
- (f) Setting out the practical arrangements under which EU officials will be present alongside the UK authorities responsible for implementing and applying the EU law applied by the Protocol within Northern Ireland;¹⁹⁴
- (g) Addressing the ramifications for Northern Ireland of subsequent EU legislation that falls within the scope of the Protocol but does not amend or replace legislation listed in its Annexes;¹⁹⁵
- (h) Considering recommendations from the Specialised Committee on the functioning of the Protocol;¹⁹⁶
- (i) Policing, where necessary, the imposition by the EU or the UK of any safeguards introduced to address “serious economic, societal or environmental difficulties”;¹⁹⁷ and,
- (j) In the event that the Northern Ireland Assembly decides not to extend the trade arrangements set out in the Protocol, making recommendations to the EU and the UK on necessary measures, taking into account the 1998 Belfast/Good Friday Agreement.¹⁹⁸

182. Dr Katy Hayward pointed to the “uncertainty” inherent in the Protocol because “so many decisions to be made” have been left to the Joint Committee.¹⁹⁹ Aodhán Connolly was concerned that “we do not even know” how the Joint Committee will be “constituted”.²⁰⁰

189 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(2)

190 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 6(2)

191 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 5(3)

192 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 8

193 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 11(2)

194 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 12(2) and (3)

195 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 13(4)

196 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 14(e)

197 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 16(3) and Annex 7

198 [Withdrawal Agreement](#) (17 October 2019), Protocol on Ireland/Northern Ireland, Article 18(4)

199 Oral evidence taken on 29 October 2019 (Session 2019), [Q 8](#) (Dr Katy Hayward, Ivor Ferguson and Aodhán Connolly)

200 Oral evidence taken on 29 October 2019 (Session 2019), [Q 8](#) (Dr Katy Hayward, Ivor Ferguson and Aodhán Connolly)

183. It was, Dr Hayward said, “very significant” that the Joint Committee “in effect becomes a managing body for the withdrawal agreement but, very specifically the protocol”. She suggested that its role had been “greatly increased by this new protocol”, arguing that “its decisions will ... have very direct implications for NI-GB relations on practical matters”.²⁰¹
184. **The Joint Committee will play an important role in the operation and application of the Protocol on Ireland/Northern Ireland. This role has been substantially enhanced in the latest text of the Protocol, yet no corresponding changes have been made to the governance arrangements provided for elsewhere in the Withdrawal Agreement to accommodate this expanded role.**
185. **Against this backdrop, the concerns we have expressed about the absence of any provision for democratic oversight of the Joint Committee, and over the lack of transparency in its working practices, acquire still greater force.**
186. **Many contentious decisions relating to the Protocol’s application, for example, decisions on the practical operation of the trade rules governing the movement of goods between Northern Ireland and Great Britain; on the potential duties payable on fisheries and aquaculture products; and on the operation of the Protocol’s VAT and excise rules, have been referred to the Joint Committee, to resolve behind closed doors, after the parties have agreed and ratified the Withdrawal Agreement.**
187. **This underlines the critical importance both of re-establishing the devolved institutions in Northern Ireland, and of ensuring that the Northern Ireland Assembly, like the UK Parliament, has the information and powers it needs to scrutinise the work of the Joint Committee effectively and hold ministers to account. We call on the Government to set out how it plans to achieve this outcome, as a matter of urgency.**

The consent mechanism

188. The Government and the EU have negotiated a new provision for the Northern Ireland Assembly to express its consent to the continued operation of the trade aspects (Articles 5–10) of the Protocol.²⁰²
189. Two months before the end of an “initial period”²⁰³ of four years after the transition period introduced by the Withdrawal Agreement expires, the UK will seek the Assembly’s view on these arrangements “in a manner consistent with the 1998 Agreement”. In other words, assuming the transition period ends on 31 December 2020 (as stated in the Conservative Party Manifesto), the UK Government will have to seek the Assembly’s views on extension of the Protocol’s provisions no later than 31 October 2024.
190. The Protocol says that the UK retains the unilateral right to decide the precise decision-making process.²⁰⁴

201 Oral evidence taken on 29 October 2019 (Session 2019), [Q 11](#) (Dr Katy Hayward, Ivor Ferguson and Aodhán Connolly)

202 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 18

203 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 18(5)

204 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 18(2)

Box 2: Declaration by the Government concerning the operation of the ‘Democratic consent in Northern Ireland’ provision of the Protocol on Ireland/Northern Ireland

At the time that the Government published the revised Withdrawal Agreement it also issued a ‘unilateral declaration’ detailing its interpretation of the consent mechanism set out in the Protocol. It includes contingency arrangements if, at the time that the deadline arrives for the Northern Ireland Assembly to express its view, Northern Ireland’s devolved institutions are, as now, suspended.

The declaration affirms that the “objective of the democratic consent process” in the Protocol “should be to seek to achieve agreement that is as broad as possible in Northern Ireland and, where possible, through a process taken forward and supported by a power sharing Northern Ireland Executive which has conducted a thorough process of public consultation”. It continues that this should “include cross-community consultation, upholding the delicate balance of the 1998 Agreement, with the aim of achieving broad consensus across all communities to the extent possible”.

The Government undertakes to provide appropriate assistance to the Northern Ireland executive in “any prior consultation with businesses, civil society groups, representative organisations (including of the agricultural community) and trade unions; and to do the same for Members of the Legislative Assembly, if at the time that consent is sought, neither the Northern Ireland executive or the Legislative Assembly are operating”.

The declaration emphasises that the process for seeking consent to the ongoing operation of the Protocol on Ireland/Northern Ireland will have no bearing on the “constitutional status of Northern Ireland”, which remains subject to the provisions of the 1998 Belfast/Good Friday Agreement.

Paragraph 1 commits the Government to legislate for the requisite “democratic consent process”. Paragraph 2 sets out the Government’s promise to notify the relevant Northern Ireland officials of the date of any vote and the outcome to the EU. Paragraph 3 reflects the process set out in the Protocol. Paragraph 4 sets out a mechanism under which “any Member of the Legislative Assembly” can table a motion for the consent process where one “has not been proposed by the First Minister and deputy First Minister, acting jointly”.

Paragraphs 5 and 6, headed ‘Alternative process’, enjoins the UK Government to “provide for an alternative democratic consent process in the event that it is not possible to undertake the democratic consent process in the manner provided”. Such an alternative process must permit “democratic consent to be provided by Members of the Legislative Assembly if the majority of the Members of the Legislative Assembly, present and voting, vote in favour of the continued application of Articles 5 to 10 of the Protocol on Northern Ireland and Ireland in a vote specifically arranged for this purpose”.

Source: HM Government, Declaration by Her Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland concerning the operation of the ‘Democratic consent in Northern Ireland’ provision of the Protocol on Ireland / Northern Ireland (19 October 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840232/Unilateral_Declaration_on_Consent.pdf [accessed 18 December 2019]

191. If in expressing its view, a “majority of Members of the Northern Ireland Assembly” vote in favour of continued application of the trade aspects of the Protocol, they will be extended for a “subsequent period” of four years.²⁰⁵ If

205 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 18(5)

the Assembly's decision in addition reflects "cross-community support" then the arrangements will be extended for a "subsequent period" of eight years. The Protocol defines "cross-community support" as either "a majority of those Members of the Legislative Assembly present and voting, including a majority of the unionist and nationalist designations", or a "weighted majority (60%) of Members ... including at least 40% of each of the nationalist and unionist designations present and voting".²⁰⁶ Further votes will follow at the end of each subsequent period.

192. In the event that consent is provided by a simple majority but without cross-community support, paragraphs 7–9 of the declaration state that the UK Government will commission an "independent review into the functioning of the Northern Ireland Protocol and the implications of any decision to continue or terminate alignment on social, economic and political life in Northern Ireland". Such a review will make recommendations on a way forward and will conclude within two years of the vote.
193. If the Assembly does not express its consent, then the trade arrangements set out in the Protocol will cease to apply to Northern Ireland two years after the "initial" or, as the case may be, "subsequent" period expires. In this eventuality, the Joint Committee will make recommendations to the UK and the EU on necessary measures, which must take into account the obligations imposed by the 1998 Belfast/Good Friday Agreement.
194. The Secretary of State described the inclusion of a consent mechanism as the "overarching change" the Government had secured in its renegotiation of the Protocol. In his view, it creates a "shared incentive to minimise [the] burdens and impacts" created by the application of the trade rules proposed in the Protocol.²⁰⁷ He argued that "there is a strong interest" for the EU to make the trade rules set down in the Protocol "work in the most proportionate and pragmatic way because it is subject to consent by the Northern Ireland Assembly at the end of four years".²⁰⁸
195. **The inclusion of a mechanism enabling the Northern Ireland Assembly periodically to express its continued consent to the operation of the trade arrangements proposed in this iteration of the Withdrawal Agreement, is, as the Secretary of State suggested, a key difference between this Agreement and the one proposed in November 2018.**
196. **We welcome the inclusion of a consent mechanism, but note that the political situation in Northern Ireland, where the Assembly has not met in full for more than a thousand days, remains unstable. We repeat the plea made in our 2016 report *Brexit: UK-Irish relations*, that political stability in Northern Ireland must not be allowed to become 'collateral damage' of Brexit.**

206 [Withdrawal Agreement](#) (19 October 2019), Protocol on Ireland/Northern Ireland, Article 18(6)

207 Oral evidence taken on 21 October 2019 (Session 2019), [Q 5](#) (Rt Hon Stephen Barclay MP)

208 Oral evidence taken on 21 October 2019 (Session 2019), [Q 6](#) (Rt Hon Stephen Barclay MP)

CHAPTER 5: THE REVISED POLITICAL DECLARATION ON THE FUTURE RELATIONSHIP

Overview

197. Article 50(2) TEU states: “In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.” Accordingly, on 22 November 2018, a 26-page draft ‘Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom’ was published.²⁰⁹ This expanded an earlier seven-page outline Declaration, published on 14 November 2018.²¹⁰
198. Following the renegotiation undertaken after the change of Government in July 2019, a 27-page revised Political Declaration was published on 17 October 2019.²¹¹ In quantitative terms, the majority of the text of the Political Declaration is unaltered from the November 2018 version. However, some significant changes have been made to the text, which can be summarised as follows:²¹²
- Removal of references to the Withdrawal Agreement (including the proposed single customs territory) and the Protocol on Ireland/Northern Ireland;
 - Deletion of most references to alignment of rules;
 - Insertion of text explicitly stating that a “comprehensive and balanced Free Trade Agreement” is the end destination of the future relationship negotiations;
 - Significant amendment to the text on a “level playing field for open and fair competition”;
 - Insertion of additional references to the autonomy and sovereignty of the UK and EU;
 - Adjustment of the text in relation to dispute settlement and the role of the CJEU;
 - Insertion of less specific language on the process that will follow exit.
199. The following analysis highlights key issues, with particular reference to the findings of the reports published by the Committee since the referendum.

209 Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (26 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759054/26_November_-_Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf [accessed 18 December 2019]

210 Outline of the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (14 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756378/14_November_Outline_Political_Declaration_on_the_Future_Relationship.pdf [accessed 18 December 2019]

211 *Political Declaration* (19 October 2019)

212 See also Institute for Government, *Brexit deal: Political Declaration on future UK-EU relationship* (17 October 2019): <https://www.instituteforgovernment.org.uk/explainers/brexit-deal-political-declaration> [accessed 9 January 2020]

Introduction to the Political Declaration

200. The introduction to the Political Declaration sets out overarching principles and shared “values and interests”, deriving from the EU and the United Kingdom’s “common European heritage”, which should underpin the future relationship. It expresses a shared belief in “free and fair trade, defending individual rights and the rule of law, protecting workers, consumers and the environment, and standing together against threats to rights and values from without or within”.²¹³ It also acknowledges the “unique context” of the UK’s status as a former Member State.²¹⁴
201. The Declaration “establishes the parameters of an ambitious, broad, deep and flexible partnership”, working in the interests of EU and UK citizens, and based on “a balance of rights and obligations, taking into account the principles of each party”. On the EU side, these include “the integrity of the Single Market and the Customs Union and the indivisibility of the four freedoms”, and that the future relationship “cannot amount to the rights and obligations of membership”. On the UK side, these include the sovereignty of the UK, the protection of its internal market, and respecting the result of the referendum, with particular reference to “the development of its independent trade policy and the ending of free movement of people”.²¹⁵
202. The text of the introduction has not changed from the previous iteration of the Political Declaration, save for the insertion of text stating that “a comprehensive and balanced Free Trade Agreement” will be at the core of the future relationship.²¹⁶ This newly specified destination is emphasised at several subsequent points in the text.
203. The Secretary of State for Exiting the EU, Rt Hon Stephen Barclay MP, sought to explain the specific references to a free trade agreement:
- “It really flows from the criticism we used to get previously that the Political Declaration was too wide in scope and the UK had not been specific enough about what sort of future relationship it was seeking. The Prime Minister has been very clear that the relationship the UK is seeking is a best-in-class free trade agreement. That is not simply shorthand for CETA; it is saying that, where the EU has entered into deals with other countries, we take the best elements of that as a package together with other areas such as close security co-operation.”
- He added that this clarification had enabled the text of the Political Declaration to be made more specific at certain points.²¹⁷
204. At the same time, the Political Declaration acknowledges that the UK-EU relationship may evolve over time, and therefore “may encompass areas of cooperation” beyond those described in the document itself.
205. **We welcome the Political Declaration’s acknowledgement of the shared heritage, values and interests of the UK and EU, and its recognition of the unique context of their future relationship given the UK’s post-withdrawal status as a former Member State. It is**

213 [Political Declaration](#) (19 October 2019), para 3

214 [Political Declaration](#) (19 October 2019), para 5

215 [Political Declaration](#) (19 October 2019), paras 4–5

216 [Political Declaration](#) (19 October 2019), para 3

217 Oral evidence taken on 21 October 2019 (Session 2019), [Q 14](#) (Rt Hon Stephen Barclay MP)

therefore important to acknowledge that the future relationship may evolve over time.

206. **The Political Declaration notes the need to strike a balance between the rights and obligations of both sides. It now also includes an explicit reference to the intended destination of a “comprehensive and balanced Free Trade Agreement”. While this provides greater definition of the likely shape of the future relationship, it also constrains the potential depth of that relationship. The scope and ambition of the Declaration must be judged in that light.**

Part I: initial provisions

207. No change has been made to the initial provisions set out in Part 1 of the Political Declaration. Paragraphs 6 and 7 develop the theme of shared values, focusing on the commitment of both sides to “human rights and fundamental freedoms, democratic principles, the rule of law and support for non-proliferation”. The EU will remain bound by the Charter of Fundamental Rights of the European Union (which reaffirms rights arising out of the European Convention on Human Rights), while the UK commits to “respect the framework” of the ECHR.²¹⁸
208. Both sides also commit to maintaining personal data protection. The Commission will start the process of assessing the UK’s data protection regime as soon as possible after the withdrawal date, with a view to adopting an ‘adequacy decision’ by the end of the transition period on 31 December 2020, allowing data flows to proceed without interruption.²¹⁹ In return the UK commits within the same timeframe to take steps to ensure uninterrupted transfers of personal data to the EU. There is also a general, but undefined, commitment to “appropriate cooperation between regulators”.²²⁰
209. The Declaration then gives a generic undertaking to establish “principles, terms and conditions” for UK participation in EU programmes, including those in “areas such as science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space”.²²¹ Though the programmes themselves are not specified, this commitment could be the basis for negotiating continued UK participation in several EU programmes, including but not limited to:
- Horizon Europe (a €100 billion research and innovation programme, the successor to Horizon 2020);
 - Erasmus+, the EU’s programme for education, training, youth and sport;
 - The European Development Fund;
 - Defence projects supported by the European Defence Fund;
 - The EU Civil Protection Mechanism;
 - The EU Space Programme (which has been proposed for 2021–27).

218 [Political Declaration](#) (19 October 2019), para 7

219 Compare European Union Committee, [The EU data protection package](#) (3rd Report, Session 2017–19, HL Paper 7), paras 112 and 113.

220 [Political Declaration](#) (19 October 2019), paras 8–10

221 [Political Declaration](#) (19 October 2019), para 11

210. The precise means by which the UK will participate in, and have influence over the management of, these programmes remain to be clarified. But among the key principles for UK participation will be a fair and appropriate financial contribution, sound financial management, fair treatment of participants, and “management and consultation appropriate to the nature and cooperation between the parties”.²²²
211. The Committee has consistently called for continued UK participation in those programmes that benefit the UK. For instance, our February 2019 report on *Brexit: the Erasmus and Horizon programmes* concluded:
- “It is in the UK and the EU’s mutual interest to preserve current close levels of cooperation on research and innovation and educational mobility, and that the UK should participate fully in the Erasmus and Horizon Europe programmes as an associated third country.”
- We also acknowledged that even if the UK secured continuing participation, it would have less influence over these programmes’ development as a non-EU Member State.²²³
212. The parties will also “explore” UK participation in the European Research Infrastructure Consortia (ERICs), subject to relevant conditions and the level of UK participation in science and innovation programmes.²²⁴ There is a more detailed commitment to a future PEACE PLUS programme in Northern Ireland (which we advocated in our December 2016 report on *Brexit: UK-Irish relations*), maintaining current funding proportions.²²⁵
213. As well as contemplating UK participation in specific programmes, the Declaration, under the heading of ‘Dialogues’, states that the parties should look for opportunities to cooperate in areas such as culture, education, science and innovation. It acknowledges the importance of mobility and temporary movements of objects and equipment in these areas—though it is unclear whether the reference to ‘mobility’ in this context is intended to allow for measures to facilitate short-term movement of workers in specific sectors, such as the cultural sector, which are acutely reliant on such movement.²²⁶ The parties will also explore ongoing cooperation between culture and education related groups.²²⁷
214. While no specific commitment is made, the Declaration notes the UK’s intention to explore options for a future relationship with the European Investment Bank (EIB).²²⁸ In our January 2019 report on *Brexit: the European Investment Bank*, we noted that the EIB had lent more than €118 billion to key infrastructure projects in the UK, and expressed concern that losing access to the EIB could have negative consequences for the financing of UK infrastructure.²²⁹

222 [Political Declaration](#) (19 October 2019), para 11

223 European Union Committee, [Brexit: the Erasmus and Horizon programmes](#) (28th Report, Session 2017–19, HL Paper 283)

224 [Political Declaration](#) (19 October 2019), para 11

225 [Political Declaration](#) (19 October 2019), para 13. See European Union Committee, [Brexit: UK-Irish relations](#) (6th Report, Session 2016–17, HL Paper 76), para 194.

226 See European Union Committee, [Brexit: movement of people in the cultural sector](#) (18th Report, Session 2017–19, HL Paper 182).

227 [Political Declaration](#) (19 October 2019), para 14

228 [Political Declaration](#) (19 October 2019), para 15

229 See European Union Committee, [Brexit: the European Investment Bank](#) (25th Report, Session 2017–19, HL Paper 269).

215. **We welcome the reference in paragraphs 6–7 of the Political Declaration to shared values and the maintenance of human rights and fundamental freedoms.**
216. **We have reported on the critical importance of maintaining uninterrupted data flows during and after Brexit. We therefore welcome the provisions on data protection, which offer a pragmatic way forward.**
217. **We also welcome the prospect of UK participation in EU programmes in areas such as research, science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space, and the possibility of UK participation in European Research Infrastructure Consortia. We note, however, that such participation will come at a cost, which is yet to be determined, and that the Declaration sheds little light on how UK participation will be achieved, and what influence it will have over these programmes.**
218. **We warmly welcome the shared commitment of the UK and the EU to delivering a future PEACE PLUS programme in Northern Ireland.**
219. **We note the possibility of continuing cooperation in areas such as culture, education, science and innovation. We again call on the Government to explain the significance of the reference in paragraph 14 of the Declaration to “the importance of mobility” in enabling such cooperation.**
220. **We note that most of the commitments in Part I of the Declaration remain undefined. Stakeholders in the various sectors affected still need clarification of how future UK-EU cooperation will work in practice, in particular in terms of UK participation in EU programmes and its relationship with the European Investment Bank.**

Part II: economic partnership

221. In view of the importance of the trading relationship between the UK and EU, the parties agree to develop “an ambitious, wide-ranging and balanced economic partnership ... encompassing a Free Trade Agreement, as well as wider sectoral cooperation where it is in the mutual interest of both Parties”. The reference to a free trade agreement replaces the words “free trade area” in the November 2018 text. This partnership should facilitate trade and investment to the extent possible while respecting both sides’ principles and obligations.²³⁰

Goods

222. While the November 2018 text envisaged “a trading relationship on goods that is as close as possible”,²³¹ the revised text refers to “an ambitious trading relationship on goods on the basis of a Free Trade Agreement”. The aim is to facilitate the movement of goods by reaching “comprehensive arrangements that will create a free trade area, combining deep regulatory and customs

²³⁰ [Political Declaration](#) (19 October 2019), paras 16–18

²³¹ [Political Declaration](#) (26 November 2018), para 20

cooperation, underpinned by provisions ensuring a level playing field for open and fair competition”.²³²

223. As with the previous text, the revised Declaration envisages “no tariffs, fees, charges or quantitative restrictions across all sectors”, albeit now in the explicit context of a free trade agreement. The reference to “ambitious customs arrangements” is retained. But rather than referring back to the single customs territory provided for in the November 2018 text of the Protocol on Ireland/Northern Ireland, which would have obviated the need for checks on rules of origin,²³³ the latest text acknowledges that there will need to be “appropriate and modern accompanying rules of origin”.²³⁴
224. The Secretary of State acknowledged that the clarification of rules of origin requirements was an urgent concern for manufacturing industry, in particular, and said that the Government was in discussions with major manufacturers. However, when we asked him to elaborate on what might be involved, he told us only that “we have not defined that at this stage ... This is part of the negotiation that is still to come.”²³⁵
225. The Declaration emphasises the principle of regulatory autonomy. Consistent with this, there is no reference to a common external tariff, which would inhibit the UK’s ability to develop an independent trade policy. The November 2018 iteration noted that the UK would consider aligning with EU rules in relevant areas.²³⁶ This qualification too has been deleted in the revised text (see further in relation to level playing field for open and fair competition, below). Nevertheless, references to the following areas are retained:
- Technical barriers to trade. The Declaration calls for common principles in relation to standardisation, technical regulations, conformity assessment, accreditation, market surveillance, metrology and labelling.
 - Sanitary and phytosanitary measures. The parties should treat each other as single entities, including for certification purposes, and recognise regionalisation on the basis of appropriate epidemiological information.²³⁷
226. The parties undertake to explore the possibility of UK “cooperation” with EU Agencies, including (but not explicitly limited to) the European Medicines Agency, European Chemicals Agency and European Aviation Safety Agency.²³⁸ The extent and means of such cooperation are not explained.
227. The Secretary of State stressed that the key issue in the negotiations on cooperation with EU agencies would be “not just what appetite there is on the UK side but also what willingness there is on the EU side. The Political Declaration allows these discussions to continue.” He expressed optimism that other Member States wished for UK-EU cooperation to continue.²³⁹

232 [Political Declaration](#) (19 October 2019), para 21

233 [Political Declaration](#) (26 November 2018), para 23

234 [Political Declaration](#) (19 October 2019), para 22

235 Oral evidence taken on 21 October 2019 (Session 2019), [QQ 13, 15](#) (Rt Hon Stephen Barclay MP).

236 [Political Declaration](#) (26 November 2018), para 25.

237 [Political Declaration](#) (19 October 2019), para 23

238 [Political Declaration](#) (19 October 2019), para 23

239 Oral evidence taken on 21 October 2019 (Session 2019), [Q 16](#) (Rt Hon Stephen Barclay MP)

228. In an apparent nod to the so-called ‘maximum facilitation’ model previously advocated by some UK ministers, the Declaration refers to “making use of all available facilitative arrangements and technologies”, including mutual recognition of trusted traders’ programmes, administrative cooperation and mutual assistance in the recovery of claims for taxes and duties, and exchange of information to combat customs fraud. This has been supplemented by a new reference to administrative cooperation in VAT matters and the exchange of information to combat VAT fraud.²⁴⁰
229. Paragraph 26 of the Declaration adds the general caveat that all future customs arrangements are dependent upon “the extent of the United Kingdom’s commitments on customs and regulatory cooperation”. However, the previous reference to alignment of rules has been deleted, as has the statement that the extent of UK commitments “can lead to a spectrum of different outcomes” for administrative processes, checks and controls.²⁴¹ This has been replaced by a reference to the possibility of “facilitation” of processes, checks and controls. While the parties wish to be “as ambitious as possible”, any agreements will have to respect the “integrity of their respective markets and legal orders”.²⁴²
230. **The Political Declaration’s commitment to tariff-free trade in goods is welcome. The change in objective from a free trade area to a free trade agreement is one of the most consequential in the revised Political Declaration, involving in particular the deletion of references to the single customs territory and alignment of rules.**
231. **While these changes provide greater clarity, they also imply that there will be some new friction in trade in goods, notwithstanding that the Declaration holds out the possibility, without commitment, of the use of facilitative arrangements and technologies, and refers, without elaboration, to “facilitation” of customs processes, checks and controls. We call on the Government to specify what new facilitative arrangements and technologies are envisaged, when, at what cost, and to what effect.**
232. **The revised Declaration also concedes, for the first time, that rules of origin, albeit “appropriate and modern”, will be necessary. We call on the Government urgently to confirm to Parliament, manufacturers, traders and all those affected, what rules of origin checks and processes will be required in the future.**
233. **We welcome the commitment to consider cooperation and exchange of information in customs and, additionally, VAT matters, including to combat customs and VAT fraud and other illegal activity.**
234. **We also call on the Government urgently to clarify the extent and means of UK cooperation with EU agencies, including the European Medicines Agency, the European Chemicals Agency and the European Aviation Safety Agency, and to confirm whether cooperation with other agencies is envisaged.**

240 [Political Declaration](#) (19 October 2019), para 24

241 [Political Declaration](#) (26 November 2018), para 28

242 [Political Declaration](#) (19 October 2019), para 26

Services and investment

235. The text of the Declaration is unchanged in relation to services and investment. It envisages “ambitious, comprehensive and balanced arrangements on trade in services and investment in services and non-services sectors, respecting each party’s right to regulate”. It aims for substantial sectoral coverage of professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, transport services and other services of mutual interest.²⁴³ There are no explicit references to other services sectors that are important to the UK economy and citizens, including the health, creative and tourism sectors.
236. The Declaration calls for provisions on market access and national treatment under host state rules to ensure services providers and investors are treated in a non-discriminatory manner. In our 2017 report on *Brexit: trade in non-financial services* we expressed concern that the Government had “under-estimated the reliance of the services sector on the free movement of persons”.²⁴⁴ We also note the importance of onward free movement within the EU in this context. Paragraph 30 of the Declaration states that “the temporary entry and stay of natural persons for business purposes” should be permitted in defined areas, suggesting that there may be scope for relaxing rules on the movement of people to facilitate the delivery of services.²⁴⁵
237. While regulatory autonomy is to be retained, the Declaration states that regulatory approaches should be “compatible to the extent possible”. In particular, there should be horizontal provisions on licensing procedures, and specific regulatory provisions in sectors of mutual interest such as telecommunications, financial services, delivery services and international maritime transport. A framework for voluntary regulatory cooperation, including exchange of information and sharing of best practice, should be established. Appropriate arrangements should be developed on professional qualifications which are necessary to the pursuit of regulated professions, “where in the Parties’ mutual interest”.²⁴⁶
238. **We welcome the intention to conclude “ambitious, comprehensive and balanced” arrangements on trade in services across a range of sectors. However, given the significance of the sector to the UK economy, we are concerned by the lack of detail in the section on services and investment, and in particular that some key service sectors are not mentioned in the Declaration. We call on the Government to explain what agreement, if any, it expects to reach in respect of the health, creative and tourism sectors.**
239. **We welcome the commitment to ensure services providers and investors are treated in a non-discriminatory manner, and to allow for the temporary entry and stay of natural persons for business purposes. We invite the Government to confirm whether the latter provision envisages preferential arrangements for UK and EU citizens moving between each other’s territories to provide services.**

243 [Political Declaration](#) (19 October 2019), paras 27–28

244 European Union Committee, [Brexit: trade in non-financial services](#) (18th Report, Session 2016–17, HL Paper 135), para 292

245 [Political Declaration](#) (19 October 2019), para 30

246 [Political Declaration](#) (19 October 2019), paras 31–34

240. **More broadly, while the provisions on services and investment are helpful as far as they go, they will not provide the current level of access to the EU Single Market enjoyed by the UK's services sectors. Further details are urgently required to provide service providers and customers with assurance and certainty.**

Financial services

241. The latest text of the Declaration in relation to financial services is unchanged. It offers a generalised commitment to preserving “financial stability, investor and consumer protection and fair competition”, but qualifies this by acknowledging the UK's and the EU's regulatory and decision-making autonomy. It also records an agreement “to engage in close cooperation on regulatory and supervisory matters in international bodies”.²⁴⁷ We have previously noted that it is “crucial that [international] standards remain the base of the UK's domestic regime”.²⁴⁸
242. The Declaration makes clear that the future relationship will be on the basis of “equivalence frameworks”, and, like the November 2018 text, states that both sides will endeavour to conclude these assessments before the end of June 2020 (even though 14 months have passed since this timetable was originally proposed).²⁴⁹ Respective equivalence frameworks will be kept under review, and there is no commitment to a model of economic and regulatory alignment with the EU in financial services as proposed by the Government in its future relationship White Paper. This bears out a warning we issued as long ago as December 2016: “While the UK might be deemed equivalent at the point of withdrawal, there is no guarantee that it will remain so.”²⁵⁰
243. Offsetting the prospect of regulatory divergence, the Declaration stresses the mutual importance of “close and structured” political and technical regulatory and supervisory cooperation, including transparency and appropriate consultation on equivalence decisions, information exchange and consultation on regulatory initiatives.²⁵¹
244. **We acknowledge the intention of both sides to complete the equivalence assessment process in respect of financial services by June 2020, but note that time is now acutely short for such assessments to be completed. We also welcome the commitment to “close and structured” regulatory and supervisory cooperation, and to close cooperation in international bodies. But the agreement to keep respective equivalence frameworks under review falls short of the new economic and regulatory arrangement in financial services proposed by the UK.**

Digital

245. The text of the Declaration on digital is unchanged. It calls for the establishment of “provisions to facilitate electronic commerce, address unjustified barriers to trade by electronic means, and ensure an open,

247 [Political Declaration](#) (19 October 2019), para 35

248 European Union Committee, *Brexit: the future of financial regulation and supervision* (11th Report, Session 2017–19, HL Paper 66), para 61

249 [Political Declaration](#) (19 October 2019), para 36

250 European Union Committee, *Brexit: financial services* (9th Report, Session 2016–17 HL Paper 81), para 58

251 [Political Declaration](#) (19 October 2019), para 37

secure and trustworthy online environment for businesses and consumers”. These provisions should also facilitate cross-border data flows, though in this respect they should be read alongside the provisions on personal data protection.²⁵² It also proposes sectoral agreements to provide for fair and equal access for service providers to public telecommunications networks and services.²⁵³ There is, however, no commitment to the maintenance of free data flows, or to the continued abolition of data roaming charges.

246. **Given its growing importance to the UK’s economy, the specific emphasis on digital services in the Political Declaration is welcome. Nevertheless, the Declaration’s emphasis on the facilitation of data flows, rather than on the retention of free data flows, appears to mark a lowering of ambition when compared with the ongoing development of the EU’s Digital Single Market.**

Capital movements and payments, intellectual property and public procurement

247. Paragraph 41 of the Declaration calls for provisions to enable free movement of capital and payments related to transactions that fall within the scope of the economic partnership.
248. Paragraph 42 states that provision should be made for the “protection and enforcement of intellectual property rights”, going beyond international standards. Paragraph 43 builds on the Withdrawal Agreement in requiring that any such provisions should include appropriate protection for geographical indicators. The parties will retain their own regimes for the exhaustion of intellectual property rights, and the Declaration calls for a mechanism for cooperation and exchange of information on intellectual property issues.
249. Paragraphs 46–47 of the Declaration call for mutual access to public procurement markets, going beyond WTO provisions, alongside a commitment to upholding mutual standards based on those of the WTO Government Procurement Agreement.
250. The text of these paragraphs is unchanged from the November 2018 Declaration.
251. **We welcome the provisions to enable free movement of capital and payments, on intellectual property (including geographical indicators) and on public procurement, as far as they go.**

Mobility

252. The section on mobility, also unchanged in the latest text,²⁵⁴ begins by recalling the UK’s red line, that the principle of free movement of persons between the EU and UK should no longer apply. That red line defines the parameters of what can be agreed, and the Declaration accordingly calls for:
- Mobility arrangements based on non-discrimination between the EU Member States and full reciprocity;
 - Visa-free travel for short-term visits;

252 [Political Declaration](#) (19 October 2019), para 38

253 [Political Declaration](#) (19 October 2019), para 39

254 [Political Declaration](#) (19 October 2019), paras 48–57

- Consideration of conditions for entry and stay for the purpose of research, study, training and youth exchanges;
- Consideration of social security coordination; and
- The possibility of facilitating the crossing of respective borders for legitimate travel.

There is no reference in this section of the Declaration to reciprocal healthcare, including the European Health Insurance Card (EHIC), as a means of facilitating mobility.

253. The emphasis in the Declaration on “full reciprocity” means that any restrictions placed by the UK upon those moving from the EU are likely to apply in reverse. The recent Conservative Party manifesto stated that “we will treat EU and non-EU citizens equally”, and that people coming into the UK from the EU “will only be able to access unemployment, housing, and child benefit after five years, in the way non-EEA migrants currently do”.²⁵⁵ If this is the case, it follows that UK nationals will also not receive any preferential treatment in the EU 27, as compared with other third country nationals. Set against this fundamental fact, the proposals outlined in the Declaration, such as visa-free travel for short visits, or measures to facilitate border crossings, are necessarily limited in scope and impact.
254. The Declaration also highlights the options for judicial cooperation in matrimonial, parental responsibility and other family law matters. It affirms both parties’ commitment to the effective application of existing international family law instruments to which they are parties.²⁵⁶
255. In our 2017 report on *Brexit: justice for families, individuals and businesses?* we expressed concern that the Government had not taken account of the full implications of the impact of Brexit on family law, and warned that leaving the EU without an alternative system in place would have a “profound and damaging impact on the UK’s family justice system and those individuals seeking redress within it”.²⁵⁷ The lack of detail in the Declaration suggests that little consideration has yet been given to this complex area.
256. **The provisions on mobility respect and reflect the UK’s decision that the principle of free movement of persons from the EU will no longer apply. The principle of full reciprocity means that UK nationals will therefore also cease to receive preferential treatment by the EU in the future. While the Political Declaration proposes some mitigations, they will not change this significant restriction upon the freedoms currently enjoyed by UK citizens.**
257. **We are concerned at the omission of any reference to reciprocal healthcare, including the European Health Insurance Card, as a means of facilitating mobility. We call on the Government to set out, as a matter of urgency, its plans for maintaining reciprocal healthcare arrangements in the context of the future relationship.**

255 Conservative Party, *Conservative and Unionist Party Manifesto 2019*, p. 23: https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf [accessed 19 December 2019]

256 *Political Declaration* (19 October 2019), para 55

257 European Union Committee, *Brexit: justice for families, individuals and businesses?* (17th Report, Session 2016–17, HL Paper 134), para 145

258. **We are concerned that the Declaration contains so little detail on the impact of UK withdrawal on family law. We remind the Government of our earlier conclusion, that if the UK leaves the EU without alternative arrangements being in place, the UK's family justice system, and the individuals seeking redress within it, could suffer profound damage.**

Transport

259. The provisions of the Declaration on transport are unchanged. It calls for a Comprehensive Air Transport Agreement covering “market access and investment, aviation safety and security, air traffic management, and provisions to ensure open and fair competition, including consumer protection requirements and social standards”. It also calls for further arrangements to ensure high standards of aviation safety.²⁵⁸ UK membership of the European Aviation Safety Agency will also be considered. The Declaration does not, however, clarify if the proposed Agreement will aim for reciprocal liberalised market access.
260. The Declaration also calls for “comparable market access for freight and passenger road transport operators, underpinned by consumer protection requirements and social standards for international road transport”—but makes no reference to reciprocal market access.²⁵⁹ The Declaration also states that the parties should consider “complementary arrangements to address travel by private motorists”, though it is not clear if this will negate the need for UK drivers to carry International Driving Permits or insurance Green Cards when travelling in the EU.²⁶⁰
261. The Declaration states that bilateral arrangements should be established to cover cross-border rail services between Belfast and Dublin (with Ireland) and through the Channel Tunnel (with France, Belgium and The Netherlands).²⁶¹
262. It also states that maritime transport passenger and cargo connectivity should be underpinned by the international legal framework, with appropriate arrangements on market access. Maritime safety and security cooperation should be facilitated, including exchange of information between the European Maritime Safety Agency and the UK Maritime and Coastguard Agency.²⁶²
263. Our May 2019 report on *Brexit: road, rail and maritime transport* underlined the importance of UK-EU transport links and cooperation across sectors, as well as emphasising the unique demands placed upon Northern Ireland/Ireland transport connections.²⁶³ It is disappointing that no further progress appears to have been made in this area.
264. **We welcome the commitment to cooperation in the aviation sector, and in particular the proposed Comprehensive Air Transport Agreement. We call on the Government to confirm whether the reference to market access in paragraph 58 of the Declaration is**

258 [Political Declaration](#) (19 October 2019), paras 58–59

259 [Political Declaration](#) (19 October 2019), para 60

260 [Political Declaration](#) (19 October 2019), para 60

261 [Political Declaration](#) (19 October 2019), para 61

262 [Political Declaration](#) (19 October 2019), paras 62–63

263 European Union Committee, [Brexit: road, rail and maritime transport](#) (39th Report, Session 2017–19, HL Paper 355)

intended to include the fully liberalised market access currently enjoyed by UK and EU operators.

265. **We also note the high-level commitments to cooperation in the road, rail and maritime sectors. More detail is needed, particularly with respect to road transport, where the Government needs to explain whether the reference to “comparable market access” achieves its aim of “reciprocal access”; whether, in the absence of any reference to reciprocal cabotage rights, new permitting and licencing requirements will be required for transport operators and professional drivers; and whether any “complementary arrangements” in relation to travel by private motorists will negate the need for UK motorists to carry International Driving Permits and insurance Green Cards when travelling in the EU.**

Energy

266. In our 2017 report on *Brexit: energy security* we urged the Government to seek continuing participation of the EU’s Internal Energy Market.²⁶⁴ The (unaltered) commitment in the Declaration falls short of this, but does call for cooperation to support the delivery of “cost efficient, clean and secure supplies of electricity and gas, based on competitive markets and non-discriminatory access to networks”. It also calls for a technical cooperation framework between electricity and gas networks operators and organisations in the planning and use of energy infrastructure connecting their systems. This should include mechanisms to ensure as far as possible security of supply and efficient trade over interconnectors.²⁶⁵
267. The Declaration advocates a wide-ranging Nuclear Cooperation Agreement between EURATOM and the UK, to enable cooperation between them, including exchange of information, trade in nuclear materials and equipment, and the participation of the UK as a third country in EU systems for monitoring and exchanging information on levels of radioactivity in the environment. The UK’s intention to be associated with EURATOM research and training programmes (which include the ITER nuclear fusion research programme) is noted. The Declaration indicates that the EURATOM Supply Agency intends to reassess the authorisations and approvals for contracts for the supply of nuclear material between the EU and UK, and that there will be cooperation through the exchange of information on the supply of medical radioisotopes.²⁶⁶
268. The Secretary of State stressed the importance of security of energy supply, and therefore of the maintenance and development of UK-EU interconnectors. He argued that energy cooperation was of mutual benefit, in meeting climate change targets and in reducing costs.²⁶⁷
269. **We regret that the Declaration does not hold out the possibility of continued UK participation in the Internal Energy Market, but at the same time we welcome the high-level commitment to cooperation in the supply of electricity and gas to ensure as far as possible security of supply and trade over interconnectors.**

264 European Union Committee, *Brexit: energy security* (10th Report, Session 2017–19, HL Paper 63), para 67

265 *Political Declaration* (19 October 2019), paras 64–65

266 *Political Declaration* (19 October 2019), paras 66–68

267 Oral evidence taken on 21 October 2019 (Session 2019), [Q 15](#) (Rt Hon Stephen Barclay MP).

270. **We welcome the commitment to a wide-ranging Nuclear Cooperation Agreement, including exchange of information, trade in nuclear materials and equipment, monitoring of levels of radioactivity, and exchange of information on medical radioisotopes. While the reference to the UK's intention to be associated with the EURATOM research and training programmes is a positive step, we call on the Government to provide further clarification of its plans in this regard.**

Fishing opportunities

271. The text of the Declaration on fishing is unaltered. It notes that the UK will be an independent coastal state, while stating that the parties should cooperate bilaterally and internationally to ensure sustainable fishing and a healthy marine environment. While preserving regulatory autonomy, the parties should cooperate on conservation, management and regulation of fisheries in a non-discriminatory manner. The key provision is paragraph 73, which, in the context of the overall economic partnership, calls for a new fisheries agreement, covering access to waters and quota shares. The parties will endeavour to conclude and ratify this agreement by 1 July 2020, in time for it to be used for determining fishing opportunities for the first year after the transition period.²⁶⁸
272. A Declaration by the EU 27, attached to the Minutes of the 25 November 2018 European Council (Art. 50) meeting, states that the European Council will be particularly vigilant to protect fisheries enterprises and coastal communities when considering the future relationship: “A fisheries agreement is a matter of priority, and should build on, inter alia, existing reciprocal access and quota shares.”²⁶⁹ It appears therefore that the EU may insist on a fisheries agreement, providing access to the UK's waters, as a precondition for concluding a free trade agreement.
273. In our 2016 report on *Brexit: fisheries* we concluded that geographical proximity, the mobility of fish stocks, international law and the risk of over-exploitation, all necessitated cooperation with the EU and other neighbouring states in fisheries management. We also warned:

“There is a likelihood that the Government may come under pressure to balance the negotiations over a future fisheries relationship, including quota shares and access arrangements, against the negotiations over trade in fish products with the EU.”²⁷⁰

That warning has been borne out by subsequent events.

274. **The Political Declaration confirms that the UK will leave the Common Fisheries Policy and become an independent coastal state. Yet, as we warned in December 2016, the EU has also made clear that finalising a future fisheries agreement is a precondition for agreement of the overall economic partnership. While we reiterate our view that cooperation with the EU and other neighbouring states in fisheries management will be critical in the years to come, difficult negotiations lie ahead. We note also that the aspiration of both sides**

268 [Political Declaration](#) (19 October 2019), paras 71–74

269 European Council, Special Meeting of the European Council (25 November 2018): <https://www.consilium.europa.eu/media/37102/xt20017-en18.pdf> [accessed 28 November 2019]

270 European Union Committee, *Brexit: fisheries* (8th Report, 2016–17, HL Paper 78), paras 96 and 170

to conclude a fisheries agreement before 1 July 2020, in time to determine fishing opportunities for 2021, is now highly ambitious.

Global cooperation

275. The Declaration is unchanged in relation to global cooperation, where it stresses the importance of cooperation between the parties in international fora, “where it is in their mutual interest”. The specific areas identified are: climate change; sustainable development; cross-border pollution; public health and consumer protection; financial stability; and the fight against trade protectionism.²⁷¹
276. Paragraph 76 of the Declaration gives more specific detail on climate change, restating both parties’ commitment to international agreements, including those implementing the UN Framework Conventions on Climate Change, such as the Paris Agreement. A key tool in reducing carbon emissions is emissions trading, and paragraph 76 should thus be read alongside paragraph 70 (in the section on energy). This indicates that the parties will consider cooperation on carbon pricing by linking a UK national greenhouse gas emissions trading system with the EU Emissions Trading System.
277. **We welcome the commitment to future UK-EU cooperation to address issues of shared economic, environmental and social interest. We particularly welcome the continued shared commitment to international agreements on climate change, where the UK has been a global leader, and where continuing cooperation with the EU will help to offset any potential loss of influence as a result of Brexit.**

Level playing field for open and fair competition

278. Paragraph 77 of the Declaration, on the level playing field for open and fair competition, includes some of the most significant changes to the 2018 text of the Declaration.²⁷² Some text is retained:²⁷³ the core references to the need to ensure open and fair competition remain; the key areas cited remain state aid, competition, social and employment standards, environment, climate change and relevant tax matters; and the text continues to stress the role of EU and international standards, and appropriate mechanisms for implementation, enforcement and dispute settlement.
279. The remainder of the text, however, has been substantially rewritten, and new text added. The Declaration now refers to the geographic proximity and economic independence of the parties. It states that “the precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties”, with the aim of preventing distortions of trade and unfair competitive advantages. It calls on common high standards applicable at the end of the transition period to be retained, and continues:

“The Parties should ... maintain a robust and comprehensive framework for competition and state aid control that prevents undue distortion of trade and competition; commit to the principles of good governance in the area of taxation and to the curbing of harmful tax practices;

271 [Political Declaration](#) (19 October 2019), para 75

272 [Political Declaration](#) (19 October 2019), para 77

273 [Political Declaration](#) (26 November 2018), para 79

and maintain environmental, social and employment standards at the current high levels provided by the existing common standards.”

The revised text also stresses the importance of adherence to and implementation of internationally agreed principles and rules in these areas, including the Paris Agreement.

280. Some of the additional text has been transferred, in modified form, from the November 2018 Withdrawal Agreement. This stated that, in order to ensure the “proper functioning” of the “single customs territory” and “the maintenance of [a] level playing field”²⁷⁴ within it, the UK would also undertake to implement EU standards on taxation (including a number of EU Directives that support the “principles of good governance in the area of taxation”),²⁷⁵ and not to fall below whatever EU standards apply at the end of the transition period in respect of environmental protection,²⁷⁶ labour and social standards.²⁷⁷ These “non-regression”²⁷⁸ provisions (in common with all references to the single customs territory) have been deleted from the Withdrawal Agreement, and the corresponding statement in the November 2018 Declaration that the future relationship should build “on the level playing field measures provided for in the Withdrawal Agreement” has also been deleted.
281. The Secretary of State told us that these changes were “100%” about stressing the UK’s sovereignty, rather than an indication of whether standards would necessarily go up or down: “The whole point is that the UK ... will have control over it as a sovereign country.” He said that it was “quite normal to have level playing field commitments within free trade deals”, but stressed that “those standards should be set by a UK sovereign Parliament and should focus on what are the best outcomes rather than simply marching in step with what the EU does in some sort of dynamic alignment ... The point is: we can be more bespoke but that is not about a race to the bottom.”²⁷⁹
282. The Secretary of State said that the key change in the new text was the “commitment to high international standards”. He argued that the Government had demonstrated such commitment through its support for strengthened environmental standards and parental rights, which, in the latter case, were already higher than in many other EU countries:

“But those need to be part of a reflection of the level of access that comes in a future trade deal. There is always a trade-off between market access and regulatory commitments. The key issue in paragraph 77 is the word ‘commensurate’. It says that the commitments that are given will be ‘commensurate with the scope and depth of the future relationship’. It makes a commitment to uphold common high standards and includes a

274 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 6

275 See [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 1 of Annex 4.

276 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 2 of Annex 4

277 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 4 of Annex 4

278 For example, [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 2 of Annex 4, states “With the aim of ensuring the proper functioning of the “single customs territory”, the Union and the United Kingdom shall ensure that the level of environmental protection provided by law ... is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the Transition period”.

279 Oral evidence taken on 21 October 2019 (Session 2019), [Q 13–15](#) (Rt Hon Stephen Barclay MP)

specific reference to the Paris agreement. That is reflective ... of wider government policy on things such as the environment, but it should be commensurate with the level of access to the EU market ... the level of access is linked to the level of commitment.”²⁸⁰

283. Mr Barclay denied that the shift of text on the level playing field from the Withdrawal Agreement to the Political Declaration was a lowering of ambition: “It is a fact that the Political Declaration reflects the future arrangements and that is where the Government feel that these arrangements should be discussed and set out.”²⁸¹
284. The Conservative Party Manifesto included a commitment to “legislate to ensure high standards of workers’ rights, environmental protection and consumer rights”.²⁸² Furthermore, during the general election campaign, the Prime Minister stated that the UK would introduce a new State aid regime on 1 January 2021, based on the World Trade Organization commitments on restricting harmful subsidies.²⁸³ We await further details.
285. **The EU (and many of its Member States) have expressed concern that the UK may seek to undercut EU standards and competitiveness. These concerns were reflected in the November 2018 text of the Withdrawal Agreement, but are now reflected in the (non-binding) Political Declaration. The amended text, the Government argues, maintains the UK’s commitment to high international standards while protecting the UK’s sovereign right to pursue a bespoke approach.**
286. **Early case studies in the practical implications of these level playing field provisions will be found in the UK’s post-Brexit approach to workers’ rights, environmental protection, consumers’ rights, and State aid. We await proposals from the Government, as well as the EU’s response. Statements by EU leaders suggest that clear level playing field commitments will be a pre-condition for the EU to conclude a free trade agreement with the UK.**
287. **We note also that the elements that make up the ‘level playing field’ are split between reserved and devolved competence. There will, as a result, be an overlap between any future UK-EU level playing field and the internal UK level playing field. The early adoption of UK-wide common frameworks, agreed by central and devolved administrations, will be an important early indicator of the UK’s capacity to come to an agreement with the EU in these areas.**

Negotiating the economic partnership during the transition period

288. As we noted in Chapter 3, the two sides will have just 11 months, from exit day on 31 January 2020, to the end of the transition period, in which to negotiate, conclude and ratify the future economic partnership.

280 Oral evidence taken on 21 October 2019 (Session 2019), [Q 13](#) (Rt Hon Stephen Barclay MP)

281 Oral evidence taken on 21 October 2019 (Session 2019), [Q 13–15](#) (Rt Hon Stephen Barclay MP)

282 Conservative Party, *Conservative and Unionist Party Manifesto 2019*, p.23: https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf [accessed 19 December 2019]

283 ‘Boris Johnson backs looser state aid rules after Brexit’, *Financial Times*, (29 November 2019): <https://www.ft.com/content/e46f977e-12b5-11ea-a7e6-62bf4f9e548a> [accessed 6 January 2020]

289. The Secretary of State was confident that the terms of the economic partnership could be agreed before the end of 2020, because “we start from a position of alignment”. He argued that in a free trade agreement, much preliminary work and time was spent in understanding each other’s economies and positions, which would not be necessary in this case. He also said that the logistics were simpler because of geographical proximity, which meant that negotiations could progress quickly rather than in six-week cycles. He also noted that there was “a shared will; there is a legal commitment in the Withdrawal Agreement to work at pace”.²⁸⁴
290. **The former Prime Minister, Rt Hon Theresa May MP, in her Florence speech on 22 September 2017, argued that the length of any transition or implementation period should “be determined simply by how long it will take to prepare and implement the new processes and new systems that will underpin [the] future partnership”. She concluded that the challenges of this task “point to an implementation period of around two years”. The end date for the transition period was accordingly set (in late 2018) as 31 December 2020.**
291. **Despite the repeated delays in the Brexit process, that deadline has not changed. The time available to negotiate the terms of the future economic relationship has thus been reduced from over two years to under one year—yet the task ahead is no less complex. Other deadlines, including the need to adopt a financial services equivalence framework and conclude a fisheries agreement, fall even earlier, on 1 July 2020.**
292. **The current Government has made clear that it will not request an extension to the transition period. Yet the Political Declaration contains, for the most part, only an overview of the terms of the economic relationship, and while the two sides start from a position of alignment, the prospect of future divergence could make reaching agreement more difficult, technically and politically, than the Government allows. If agreement is to be reached by the end of 2020, both sides will have to commit from the outset to intense, continuous negotiation. But success cannot be guaranteed, and it would in our view be prudent for the Government to keep open the option of seeking an extension to the transition period, should more time be required to conclude an agreement in the best interests of both sides.**

Part III: security partnership

293. Part III of the Declaration, on the security partnership, is for the most part unchanged from the November 2018 iteration, save for the few amendments that are highlighted below. The Declaration envisages a “broad, comprehensive and balanced security partnership” that comprises law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence, as well as thematic cooperation in areas of common interest.²⁸⁵

Law enforcement and judicial cooperation in criminal matters

294. Without setting out the precise depth and breadth of future arrangements between the UK and the EU in these areas, paragraph 80 states that the aim is

²⁸⁴ Oral evidence taken on 21 October 2019 (Session 2019), [Q 14](#) (Rt Hon Stephen Barclay MP)

²⁸⁵ [Political Declaration](#) (19 October 2019), para 78

for a comprehensive, close and reciprocal relationship, while acknowledging “the fact that the United Kingdom will be a non-Schengen third country that does not provide for the free movement of persons”. Paragraph 81 adds that “the closer and deeper the partnership the stronger the accompanying obligations”. Any partnership should therefore reflect “the commitments the United Kingdom is willing to make that respect the integrity of the Union’s legal order”, including with regard to alignment of rules and the mechanisms for settling disputes and enforcement. A reference in the previous text to the role of the CJEU in the interpretation of EU law has been replaced with a simple forward reference to the relevant subsequent paragraphs of the Political Declaration.²⁸⁶

Data exchange

295. The parties commit to establishing reciprocal arrangements for the exchange of Passenger Name Record (PNR) data, and of DNA, fingerprints and vehicle registration data through the Prüm system. Both systems are highly valued by UK law enforcement, as witnesses to our 2016 inquiry into *Brexit: future UK-EU security and police cooperation* testified.²⁸⁷ There are also less specific commitments to consider other arrangements for data exchange which could “approximate” EU mechanisms, but there is no mention of either the SIS (Schengen Information System) II, or the European Criminal Records Information System (ECRIS), which witnesses identified as “top priorities for the UK”,²⁸⁸ but to which no non-EU (or, in the case of SIS II, no non-EU and/or non-Schengen) country currently has access.²⁸⁹

*Operational cooperation between law enforcement authorities and judicial cooperation in criminal matters*²⁹⁰

296. Paragraph 86 of the Declaration states that the parties will work together to identify terms for the UK’s operational cooperation via Europol and Eurojust.
297. Paragraph 87, on extradition, makes no mention of the European Arrest Warrant. Instead it suggests that “effective arrangements” on extradition will be established. It would also allow the parties “to determine the applicability of these [extradition] arrangements to own nationals and for political offences”. The reference to “own nationals” builds on Article 185 of the Withdrawal Agreement, which will allow any Member State that has “raised reasons related to fundamental principles of national law” to refuse during the transition period to surrender its own nationals to the UK in response to a European Arrest Warrant. This provision will, for instance, allow Germany, which has a constitutional bar on extraditing its own nationals to non-EU countries, to decline to surrender them to the UK after 31 January 2020.
298. Paragraph 88 expresses an intention to continue joint investigation teams (JITs) that “approximate those enabled by relevant Union mechanisms”.

286 See [Political Declaration](#) (19 October 2019), para 131.

287 See European Union Committee, *Brexit: future UK-EU security and police cooperation* (7th Report, Session 2016–17, HL Paper 77), Chapter 3

288 See European Union Committee, *Brexit: future UK-EU security and police cooperation* (7th Report, Session 2016–17, HL Paper 77), para 122

289 [Political Declaration](#) (19 October 2019), paras 83–85

290 [Political Declaration](#) (19 October 2019), paras 86–88

Anti-money laundering and counter-terrorism financing

299. The parties envisage continued cooperation through international bodies, including the Financial Action Task Force, to fight money laundering and terrorist financing.²⁹¹

Classified and sensitive non-classified information

300. Also relevant to the security sphere is paragraph 116 of the Declaration, in which the parties agree to conclude a Security of Information Agreement, along with Implementing Arrangements, for the handling and protection of classified information.

Conclusions

301. **We welcome the ambition by both sides to strike a “broad, comprehensive and balanced security partnership”, but note that the depth of this partnership will depend on “an appropriate balance between rights and obligations”, and on the UK’s willingness to continue to follow EU rules and to accept that the CJEU, as the sole interpreter of EU law, will have continuing influence over the application of those rules.**
302. **In some areas the UK will necessarily cease to be part of the EU’s law enforcement and security ecosystem. This is most evident in the case of databases and data exchange. While we welcome the commitment to establishing arrangements for the exchange of Passenger Name Record and Prüm data, we regret the lack of any reference to UK access to the Schengen Information System II (SIS II) and the European Criminal Records Information System (ECRIS) database.**
303. **It is unclear whether UK cooperation with Europol and Eurojust will go beyond existing third-country-arrangements. Both agencies are vital tools for UK law enforcement.**
304. **We note that the UK will cease to be party to the European Arrest Warrant, but welcome the commitment to establishing “effective arrangements based on streamlined procedures” on extradition. We urge the Government to bring forward detailed proposals as soon as possible, ahead of formal negotiations.**

Foreign policy, security and defence

305. Paragraph 90 of the Declaration commits both parties to “support ambitious, close and lasting cooperation on external action”. This open-ended commitment reflects the close alignment between the UK’s and the EU’s strategic interests, and their determination to “champion a rules-based international order and [to] project their common values worldwide”. At the same time, paragraph 92 acknowledges “their respective strategic and security interests”—collaboration will only occur “when and where these interests are shared”.²⁹²

291 [Political Declaration](#) (19 October 2019), para 89

292 [Political Declaration](#) (19 October 2019), paras 92–95

Consultation and cooperation

306. Paragraph 95 states that a Political Dialogue on Common Foreign Security Policy (CFSP) and Common Security and Defence Policy (CSDP) will enable “flexible consultation between the Parties at different levels”. It is not clear whether this goes beyond existing third-country arrangements.
307. Paragraph 95 also states that the “High Representative may, where appropriate, invite the United Kingdom to informal Ministerial meetings of the Member States of the Union”. This provides a channel through which the UK may informally discuss matters of foreign policy, security, and defence with the Member States, when the EU judges that this is appropriate.

Sanctions

308. In 2017 we concluded that it was “particularly important that the UK should remain able to align itself with EU sanctions post-Brexit”.²⁹³ The Declaration falls some way short of this, stating that, while the parties will pursue “independent sanctions policies driven by their respective foreign policies”, they recognise that sanctions are a “multilateral foreign policy tool”, and that there are benefits in “close consultation and cooperation”.²⁹⁴ Paragraph 98 refers to “the possibility of adopting sanctions that are mutually reinforcing”.

Operations and missions

309. The Declaration proposes a Framework Participation Agreement that would enable the UK to participate “on a case by case basis in CSDP missions and operations”.²⁹⁵ Similar arrangements already exist for third-countries, and we warned in our report on *Brexit: Common Security and Defence Policy missions and operations* that such a model would allow limited influence.²⁹⁶ A key difference is that the Declaration envisages the UK participating in the Force Generation conference that plans the mission, a status otherwise reserved for EU Member States. This could give the UK more influence over the planning and design of the mission, and also suggests that the greater the UK contribution to a future EU operation, the closer the consultations would be.
310. The following caveat has been added to the text at paragraph 99:

“Such an agreement would be without prejudice to the decision-making autonomy of the Union or the sovereignty of the United Kingdom, and the United Kingdom will maintain the right to determine how it would respond to any invitation or option to participate in operations or missions.”

The Secretary of State explained that this text had been added to make clear that such defence cooperation was not binding on the UK, and that Parliament would be able to express its view as the future relationship negotiations were taken forward.²⁹⁷

293 European Union Committee, *The legality of EU sanctions* (11th Report, Session 2016–17, HL Paper 102), para 116

294 *Political Declaration* (19 October 2019), para 97

295 *Political Declaration* (19 October 2019), paras 99–101

296 European Union Committee, *Brexit: Common Security and Defence Policy missions and operations* (16th Report, Session 2017–19, HL Paper 132), paras 173–174

297 Oral evidence taken on 21 October 2019 (Session 2019), [Q 14](#) (Rt Hon Stephen Barclay MP).

Defence capabilities development

311. The Declaration foresees a future Administrative Agreement to enable the UK to collaborate in projects of the European Defence Agency (as is already the case for third countries such as Norway and Ukraine), the European Defence Fund (EDF), as well as projects in the framework of Permanent Structured Cooperation (PESCO), upon invitation from the Council of the European Union. This would permit UK defence companies to participate in future projects supported by the EDF.²⁹⁸

Intelligence exchanges

312. The parties agree to exchange intelligence on a “voluntary basis as appropriate”, especially in the areas of counter-terrorism, hybrid threats, cyber-threats and space-based imagery, and to support those CSDP missions to which the UK is contributing. No formal mechanism for such exchanges is described.²⁹⁹

Space

313. Paragraph 105 of the Declaration is a one-line reference to consideration of “appropriate arrangements for cooperation on space”. There is no mention of the Galileo programme, let alone support for continuing UK participation. On 30 November 2018 the Government confirmed that the UK would withdraw from military aspects of Galileo, instead seeking to build its own global satellite navigation system.³⁰⁰

Development cooperation

314. Paragraph 106 proposes a dialogue to develop “mutually reinforcing” strategies in the programming and delivery of development. Paragraph 107 suggests that the UK could contribute to EU development instruments and mechanisms, including coordination with EU delegations in third countries. No further clarity is provided.

Conclusions

315. **We welcome the commitment to continued cooperation in the areas of foreign policy and defence. While we note that this includes the possibility of UK contributions to EU development programmes, we regret the lack of specific detail about how such cooperation will work in practice.**
316. **We also endorse the commitment to UK-EU political and industrial collaboration in the area of defence, through UK collaboration with the European Defence Agency and projects in the PESCO framework, and the possibility of UK defence companies participating in projects by the European Defence Fund.**
317. **The EU’s readiness to engage in sectoral dialogue with the UK, and to invite the UK to informal EU Ministerial meetings on an ad-hoc basis, reflects the crucial contribution by the UK to the EU’s foreign policy. Taken together with the possibility of the UK participating in the planning of CSDP missions to which it contributes, the**

298 [Political Declaration](#) (19 October 2019), para 102

299 [Political Declaration](#) (19 October 2019), paras 103–104

300 ‘Britain quits military side of Galileo satellite system’, *Financial Times* (30 November 2018): <https://www.ft.com/content/da53b36e-f4ad-11e8-ae55-df4bf40f9d0d> [accessed 4 December 2019]

Declaration allows greater UK engagement with and influence over EU foreign policy than is currently afforded to any third country. We also note that the UK retains full sovereignty in determining how to respond to any invitation or option to participate in operations and missions.

318. **The Political Declaration is vague in respect of space. Set alongside the confirmation that the UK will no longer have access to Galileo, this underlines that there will be serious consequences for UK companies operating in the sector and for their ability to tender for contracts.**

Thematic cooperation

319. On cyber-security, the parties foresee close UK cooperation with the EU's Computer Emergency Response Team (CERT-EU), as well as participation in the European Union Agency for Network and Information Security (ENISA) and in "certain activities" of the NIS Cooperation Group. There is a broad commitment to "promote security and stability in cyberspace" through increased cooperation in international bodies, and an agreement to exchange data on a voluntary basis that can protect both parties from common threats.³⁰¹
320. The Declaration provides for UK participation as a "participating state" in the EU's Civil Protection Mechanism. The CPM already provides for third-country participation, and includes Norway, Iceland, and Turkey as well as other EU candidate countries.³⁰²
321. Paragraph 113 envisages cooperation on health security "in line with existing Union arrangements with third countries" and via international fora.
322. Paragraph 114 sets out both parties' commitment to cooperate in tackling illegal migration, through operational cooperation with Europol, working with the European Border and Coastguard Agency, and "dialogue on shared objectives and cooperation", with a particular view to tackling illegal migration upstream.
323. There is no mention in the Political Declaration of future UK-EU cooperation on asylum, or of the Eurodac database, which records fingerprints of those seeking asylum. The previous Government had in July 2018 expressed its wish to join Eurodac,³⁰³ in which Norway, Iceland, and Switzerland participate. Our October 2019 report on *Brexit: refugee protection and asylum policy* expressed concern over this omission from the Political Declaration, and more broadly over the impact of UK withdrawal from the Dublin system and the Eurodac database—in particular on the reunification of separated refugee families in Europe.³⁰⁴
324. Both parties agree to cooperate on "counter-terrorism, countering violent extremism and emerging threats".³⁰⁵ They also agree to conclude a Security

301 [Political Declaration](#) (19 October 2019), paras 108–111

302 [Political Declaration](#) (19 October 2019), para 112

303 HM Government, *The future relationship between the United Kingdom and European Union*, Cm 9593, July 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf [accessed 28 November 2019]

304 European Union Committee, *Brexit: refugee protection and asylum policy* (48th Report, Session 2017–19, HL Paper 428)

305 [Political Declaration](#) (19 October 2019), para 115

of Information Agreement providing for the handling and protection of classified information.³⁰⁶

325. **The UK and the EU’s wish to continue cooperation and dialogue on cyber-security, civil protection, illegal migration, and counter-terrorism, reflects shared concerns, priorities, and threats. While commitments are vague, and the mechanisms for future collaboration are not always described, the Political Declaration shows willingness to continue to exchange information and cooperate in international fora. This is to be welcomed. However, we regret the conspicuous lack of reference to future UK-EU asylum cooperation, and we are concerned more broadly at the impact of UK withdrawal from the Dublin system.**

Negotiating the security partnership during the transition period

326. The Secretary of State said that he was “mindful” of concerns about the lack of time to negotiate the security partnership by the end of the transition period in 2020. He was, however, confident that it was possible to do so, given the commitment of both sides to use their best endeavours to reach agreement: “If one takes the security co-operation areas, on the European Arrest Warrant the UK surrenders eight times more people than is the case from the EU to the UK. The message I get in European capitals is an extremely strong desire from the EU to have close security relationships.”³⁰⁷
327. **The target of negotiating the full terms of a new security partnership dealing with Justice and Home Affairs cooperation by the end of the transition period in December 2020 is extremely challenging, given the legal and technical obstacles to third country participation in many of the relevant EU mechanisms.**

Part IV: institutional and other horizontal arrangements

328. Significant textual alterations have been made to Part IV of the Declaration, on institutional and other horizontal arrangements. The Declaration states that the future relationship should be based on an “overarching institutional framework covering chapters and linked agreements relating to specific areas of cooperation”. At the same time, it recognises that the precise legal form of the future relationship will be determined as part of the formal negotiations, and that there may be “specific governance arrangements”, particularly in respect of agreements that sit outside the overarching institutional framework.³⁰⁸
329. In our report on *UK-EU relations after Brexit* we noted the European Parliament’s support for an Association Agreement, observing that such agreements are “by their nature dynamic and evolutionary”, and suggesting that a UK commitment to such a partnership could bring about a positive change in the tone of the negotiations.³⁰⁹ One of the benefits of an Association Agreement would be that it would be subject to a single ratification process on the EU side; it could also be applied provisionally pending ratification. Paragraph 120 of the Political Declaration, unchanged from the November

306 [Political Declaration](#) (19 October 2019), paras 116–117

307 Oral evidence taken on 21 October 2019 (Session 2019), [QQ 14–17](#) (Rt Hon Stephen Barclay MP)

308 [Political Declaration](#) (19 October 2019), para 118

309 See European Union Committee, [UK-EU relations after Brexit](#) (17th Report, Session 2017–19, HL Paper 149), para 105.

2018 text, notes that the overarching institutional framework could take the form of an Association Agreement.

330. On governance, the previous commitment to dialogue “at summit, ministerial, technical and parliamentary level” has been made less specific, referring only to dialogue “at appropriate levels”, to provide strategic direction and discuss opportunities for cooperation in areas of mutual interest. Similarly, while the commitment to specific thematic dialogues is retained, the revised Declaration states only that this should take place “at appropriate level”, rather than “at ministerial and senior official level”. This should take place as often as is necessary for the effective operation of the future relationship.³¹⁰
331. The Secretary of State explained that these changes were designed to make clear that the proposed models and structures for dialogue as set out in the original Political Declaration were not binding on the UK, and that there was room for flexibility, taking into account the views of Parliament: “What role Parliament and both Houses have in the future negotiating mandate will also shape that.”³¹¹
332. According to paragraph 125, the UK and the EU “support the establishment of a dialogue between the European Parliament and the UK Parliament, where they see fit ... to share views and expertise on issues related to the future relationship”.
333. Paragraphs 126–127 state that a Joint Committee will be established, with responsibility for managing and supervising the implementation and operation of the future relationship, and to facilitate the resolution of disputes. It should comprise the parties’ representatives at an appropriate level, establish its own rules of procedure, reach decisions by mutual consent, and meet as often as required. It could also establish sub-committees.
334. The section on dispute settlement (paragraphs 129–132) has been significantly altered. The statement that “arrangements for dispute settlement and enforcement will be based on those in the Withdrawal Agreement”³¹² has been replaced with the following:

“The Agreement should include appropriate arrangements for dispute settlement and enforcement, including provisions for expedient problem-solving such as, in certain areas, a flexible mediation mechanism. Such a mediation mechanism would be without prejudice to the Parties’ rights and obligations or to dispute settlement provided for under the Agreement.”³¹³
335. The syntax has also been altered to make clear that the Joint Committee is a forum for discussion and consultation, as well as for formal resolution. As with the previous iteration, the revised Declaration states that the Joint Committee may refer a dispute to an independent arbitration panel, and either party may do so where the Joint Committee has not arrived at a mutually satisfactory solution within a defined period of time. The decisions of the arbitration panel will be binding.³¹⁴

310 [Political Declaration](#) (19 October 2019), paras 122–124. Compare [Political Declaration](#) (26 November 2018), paras 124–127.

311 Oral evidence taken on 21 October 2019 (Session 2019), [QQ 14](#) (Rt Hon Stephen Barclay MP)

312 [Political Declaration](#) (26 November 2018), para 132

313 [Political Declaration](#) (19 October 2019), para 129

314 [Political Declaration](#) (19 October 2019), paras 129–130

336. Should a dispute raise “a question of interpretation of provisions or concepts of Union law, the arbitration panel will refer the question of EU law to the CJEU for a binding ruling, with the added caveat that “there should be no reference to the CJEU where a dispute does not raise such a question”.³¹⁵
337. The November 2018 text stated that the arbitration panel should decide the dispute in accordance with the CJEU ruling, and that a Party considering that the arbitration panel should have referred a question of interpretation of Union law to the CJEU could ask the panel to review and provide reasons for its assessment.³¹⁶ This text has been deleted.
338. The wording on remedial measures for non-compliance has been simplified and made less specific in the latest text, and new paragraph 132 states merely that “the future relationship will set out the conditions under which temporary remedies in case of non compliance can be taken”, including the suspension of obligations arising from parts of any agreement between the EU and the UK.³¹⁷
339. The Secretary of State told us that these changes were a direct result of the UK providing clarity that it was seeking a “best-in-class free trade agreement ... That has enabled the text of the Political Declaration to be more precise in areas such as dispute resolution mechanisms, compared to what it was before.”³¹⁸
340. Paragraphs 133–134 outline certain exceptions and safeguards, confirming that national security (which is not an EU competence) remains the sole responsibility of the Member States and the UK. Either party may activate temporary safeguard measures if faced with significant economic, societal or environmental difficulties. The other party should have the right to take rebalancing measures, and the proportionality of measures taken would be subject to independent arbitration.
341. **We welcome the proposed overarching institutional framework, and, while we note that the precise legal form of the future relationship remains to be determined, we welcome the suggestion that it could take the form of an Association Agreement. Association Agreements are by their nature dynamic and evolutionary, and such a model fits well with the commitment by both sides to keep the future relationship under review.**
342. **Much of the detail of how the future UK-EU dialogue will function in practice, including the Joint Committee’s rules of procedure, the frequency of its meetings, its membership, and the appointment of specialist sub-committees, remains to be determined. We addressed these issues in detail in our March 2019 report *Beyond Brexit: how to win friends and influence people*. We again emphasise that the work of the Joint Committee on the future relationship, and the process by which it is established, will require close parliamentary scrutiny and accountability at both UK and EU level.**

315 [Political Declaration](#) (19 October 2019), para 131

316 [Political Declaration](#) (26 November 2018), para 134

317 [Political Declaration](#) (17 October 2019), para 132. Compare [Political Declaration](#) (26 November 2018), para 135.

318 Oral evidence taken on 21 October 2019 (Session 2019), [QQ 14](#) (Rt Hon Stephen Barclay MP)

343. **In that context, we particularly welcome the recognition of the importance of interparliamentary cooperation, and the proposed establishment of a specific dialogue between the European Parliament and the UK Parliament. We stand ready to work with House of Commons and European Parliament colleagues in establishing this dialogue as swiftly as possible.**
344. **As we set out in Chapter 2, the proposed arbitration model for the future relationship means that the CJEU would have a limited, but continuing, role in relation to questions of EU law arising in disputes with the UK, even after its obligations under the Withdrawal Agreement fell away. These provisions, like those on dispute settlement and on the Joint Committee, illustrate how the structure for interinstitutional dialogue in the Political Declaration echoes that established under the Withdrawal Agreement. This underlines the close relationship between the two parts of the Brexit agreement.**

Part V: forward process

345. Part V of the Declaration sets out the “clear intent of both Parties to develop in good faith agreements giving effect to this relationship and to begin the formal process of negotiations as soon as possible” after UK withdrawal, so that they can come into force by the end of 2020.³¹⁹
346. Both parties also affirm their commitment to the peace process in Northern Ireland, and the protection of the Belfast/Good Friday Agreement in all its parts, including “the practical application of the 1998 Agreement on the island of Ireland and to the totality of the relationships set out in the 1998 Agreement.”³²⁰
347. The text of the remainder of Part V has been reworked, reflecting developments since November 2018. It states that after the EU has taken the steps necessary to begin formal negotiations under Article 218 TFEU, the parties will “negotiate in parallel the agreements needed to give the future relationship legal form”. Immediately following UK withdrawal, a programme will be agreed, covering the structure, format and schedule of negotiation rounds: “This programme will be designed to deliver the Parties’ shared intention to conclude agreements giving effect to the future relationship by the end of 2020.” Text has been added, to the effect that the Commission “is ready to propose applying on a provisional basis relevant aspects of the future relationship, in line with the applicable legal frameworks and existing practice”.³²¹
348. New paragraph 140 states that the parties will expeditiously identify those areas that are likely to require the greatest consideration and the associated legal and technical issues that will need to be addressed; draw up a full schedule for the negotiations; and consider the logistical requirements of the formal negotiations.
349. The November 2018 text referred to a high-level conference, to be convened at least every six months to take stock of progress and agree, as far as possible, further action.³²² This reference has been made less specific, merely stating

319 [Political Declaration](#) (19 October 2019), para 135

320 [Political Declaration](#) (19 October 2019), para 136

321 [Political Declaration](#) (19 October 2019), paras 137–139

322 [Political Declaration](#) (26 November 2018), para 147

that “the Parties will convene to take stock of progress with the aim of agreeing actions to move forward in negotiations on the future relationship. In particular, the Parties will convene at a high level in June 2020 for this purpose.”³²³

350. Finally, the Political Declaration makes no reference to any arrangements that either side may make for parliamentary oversight of the negotiations. On the EU side, the negotiations are likely to take place under Article 217 or 218 TFEU, and will be subject to detailed scrutiny by the European Parliament, probably led by the International Trade (INTA) Committee. On the UK side, the original text of the European Union (Withdrawal Agreement) Bill, published in October 2019, included a detailed clause (clause 31) on parliamentary oversight of the negotiations on the future relationship. This required a Minister to lay a statement before Parliament setting out the Government’s objectives for the future relationship, and prohibited the Government from commencing negotiations until that statement had been approved by the House of Commons and debated by the House of Lords. It also provided for regular reports to Parliament thereafter, and required a vote by the House of Commons to approve the treaty prior to its ratification. This clause was entirely dropped from the Bill prior to its reintroduction at the start of the present session of Parliament.
351. **The Political Declaration confirms that formal negotiations on the future UK-EU relationship will begin only after UK withdrawal on 31 January 2020. The Political Declaration is thus in many places little more than an agenda for a discussion that has barely begun. But despite its lack of detail and precision, the Declaration is an important signpost to the shape of the future relationship, and to the structure and scope of the forthcoming negotiations.**
352. **While much of the text of Political Declaration is unaltered from the November 2018 iteration, significant changes have been made, reflecting the evolution of the UK Government’s negotiating position.**
353. **We welcome the commitment of both sides to engage in preparatory organisational work ahead of the commencement of formal negotiations. We also note their commitment to develop agreements in good faith, so that the future relationship can come into force by the end of 2020. Nevertheless, given the range and complexity of the issues to be discussed, which the former Prime Minister judged would require a transition period of around two years, this timetable is extremely challenging.**
354. **We endorse the recognition in paragraph 136 of the Declaration, in the context of the future relationship, of the need to safeguard the peace process in Northern Ireland, and to protect the Belfast/Good Friday Agreement in all its parts.**
355. **The negotiations on the future relationship should be subject to full parliamentary scrutiny. At EU level the negotiations are likely to take place under Article 217 or 218 TFEU, and will be subject to detailed and transparent scrutiny by the European Parliament. The UK Parliament and the British people deserve the same transparency and accountability, and we urge the Government to engage proactively**

323 [Political Declaration](#) (19 October 2019), para 141

and constructively with Parliament, rather than repeating the mistakes of the last three years.

356. **We are therefore concerned by the omission of what was clause 31 of the October 2019 version of the European Union (Withdrawal Agreement) Bill. The result of this omission is that Parliament will have no formal statutory role in respect of the future relationship treaty, other than the limited role provided for in Part 2 the Constitutional Reform and Governance Act 2010—a role which under section 22 of the Act can itself be disapplied by a Minister of the Crown.**
357. **Our March 2019 report on *Beyond Brexit: how to win friends and influence people*, set out our views on the role of committees in scrutinising these negotiations, and our intention is therefore to play a full, active and constructive part in scrutinising negotiations on the future relationship during 2020. We urge the Government to engage with Parliament, and with select committees, in the same spirit.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The Withdrawal Agreement

1. The Joint Committee structure for governance of the Withdrawal Agreement should allow a collaborative approach to the supervision of the Withdrawal Agreement, as well as the delegation of specific functions, such as citizens' rights, financial provisions, Ireland/Northern Ireland and Gibraltar, to specialised committees. (Paragraph 34)
2. The Joint Committee also has significant responsibilities in relation to the Protocol on Ireland/Northern Ireland. (Paragraph 35)
3. The Joint Committee will thus be critical in ensuring the smooth working of the Withdrawal Agreement. It will be a uniquely powerful and influential body. Decisions adopted by the Joint Committee will be binding on the EU and the UK and will have the same legal effect as the Withdrawal Agreement. (Paragraph 36)
4. In particular, during the transition period and for four years thereafter, Article 164 of the Withdrawal Agreement provides that the Joint Committee will have power to amend aspects of the Agreement to take account of errors, omissions and deficiencies, and to address unforeseen situations. Even though changes that "amend the essential elements" of the Agreement are excluded, the extent of this widely drawn power is uncertain, and it is not subject to clear scrutiny procedures or parliamentary oversight. (Paragraph 37)
5. Nor does it appear that the Joint Committee will operate in an open and transparent way. The relevant rules suggest that meetings will be confidential, decisions might not be published, and even summary minutes might not be made publicly available. This is an unsatisfactory state of affairs. (Paragraph 38)
6. Against this backdrop, we note the Government's statement, in the Explanatory Notes to the European Union (Withdrawal Agreement) Bill, that clause 35 of the Bill, prohibiting the use of written procedure, is intended to ensure "full ministerial accountability, including to Parliament". It is unclear how this accountability will work in practice, and Members may wish to consider whether the Bill should in fact include provision both for appropriate parliamentary oversight of the Joint Committee, and for a proportionate level of transparency. (Paragraph 39)
7. The provisions relating to dispute resolution in the Withdrawal Agreement retain a limited role for the CJEU. (Paragraph 55)
8. The arbitration mechanism, with input from the CJEU only in circumstances where questions of Union law arise, moves toward the Government's goal of ending the direct jurisdiction of the CJEU, while still respecting the autonomy of the European Union's legal order and the role of the CJEU. (Paragraph 56)
9. We welcome the fact that the Agreement provides a longstop, or limitation period, for any claims that arise before, or during, the transition period. This will give parties involved in legal disputes greater certainty as to the legal regime which will apply to their case. (Paragraph 57)

10. One of the Government's primary aims in negotiating Brexit has been a desire to end free movement of people. A necessary consequence has been that the citizens' rights guaranteed under the Withdrawal Agreement fall short in some respects of those enjoyed during the UK's EU membership. Most notably, for UK citizens in the EU, onward free movement rights are not guaranteed. EU nationals applying to remain in the UK under the EU Settled Status Scheme face automatic criminal records checks. (Paragraph 80)
11. Nonetheless, the agreement on citizens' rights is fairly comprehensive and will allow individuals and families to continue with their lives and careers with a minimum of disruption. We therefore broadly welcome the citizens' rights provisions. At the same time, given that over 40 percent of applicants thus far have been granted 'pre-settled status', we emphasise that the Government will face a continuing challenge in ensuring a smooth transition to settled status. (Paragraph 81)
12. The provisions on the financial settlement in Part Five of the Withdrawal Agreement set out not the amount of the UK's financial obligation, but the agreed methodology for calculating it. The precise amounts paid will be contingent upon future events, including fluctuations in exchange rates. Moreover, with each extension to the Article 50 period the UK has made further payments as a Member State, which will be offset against the payments due under the terms of the financial settlement. (Paragraph 87)
13. Much of the sum payable relates to UK contributions to the 2020 EU budget, which will coincide with the transition period, during which the UK will continue to be subject to EU law and be part of the EU Single Market. (Paragraph 88)
14. The payment of these sums does not depend upon a successful outcome to negotiations on future UK-EU relations. Once the UK and the EU conclude the agreement under Article 50 TEU, the UK's financial commitments will crystallise as legal obligations in international law, irrespective of the outcome of the future relationship negotiations. (Paragraph 89)

The transition or implementation period

15. The transition period embodied in the Agreement is intended to ensure stability, avoiding an abrupt change in the terms of UK-EU trade at the point of exit, while allowing the two sides time to negotiate, agree and implement the terms of their future relationship. The price the UK will pay for transition is that, save for a few minor exceptions, it will during the transition period carry all the responsibilities of EU membership without the institutional rights and privileges enjoyed by EU Member States. It will also remain subject to EU law and the EU institutions and agencies that oversee its application and operation, without any institutional say over the development, application and content of that law. (Paragraph 99)
16. Despite the possibility of invitations being extended to UK officials to attend relevant meetings in exceptional circumstances, we remain concerned about the sudden removal of the UK's institutional privileges, particularly those relating to the EU's many executive agencies. (Paragraph 100)

17. We broadly welcome Article 129, which leaves the UK free to pursue its own free trade agreements during the transition period, provided they do not enter into force before it expires. (Paragraph 105)
18. Questions remain about the detailed operation of this provision. For example, it is silent about the extent of the UK's freedom to renegotiate during transition the myriad EU agreements dealing with matters where responsibilities are shared between the EU and the individual Member States. (Paragraph 106)
19. Furthermore, Article 129, which attempts to carry over the application to the UK of the suite of existing EU international agreements, is one-sided and unclear. While it expressly binds the UK to its obligations under these international agreements, and calls on the Government to refrain from any action in this context deemed "prejudicial" to the Union's interests, the UK's status as a party to these agreements after exit day is dealt with by a footnote. We are concerned that the solution to such a significant question remains even in the latest text subject to a footnote of questionable legal status. The attitude of third countries to continuing UK participation in agreements with the EU remains unclear. We call on the Government to clarify these points urgently. (Paragraph 107)
20. The previous Government described the option to extend the transition period as an "insurance policy" in case the negotiations on the future relationship are not completed by the end of 2020. The present Government, notwithstanding the fact that the transition period will now last only 11 months, has ruled out any extension. The timetable for achieving a satisfactory outcome is, as a result, extremely challenging. (Paragraph 113)
21. Any decision by the Joint Committee to extend the transition period will have to be taken before 1 July 2020. Should that deadline pass without an extension being granted, we can see no other legal mechanism, under the terms of the Withdrawal Agreement, whereby an extension could be achieved, even if the two sides so desired. (Paragraph 114)
22. We note that, were the Government to seek and be granted an extension ahead of the deadline, the cost to the United Kingdom is unclear and would be subject to negotiation. (Paragraph 115)
23. An extension of the transition period would also mean that the UK would remain subject to EU law (including new Regulations and Directives and the jurisdiction of the CJEU) for an extended period, without any representation in the European Parliament, the Council, or the CJEU. The risk that is inherent in the UK becoming a 'rule taker' (subject to new EU laws, without having had any say in their preparation or adoption) would become more acute, the longer the transition period lasted. (Paragraph 116)

Protocol on Ireland/Northern Ireland

24. We welcome Article 2 of the Protocol, on safeguarding the rights of individuals, as set out in the Belfast/Northern Ireland Agreement, and note that these provisions are unchanged from the November 2018 text. (Paragraph 125)
25. We have repeatedly emphasised the importance of the Common Travel Area as a basis for cooperation between the UK and Ireland. We therefore welcome the explicit commitment to its retention contained in the latest iteration of the Withdrawal Agreement. (Paragraph 128)

26. The precise rules governing the payment of customs duties on goods brought into Northern Ireland either from the rest of the UK or from outside both the UK and EU are yet to be determined by the Joint Committee. But the term “at risk” appears to cover a greater number and range of goods than would have been covered by terms such as “likely” or “potentially”. (Paragraph 134)
27. We call on the Government to publish its assessment of the proportion, value, type and volume of goods entering Northern Ireland from the UK and from outside the EU on which customs duty will be payable in accordance with Article 5 of the Protocol. (Paragraph 135)
28. Notwithstanding the statement in Article 4 of the Protocol that Northern Ireland is part of the customs territory of the UK, the practical implication of the Protocol’s provisions on customs will be the introduction of a regulatory border for goods travelling from Great Britain to Northern Ireland. The introduction of such a border within the UK will have financial and political consequences. (Paragraph 140)
29. There is tension at the heart of the customs provisions of the Protocol. On the one hand, Northern Ireland is obliged to apply the EU’s customs code to the movement of goods from Northern Ireland to Great Britain. On the other, the Protocol says that it does not prevent the UK from ensuring unfettered access for goods moving from Northern Ireland into Great Britain’s market. (Paragraph 149)
30. Given the Janus nature of these customs arrangements, and HMRC’s confirmation that much of the detail is yet to be settled or even fully understood by the two sides, it is perhaps not surprising that there have been conflicting statements from within Government. (Paragraph 150)
31. In our view, as part of Northern Ireland’s obligations under the Protocol to apply the EU’s customs code, exit summary declarations are likely to be required for goods moving from Northern Ireland to Great Britain, unless and until the parties agree alternative arrangements to facilitate the movement of such goods. Although this requirement will be far less onerous than the requirements applying to goods moving in the other direction, it will have an economic cost for Northern Ireland-based businesses. (Paragraph 151)
32. The agreement includes an undertaking by both parties to the Withdrawal Agreement to use their best endeavours to agree arrangements to facilitate the movement of goods from Northern Ireland to Great Britain. There remains, however, a risk that reaching agreement on the detailed operation of this aspect of the Withdrawal Agreement’s arrangements will be time-consuming and, given the Government’s insistence that there will be no extension of the transition period, particularly challenging. (Paragraph 152)
33. We note that the potentially contentious arrangements for dealing with the duties applicable to fisheries and aquaculture products brought into the Union by vessels flying the UK flag but registered in Northern Ireland have been passed to the Joint Committee for resolution. (Paragraph 153)
34. Notwithstanding these uncertainties, the proposed arrangements on the movement of goods contained in this iteration of the Protocol on Ireland/Northern Ireland will, when it comes into effect, achieve the key objective of avoiding a ‘hard border’ on the island of Ireland. (Paragraph 154)

35. To achieve this aim, these new arrangements effectively keep Northern Ireland in the EU's single market for goods, with all that this implies for regulatory alignment, customs, institutional supervision and checks on the movement of goods between Great Britain and Northern Ireland. There is thus a price to be paid, in particular with regard to the integrity of the UK's internal market. How high a price remains to be seen, since the responsibility for sorting out the detail of these contentious issues has been conferred upon the Joint Committee. (Paragraph 155)
36. The consequences, if the Joint Committee is unable to reach agreement on these issues, are not clearly spelled out in the Protocol. It is therefore critical that both the UK and the EU approach these issues with sensitivity, taking full account of the concerns of both unionist and nationalist communities in Northern Ireland. (Paragraph 156)
37. The VAT and excise rules proposed in the Protocol, in particular the rules dealing with excise reductions and/or VAT exemptions, are complex, and we note the concern of witnesses that businesses in Northern Ireland urgently need further explanation of how they will operate in practice. (Paragraph 161)
38. We acknowledge the Secretary of State's statement that the specific practical arrangements governing this aspect of the Protocol on Ireland/Northern Ireland will be addressed by the Joint Committee, but are concerned that this key aspect of the post-Brexit arrangements for Northern Ireland's interaction with both the EU and Great Britain will be left to the Joint Committee to resolve after the Withdrawal Agreement has been agreed and ratified. (Paragraph 162)
39. The Protocol will bind Northern Ireland closely to the EU. Northern Ireland's compliance with EU rules will be policed and enforced by the European Commission, the EU's executive agencies and the CJEU, without the additional institutional privileges inherent in EU membership, save for the UK's right to participate in Northern Ireland-based CJEU proceedings. (Paragraph 168)
40. The introduction of different regulatory and technical rules on opposite sides of the Irish Sea would, like the proposed customs arrangements, carry risks for the UK's internal market. (Paragraph 169)
41. We have previously recommended that Northern Ireland should, as part of the future UK-EU relationship, remain part of the Single Electricity Market on the island of Ireland. We welcome the fact that the UK and EU negotiators have remained aware of the importance of this issue, but reiterate that such an outcome might require the devolution of additional powers to the Northern Ireland Assembly once the devolved institutions are reinstated. (Paragraph 170)
42. In the event that the Northern Ireland Assembly does not consent to the continuation of the arrangements contained in the Protocol, Northern Ireland's continued participation in the Single Electricity Market could be at risk. (Paragraph 171)
43. Article 11 of the Protocol covers North-South cooperation in a wide range of areas of EU competence, including some areas where the EU's competence is merely to support action by the Member States. The breadth of this provision underlines the vital importance of cross-border cooperation to the

lives of UK and EU citizens, particularly those living close to the Irish land border. (Paragraph 174)

44. The Joint Committee will play an important role in the operation and application of the Protocol on Ireland/Northern Ireland. This role has been substantially enhanced in the latest text of the Protocol, yet no corresponding changes have been made to the governance arrangements provided for elsewhere in the Withdrawal Agreement to accommodate this expanded role. (Paragraph 184)
45. Against this backdrop, the concerns we have expressed about the absence of any provision for democratic oversight of the Joint Committee, and over the lack of transparency in its working practices, acquire still greater force. (Paragraph 185)
46. Many contentious decisions relating to the Protocol's application, for example, decisions on the practical operation of the trade rules governing the movement of goods between Northern Ireland and Great Britain; on the potential duties payable on fisheries and aquaculture products; and on the operation of the Protocol's VAT and excise rules, have been referred to the Joint Committee, to resolve behind closed doors, after the parties have agreed and ratified the Withdrawal Agreement. (Paragraph 186)
47. This underlines the critical importance both of re-establishing the devolved institutions in Northern Ireland, and of ensuring that the Northern Ireland Assembly, like the UK Parliament, has the information and powers it needs to scrutinise the work of the Joint Committee effectively and hold ministers to account. We call on the Government to set out how it plans to achieve this outcome, as a matter of urgency. (Paragraph 187)
48. The inclusion of a mechanism enabling the Northern Ireland Assembly periodically to express its continued consent to the operation of the trade arrangements proposed in this iteration of the Withdrawal Agreement, is, as the Secretary of State suggested, a key difference between this Agreement and the one proposed in November 2018. (Paragraph 195)
49. We welcome the inclusion of a consent mechanism, but note that the political situation in Northern Ireland, where the Assembly has not met in full for more than a thousand days, remains unstable. We repeat the plea made in our 2016 report *Brexit: UK-Irish relations*, that political stability in Northern Ireland must not be allowed to become 'collateral damage' of Brexit. (Paragraph 196)

The revised Political Declaration on the future relationship

50. We welcome the Political Declaration's acknowledgement of the shared heritage, values and interests of the UK and EU, and its recognition of the unique context of their future relationship given the UK's post-withdrawal status as a former Member State. It is therefore important to acknowledge that the future relationship may evolve over time. (Paragraph 205)
51. The Political Declaration notes the need to strike a balance between the rights and obligations of both sides. It now also includes an explicit reference to the intended destination of a "comprehensive and balanced Free Trade Agreement". While this provides greater definition of the likely shape of the future relationship, it also constrains the potential depth of that relationship.

The scope and ambition of the Declaration must be judged in that light. (Paragraph 206)

52. We welcome the reference in paragraphs 6–7 of the Political Declaration to shared values and the maintenance of human rights and fundamental freedoms. (Paragraph 215)
53. We have reported on the critical importance of maintaining uninterrupted data flows during and after Brexit. We therefore welcome the provisions on data protection, which offer a pragmatic way forward. (Paragraph 216)
54. We also welcome the prospect of UK participation in EU programmes in areas such as research, science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space, and the possibility of UK participation in European Research Infrastructure Consortia. We note, however, that such participation will come at a cost, which is yet to be determined, and that the Declaration sheds little light on how UK participation will be achieved, and what influence it will have over these programmes. (Paragraph 217)
55. We warmly welcome the shared commitment of the UK and the EU to delivering a future PEACE PLUS programme in Northern Ireland. (Paragraph 218)
56. We note the possibility of continuing cooperation in areas such as culture, education, science and innovation. We again call on the Government to explain the significance of the reference in paragraph 14 of the Declaration to “the importance of mobility” in enabling such cooperation. (Paragraph 219)
57. We note that most of the commitments in Part I of the Declaration remain undefined. Stakeholders in the various sectors affected still need clarification of how future UK-EU cooperation will work in practice, in particular in terms of UK participation in EU programmes and its relationship with the European Investment Bank. (Paragraph 220)
58. The Political Declaration’s commitment to tariff-free trade in goods is welcome. The change in objective from a free trade area to a free trade agreement is one of the most consequential in the revised Political Declaration, involving in particular the deletion of references to the single customs territory and alignment of rules. (Paragraph 230)
59. While these changes provide greater clarity, they also imply that there will be some new friction in trade in goods, notwithstanding that the Declaration holds out the possibility, without commitment, of the use of facilitative arrangements and technologies, and refers, without elaboration, to “facilitation” of customs processes, checks and controls. We call on the Government to specify what new facilitative arrangements and technologies are envisaged, when, at what cost, and to what effect. (Paragraph 231)
60. The revised Declaration also concedes, for the first time, that rules of origin, albeit “appropriate and modern”, will be necessary. We call on the Government urgently to confirm to Parliament, manufacturers, traders and all those affected, what rules of origin checks and processes will be required in the future. (Paragraph 232)

61. We welcome the commitment to consider cooperation and exchange of information in customs and, additionally, VAT matters, including to combat customs and VAT fraud and other illegal activity. (Paragraph 233)
62. We also call on the Government urgently to clarify the extent and means of UK cooperation with EU agencies, including the European Medicines Agency, the European Chemicals Agency and the European Aviation Safety Agency, and to confirm whether cooperation with other agencies is envisaged. (Paragraph 234)
63. We welcome the intention to conclude “ambitious, comprehensive and balanced” arrangements on trade in services across a range of sectors. However, given the significance of the sector to the UK economy, we are concerned by the lack of detail in the section on services and investment, and in particular that some key service sectors are not mentioned in the Declaration. We call on the Government to explain what agreement, if any, it expects to reach in respect of the health, creative and tourism sectors. (Paragraph 238)
64. We welcome the commitment to ensure services providers and investors are treated in a non-discriminatory manner, and to allow for the temporary entry and stay of natural persons for business purposes. We invite the Government to confirm whether the latter provision envisages preferential arrangements for UK and EU citizens moving between each other’s territories to provide services. (Paragraph 239)
65. More broadly, while the provisions on services and investment are helpful as far as they go, they will not provide the current level of access to the EU Single Market enjoyed by the UK’s services sectors. Further details are urgently required to provide service providers and customers with assurance and certainty. (Paragraph 240)
66. We acknowledge the intention of both sides to complete the equivalence assessment process in respect of financial services by June 2020, but note that time is now acutely short for such assessments to be completed. We also welcome the commitment to “close and structured” regulatory and supervisory cooperation, and to close cooperation in international bodies. But the agreement to keep respective equivalence frameworks under review falls short of the new economic and regulatory arrangement in financial services proposed by the UK. (Paragraph 244)
67. Given its growing importance to the UK’s economy, the specific emphasis on digital services in the Political Declaration is welcome. Nevertheless, the Declaration’s emphasis on the facilitation of data flows, rather than on the retention of free data flows, appears to mark a lowering of ambition when compared with the ongoing development of the EU’s Digital Single Market. (Paragraph 246)
68. We welcome the provisions to enable free movement of capital and payments, on intellectual property (including geographical indicators) and on public procurement, as far as they go. (Paragraph 251)
69. The provisions on mobility respect and reflect the UK’s decision that the principle of free movement of persons from the EU will no longer apply. The principle of full reciprocity means that UK nationals will therefore also cease to receive preferential treatment by the EU in the future. While the

Political Declaration proposes some mitigations, they will not change this significant restriction upon the freedoms currently enjoyed by UK citizens. (Paragraph 256)

70. We are concerned at the omission of any reference to reciprocal healthcare, including the European Health Insurance Card, as a means of facilitating mobility. We call on the Government to set out, as a matter of urgency, its plans for maintaining reciprocal healthcare arrangements in the context of the future relationship. (Paragraph 257)
71. We are concerned that the Declaration contains so little detail on the impact of UK withdrawal on family law. We remind the Government of our earlier conclusion, that if the UK leaves the EU without alternative arrangements being in place, the UK's family justice system, and the individuals seeking redress within it, could suffer profound damage. (Paragraph 258)
72. We welcome the commitment to cooperation in the aviation sector, and in particular the proposed Comprehensive Air Transport Agreement. We call on the Government to confirm whether the reference to market access in paragraph 58 of the Declaration is intended to include the fully liberalised market access currently enjoyed by UK and EU operators. (Paragraph 264)
73. We also note the high-level commitments to cooperation in the road, rail and maritime sectors. More detail is needed, particularly with respect to road transport, where the Government needs to explain whether the reference to "comparable market access" achieves its aim of "reciprocal access"; whether, in the absence of any reference to reciprocal cabotage rights, new permitting and licencing requirements will be required for transport operators and professional drivers; and whether any "complementary arrangements" in relation to travel by private motorists will negate the need for UK motorists to carry International Driving Permits and insurance Green Cards when travelling in the EU. (Paragraph 265)
74. We regret that the Declaration does not hold out the possibility of continued UK participation in the Internal Energy Market, but at the same time we welcome the high-level commitment to cooperation in the supply of electricity and gas to ensure as far as possible security of supply and trade over interconnectors. (Paragraph 269)
75. We welcome the commitment to a wide-ranging Nuclear Cooperation Agreement, including exchange of information, trade in nuclear materials and equipment, monitoring of levels of radioactivity, and exchange of information on medical radioisotopes. While the reference to the UK's intention to be associated with the EURATOM research and training programmes is a positive step, we call on the Government to provide further clarification of its plans in this regard. (Paragraph 270)
76. The Political Declaration confirms that the UK will leave the Common Fisheries Policy and become an independent coastal state. Yet, as we warned in December 2016, the EU has also made clear that finalising a future fisheries agreement is a precondition for agreement of the overall economic partnership. While we reiterate our view that cooperation with the EU and other neighbouring states in fisheries management will be critical in the years to come, difficult negotiations lie ahead. We note also that the aspiration of both sides to conclude a fisheries agreement before 1 July 2020,

in time to determine fishing opportunities for 2021, is now highly ambitious. (Paragraph 274)

77. We welcome the commitment to future UK-EU cooperation to address issues of shared economic, environmental and social interest. We particularly welcome the continued shared commitment to international agreements on climate change, where the UK has been a global leader, and where continuing cooperation with the EU will help to offset any potential loss of influence as a result of Brexit. (Paragraph 277)
78. The EU (and many of its Member States) have expressed concern that the UK may seek to undercut EU standards and competitiveness. These concerns were reflected in the November 2018 text of the Withdrawal Agreement, but are now reflected in the (non-binding) Political Declaration. The amended text, the Government argues, maintains the UK's commitment to high international standards while protecting the UK's sovereign right to pursue a bespoke approach. (Paragraph 285)
79. Early case studies in the practical implications of these level playing field provisions will be found in the UK's post-Brexit approach to workers' rights, environmental protection, consumers' rights, and State aid. We await proposals from the Government, as well as the EU's response. Statements by EU leaders suggest that clear level playing field commitments will be a pre-condition for the EU to conclude a free trade agreement with the UK. (Paragraph 286)
80. We note also that the elements that make up the 'level playing field' are split between reserved and devolved competence. There will, as a result, be an overlap between any future UK-EU level playing field and the internal UK level playing field. The early adoption of UK-wide common frameworks, agreed by central and devolved administrations, will be an important early indicator of the UK's capacity to come to an agreement with the EU in these areas. (Paragraph 287)
81. The former Prime Minister, Rt Hon Theresa May MP, in her Florence speech on 22 September 2017, argued that the length of any transition or implementation period should "be determined simply by how long it will take to prepare and implement the new processes and new systems that will underpin [the] future partnership". She concluded that the challenges of this task "point to an implementation period of around two years". The end date for the transition period was accordingly set (in late 2018) as 31 December 2020. (Paragraph 290)
82. Despite the repeated delays in the Brexit process, that deadline has not changed. The time available to negotiate the terms of the future economic relationship has thus been reduced from over two years to under one year—yet the task ahead is no less complex. Other deadlines, including the need to adopt a financial services equivalence framework and conclude a fisheries agreement, fall even earlier, on 1 July 2020. (Paragraph 291)
83. The current Government has made clear that it will not request an extension to the transition period. Yet the Political Declaration contains, for the most part, only an overview of the terms of the economic relationship, and while the two sides start from a position of alignment, the prospect of future divergence could make reaching agreement more difficult, technically and politically, than the Government allows. If agreement is to be reached by

the end of 2020, both sides will have to commit from the outset to intense, continuous negotiation. But success cannot be guaranteed, and it would in our view be prudent for the Government to keep open the option of seeking an extension to the transition period, should more time be required to conclude an agreement in the best interests of both sides. (Paragraph 292)

84. We welcome the ambition by both sides to strike a “broad, comprehensive and balanced security partnership”, but note that the depth of this partnership will depend on “an appropriate balance between rights and obligations”, and on the UK’s willingness to continue to follow EU rules and to accept that the CJEU, as the sole interpreter of EU law, will have continuing influence over the application of those rules. (Paragraph 301)
85. In some areas the UK will necessarily cease to be part of the EU’s law enforcement and security ecosystem. This is most evident in the case of databases and data exchange. While we welcome the commitment to establishing arrangements for the exchange of Passenger Name Record and Prüm data, we regret the lack of any reference to UK access to the Schengen Information System II (SIS II) and the European Criminal Records Information System (ECRIS) database. (Paragraph 302)
86. It is unclear whether UK cooperation with Europol and Eurojust will go beyond existing third-country arrangements. Both agencies are vital tools for UK law enforcement. (Paragraph 303)
87. We note that the UK will cease to be party to the European Arrest Warrant, but welcome the commitment to establishing “effective arrangements based on streamlined procedures” on extradition. We urge the Government to bring forward detailed proposals as soon as possible, ahead of formal negotiations. (Paragraph 304)
88. We welcome the commitment to continued cooperation in the areas of foreign policy and defence. While we note that this includes the possibility of UK contributions to EU development programmes, we regret the lack of specific detail about how such cooperation will work in practice. (Paragraph 315)
89. We also endorse the commitment to UK-EU political and industrial collaboration in the area of defence, through UK collaboration with the European Defence Agency and projects in the PESCO framework, and the possibility of UK defence companies participating in projects by the European Defence Fund. (Paragraph 316)
90. The EU’s readiness to engage in sectoral dialogue with the UK, and to invite the UK to informal EU Ministerial meetings on an ad-hoc basis, reflects the crucial contribution by the UK to the EU’s foreign policy. Taken together with the possibility of the UK participating in the planning of CSDP missions to which it contributes, the Declaration allows greater UK engagement with and influence over EU foreign policy than is currently afforded to any third country. We also note that the UK retains full sovereignty in determining how to respond to any invitation or option to participate in operations and missions. (Paragraph 317)
91. The Political Declaration is vague in respect of space. Set alongside the confirmation that the UK will no longer have access to Galileo, this underlines that there will be serious consequences for UK companies operating in the sector and for their ability to tender for contracts. (Paragraph 318)

92. The UK and the EU's wish to continue cooperation and dialogue on cyber-security, civil protection, illegal migration, and counter-terrorism, reflects shared concerns, priorities, and threats. While commitments are vague, and the mechanisms for future collaboration are not always described, the Political Declaration shows willingness to continue to exchange information and cooperate in international fora. This is to be welcomed. However, we regret the conspicuous lack of reference to future UK-EU asylum cooperation, and we are concerned more broadly at the impact of UK withdrawal from the Dublin system. (Paragraph 325)
93. The target of negotiating the full terms of a new security partnership dealing with Justice and Home Affairs cooperation by the end of the transition period in December 2020 is extremely challenging, given the legal and technical obstacles to third country participation in many of the relevant EU mechanisms. (Paragraph 327)
94. We welcome the proposed overarching institutional framework, and, while we note that the precise legal form of the future relationship remains to be determined, we welcome the suggestion that it could take the form of an Association Agreement. Association Agreements are by their nature dynamic and evolutionary, and such a model fits well with the commitment by both sides to keep the future relationship under review. (Paragraph 341)
95. Much of the detail of how the future UK-EU dialogue will function in practice, including the Joint Committee's rules of procedure, the frequency of its meetings, its membership, and the appointment of specialist sub-committees, remains to be determined. We addressed these issues in detail in our March 2019 report *Beyond Brexit: how to win friends and influence people*. We again emphasise that the work of the Joint Committee on the future relationship, and the process by which it is established, will require close parliamentary scrutiny and accountability at both UK and EU level. (Paragraph 342)
96. In that context, we particularly welcome the recognition of the importance of interparliamentary cooperation, and the proposed establishment of a specific dialogue between the European Parliament and the UK Parliament. We stand ready to work with House of Commons and European Parliament colleagues in establishing this dialogue as swiftly as possible. (Paragraph 343)
97. As we set out in Chapter 2, the proposed arbitration model for the future relationship means that the CJEU would have a limited, but continuing, role in relation to questions of EU law arising in disputes with the UK, even after its obligations under the Withdrawal Agreement fell away. These provisions, like those on dispute settlement and on the Joint Committee, illustrate how the structure for interinstitutional dialogue in the Political Declaration echoes that established under the Withdrawal Agreement. This underlines the close relationship between the two parts of the Brexit agreement. (Paragraph 344)
98. The Political Declaration confirms that formal negotiations on the future UK-EU relationship will begin only after UK withdrawal on 31 January 2020. The Political Declaration is thus in many places little more than an agenda for a discussion that has barely begun. But despite its lack of detail and precision, the Declaration is an important signpost to the shape of the future relationship, and to the structure and scope of the forthcoming negotiations. (Paragraph 351)

99. While much of the text of Political Declaration is unaltered from the November 2018 iteration, significant changes have been made, reflecting the evolution of the UK Government's negotiating position. (Paragraph 352)
100. We welcome the commitment of both sides to engage in preparatory organisational work ahead of the commencement of formal negotiations. We also note their commitment to develop agreements in good faith, so that the future relationship can come into force by the end of 2020. Nevertheless, given the range and complexity of the issues to be discussed, which the former Prime Minister judged would require a transition period of around two years, this timetable is extremely challenging. (Paragraph 353)
101. We endorse the recognition in paragraph 136 of the Declaration, in the context of the future relationship, of the need to safeguard the peace process in Northern Ireland, and to protect the Belfast/Good Friday Agreement in all its parts. (Paragraph 354)
102. The negotiations on the future relationship should be subject to full parliamentary scrutiny. At EU level the negotiations are likely to take place under Article 217 or 218 TFEU, and will be subject to detailed and transparent scrutiny by the European Parliament. The UK Parliament and the British people deserve the same transparency and accountability, and we urge the Government to engage proactively and constructively with Parliament, rather than repeating the mistakes of the last three years. (Paragraph 355)
103. We are therefore concerned by the omission of what was clause 31 of the October 2019 version of the European Union (Withdrawal Agreement) Bill. The result of this omission is that Parliament will have no formal statutory role in respect of the future relationship treaty, other than the limited role provided for in Part 2 the Constitutional Reform and Governance Act 2010—a role which under section 22 of the Act can itself be disapplied by a Minister of the Crown. (Paragraph 356)
104. Our March 2019 report on *Beyond Brexit: how to win friends and influence people*, set out our views on the role of committees in scrutinising these negotiations, and our intention is therefore to play a full, active and constructive part in scrutinising negotiations on the future relationship during 2020. We urge the Government to engage with Parliament, and with select committees, in the same spirit. (Paragraph 357)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members of the European Union Select Committee

The Earl of Kinnoull (Chair)
 Baroness Brown of Cambridge
 Lord Cavendish of Furness
 Baroness Couttie
 Baroness Donaghy
 Lord Faulkner of Worcester
 Baroness Hamwee
 Lord Jay of Ewelme
 Lord Kerr of Kinlochard
 Lord Lamont of Lerwick
 Lord Morris of Aberavon
 Baroness Neville-Rolfe
 Lord Oates
 Baroness Primarolo
 Lord Ricketts
 Lord Sharkey
 Lord Teverson
 Baroness Verma
 Lord Wood of Anfield

Declarations of interest

The Earl of Kinnoull (Chair)
Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy
Chairman, Culture Perth and Kinross, in receipt of governmental subsidy
Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies
Shareholdings as set out in the register
 Baroness Brown of Cambridge
Vice Chair of the Committee on Climate Change
Chair of the Adaptation Sub-Committee of the Committee on Climate Change
Chair of the Henry Royce Institute for Advanced Materials
Chair of STEM Learning Ltd
Non-Executive Director of the Offshore Renewable Energy Catapult
Chair of The Carbon Trust
Council member of Innovate UK
 Lord Cavendish of Furness
Director, Burlington Slate Limited
Shareholder, Holker Holdings Limited
Shareholder, Cartmel Steeplechases (Holker) Limited
Shareholder, Holker Estates Co Limited
Shareholder, Holker Homes Limited
Shareholder, Burlington Slate Limited
Roose and Walney Sand and Gravel Company Limited (The) (Dormant)
Holker Estates Co Limited

Holker Holdings Limited

Cartmel Steeplechases (Holker) Limited

Corrie and Co Limited

Guides over the Kent and Levens Sands Limited

*Beneficiary of a Family Trust which owns land in South Cumbria,
including residential and business property*

Owner of a flat in London SW1 from which rental income is received

Owner of woodlands based in South Cumbria

Baroness Couttie

Non-Executive Director, Mitie

Commissioner, Guernsey Financial Services Commission

Baroness Donaghy

Former President of the Trades Union Congress

Former member European Trades Union Congress

Lord Faulkner of Worcester

Chairman, Great Western Railway Advisory Board

Chairman, Alderney Gambling Control Commission

Her Majesty's Government's Trade Envoy to Taiwan

Baroness Hamwee

Liberal Democrat Lords Spokesperson on Immigration

Lord Jay of Ewelme

*Trustee (Non-Executive Director), Thomson Reuters Founders Share
Company*

Vice Chairman, European Policy Forum Advisory Council

Member, Senior European Experts Group

Trustee, Magdalen College, Oxford Development Trust

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power PLC

Member, Scottish Government's advisory Standing Council on Europe

Lord Lamont of Lerwick

Director, Jupiter European Opportunities Trust

*Director, Compagnie Internationale de Participations Bancaires et
Financieres (CIPAF)*

Director, Chelverton UK Dividend Trust

Adviser, Halkin Investments

Adviser, Official Monetary and Financial Institutions Forum (OMFIF)

Adviser, Meinhardt Engineering Group, Singapore

Adviser, Stanhope Capital LLP

Lord Morris of Aberavon

No relevant interests declared

Baroness Neville-Rolfe

Former Commercial Secretary, HM Treasury

Former Minister of State for Energy and Intellectual Property

Chair, Assured Food Standards Ltd

Chair, UK ASEAN Business Council

Non-Executive Director, Capita Plc

Non-Executive Director, Secure Trust Bank

Governor, London Business School

Shareholdings as set out in the register

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Lord Oates

*Director, Centre for Countering Digital Hate
Chairman, Advisory Board, Weber Shandwick
Non-Executive Director, NHSBT*

Baroness Primarolo

*Non-executive director and chair, Thompson's Solicitors
Chair, Remuneration Board, National Assembly for Wales*

Lord Ricketts

*Non-Executive Director, Group Engie, France
Strategic Adviser, Lockheed Martin UK
Charitable activities as set out in the Register of Interests*

Lord Sharkey

No relevant interests declared

Lord Teverson

*Trustee, Regen SW
In receipt of a pension from the European Parliament*

Baroness Verma

No relevant interests declared

Lord Wood of Anfield

*Chair of the United Nations Association (UNA-UK)
Director, Good Law Project*

A full list of Members' interests can be found in the Register of Lords' Interests:
<http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-of-lords-interests/>

APPENDIX 2: LETTER DATED 4 NOVEMBER 2019 FROM LORD KINNOULL, CHAIR OF THE EUROPEAN UNION COMMITTEE, TO BARONESS EVANS OF BOWES PARK, LEADER OF THE HOUSE OF LORDS

I am writing on behalf of the European Union Committee to offer some initial observations and concerns on the European Union (Withdrawal Agreement) Bill. The Select Committee considered this letter at its meeting on 29 October 2019.

Although the Bill will not make further progress before Parliament is dissolved, it is possible that it could be reintroduced in January, on an expedited timetable, ahead of the scheduled exit day of 31 January 2020. There is also a risk that the appointment of select committees at the start of the new Parliament could be delayed. We have therefore decided to send this letter now, to put our observations on the record.

We comment in this letter only on clauses 29-33 of the Bill, which relate most closely to the European Union Committee's remit. Other committees, including the Constitution Committee and the Delegated Powers and Regulatory Reform Committee, will have a direct interest in other elements of the Bill, and we have not addressed issues that would fall more naturally to them. Nor in this letter have we sought to review the Withdrawal Agreement itself, or the accompanying Political Declaration, though if time permits we are minded to publish a report on them early in the new Parliament.

The Committee's object in writing is to open a dialogue with the Government. I hope that the Government will consider bringing forward amendments to meet our concerns, and I and committee staff stand ready to discuss these issues in more detail.

Clauses 29-33 of the Bill relate to parliamentary oversight of the transition or implementation period. In our report *Beyond Brexit: how to win friends and influence people* we stated that, since the UK will continue to be bound by EU laws during the transition period, "some form of continuing parliamentary scrutiny of those laws will be essential to maintain transparency and to draw significant changes to the attention of Parliament and the wider public prior to their implementation in domestic law."

Clause 29 of the Bill provides a statutory role for the House of Commons European Scrutiny Committee (ESCOM) in scrutinising EU legislation during the implementation period. It provides that where ESCOM publishes a report in respect of EU legislation made during the legislation, stating that the legislation raises a matter "of vital national interest to the United Kingdom", a Minister must, within a period of 14 Commons sitting days, arrange for a motion drawn up by ESCOM to be "debated and voted on" by the House of Commons.

While I welcome the intention underlying clause 29, I note that prescribing such a procedure in statute, rather than in Standing Orders or by means of resolutions of the House, is an innovation, which some colleagues may find concerning. Still more worrying is the fact that clause 29 makes no provision for the role of the House of Lords European Union Committee. Hitherto the two Houses have undertaken scrutiny of EU laws in tandem: the same scrutiny reserve principles apply, the same mechanism with regard to the Justice and Home Affairs opt-in, and each House has the same powers under EU law to issue Reasoned Opinions.

There is no reason to differentiate between them now, so I suggest that clause 29, if it remains in the Bill, should be amended to ensure that there is an equivalent statutory role for the EU Committee. While the current terms of clause 29 (in particular the reference to a Minister of the Crown providing time for a debate) are not fully consistent with the way business is conducted in the House of Lords, **we strongly support the principle that it should be open to the EU Committee during the transition period to propose substantive motions for resolution relating to EU legislation, and that such motions should be debated in timely fashion.**

Our *Beyond Brexit* report also expressed concern at the lack of transparency surrounding the governance mechanisms established in the Withdrawal Agreement, in particular the Joint Committee, which we described as a “uniquely powerful and influential body”. We noted in paragraph 36 of our report that the Joint Committee had the power in certain circumstances to amend the Withdrawal Agreement, a “widely drawn” power that was “not subject to clear scrutiny procedures or parliamentary oversight”.

I also note that hitherto UK citizens have enjoyed significant safeguards in respect of the actions of the EU (including actions undertaken on behalf of the UK) in international fora. There has been extensive scrutiny by the European Parliament (including UK MEPs). There has also been extensive scrutiny by Committees of both Houses, triggered by the Government’s deposit of draft Council Decisions (including those mandating third-country agreements), and accompanying Explanatory Memoranda. Decisions of Ministers to vote in favour of EU legislation have also been subject to scrutiny reserves in both Houses. These safeguards will be lost post-Brexit.

The lack of any provision in the Bill for systematic parliamentary oversight of the Government’s actions within the format of the Joint Committee is therefore concerning. **We urge the Government to bring forward amendments to provide for appropriate parliamentary oversight and scrutiny of the Joint Committee and of the other governance mechanisms established under the Withdrawal Agreement, in order to ensure that UK citizens do not lose the safeguards they currently enjoy by virtue of the scrutiny undertaken by the European Parliament and by the two Houses of the Westminster Parliament.**

In the specific instances where the Bill envisages parliamentary oversight either of decisions of the Joint Committee or of the conduct of negotiations on the future relationship, these are invariably asymmetric: the role of the House of Commons is to approve; that of the House of Lords is to take note. **Members will wish to reflect carefully on these provisions, and their implications for the status and reputation of the House of Lords.**

Clause 30 addresses one of the key functions of the Joint Committee, which is to make a single decision, before 1 July 2020, whether to extend the length of the transition period for up to one or two years. If the Government decides to seek an extension, it provides for a Minister to lay a statement before Parliament, and for the House of Commons then to pass a motion agreeing to the proposed extension, and for the House of Lords to debate a ‘take note’ motion. Only then can the Minister agree in the Joint Committee.

We offer two observations. First, the House of Lords is given no decision-making role in seeking an extension of the transition period. This contrasts with its role thus far in the adoption of the secondary legislation that has given effect to

extensions of the Article 50 period. We see no justification for this diminution in the role of the House.

Second, it is unclear why Parliament's role is restricted to approving a decision to seek an extension, when a decision by the Government not to seek an extension could have equally profound implications for the United Kingdom. We therefore welcome the statement by the Lord Chancellor, Rt Hon Robert Buckland MP, in responding to the second reading debate on 22 October, that the Government will bring forward an amendment "that would allow Parliament to have its say on the merits of an extension of the implementation period", and that the Government "will abide by" the result. **Parliament should have a role in approving the Government's decision whether or not to seek an extension to the transition period, and we look forward to seeing the Government's proposals to give effect to the commitments made by the Lord Chancellor on 22 October.**

Clause 31 of the Bill sets out provisions for the oversight of negotiations on the future relationship with the EU. It requires a Minister of the Crown, before the end of a period of 30 Commons sitting days from exit day, to make a statement on the objectives for the future relationship. That statement (and any revised statement) must be consistent with the terms of the Political Declaration that sits alongside the Withdrawal Agreement, and the Minister may not commence negotiations until it has been approved by the House of Commons. In negotiation Ministers must seek to achieve the objectives set out in the most recent statement to have been approved by the Commons, and Ministers must lay before Parliament a report on progress every three months.

We welcome the requirement for ministers to lay regular reports before Parliament, and for those reports to be debated. This should help to achieve a measure of parliamentary and public accountability during the process. But it is imperative that this formal statutory structure should be supported by meaningful dialogue between the Government and designated committees in each House, so that those committees can make reports to help inform public and parliamentary debate. We would be grateful for your thoughts on how to establish such a role for committees, whether in the Bill or by other means.

I would be grateful also for further explanation of new subsection (3). This requires the statement of objectives presented to Parliament to be "consistent" with the terms of the Political Declaration. Yet the precise terms of the Political Declaration have never been understood to be legally binding: indeed, paragraph 3 of the Declaration states that "where the parties consider it to be in their mutual interest ... the future relationship may encompass areas of cooperation beyond those described in this political declaration". Paragraph 5 envisaged that the UK-EU relationship "might evolve over time". **What constraints, if any, does new subsection (3) place upon Ministers? Is subsection (3) in fact necessary?**

Clause 31 also sets out the procedure for ratification of any agreement reached with the EU on the future UK-EU relationship. These provisions appear to me to be unsatisfactory, not least because they map imprecisely onto the normal processes whereby international agreements are concluded. Thus clause 31(8) suggests that a statement on a "political agreement" would be provided alongside "a copy of the negotiated future relationship treaty". But a natural reading of "political agreement" would be an agreement analogous to the Joint Report of December 2017. You will recall that it took several months to turn this political agreement into a draft Treaty, and almost a year to finalise the text.

This obscurity is compounded by clause 31(9), which appears to envisage that the House of Commons would approve only “the negotiated future relationship treaty”, and that the final text of the Treaty could be different, as long as it is “to substantially the same effect”. The meaning of this is unclear. Does this mean that Parliament would approve a stable, ‘initialled’ agreement, which might be subject to very minor amendment upon signature, or would more substantial changes be permitted? Either way, this appears to contradict the principles that underpin parliamentary scrutiny of treaties under the Constitutional Reform and Governance Act 2010.

The role of the House of Lords is attenuated still further: clause 31(9) limits the period within which the House could pass a motion relating to the future relationship treaty to just 14 Lords sitting days, rather than the 21 parliamentary sitting days required by section 20 of the CRAG Act. Given the EU Committee’s recent experience of the serious constraints placed upon effective scrutiny by the CRAG Act timetable (which, as we noted in our recent report on *Scrutiny of international agreements: lessons learned*, already reduces opportunities for consultation and collection of evidence), such a further restriction appears unworkable.

Finally, clause 31(10) disapplies the CRAG Act for the purposes of ratification of the future relationship treaty—even though Parliament as a whole (including the House of Lords) is likely to be required to pass legislation to give effect to any future relationship treaty prior to ratification. Again, this provision removes safeguards that UK citizens currently enjoy thanks to Parliament’s role in scrutinising international agreements.

We are concerned that the provisions of clause 31 relating to the ratification of any treaty arising out of those negotiations are both restrictive and confusing. We therefore invite the Government to bring forward amendments both to clarify the clause and to strengthen parliamentary oversight, including by the House of Lords.

Finally, I note that clauses 32 and 33 would both repeal the approval process for the Withdrawal Agreement that was incorporated, after much debate, in section 13 of the European Union (Withdrawal) Act 2018, and the requirement that the Agreement should be approved under the terms of the CRAG Act. In effect, these clauses mean that Parliament would have no role in approving the Agreement, as an agreement binding upon the UK in international law: its role would be limited to passing the domestic legislation necessary to implement that Agreement. We appreciate the difficulties the Government has faced in securing a ‘meaningful vote’ in favour of the Withdrawal Agreement, but nevertheless **we invite the Government to give careful thought to the precedent that will be set if Parliament’s role in approving ratification of an international agreement as important as the Withdrawal Agreement—a role which exists in order to safeguard the wider public interest—is curtailed in the manner proposed in clauses 32 and 33 of the Bill.**

I would be grateful to receive a reply to this letter in due course, and at all events before any Withdrawal Agreement Bill reaches the House of Lords in the new Parliament. I am copying this letter to Rt Hon Stephen Barclay MP, Secretary of State for Exiting the EU, Lord Callanan, Minister of State, Department for Exiting the EU, Baroness Taylor of Bolton, Chair of the House of Lords Constitution Committee, and Lord Blencathra, Chair of the House of Lords Delegated Powers and Regulatory Reform Committee.