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European Union Committee

7th Report of Session 2017–19

Brexit: deal or no deal

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Q in footnotes refers to a question in oral evidence.

SUMMARY

This report explores the consequences of ‘no deal’—the failure of the UK and the EU to reach agreement on either withdrawal or future relations. The overwhelming view of witnesses was that ‘no deal’ would be deeply damaging for the UK. It would not just be economically disruptive, but would bring UK-EU cooperation on issues such as counter-terrorism, nuclear safeguards, data exchange and aviation to a sudden halt. It would necessitate the imposition of controls on the Irish land border, and would also leave open the critical question of citizens’ rights.

The potential mitigations proposed by the Secretary of State for Exiting the EU, such as ‘stopping the clock’ at the last moment in order to prolong negotiations, need further explanation. He also envisaged, in the event that a comprehensive agreement is not achieved, a ‘bare-bones’ deal covering critical issues such as counter-terrorism, justice cooperation or aviation. It is unclear how a ‘bare-bones’ deal would relate to the Article 50 withdrawal agreement, or what issues it would address. Nor can it be guaranteed that agreement even on a bare-bones deal will be possible, if wider negotiations have failed to reach agreement. The Government needs to clarify its approach as a matter of urgency.

The UK is leaving the EU, so a substantial change in UK-EU relations is unavoidable. Against this backdrop, the Government’s assertion that ‘no deal is better than a bad deal’ is not helpful. It is difficult to envisage a worse outcome for the United Kingdom than ‘no deal’.

The key factor adding to the risk of ‘no deal’ is time—the Article 50 clock is ticking. The closer the UK and the EU get to the deadline of 29 March 2019, the more damaging a breakdown of negotiations, and a ‘no deal’ outcome, would be. Both sides need to show flexibility, and for the UK to compound the rigidity of Article 50 by enshrining the same deadline in domestic law would not, we believe, be in the national interest.

The Government insists not only that the UK will leave the EU on 29 March 2019, but that both the Article 50 withdrawal agreement and an agreement on future relations will be agreed before this point. This means in practice that the agreements will have to be reached by October 2018, to allow time for the UK Parliament and the European Parliament to consider and vote on them.

An early and comprehensive agreement would, in our view, be the best solution for all sides. But precedent, and the overwhelming weight of evidence, suggests that it will not be possible by March 2019, and that negotiations on future relations will need to continue beyond that point.

If this is the case, both sides will need a transition period. This will not just be an implementation period, since the agreement on future relations will still be under negotiation, but will begin with a ‘standstill period’, to buy time to finalise that agreement, followed by an implementation or adaptation phase. The Government has yet to acknowledge the legal complexity of such a transition period, which may be tested by the Court of Justice of the EU prior to March 2019.

In particular, we question whether Article 50 TEU provides a secure legal basis for the continuing application of EU rules after withdrawal, or for implementation of any yet-to-be-defined agreement on future relations. We also note that while

‘off-the-shelf’ alternatives for transition, such as temporary membership of the EEA or EFTA, may have merit, they would be subject to risk and uncertainty.

Time is passing, and the Government needs to reflect on what steps it will take if negotiations are still continuing as we approach March 2019. We note that Article 50 provides two potential means of securing a limited extension of the UK’s EU membership, which could buy more time for negotiations—either to extend the Article 50 period (which would require the unanimous agreement of the EU 27) or, within the withdrawal agreement, to set a date later than 29 March 2019 for withdrawal to take effect. Either of these options could help the UK achieve its objective of concluding the withdrawal and future relations agreements in tandem.

The overriding UK and EU interest is in securing an orderly and legally certain transition, and we urge the Government and EU to discuss all options for achieving this outcome, and to make their conclusions known before the end of March 2018.

Brexit: deal or no deal

CHAPTER 1: INTRODUCTION

The subject-matter of this report

1. In May 2016, a few weeks before the referendum of 23 June 2016, we published a report entitled *The process of withdrawing from the European Union*¹. That report described a still hypothetical process, drawing on expert evidence to analyse the terms of Article 50 of the Treaty on European Union (TEU), and seeking to set out the key legal and political issues in measured, dispassionate language. The report bears re-reading today, when many of the issues we canvassed, such as revocability of the Article 50 notification, the length of the negotiations, the links between the agreements on withdrawal and on future relations, and the consequences were the negotiations to break down without agreement, have become topics of often heated debate and argument.
2. The key difference between the process, as we outlined it in May 2016, and as it has in fact transpired, is time. In 2016 we envisaged a negotiation lasting until at least 2020, making use of the provision in Article 50 to extend the UK's EU membership. Now, in contrast, the Government's clear policy is that the UK will leave the EU on 29 March 2019, and that negotiations must be completed before that deadline. As the EU's Chief Negotiator, Michel Barnier, has said, "the clock is ticking".²
3. One consequence of this shortage of time is that both sides now accept that, as part of any deal, a transition period will be needed, in order to bridge the gap between the UK's EU membership and the future relationship.
4. The aim of this report is to take stock: to summarise what 'no deal' would mean, and to set out some of the scenarios that might lead to that outcome; and to explore the aims and feasibility of a 'transition' period. Underpinning this report and our conclusions is the ticking of the Article 50 clock: as March 2019 approaches, lack of time will increasingly become the one dominant factor in the negotiations, and potentially a determinant of the UK's future prosperity and security.

This inquiry

5. This inquiry was conducted between September and November 2017. We heard oral evidence on 31 October from the Secretary of State for Exiting the European Union, Rt Hon David Davis MP. In addition, we heard from a range of experts and stakeholders on both sides of the Brexit debate, including John Longworth, of Leave Means Leave, Ruth Lea CBE, Lord Darling of Roulanish, and representatives of the CBI, TUC and TheCityUK. We also received 47 written submissions. We are grateful to all our witnesses for their assistance.
6. **We make this report for debate.**

1 European Union Committee, *The process of withdrawing from the European Union* (11th Report, Session 2015–16, HL Paper 138)

2 At a press conference on 12 July 2017 Michel Barnier responded to comments by the Foreign Secretary, Rt Hon Boris Johnson MP, by saying: "I am not hearing any whistling, just a clock ticking."

CHAPTER 2: NO DEAL

The Government's position

7. In her Lancaster House speech on 17 January 2017, the Prime Minister set out the Government's negotiating objectives for leaving the EU, and achieving a "new, positive and constructive partnership between Britain and the European Union". She said:

"I know there are some voices calling for a punitive deal that punishes Britain and discourages other countries from taking the same path. That would be an act of calamitous self-harm for the countries of Europe. And it would not be the act of a friend. Britain would not—indeed we could not—accept such an approach. And while I am confident that this scenario need never arise—while I am sure a positive agreement can be reached—I am equally clear that no deal for Britain is better than a bad deal for Britain."³
8. While the Prime Minister made clear that it was not her desired outcome, the possibility of 'no deal' has, ever since, been a matter of intense political discussion. For instance, the 2017 Conservative Party general election manifesto stated that "we continue to believe that no deal is better than a bad deal for the UK. But we will enter the negotiations in a spirit of sincere cooperation and committed to getting the best deal for Britain."⁴ By contrast, the Labour Party manifesto stated that "leaving the EU with 'no deal' is the worst possible deal for Britain and ... it would do damage to our economy and trade. We will reject 'no deal' as a viable option and if needs be negotiate transitional arrangements to avoid a 'cliff-edge' for the economy."⁵ The Scottish National Party manifesto recalled that a majority of people in Scotland had voted to remain in the EU, and expressed concern at "the extreme Brexit being pursued by the Prime Minister"—also implicitly rejecting any possibility of 'no deal'.⁶
9. Since the general election, the assertion that "no deal is better than a bad deal" has been heard less often. The Prime Minister's Florence speech on 22 September did not repeat the phrase (although she did use it in response to a subsequent question). Instead, she cited the UK's preparations "for a successful negotiation but also ... our preparations for our life outside the European Union—with or without what I hope will be a successful deal".⁷
10. The Secretary of State for Exiting the European Union, Rt Hon David Davis MP, told the House of Commons Exiting the EU Committee on 25 October that:

3 Rt Hon Theresa May MP, speech on 'The Government's negotiating objectives for exiting the EU', 17 January 2017; <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 27 November 2017]

4 The Conservative Party, *Forward together: the Conservative manifesto*, 2017: <https://www.conservatives.com/manifesto> [accessed 27 November 2017]

5 The Labour Party, *For the Many Not the Few*, *The Labour Party manifesto*, 2017: <http://labour.org.uk/wp-content/uploads/2017/10/labour-manifesto-2017.pdf> [accessed 27 November 2017]

6 The Scottish National Party, *Stronger for Scotland*, (2017), p 8: https://d3n8a8pro7vhmx.cloudfront.net/thesnp/pages/9544/attachments/original/1496320559/Manifesto_06_01_17.pdf?1496320559 [accessed 4 December 2017]

7 Rt Hon Theresa May MP, speech on 'a new era of cooperation and partnership between the UK and the EU', 22 September 2017: <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu> [accessed 27 November 2017]

“No deal is an option. We have made that clear. It is not our preferred option: let’s be clear about that. I am careful about the way I phrase it. At the moment I start talking about no deal, people say, ‘That is what you really want.’ That is not the case; we want the deal. But of course we have reasons why we need no deal as an option literally right up to the moment of signing: because it would not be the first time in European negotiations where sudden, last-minute claims come in because they think they have got you over a barrel.”⁸

11. It is clear from Mr Davis’ remarks that, notwithstanding the shift in tone since the election, the threat of ‘no deal’ remains an important component of the Government’s negotiating strategy. The Government’s preferred option is a successful negotiation, leading to a close partnership between the UK and the EU. But it is also keeping the option of walking away from the negotiations in reserve, and will continue to do so right to the “moment of signing”, to forestall any attempt to force last-minute concessions out of the UK as the deadline approaches.

The EU perspective

12. In evidence to us on 12 July, the EU’s Chief Brexit Negotiator, Michel Barnier, stated:

“I want to reach an agreement because I know the cost and the price of no deal ... I think we really need to explain what ‘no deal’ would mean ... We really have to weigh up the consequences. It is certainly not the option I would choose ... when we are in a classic kind of negotiation, ‘no deal’ means the status quo ... Here we would go back 44 years, and I think that also needs to be explained.”⁹

13. On 12 November, Mr Barnier stated that, while no deal was not his preferred outcome, “It’s a possibility. Everyone needs to plan for it, member states and businesses alike. We too are making technical preparations for it. On 29 March 2019, the United Kingdom will become a third country.” He added that such an outcome would have “consequences in multiple areas”, from “the capacity of British planes to land in Europe to that of dogs and cats to cross the Channel”.¹⁰
14. The fact that both sides are treating no deal as a possible (albeit not desirable) outcome prompted us to examine:
 - How ‘no deal’ can be defined;
 - What the impact of ‘no deal’ would be;
 - The circumstances in which it might arise; and
 - How its effect might be mitigated.

Defining ‘no deal’

15. Box 1 sets out the relevant sections of Article 50 TEU.

8 Oral evidence taken before the House of Commons Select Committee on Exiting the European Union, 25 October 2017 (Session 2017–19), [Q 36](#)

9 Oral evidence taken on 12 July 2017 (Session 2017–19), [QQ 1, 8](#)

10 Jon Henley and Rajeev Syal, ‘EU planning for collapse of Brexit talks, says Michel Barnier’, *The Guardian* (12 November 2017): <https://www.theguardian.com/politics/2017/nov/12/eu-planning-for-collapse-of-brexit-talks-says-michel-barnier> [accessed 27 November 2017]

Box 1: Article 50 TEU and no deal

“2. A Member State which decides to withdraw shall notify the European Council of its intention. 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. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

“3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.”

Source: Treaty on European Union, [OJ C 326](#) (consolidated version of 26 October 2012)

16. Under the terms of Article 50, ‘no deal’ can therefore be defined as a failure by the European Union and the UK to negotiate and conclude an agreement setting out the arrangements for the UK’s withdrawal before the Treaties cease to apply to the UK on 29 March 2019, two years after Article 50 was triggered, without any extension to that period having been agreed.

The impact of ‘no deal’

17. We asked our witnesses what the consequences, positive or negative, of ‘no deal’—that is to say, a complete failure to secure agreement—would be.

Positive consequences

18. Very few witnesses identified any positives arising as a result of ‘no deal’. John Foster, Director of Campaigns, CBI, told us:

“Positives are very difficult to come by, and ... no deal is not an option that the CBI or our membership advocates in any way, but the one positive would be that it is decisive and quick. You are talking about a very complex relationship over 40 years, so no deal would provide a very definitive stop-off point.”¹¹

19. John Longworth, Co-Chairman, Leave Means Leave, said that, while he would like to see a trade deal agreed, the UK’s negotiating position had been undermined by the Prime Minister not making clear in her Florence speech that “we were categorically prepared to walk away, that no deal was better than a bad deal.”¹² He argued that “we are rapidly coming to a position where not only is no deal better than a bad deal but no deal may well be the very best deal ... If there is no progress before Christmas, in order to have adequate time to prepare for a no deal scenario, we ought to declare before Christmas that we are moving to WTO¹³ in March 2019.”¹⁴ This was

¹¹ [Q 43](#)

¹² [Q 1](#)

¹³ A corollary of failure to reach agreement with the EU on future trade would be that UK-EU trade would by default take place on World Trade Organization (WTO) terms. This would involve the imposition of tariffs on the majority of goods traded, and would also curtail trade in services. For an outline of the implications of a move to WTO terms see European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72), chapter 6.

¹⁴ [QQ 1, 5](#)

because, in his view, the benefits of leaving the EU “can only be crystallised if we leave the single market and the customs union. The longer we delay doing that, the more the costs rack up.”¹⁵

Negative implications

20. With the exception of Mr Longworth, the clear consensus view of witnesses to this inquiry (including some who supported Brexit) was that ‘no deal’ would be economically damaging for the UK. Ruth Lea CBE, Economic Adviser, Arbuthnot Banking Group, said that, notwithstanding her view that the UK economy stood to benefit from Brexit in the long term, an agreement was desirable because:

“There is a possibility of disruption to trade if we leave with no deal ... You need a continuation of tariff-free trade, because even though we know that the average common external tariff is quite low—only about 3% or 4%—there are certain industries where it is relatively high, such as the car industry, where it is about 10% ... The downsides of leaving with no deal should be put on the table.”¹⁶

21. The former Chancellor of the Exchequer, Lord Darling of Roulanish, could not see any benefits of ‘no deal’:

“Why do people round the world, and why have they since medieval times, traded with each other? Basically, it is because they recognise that they do better and become better off as a result ... I am not aware of any country in the world—absent North Korea, and even it trades with China to some extent—that puts up barriers and says it is a jolly good thing. I also struggle to find any country of any significance that trades purely on the WTO rules; they all have agreements with somebody.”¹⁷

22. Lord Darling cited the impact of the imposition of tariffs on the automotive and aviation industries, given their complex cross-border supply chains. He warned that “you do not want to put into people’s minds the question, ‘Why are we doing it there? Why don’t we go and do it somewhere else where we don’t have all these things?’” He was also concerned about the practical effects of the introduction of non-tariff barriers.¹⁸

23. John Foster of the CBI said that there would be serious economic consequences across all sectors, including:

- Uncertainty for UK citizens in the EU, and EU citizens in the UK.
- An increase in costs for businesses and consumers alike: “The UK would face tariffs on 90% of our EU goods exports by value.” The CBI estimated that trading on WTO most-favoured nation terms would equate to “an average tariff of 4%, which is about £4.5 billion to £6 billion-worth of increased costs per year on our exports”.
- “Disruption at our ports and airports as a result of the reams of paperwork that we would acquire from non-tariff barriers.” He noted

15 [Q 3](#)

16 [Q 3](#)

17 [Q 35](#)

18 [Q 35](#)

the Port of Dover's view that a "two-minute delay" in the time taken to process each lorry would result in "17 miles of tailbacks."

- "Confusion over everything from contracts to chemicals regulation. The EU withdrawal Bill seeks to enshrine EU regulations into UK law, but what it does not do is provide for reciprocal recognition." For example, "the Vehicle Certification Agency allows automotive companies to sell their vehicles across the European Union. In the event of no deal, that simultaneous licensing will disappear."
 - "Significant chaos around cross-border services. The UK economy [comprises] 80% services and there is no WTO fallback. Some of our most successful exporting industries and services—financial services, aviation, broadcasting, professional and legal services—would find that there are serious legal implications in terms of their ability to conduct their business after 29 March."¹⁹
24. Miles Celic, Chief Executive, TheCityUK, thought that, in terms of financial services, the "real loser in a no-deal Brexit is Europe ... There will be greater economic inefficiency across Europe, more fragmentation, fewer jobs within the industry and less supply for consumers". TheCityUK also provided estimates of the substantial cost to the UK of 'no deal' (see Box 2), and Mr Celic concluded that the only "winners" from a no-deal outcome would be "New York and Asia".²⁰
25. Open Britain asserted that no deal was "a bad deal in its own right ... not a viable option", and "would have catastrophic consequences for the UK". Not only would it mean the UK not having any kind of preferential trading relationship with the EU, but it would also mean the UK potentially jeopardising all the existing trading relationships with third countries that it currently enjoys by virtue of EU membership. No deal could also see the UK drop out of all existing justice and security cooperation with the EU, as well as losing the participation of UK research institutions in Horizon 2020.²¹
26. Professor Adam Łazowski, Westminster Law School, University of Westminster, argued that "a unilateral Brexit would create a legal vacuum in relations with the biggest trade block in the world and the main trading partner of the United Kingdom". He too noted that the UK would lose all the preferential trade agreements it benefits from as a result of EU membership.²² The US Chamber of Commerce, US-UK Business Council agreed that falling back on trade under WTO rules was not a fail-safe, in particular given that international trade in services has not been liberalised to nearly the same degree as within the Single Market: "That matters in an economy like Britain's where more than 80% of jobs and GDP are in the services sector." They also pointed out that the UK's independent membership in the WTO was contingent on all WTO members signing up to its revised tariff-rate quotas. They noted that a wide range of agricultural exporters including the USA, Australia, Argentina, Brazil, and New Zealand had already objected to the EU and UK's initial proposal in regard to future agriculture quotas.²³

19 [Q 43](#)

20 [Q 24](#)

21 Written evidence from Open Britain ([DND0030](#))

22 Written evidence from Prof Adam Łazowski ([DND0036](#))

23 Written evidence from US Chamber of Commerce, US-UK Business Council ([DND0037](#))

Case studies

27. Boxes 2–8 set out what witnesses believed would be the impact of ‘no deal’ across a number of specific policy sectors and fields. It should be stressed that witnesses were asked to describe the impact of ‘no deal’, not the impact of Brexit. Nor was the evidence submitted to this inquiry necessarily a comprehensive cross-section of views: more detailed analysis of these issues can be found in the various Brexit-related reports we have published since the referendum.

Box 2: ‘No deal’ and financial services²⁴

TheCityUK cited analysis²⁵ that, in a scenario where the UK’s relationship with the EU largely rested on WTO obligations, 40–50% of EU-related financial services activity and up to 31–35,000 jobs in the sector could be at risk, as well as £3–5 billion of tax revenues per annum. This could rise to 75,000 jobs and £8–10 billion in tax revenues in the wider ecosystem.²⁶

PIMFA noted that WTO rules do not in general apply to financial services and in particular not to retail investment and savings. They argued that no deal could result in a range of problems in relation to passporting and equivalence, access to funds, cross-border brokerage, the position of the financial services industries in the Crown Dependencies, and divergence, equivalence and market access.²⁷

The Loan Market Association pointed out that the loss of the Capital Requirements Directive passport would have a major impact on lending and loan market activities conducted by banks. A sudden withdrawal of passporting rights could affect both the enforceability of existing loan agreements and the ability and willingness by UK-based lenders to enter into future agreements.²⁸

Lloyd’s predicted that the transfer of personal data from the EU to the UK would also be more difficult for UK firms doing business in the EEA. London-based firms would therefore have to establish EEA subsidiaries or cease to write EEA insurance.²⁹

The Association of British Insurers agreed, and argued that a system where UK insurers had to abide by dual or multiple regulatory systems in order to transfer data internationally would create inefficiencies, legal uncertainty, and risks, damaging the global competitiveness of UK insurance.³⁰

Although we heard no evidence in this inquiry to suggest that there would be positives to a ‘no deal’ outcome, we note that in evidence to the Financial Affairs Sub-Committee, Barnabas Reynolds, of Shearman & Sterling LLP, argued that, given the strength of the UK financial services industry, a no deal outcome might “enhance the gravitational pull of the markets here. If we enhance that gravitational pull, everything will keep coming back here in reality, one way or another.”³¹

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

25 Undertaken by management consultants Oliver Wyman

26 Written evidence from TheCityUK ([DND0015](#))

27 Written evidence from PIMFA ([DND0045](#))

28 Written evidence from Loan Markets Association ([DND0006](#))

29 Written evidence from Lloyd’s ([DND0028](#))

30 Written evidence from Association of British Insurers ([DND0034](#))

31 Oral evidence taken before the EU Financial Affairs Sub-Committee, 11 October 2017 (Session 2016–17), [Q 10](#)

Box 3: ‘No deal’ and the agri-food sector³²

The British Food Importers & Distributors Association said that no deal would lead to a lack of availability of key food products on supermarket shelves. Falling back on WTO rules could also lead to food prices rising by over 20%.³³

The Wine and Spirit Trade Association said that no deal would lead to job losses, investment cuts, a decline in sales and potential business relocation. Under WTO schedules, customs tariffs would be imposed on wine, probably raising the price for consumers. Non-tariff barriers would present challenges regarding access to stock, transit availability, bonded warehouse space, packaging, machinery, access to labour and securing supply of future wine vintages.³⁴

The Fresh Produce Consortium noted that the Port of Dover handled 600 lorries per day transporting fresh produce.³⁵ In 2016, the UK imported 3 million tonnes of fresh produce from other EU Member States. Many suppliers dealing solely in EU imports have no experience of meeting customs requirements, and registration as an Authorised Economic Operator³⁶ would not be feasible for most small importers.³⁷

The British Retail Consortium warned that the average tariff on food products imported from the EU would be 22%, with tariffs on Irish cheddar of 44% and on beef of 40%. Its research pointed to potential rises in the price of cheese in the order of 6–32%, on tomatoes of 9–18%, and on beef of 5–29%. Non-tariff barriers would be burdensome in relation to customs checks, and health or veterinary checks stemming from sanitary and phytosanitary requirements.³⁸

NFU England & Wales argued that a default to WTO terms would have a particularly devastating impact on the British sheep sector, which exports more than 30% of its total production each year (of which 96% goes to the EU). Other net exporting sectors such as the wheat and barley sectors would also be harmed by the imposition of duties. Overall, 71.4% of the UK’s food and non-alcoholic exports go to the EU. They also noted that the UK was a net importer of food, and that Brexit could present opportunities to increase the domestic consumption of home-grown food. However, the fact that not all imported products can be grown in the UK meant that an increase in consumer prices was likely.³⁹

32 See European Union Committee, *Brexit: fisheries* (8th Report, Session 2016–17, HL Paper 78), *Brexit: agriculture* (20th Report, Session 2016–17, HL Paper 169) and *Brexit: farm animal welfare* (5th Report, Session 2017–19, HL Paper 15)

33 Written evidence from British Food Importers & Distributors Association ([DND0020](#))

34 Written evidence from Wine And Spirit Trade Association ([DND0018](#))

35 Chamber of Shipping estimate.

36 According to the Government, Authorised Economic Operator status “is an internationally recognised quality mark indicating that your role in the international supply chain is secure, and that your customs controls and procedures are efficient and compliant.” See HM Revenue & Customs, ‘Guidance, Authorised Economic Operator’: <https://www.gov.uk/guidance/authorised-economic-operator-certification> [accessed 27 November 2017]

37 Written evidence from Fresh Produce Consortium ([DND0009](#))

38 Written evidence from British Retail Consortium ([DND0011](#))

39 Written evidence from NFU England & Wales ([DND0024](#))

Dairy UK said that there would be an increase in UK wholesale and retail prices for dairy, severe erosion of the UK's position in export markets, a growth in the sales of dairy substitute products, and particular disruption to the dairy industry in Northern Ireland (see Box 7). WTO tariffs for dairy products were prohibitively high, and would make EU imports much more expensive. Meanwhile UK dairy exports to the EU would become uncompetitive, as they would need to surmount the EU tariff wall.

Dairy UK cited a forecast by the Centre for Economics and Business Research suggesting an increase in wholesale cheddar prices of 51% and a 20% increase in the retail price of cheese. It was unclear how no deal would affect the supply of EU labour in the UK. On average, non UK-born staff account for 11% of the processing workforce.⁴⁰

Although no evidence from the fisheries sector was submitted to this inquiry, we note that some within that sector have advocated a 'no deal' outcome. Fishing for Leave, for instance, have argued that a clean break from the EU, with no continuation of the Common Fisheries Policy, is needed to ensure the future prosperity of the UK fishing industry.⁴¹

40 Written evidence from Dairy UK ([DND0031](#))

41 Fishing for Leave, 'Conservative Conference Condensed' (7 October 2017): <http://ffl.org.uk/conference/> [accessed 4 December 2017]

Box 4: ‘No deal’ and freight, transportation and ports⁴²

The Freight Transport Association stated that, in a worst case scenario, no deal could result in immediate imposition of new customs, sanitary and phytosanitary checks at the border. There could be a lack of adequate infrastructure at ports, airports and the Irish land border, as well as a lack of personnel and capacity in inspection facilities. This could lead to missed deliveries and the spoiling of perishable loads. The recruitment and training of new customs officials would take some years. The FTA also noted the uncertain impact on EU citizens working in the UK—14% of LGV drivers, 18% of forklift drivers and 26% of warehouse operatives in the UK are estimated to be EU nationals without a UK passport.⁴³

The US Chamber of Commerce, US-UK Business Council cited HMRC’s estimate that customs declarations at ports like Dover would increase fivefold, from 55 million to over 255 million per year. They were unclear how ports like Dover, or the Channel Tunnel, would be able to handle these dramatically increased customs requirements.⁴⁴

The Institute for Government noted that, in order to prepare the border for ‘no deal’, change would be needed across 30 Government departments and public bodies, as well as more than 100 local authority organisations. Private sector port operators, freight forwarders and shipping lines would need to adapt their infrastructure, paperwork and logistics. France, The Netherlands and Ireland would also need to plan for disruption at their ports. Operation Stack demonstrated how delays at Calais have a knock-on effect in Dover.⁴⁵

The British Retail Consortium (BRC) noted that “Dover is primarily set up as a minimal check port designed for just-in-time supply routes for goods. It is not a Border Control Point for the purposes of checking third country meat or plant imports.” They said that the cost to the UK economy of significant delays to the flow of goods via Dover had been quantified⁴⁶ at £1 billion per annum.

The BRC pointed out that up to 180,000 UK companies would be drawn into customs declarations for the first time. Companies would have to operate new excise and VAT systems for compliance purposes.⁴⁷ This was backed up by evidence from specific industries. The Confederation of Paper Industries, for instance, warned of the damaging impact of inspection requirements, requirements to prove legislative compliance on a shipment by shipment basis and rules of origin for converted paper products.⁴⁸

Johnson & Johnson warned that non-tariff barriers, including regulatory changes, lack of harmonisation, delays, and custom related effects (customs clearance costs, increased lead times due to border formalities, adapting IT systems for the thousands of annual shipments between the EU27 and the UK for each sector) would have the most significant impact on its business. A no deal scenario could potentially disrupt the supply of medicines, medical devices and other healthcare products from the EU to the UK.⁴⁹

42 See European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72) and *Brexit: trade in goods* (16th Report, Session 2016–17, HL Paper 129)

43 Written evidence from Freight Transport Association ([DND0023](#))

44 Written evidence from US Chamber of Commerce, US-UK Business Council ([DND0037](#))

45 Written evidence from Institute for Government ([DND0010](#))

46 By Oxera Economics

47 Written evidence from British Retail Consortium ([DND0011](#))

48 Written evidence from Confederation of Paper Industries ([DND0008](#))

49 Written evidence from Johnson & Johnson ([DND0039](#))

Box 5: ‘No deal’ and aviation⁵⁰

At a meeting of the EU Internal Market Sub-Committee on 30 November 2017, witnesses representing the aviation sector expressed confidence that a deal would be reached to cover the sector.⁵¹ The consequences of failure to reach a deal, however, would be grave.

ADS Group, representing the UK’s aerospace, defence, security and space industries, stated that no deal was “the worst possible outcome for our sectors, raising the cost of doing business, reducing our influence and damaging the UK’s reputation. Leaving the membership and regulatory framework of the European Aviation Safety Agency (EASA) could cause a regulatory vacuum for industry, and increase long term costs of re-establishing UK expertise.”⁵²

Dr Tobias Lock, Edinburgh Law School, noted that “UK airlines would no longer have a valid operating licence as they would no longer be based in an EU Member State ... and licences issued by the UK’s aviation authority would no longer be recognised as licences issued by a [Member State]. To avoid the worst consequences, the UK could unilaterally decide to recognise licenses issued by EU Member States and give EU airlines equal access (e.g. Ryanair as an Irish airline operates many intra-UK routes), but there would be no guarantee that this would be reciprocated by the rest of the EU in case of a no deal Brexit.”⁵³

The American Chamber of Commerce to the EU stated: “The EU-U.S. Open Skies Agreement permits U.S. (cargo) airlines to operate flights from the U.S. to any two international (but not domestic) EU points. (The same applies for EU airlines flying into U.S.) It is imperative for business continuity, and for the flow of cargo air traffic in general, that this existing arrangement is maintained when the UK leaves the EU ... Even if the UK elected to maintain the EU-U.S. Open Skies Agreement, this would not automatically extend the right of U.S. (cargo) carriers to fly between an airport in the UK and one in the EU. Since these flights would no longer be intra-EU, continuing the current regime would require EU approval.”⁵⁴

The London Chamber of Commerce and Industry noted that there was no WTO ‘fail safe’ for the aviation sector: “The ultimate danger is that without a deal, flights from the UK and to the EU and other parts of the world will be grounded on exit day ... And without an early deal—meaning clarity for airports, airlines and travellers as soon as possible in 2018—the uncertainty around what might happen will begin to weigh on the decision making of those considering travel.”⁵⁵

50 See European Union Committee, *Brexit: trade in non-financial services* (18th Report, Session 2016–17, HL Paper 135)

51 Oral evidence taken before the EU Internal Market Sub-Committee, 30 November 2017 Session 2016–17) [QQ 1–11](#)

52 Written evidence from ADS Group ([DND0027](#))

53 Written evidence Dr Tobias Lock ([DND0003](#))

54 AmChamEU, *Brexit and the future UK/EU Relationship* (April 2017): http://www.amchameu.eu/system/files/position_papers/amcham_eu_position_paper_-_brexit_and_the_future_eu-uk_relationship.pdf [accessed 27 November 2017]

55 Written evidence from London Chamber of Commerce and Industry ([DND0017](#))

Box 6: ‘No deal’ and higher education and research

MillionPlus argued that no deal would be “extremely damaging for UK universities and should be avoided if at all possible”. They cited in particular the reputational damage, deterrent effect and confusion that could arise from the designation of EU students as international students. No deal could also place existing EU-funded research projects in jeopardy.⁵⁶

The Russell Group concluded that no deal would affect universities’ ability to deliver world-leading research and education. No deal on the rights of EU citizens to live, study and work in the UK could lead to a loss of talented researchers and technicians with specialist skills who could not be replaced easily by UK nationals. If the UK and EU did not secure an agreement on science and research collaboration, UK institutions would cease to be eligible for Horizon 2020 funding on the day of exit. This would mean funding for existing projects would be withdrawn and researchers would immediately lose the ability to bid for this funding, with a detrimental impact on international competitiveness.⁵⁷

The British Heart Foundation also noted that the EU was a major funder of UK research, and helped to promote international collaboration. Uncertainty about what could happen to UK access to Horizon 2020 funding after March 2019 could discourage EU researchers from approaching British counterparts to collaborate on projects. They too expressed concern about the reputational damage caused by uncertainty over the status of EU researchers and healthcare professionals in the UK. They also stressed the need for maximum possible cooperation and alignment with the European Medicines Agency on the regulation of medicines and medical devices.⁵⁸

56 Written evidence from MillionPlus ([DND0013](#))

57 Written evidence from Russell Group ([DND0044](#))

58 Written evidence from British Heart Foundation ([DND0032](#))

Box 7: ‘No deal’ and the impact on Ireland and Northern Ireland⁵⁹

The Institute for Government observed that “if the UK leaves the EU with no deal, it will not be possible to put in place any agreed arrangements to manage the border in Ireland. The UK could (possibly) decide to turn a blind eye. But the land border will represent the external frontier of the EU’s Single Market and Customs Union and it is hard to envisage how they would manage that without some sort of controls in place.”⁶⁰

Dairy UK noted that imposition of a WTO schedule would be a severe challenge for the dairy industry in Northern Ireland because of its reliance on the export of raw milk to Ireland and of products to the rest of the EU. In 2015 Northern Ireland dairy exports to Ireland were £154 million, constituting 15% of total sales, while exports from Ireland to Northern Ireland were £61.6 million. In addition, Irish dairy co-operatives own approximately 60% of the processing capacity in Northern Ireland. The imposition of customs controls at the land border would be the least desirable outcome for the dairy sector, and would create uncertainty around the ability of the dairy sector in Northern Ireland to continue to operate as it does currently.

The British Retail Consortium feared that no deal would have a severe impact on retail businesses with significant operations in Ireland. They also cited a report prepared for the European Parliament’s Agriculture and Rural Development Committee on UK-EU agricultural trade, which modelled the damaging effects of a no deal scenario on UK and Irish GDP and agri-food consumer prices.⁶¹

Professor Feargal Cochrane, University of Kent, was concerned about the high degree of uncertainty over the impact of Brexit on the Irish border. He noted that the Prime Minister’s Florence speech “was unable to provide anything beyond a statement of what [the UK Government] would like to see happen rather than what it could actually and verifiably deliver on the border question”. He added that “in the Irish context, it is entirely possible that it will be the EU, rather than the UK, that reinstitutes border checks to protect its frontier with a non-EU state after Brexit.”⁶²

Although we did not receive evidence on the implications of ‘no deal’ for Gibraltar, as well as for the other Overseas Territories, the Crown Dependencies, and Sovereign Base Areas in Cyprus, we note that the implications for them could also be particularly significant.⁶³

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

60 Written evidence from Institute for Government ([DND0010](#))

61 Written evidence from British Retail Consortium ([DND0011](#)) and European Parliament ‘Research for AGRI Committee: EU-UK agricultural trade: state of play and possible impacts of Brexit’ (October 2017): [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602008/IPOL_STU\(2017\)602008_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602008/IPOL_STU(2017)602008_EN.pdf) [accessed 4 December 2017]

62 Written evidence from Prof Feargal Cochrane ([DND0025](#))

63 See European Union Committee, *Brexit: Gibraltar* (13th Report, Session 2016–17, HL Paper 116), *Brexit: the Crown Dependencies* (19th Report, Session 2016–17, HL Paper 136) and Letter from Lord Jay of Ewelme to Rt Hon David Davis MP, Secretary of State for Exiting the European Union, 13 September 2017: <http://www.parliament.uk/documents/lords-committees/eu-select/Correspondence-2017-19/11-09-17-Overseas-Territories-letter-to-David-Davis-MP.pdf>

Box 8: ‘No deal’ and citizens’ rights⁶⁴

British in Europe warned that ‘no deal’ could result in “an imperfect and patchwork solution and lead to years of practical problems for more than 4.2 million British citizens in the EU and EU citizens in the UK who moved pre-Brexit to other EU countries in good faith and with the legitimate expectation that their EU citizenship rights were irrevocable”.

British in Europe proposed that, in order to protect citizens’ rights in the event that broader agreement cannot be reached, any agreement on citizens’ rights should be set apart from the rest of the negotiations. The way that the negotiations had been structured meant that “matters and compromises that have direct repercussions for the lives of real people are being mixed up with the discussions as regards the financial settlement and the Irish border. There is no way of avoiding the conclusion that citizens and their rights are being used as bargaining chips in these negotiations. Unless and until citizens’ rights are ringfenced from the rest of the negotiations, this position will not change.”⁶⁵

Scenarios for ‘no deal’

28. The evidence summarised in the previous section sets out the potentially serious consequences of failure to reach any kind of deal during the Brexit negotiations. In reality, however, there are various possible permutations of ‘no deal’, both in terms of the extent of agreement, and in terms of timing. The impact of ‘no deal’ could be more or less grave depending on which if any of these scenarios in fact materialised.
29. The UK in a Changing Europe, in research published in July 2017, described six broad scenarios for the negotiations:
 - Smooth Brexit (where the Article 50 and trade deal are agreed by March 2019);
 - Transitional Brexit (the Article 50 deal is agreed and both sides agree on transitional arrangements to bridge the gap to a full trade deal);
 - Cliff-edge Brexit (where the Article 50 deal is agreed but the trade discussions go nowhere);
 - Chaotic Brexit (where the talks fail and all issues remain unresolved);
 - Premature Brexit (where talks break down acrimoniously, and the UK unilaterally withdraws ahead of March 2019); and
 - Timed out Brexit (where the talks continue, but are not completed within the two-year Article 50 period, and there is no extension of the UK’s EU membership).⁶⁶
30. A key factor, implicit in all these scenarios, is timing. Three important dates have emerged: December 2017, when the European Council will decide whether sufficient progress has been reached in withdrawal negotiations to justify the commencement of discussions on the future UK-EU relationship;

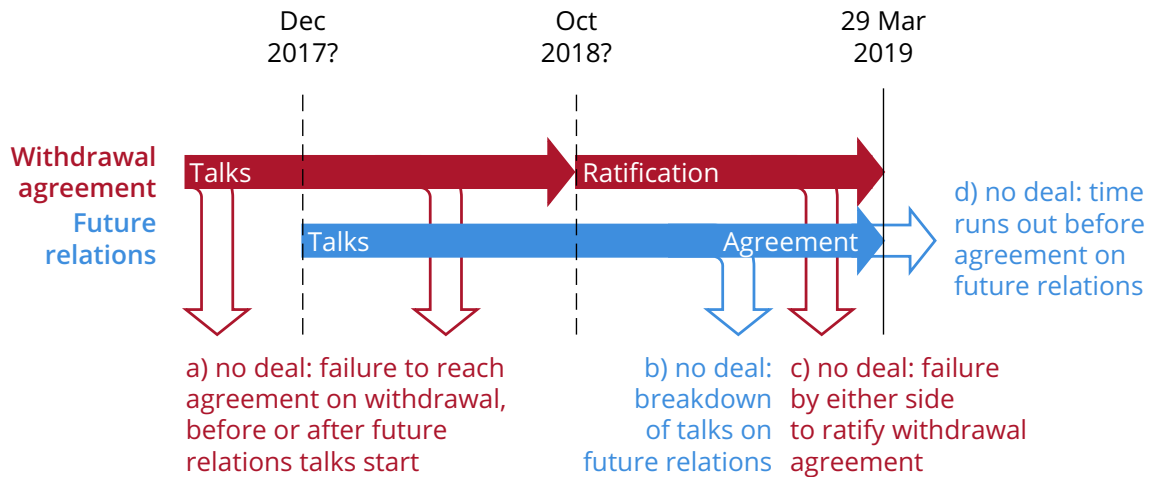
⁶⁴ See European Union Committee, *Brexit: acquired rights* (10th Report, Session 2016–17, HL Paper 82)

⁶⁵ Written evidence from British in Europe (DND0035)

⁶⁶ The UK in a Changing Europe, *Cost of No Deal* (20 July 2017): <http://ukandeu.ac.uk/wp-content/uploads/2017/07/Cost-of-No-Deal.pdf> [accessed 27 November 2017]

October 2018, when Michel Barnier has stated that the withdrawal agreement will have to be finalised, in order to allow time for consideration and ratification by Westminster and by the European Parliament; and 29 March 2019, when the two years allowed under Article 50 will elapse. These dates are reflected in Figure 1.

Figure 1: Possible ‘no-deal’ scenarios



31. Of the three dates, the first two could potentially be varied, whereas the deadline of 29 March 2019 for completion of the Article 50 process is fixed. The existence of such a ‘hard deadline’ is already ratcheting up the pressure on both sides. The longer it takes to agree that sufficient progress has been made on stage one issues (bearing in mind that the original intention was to reach agreement on phase one in October 2017), the less time will be available to discuss the future relationship, to explore complex political and legal issues, and to resolve areas of disagreement.
32. There are also factors outside the control of the parties to the negotiations, which could potentially result in an agreement falling at a late stage. For instance, the Government has undertaken that the withdrawal agreement will be enshrined in primary legislation, which will have to be passed in the right form by both Houses of Parliament. Moreover, before any withdrawal agreement can be ratified by the EU, the consent of the European Parliament is required. As part of its consideration the European Parliament may, by analogy with the procedure for ratification of international agreements under Article 218 TFEU, seek the Opinion of the Court of Justice of the European Union (CJEU)⁶⁷ as to whether the draft agreement is compatible with the Treaties. A Member State may also refer the draft agreement to the CJEU.⁶⁸ If the Court were to hold that the withdrawal agreement were incompatible with the Treaties (as it did, for instance, in the case of the proposed accession

⁶⁷ Article 263 [Treaty on the Functioning of the European Union](#). The Court of Justice of the European Union formally includes both the Court of Justice (formerly the European Court of Justice or ‘ECJ’) and the General Court (formerly the Court of First Instance or ‘CFI’) (Article 19 [Treaty on European Union](#)). In the interests of brevity, throughout this report we use the term CJEU.

⁶⁸ *Ibid.*

of the EU to the European Convention on Human Rights⁶⁹) the EU would be unable to proceed with ratification.

33. Such scenarios could present the two sides with the choice of returning to the negotiating table or accepting a late ‘no deal’ outcome. As Michel Barnier has said, the clock is ticking, and, unless the possibility of the negotiating period being extended (as provided for in Article 50) is left open, the likelihood of ‘no deal’ is increased. Against this backdrop, the Government’s proposal on 13 November to enshrine an exit date of 29 March 2019 in domestic legislation is particularly unhelpful.

Mitigating the impact of ‘no deal’

A ‘bare bones’ agreement

34. It will be clear from the previous section that, while much of our evidence focused on the possibility of a complete breakdown in negotiations, the term ‘no deal’ in fact covers a range of possible permutations. For instance, the Secretary of State described complete failure to reach agreement as “not impossible, but very, very, very improbable”. A more likely outcome, in his view (albeit still “a small possibility”), was “some sort of basic” or “bare-bones” deal, “without the bits we really want”:

“In the event that we did not get a full deal, the interest of both sides on, say, counterterrorism cooperation, justice cooperation or data exchange cooperation is so great that I find it hard to believe that we will not get some fundamental deal there ... If we do not end up with some sort of arrangement with Euratom, we would have to create, as in the Nuclear Safeguards Bill currently going through the Commons, another structure which effectively gives us the same safety arrangements ... it is so patently in everybody’s interests that we have, say, an aviation deal—not just for us and our holidaymakers, but what would the absence of one do to the economy of Spain or Italy or other countries that have regions heavily dependent on tourism, or what would it do to Poland if the 1 million Poles in Britain could not go back and forth between them?”⁷⁰

35. While Mr Davis suggested that such an agreement would cover “fundamental issues” such as counter-terrorism, justice, data exchange, nuclear safeguards and aviation, he did not specify the exact areas that it would cover, nor the mechanism by which it would be reached. Asked whether scientific and research collaboration would be included in a ‘bare-bones’ deal, he was vague, telling us that it was his “hunch—no more than that, frankly”, that “there is massive advantage for both sides to continue the movement of people, ideas and money as science projects get bigger and bigger. So [Brexit] would not be the end of the story.”⁷¹
36. Moreover, Mr Davis did not specify whether a ‘bare-bones’ deal would sit alongside a withdrawal agreement covering the ‘phase one’ issues currently

69 Opinion 2/13 (Full Court) of 18 December 2014. Following a request for its Opinion from the European Commission, the Court of Justice decided that the draft international agreement giving effect to Article 6(2) TEU and providing for the EU’s Accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, was not compatible with the EU Treaties. See also Opinion 2/94 of 28 March 1996 which dealt with the (then) European Community’s accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

70 Oral evidence taken on 31 October 2017 (Session 2017–19), [Q 9](#)

71 Oral evidence taken on 31 October 2017 (Session 2017–19), [Q 10](#)

under negotiation, including citizens' rights, the financial settlement, and resolution of UK-Irish issues.

37. Other witnesses cast doubt on both the feasibility and value of a 'bare-bones' deal. Owen Tudor, of the TUC, pointed out that:

"If you were going to go for some sort of bare-bones deal, that itself would take some time to negotiate, so at what point do you make the decision to go for such a deal given that the clock will still be ticking? I am uncertain that even a bare-bones deal could be negotiated by March 2019."⁷²

38. John Foster said that, while a 'bare-bones' agreement was "a deal", it was "just a very bad deal". He continued:

"It is also difficult to identify a set of political circumstances where decisions are taken that allow the UK to remain in the single aviation market and the single electricity market so that the lights stay on in Northern Ireland, but then no transition is agreed. I struggle to see how the jigsaw puzzle comes together where you have a set of four or five barebones deals but not a transition."⁷³

'Stopping the clock'

39. In the event that negotiations are continuing as the deadline approaches, the Secretary of State envisaged a 'stop-the-clock' procedure, to reduce the risk of a 'timed-out' Brexit. This suggestion reflected his view that "sometimes European negotiations have gone the whole distance and more than the whole distance".⁷⁴

40. Lord Darling offered some support to Mr Davis' view, predicting that there was:

"A 50% chance that we will reach the end of this process with the traditional car crash followed by the traditional crisis meeting in the middle of the night. Then we will agree to roll the thing over and will meet for another period of time. Greece is a good example of how things do not get fixed, despite everybody saying that they want to fix them. These things just go on and on, and that situation is not fixed yet. It will take time."⁷⁵

41. However, whereas the EU has sometimes stretched self-imposed deadlines, it seems to be wishful thinking that Article 50 could be overridden by 'stopping the clock'. As Professor Catherine Barnard, Professor of European Union and Employment Law, University of Cambridge, pointed out, "Article 50 would still determine what is going on. Article 50 says that unless the two-year period is extended, which requires the unanimous agreement of the 27, the treaties will cease to apply on 29 March 2019." She therefore judged that the only way to 'stop the clock' would be to use the explicit provision within Article 50 to extend negotiations, in the process extending the UK's EU membership: "Then, assuming there is political will, we will have to ask the

72 [Q 43](#)

73 [Q 43](#)

74 Oral evidence taken 31 October 2017 (Session 2017–19), [Q 3](#)

75 [Q 35](#)

EU whether it is prepared to extend that two-year period, but it would have to agree that by unanimity.”⁷⁶

Contingency planning

42. In reply to a 24 October House of Commons debate on “the preparedness of the United Kingdom to leave the European Union with no agreement”, the Parliamentary Under-Secretary of State for Exiting the European Union, Steve Baker MP, said:

“The Treasury has committed more than £250 million of new money to support Departments such as the Department for Environment, Food and Rural Affairs, the Home Office, Her Majesty’s Revenue and Customs, and the Department for Transport in this financial year for exit preparations, including under no deal.”⁷⁷

43. Subsequently, in his budget statement on 22 November, the Chancellor of the Exchequer announced:

“While we work to achieve this deep and special partnership, we are determined to ensure that the country is prepared for every possible outcome. We have already invested almost £700 million in Brexit preparations and today I am setting aside over the next two years another £3 billion. I stand ready to allocate further sums if and when needed. No one should doubt our resolve.”⁷⁸

44. We asked our witnesses whether the Government’s contingency planning for ‘no deal’ was sufficient. John Longworth (speaking in early October) said:

“If the UK Government were serious in pursuing a no-deal option, they would look at taking practical measures very soon to implement it. It is not enough simply to plan it on paper, because to be ready to have a reasonably smooth exit without a deal by March 2019 we need to be doing stuff now ... It is unfortunate that the Government did not crack on and start to upgrade the HMRC IT system quickly enough. That has delayed that process and wasted time.”⁷⁹

45. Other witnesses were sceptical about how far it would be possible to prepare for no deal. The UK Trade Policy Observatory acknowledged that, while there was a notable difference between “an ordered exit from the EU with no deal which involves detailed planning and crashing out, the former will require a gargantuan undertaking by the UK Government if it is to prepare for a ‘no deal’.”⁸⁰

46. Lord Darling considered the feasibility of preparing for the impact of ‘no deal’ upon Dover:

“It makes no sense to spend an awful lot of money concreting over Kent, which would not be uncontroversial ... or to employ lots of people who you might not need at a time where there are very serious shortages in the NHS, for example. There is a limit to what the Government can

76 [Q 12](#)

77 HC Deb, 24 October 2017, [col 277](#)

78 HC Deb, 22 November 2017, [col 1046](#)

79 [QQ 1–2](#)

80 Written evidence from The UK Trade Policy Observatory ([DND0033](#))

do there. Even if you started spending the money today, I doubt things would be ready in time.”⁸¹

47. Owen Tudor argued that “the main effort the Government ought to be putting their mind to is not planning for no deal but trying to plan for a deal and to secure the agreement with the European Union on the deal that is needed”.⁸²

Conclusions

The impact of ‘no deal’

48. **A complete ‘no deal’ outcome would be deeply damaging for the UK. It would bring UK-EU cooperation on matters vital to the national interest, such as counter-terrorism, police, justice and security matters, nuclear safeguards, data exchange and aviation, to a sudden halt. It would place the status of UK nationals in the EU, and EU nationals in the UK, in jeopardy, and would necessarily lead to the imposition of controls at the Irish land border.**
49. **The wider economic impact of an abrupt departure from the EU single market and customs union, and the adoption of WTO conditions for trade, would be felt across a range of sectors, including financial services, the agri-food sector, and aviation. It would have a particularly disruptive impact on cross-border supply chains. The short-term impact on trade in goods would also be grave: the UK’s ports would be overwhelmed by the requirement for customs and other checks. There is simply not enough time to provide the necessary capacity, IT systems, human resource and expertise to deal with such an outcome.**
50. **While the evidence we received focused on the impact on the UK, no deal would also have a damaging impact on the EU. It too would feel the negative effects of a loss of trade with a major trading partner, and restrictions on the movement of goods and services, new customs checks and the breakdown of aviation arrangements would be mirrored on the EU side. In addition, the EU would feel the loss of police and security cooperation, scientific and research collaboration, and of access to the City of London as a motor of the EU’s financial services industry, and to the City’s capital markets.**

The prospects for a ‘bare-bones’ deal

51. **The Secretary of State for Exiting the EU has argued that a complete ‘no deal’ outcome is “very, very, very improbable”. He has also said that, in the “unlikely” event that a trade deal cannot be reached, it will be possible to agree a ‘bare-bones’ deal covering fundamental issues of shared concern. We are concerned that a ‘bare-bones’ deal would, in the words of the CBI, still be a “very bad deal”.**
52. **The Secretary of State’s confidence that at least a ‘bare-bones’ deal could be agreed skates over the potential obstacles, including the technical and legal complexity of such a deal, as well as its timing.**

81 [Q 37](#)

82 [Q 45](#)

We were also concerned by his lack of clarity in outlining the “fundamental issues” that a ‘bare-bones’ agreement would cover.

53. Furthermore, Mr Davis did not specify whether, in the event of a ‘bare-bones’ deal, the UK and EU would also have reached agreement on core withdrawal issues, such as the financial settlement, citizens’ rights, and the Irish border. As our report on *Brexit: UK-Irish relations* concluded, the imposition of a hard border on the island of Ireland could have serious economic, social and political repercussions, and must be avoided. In the absence of agreement on these issues, there can be no guarantee that even a ‘bare-bones’ deal will be agreed by the EU.
54. We urge the Government therefore to clarify, as a matter of urgency, the relationship between a hypothetical ‘bare-bones’ deal and the Article 50 withdrawal agreement, and also to set out which “fundamental issues” it believes should, of necessity, be included in a ‘bare-bones’ deal.
55. In addition, we reiterate the call in our 2016 report on *Brexit: acquired rights* for the Government to offer a unilateral guarantee to EU citizens resident in the UK outlining how their position will be protected, whatever the outcome of negotiations. It would then be for the EU and its 27 remaining Member States to respond in kind.

Is no deal better than a bad deal?

56. Given the overwhelming evidence of the destructive effect of ‘no deal’, the Government’s assertion that “no deal is better than a bad deal” was not helpful. If the two sides were negotiating a free trade agreement from scratch, failure to reach agreement would simply mean a continuation of the status quo—but that is not an option in the case of Brexit, where ‘no deal’ would mean the abrupt cessation of over 40 years of economic, political and legal partnership. It is difficult, if not impossible, to envisage a worse outcome for the United Kingdom.
57. The Secretary of State told us that “we need no deal as an option literally right up to the moment of signing”. This approach only ratchets up the pressure on the negotiations and the political rhetoric that surrounds them on both sides. It also risks becoming a self-fulfilling prophecy by leading to a breakdown of trust, making an unintended ‘no deal’ more likely.
58. The way in which both sides are now treating ‘no deal’ as a realistic possibility illustrates the point. While it is sensible for them to undertake contingency planning for ‘no deal’, both the UK and the EU must ensure that the very act of such preparations does not increase the likelihood of this outcome.

The time factor

59. It is clear that the later ‘no deal’ emerges as the outcome of the negotiations, the more damaging its effects will be. To hold out the prospect of a ‘no deal’ outcome until the eleventh hour, and even to suggest that the clock could be ‘stopped’ to allow negotiations

to continue beyond that point, even when there is no obvious legal mechanism to do so, would be irresponsible. For one thing, it guarantees that uncertainty for business and citizens will continue, and even increase, as ‘Brexit day’ approaches.

60. At the same time, we urge the EU to show flexibility in its negotiating stance, to ensure that the UK is not driven to a position where it sees ‘no deal’ as the only realistic option. Both sides must work to find ways to allow discussions to move on as soon as possible to considering the future relationship between the UK and the EU. In particular, the breadth and depth of the issues to be discussed between the parties mean that in our view the parties should commence at least scoping discussions as a matter of urgency. The longer that discussions on the future relationship are delayed, the more likely ‘no deal’ becomes.
61. The key factor adding to the risk of ‘no deal’ is the lack of time—as Michel Barnier has said, the clock is ticking. The rigidity of the Article 50 deadline of 29 March 2019 in itself makes a no deal outcome more likely. But the Article 50 deadline could, in an emergency (for instance, if negotiations were unfinished, but close to completion) be extended, by unanimous agreement of the European Council. For the Government to compound the rigidity of Article 50 by enshrining the same deadline in domestic law would not, we believe, be in the national interest.

CHAPTER 3: TRANSITION

Why transition?

62. There are three major reasons why both sides to the negotiations have expressed support for the idea of transition:
- Easing uncertainty: the closer the two sides get to the Article 50 deadline, the less time businesses and citizens would have to prepare for a ‘no deal’ outcome, and the more serious its effect would be. The result is that many sectors of the economy have little option but to plan for a ‘worst case scenario’, activating contingency plans, reviewing investment decisions, and moving staff overseas. Many businesses are already taking those decisions, but early agreement on transition could provide assurance that the worst effects of ‘no deal’ will be avoided, limiting the economic damage.
 - Buying time: the worst possible ‘no deal’ outcome would be a last-minute, ‘timed out’ Brexit. As we will see in this chapter, the evidence suggests that it will not be possible to conclude a comprehensive agreement on future UK-EU relations by March 2019, and in this eventuality, a transition period could buy time for negotiations to continue beyond the deadline.
 - Orderly adaptation: whatever the outcome of the negotiations, and whatever the terms of the new UK-EU relationship, businesses and citizens on both sides will need time to adapt to those terms. A ‘no deal’ outcome would result in what is often described as a ‘cliff-edge’ for businesses, as overnight between 29 and 30 March 2019 they would have to adjust to radically different terms of trade, while citizens would face profound uncertainty over issues such as residence, property and other rights, child custody decisions, or health insurance. An orderly transition, in contrast, would allow for a phased adaptation to the agreed terms of the new relationship, minimising economic disruption.

Semantics

63. The Prime Minister, in her Lancaster House and Florence speeches, referred to the desirability of an ‘implementation phase’, to follow the UK’s withdrawal from the EU in March 2019. The *Oxford English Dictionary* defines implementation as “The action of implementing; fulfilment.” Thus the term implies the existence of a prior agreement, which then needs to be fulfilled or rolled out.
64. The term transition, on the other hand, which is widely used outside Government, is more open to interpretation: “A passing or passage from one condition, action, or (rarely) place, to another; change.” This presupposes a direction of travel, and the existence of beginning and end points—transition cannot be open-ended. But in other respects the term ‘transition’ is more neutral than ‘implementation’, and, given the range of purposes to which transition can be put, it is the term we use in this report.

The Government's policy on transition

65. The Prime Minister re-stated in her Florence speech that the UK will leave the EU on 29 March 2019. The Government's policy on transition flows from this end-date:
- The Government aims to have agreed both a withdrawal agreement and a “deep and special partnership”, covering trade, security, and other key issues, before the end of the two-year Article 50 period. David Davis confirmed in his evidence to us on 31 October 2017 that “October of [2018] is what we would like to hit”.⁸³
 - This will allow time for the European Parliament to consider and give its consent to the withdrawal agreement (a pre-condition for ratification) in time for it to come into force on 29 March 2019. But with respect to future relations, by this date neither the UK nor the EU will be “in a position to implement smoothly many of the detailed arrangements that will underpin this new relationship we seek”.⁸⁴
 - The Prime Minister also acknowledged that the EU is not “legally able to conclude an agreement with the UK as an external partner while it is itself still part of the EU”.⁸⁵ It follows that while the withdrawal agreement will take effect on 29 March 2019, any agreement on the future relationship can only be reached after the moment of withdrawal, once the UK is a ‘third country’. David Davis, in evidence to the House of Commons Exiting the EU Committee, said that such agreement could be reached “a nanosecond” after withdrawal.⁸⁶
 - Moreover, the Prime Minister acknowledged that ratification of such an agreement (which might require ratification by each Member State according to its domestic constitutional requirements) “would take time”.⁸⁷
 - It follows that there will need to be a “strictly time-limited” period following withdrawal, which the Prime Minister described as “a bridge from where we are now to where we want to be”. This implementation or transition period would be “agreed under Article 50”.⁸⁸
66. The framework for the transition period, which the Prime Minister said was likely to last around two years, will be “the existing structure of EU rules and regulations”. The starting point will thus be a continuation of the status quo, during which UK will also continue to “honour financial commitments we have made during the period of our membership”.⁸⁹
67. The Prime Minister also indicated that the Government will seek “to agree the detailed arrangements for this implementation period as early as

83 [Q 3](#)

84 Rt Hon Theresa May MP, speech on ‘a new era of cooperation and partnership between the UK and the EU’, 22 September 2017: <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu> [accessed 27 November 2017]

85 *Ibid.*

86 Oral evidence taken before the House of Commons Exiting the EU Committee, 25 October 2017 (Session 2017–19), [Q 25](#)

87 Rt Hon Theresa May MP, speech on ‘a new era of cooperation and partnership between the UK and the EU’, 22 September 2017: <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu> [accessed 27 November 2017]

88 *Ibid.*

89 *Ibid.*

possible”.⁹⁰ The Chancellor of the Exchequer, in evidence to the Treasury Select Committee on 11 October, described a transition agreement as a “wasting asset”: its value in providing clarity and certainty to businesses would “diminish significantly” in the first quarter of 2018.⁹¹ Mr Davis told us on 31 October that the Government expected agreement on a transition period to be reached no later than March 2018: “By March next year I hope that we will have—I intend that we will have—an implementation period.”⁹²

A ‘shadow agreement’

68. As the Prime Minister acknowledged in Florence, the Government faces a significant legal barrier in giving effect to its policy on transition. The withdrawal negotiations are being conducted under Article 50 TEU, but the future “deep and special partnership” will require a different legal base. Mr Davis has suggested this will be Article 218 TFEU, which covers agreements between the EU and third countries,⁹³ though other legal bases are possible. It follows therefore that the EU cannot conclude, or even enter into formal negotiations on, the future relationship with the UK while the UK remains a Member State.
69. In practice, however, as we noted in our 2016 report on *The process of withdrawing from the European Union*, there may be some room for manoeuvre.⁹⁴ Article 50 requires the two sides, in concluding a withdrawal agreement, to take account of the framework for future relations between the EU and the withdrawing state. Article 50 does not specify the level of detail embodied in this framework, but Professor Derrick Wyatt QC, giving evidence on 8 March 2016, envisaged a fully developed ‘shadow agreement’:

“[The future relationship] would be negotiated in parallel with the withdrawal agreement by analogy with the appropriate treaty base ... The withdrawal agreement would come into force (bringing about withdrawal) but would take effect a few days later. In those few days, the Council and Parliament would endorse the shadow agreement that had already been agreed in draft by reference to the appropriate treaty base.”⁹⁵
70. Professor Wyatt’s evidence foreshadowed what has become the Government’s approach. In the words of the Secretary of State, “Article 50 ... says ‘taking account’ of the ongoing relationship. It seems to us that you cannot take something into account until it exists.”⁹⁶ In fact Article 50 anticipates the withdrawal agreement taking account only of the “framework” for future relations, and this is developed in the European Council Guidelines, which state only that “an overall understanding on the framework for the future

⁹⁰ *Ibid.*

⁹¹ Oral evidence taken before the House of Commons Treasury Committee, 11 October 2017 (Session 2017–19), [Q 19](#)

⁹² [Q 11](#)

⁹³ Oral evidence taken before the House of Commons Exiting the EU Committee, 25 October 2017 (Session 2017–19), [Q 28](#). Article 218 TFEU states that “agreements between the Union and third countries or international organisations shall be negotiated and concluded” in accordance with the specified procedures.

⁹⁴ European Union Committee, *The process for withdrawing from the European Union* (11th Report, Session 2015–16, HL Paper 138), para 31

⁹⁵ Oral evidence taken on 8 March 2016 (Session 2015–16), [Q 4](#) (Prof Derrick Wyatt QC)

⁹⁶ [Q 3](#)

relationship should be identified during a second phase of the negotiations under Article 50 TEU”.⁹⁷ Mr Davis, however, challenged the EU’s approach:

“I take the view that it has to be an agreement. It may be a political agreement at that stage, because ... the European Union cannot sign the next stage agreement with us until we are a third country. That may be one second after midnight on 30 March but it should be agreed; otherwise, how will [the Lords] and the Commons decide whether or not the deal is acceptable?”⁹⁸

71. Underlying the Government’s insistence upon reaching a ‘political’ or ‘shadow’ agreement on future relations alongside the withdrawal agreement is its calculation that the latter agreement, embodying as it will the UK’s financial settlement with the EU, largely benefits the EU. It follows that the Government believes that leaving open the terms of the withdrawal agreement gives the UK most leverage to secure a beneficial deal on the long-term future relationship:

“In the infamous—or famous—words of the European Union, nothing is agreed until everything is agreed ... The withdrawal agreement on balance will probably favour the Union in terms of money and so on, whereas the future relationship will favour both sides ... We see them as inseparable.”⁹⁹

The length of the negotiations

72. While the Government’s approach is in outline similar to that described by Professor Wyatt in March 2016, there is a key practical difference: timing.
73. Professor Wyatt expected negotiations on the future relationship to be protracted. He noted that it took two years to negotiate a withdrawal agreement between the EU and Greenland, even though Greenland had a population of just 55,000 and only one major industry, fishing. He expected more complex negotiations with the UK to last significantly longer, and to continue at least “for the duration of the present Parliament”. At the time he gave evidence, the 2015 Parliament was expected to end in March 2020.¹⁰⁰
74. The Government, in contrast, insists that a ‘shadow agreement’ on future relations will be concluded before the UK’s withdrawal from the EU on 29 March 2019. The ‘shadow agreement’ will then be formally concluded (subject to ratification by Member States) shortly after withdrawal, by which time the UK will be a ‘third country’ under EU law. The main object of transition will then be implementation of the agreement on future relations—it will be “a bridge from where we are now to where we want to be”.
75. The overwhelming weight of the evidence suggests that the Government’s proposed timetable is ambitious. Mr Davis, while he has consistently expressed confidence that the negotiations can be completed in two years, acknowledged to us in September 2016 that they were “as broad as the entire governmental front”.¹⁰¹ In evidence to this inquiry, Roderick Abbott told

97 European Council, ‘European Council (Art. 50) guidelines following the United Kingdom’s notification under Article 50 TEU’ (April 2017): <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexite-guidelines/#> [accessed 4 December 2017]

98 Q 3

99 Q 3

100 Oral evidence taken on 8 March 2016 (Session 2015–16), QQ 8, 1

101 Oral evidence taken on 12 September 2016 (Session 2016–17), Q 17 (David Davis MP)

us: “I do not believe that you will get a deal by March 2019, certainly not the trade deal.”¹⁰² Lord Darling of Roulanish agreed: “We need a period of two, three or four years to reach an agreement ... I cannot see how we can possibly get 40 years’ worth of stuff redone in 18 months.”¹⁰³ Ruth Lea reached the same conclusion: “I cannot envisage that the new deal will be agreed by March 2019.”¹⁰⁴ Michel Barnier, the EU’s Chief Negotiator, told the Committee in July that he envisaged negotiations on a trade agreement lasting “a few years”.¹⁰⁵

What is transition for?

76. As we indicated at the start of this chapter, transition would serve various purposes, and these were reflected in the evidence submitted to this inquiry.
77. John Longworth, of Leave Means Leave, saw transition purely as a means to implement the ‘shadow agreement’ that will have been concluded before the date of withdrawal:

“My view is also that it is an implementation period ... It implies that the deal must be done before March 2019 and that the period afterwards is for implementation, not for further negotiation.”¹⁰⁶
78. The Government’s position is slightly more nuanced. As we have noted, the Prime Minister has consistently used the term “implementation phase”. But she has also emphasised that the framework for transition will be “the existing structure of EU rules and regulations”.¹⁰⁷ This approach underpins the European Union (Withdrawal) Bill, one of whose aims is to ensure that “the same rules and laws will apply on the day after exit as on the day before”.¹⁰⁸
79. Underlying the Government’s emphasis on continuity in the immediate aftermath of withdrawal is its belief that “businesses and public services should only have to plan for one set of changes in the relationship between the UK and the EU”. In other words, the aim of transition is to ensure continuity by extending the key elements of the existing UK-EU relationship until both sides are ready to implement the new relationship, without the disruption that would be caused were the relationship to default in the meantime to a third format, such as WTO rules.
80. Thus the Prime Minister’s Florence speech and subsequent statements have repeatedly sought to reassure the EU that during any transition period the UK will continue to respect existing obligations. On the EU budget, “The UK will honour commitments we have made during the period of our membership.” On free movement, “People will continue to be able to come and live and work in the UK.”¹⁰⁹ On judicial oversight, the UK will “start

¹⁰² [Q 17](#)

¹⁰³ [Q 38](#)

¹⁰⁴ [Q 1](#)

¹⁰⁵ Oral evidence taken on 12 July 2017 (Session 2017–19), [Q 5](#) (Michel Barnier)

¹⁰⁶ [Q 1](#)

¹⁰⁷ Rt Hon Theresa May MP, speech on ‘a new era of cooperation and partnership between the UK and the EU’, 22 September 2017: <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu> [accessed 27 November 2017]

¹⁰⁸ [Explanatory Notes to the European Union \(Withdrawal\) Bill](#), para 10 [Bill 5 (2017–19)-EN]

¹⁰⁹ Rt Hon Theresa May MP, speech on ‘a new era of cooperation and partnership between the UK and the EU’, 22 September 2017: <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu> [accessed 27 November 2017]

off with the [CJEU] still governing the rules we are part of”.¹¹⁰ On trade, “access to one another’s markets should continue on current terms”. On security, the UK will “continue to take part in existing security measures”.¹¹¹

81. The Government’s emphasis on continuity sits awkwardly with its insistence that the period after March 2019 will be no more than an ‘implementation phase’. But such continuity would be absolutely critical were negotiations to continue beyond that point, as almost all our witnesses believed they would. Roderick Abbott, for instance, saw the first objective of transition as buying time for the two sides to reach agreement, while giving stability and certainty to businesses, agencies and citizens and avoiding a damaging ‘cliff-edge’: “You will need to do something to bridge however long it might be until you have completed that negotiation.”¹¹² Lord Darling also envisaged “a standstill agreement, where we reach March 2019 and do not have an agreement but agree to keep talking”.¹¹³ The American Chamber of Commerce to the EU argued that transition would:

“Negate the possibility of a ‘cliff edge’ effect, providing companies with the knowledge that they can continue to operate as normal after the UK exits, and equip the UK and the EU with the time necessary to agree on the contours of a deep and comprehensive future trade and investment relationship.”¹¹⁴

82. The risk, as Lord Darling acknowledged, is that a ‘standstill agreement’ would “simply move the crisis from 2019 to 2021”.¹¹⁵ Owen Tudor, Head of European and International Relations, TUC, agreed that the UK needed “a transition and not just a delay ... We absolutely should not be sending out signals that this is just kicking the can down the road for two years.”¹¹⁶ John Longworth warned: “If we have a period of further negotiation, not only does it lead to a second cliff edge but it produces a situation in which business continues to have no certainty.”¹¹⁷
83. Miles Celic, Chief Executive of TheCityUK, who also believed that reaching agreement by March 2019 would be an “ambitious ask”, and that more time would be needed “to finalise the detail of what the comprehensive free trade agreement looks like”, therefore envisaged a structured, two-stage transition period:

“Our vision of transition is that there are two stages. First, there is a bridging period between the end of the Article 50 process and the start of the new relationship, should that be required ... and then an adaptation period.”¹¹⁸

The legal basis for transition

84. The Prime Minister said in her Florence speech that Article 50 TEU would provide the legal basis in EU law for any transition period. Given that EU law will no longer apply in the UK following withdrawal, any transitional

110 HC Deb, 9 October 2017, [col. 53](#)

111 HC Deb, 9 October 2017, [col. 42](#)

112 [Q 17](#)

113 [Q 38](#)

114 Written evidence from American Chamber of Commerce to the EU ([DND0012](#))

115 [Q 38](#)

116 [Q 47](#)

117 [Q 1](#)

118 [QQ 22, 28](#) and written evidence from TheCityUK ([DND0015](#)) para 26.

arrangement will also need to be enacted in domestic law. In this section we explore both elements.

EU law

85. As we noted in Chapter 2, both the European Parliament, before giving its consent to any withdrawal agreement, and any Member State, may refer the draft to the CJEU (see paragraph 32). In other words, it is vital for the UK, as well as for the EU, that any transition element within the withdrawal agreement should have a secure basis under EU law, to avoid any risk of the agreement being struck down at a late stage in the Article 50 process.
86. The Government appears to regard all aspects of transition (both a standstill phase and an implementation phase) as inherent in the Article 50 process—part of “the arrangements for [the UK’s] withdrawal”, which will be set out in any withdrawal agreement. Thus the Prime Minister said in Florence that transition “can be agreed under Article 50”. Professor Barnard agreed that Article 50 “says that here will be negotiations on the divorce with a view to a future trade deal, so it does feel as though some bridge may be needed”. She also drew an analogy with Article 49 TEU, on accession, which “also says nothing about transition, but it is customary to have transition arrangements”.¹¹⁹ Dr Tobias Lock, of the Edinburgh Law School, went further, arguing that “In terms of content, there would seem to be few legal limits to what can be agreed [under Article 50].”¹²⁰
87. We agree with our witnesses that the reference in Article 50 to the “arrangements for withdrawal” would provide a legal basis for some key elements of transition. The withdrawal agreement could, for instance, include provisions to ensure contractual continuity for parties entering into contracts that straddle the date of withdrawal.¹²¹ But the duration of such provisions may be open to question. Professor Barnard noted that the Prime Minister had referred “very carefully” to a time-limited transition of about two years. That begged the question of “what happens if we are not done in two years”. The longer transition lasted, the more difficult it would be to justify a backward-looking legal base, rather than one relating to “a future trade deal, which actually needs to be done under the different legal regimes of Articles 217 and 218”.
88. Professor Barnard also highlighted a tension inherent in the Prime Minister’s view that the starting point for transition would be maintenance of the status quo. Professor Barnard found this “slightly odd, because transition for exiting would suggest a reduction in the content of the agreement rather than a continuation of what we have at the moment”.
89. Underlying these legal considerations is the tension between the different objectives, legal as well as political, of transition. Transition is a path from EU membership to withdrawal, but also a means of implementing a new and yet-to-be-defined relationship. As we have noted, this means that there may be two distinct phases to any transition period, a ‘standstill’ or ‘bridging’ phase (which could buy time for negotiations to continue and for any agreement

¹¹⁹ [Q 17](#)

¹²⁰ Written evidence from Dr Tobias Lock ([DND0003](#))

¹²¹ This point is developed in the oral evidence of Andrew Bailey, Chief Executive of the Financial Conduct Authority, taken before EU Financial Affairs Sub-Committee, 29 November 2017 (Session 2017–19), [Q 100](#)

to be ratified), and an implementation or adaptation phase. The latter phase too comprises two logically distinct elements:

- shedding existing obligations, a process that is inherent in withdrawal;
- adaptation to the new obligations that will underpin the future relationship.

90. It may be that no single legal basis in the EU treaties exists for these various objectives. More specifically, the Government's acceptance that an agreement on the future UK-EU relationship would have an Article 218 TFEU legal base, may imply, as Professor Barnard suggested, an Article 218 legal base may be needed to underpin the implementation of that agreement.¹²²

UK law

91. As for the status of transition under domestic law, Professor Barnard referred us to clause 9 of the European Union (Withdrawal) Bill.¹²³ This clause provides that a Minister of the Crown “may by regulations make such provision as the Minister considers appropriate for the purposes of implementing the withdrawal agreement”. By referring to the withdrawal agreement, it therefore begs the same questions that we have touched on with regard to the scope of that agreement. Clause 9 was, however, superseded by the Government's announcement, on 13 November 2017, that it would enshrine the withdrawal agreement in what Mr Davis called “the withdrawal agreement and implementation Bill”.¹²⁴ As primary legislation, such a Bill would not be subject to the limitations and legal challenges that might arise in respect of secondary legislation, and it must be assumed that it would provide a secure legal framework for transition.

‘Off the shelf’ alternatives to Article 50

92. One of the practical difficulties facing both sides is the sheer technical complexity of negotiating a transitional period. If the UK's EU membership is not extended, but Article 50 is to be the legal basis for transition, the withdrawal agreement will need to spell out clearly and unambiguously which elements of the EU *acquis* continue to apply to the UK, and which do not. As Professor Adam Łazowski commented, “It may be as difficult to negotiate the transitional arrangements as it is to negotiate the withdrawal itself.”¹²⁵
93. Miles Celic agreed, warning that there was “no time to design a bespoke transition period”. Instead, he wanted a solution that was “off the shelf. Whether that is EEA or EFTA,¹²⁶ or something along those lines, remains to be seen. During that period, we would effectively have a stand-still arrangement.”¹²⁷ Among the advantages of such an approach would be the availability of existing institutions, for instance for dispute resolution, and, in the case of the EEA, a dynamic process for reflecting changes in EU law;

¹²² [QQ 10–20](#)

¹²³ [Q 18](#)

¹²⁴ HC Deb, 13 November 2017, [col 37](#)

¹²⁵ Written evidence from Prof Adam Łazowski ([DND0036](#))

¹²⁶ The non-EU member states of the European Economic Area (EEA), which also belong to the European Free Trade Area (EFTA), are Iceland, Liechtenstein and Norway. Switzerland is a member of EFTA, but not the EEA.

¹²⁷ [Q 28](#)

EEA states are also not party to the EU's common commercial policy, and are therefore free to negotiate trade deals with third countries.

94. The Law Society also suggested that, in the absence of an extension of the UK's EU membership, "The Norwegian ... and Swiss models of conducting institutional relations with the EU are worth taking into consideration as potential examples to follow during a transition period."¹²⁸ But they warned that "any transitional arrangement that would see the UK become an EEA/EFTA member state (even for a time-limited period) would involve a time-consuming and complex negotiation and ratification procedure". The unanimous agreement of the existing EFTA states would be required.

The length of transition

95. The Prime Minister indicated in her Florence speech that she expected any transition period to be "strictly time-limited". She did not, however, prescribe what this time-limit should be. Instead she acknowledged that it would take time to put in place the necessary infrastructure, for instance to control the UK's borders, and concluded that "these considerations point to an implementation period of around two years".¹²⁹
96. Witnesses had mixed views on the length of transition. Ruth Lea believed that, given that the UK and the EU were starting from a position of full compliance, transition could "be done within two years".¹³⁰ The London Chamber of Commerce and Industry, on the other hand, told us that in reality "the required transition times will not be the same for every sector ... Some changes may require more time to adapt to than others". They judged the two-year period cited by the Prime Minister to be "a minimum", and suggested a period of three to five years.¹³¹ The UK Trade Policy Observatory helpfully outlined some of the practical challenges facing the Government, public and private sectors, and concluded that "a transition period of five years" would be realistic.¹³² Open Britain expressed the view of many witnesses in arguing that transition "should last as long as it needs to last", in order to reflect "the needs and wishes of businesses and of people living in the UK".¹³³

Extending EU membership?

97. In legal terms, the most secure way to ensure continuity after March 2019 would be to use the provision in Article 50 TEU for the European Council (as the EU 27), acting unanimously, to extend the period allowed for negotiations, presumably to a specified future date. The effect of this would be that the UK would remain an EU Member State for the duration of any extension, subject to all the obligations of membership. Professor Barnard confirmed that in legal terms an extension of the UK's EU membership under Article 50 would be "much more secure" than the alternatives.
98. Prior to the referendum, in May 2016, in our report on *The process of withdrawing from the European Union*, we concluded that, given the over-

128 Written evidence from The Law Society ([DND0046](#))

129 Rt Hon Theresa May MP, speech on 'a new era of cooperation and partnership between the UK and the EU', 22 September 2017: <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu> [accessed 27 November 2017]

130 [Q 1](#)

131 Written evidence from London Chamber of Commerce and Industry ([DND0017](#))

132 Written evidence from The UK Trade Policy Observatory ([DND0033](#))

133 Written evidence from Open Britain ([DND0030](#))

riding need to secure an agreement, an extension of the Article 50 process would “almost certainly” be needed:

“It would be in the interests of the UK and its citizens, and in the interests of the remaining Member States and their citizens, to achieve a negotiated settlement. This would almost certainly necessitate extending the negotiating period beyond the two years provided for in Article 50.”¹³⁴

99. Article 50 offers one other potential means of securing a transition period, which has been little commented on so far.¹³⁵ In the absence of an extension of the two-year negotiating period, Article 50(3) provides that “The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification”. In other words, any date set in the withdrawal agreement would trump the two-year deadline. Such a date could fall earlier than 29 March 2019, but in principle it could fall later: in effect, a withdrawal agreement could be post-dated—the UK would continue to be an EU Member State until the date specified for the withdrawal agreement to come into force. Professor Barnard suggested that such an approach might be needed were the two sides only to reach agreement at the last moment in March 2019, in order to allow time for consideration by the European Parliament and Westminster.¹³⁶
100. It is clear that in current circumstances any extension of the UK’s EU membership, by either of these means, would be highly controversial, conflicting with the Government’s policy that the UK should leave the EU in March 2019. It is also possible that the EU would not welcome an extension, which, as the Law Society pointed out, “would involve the UK taking part in the 2019 European Parliament elections”.¹³⁷ Nevertheless, there are three arguments that may weigh in favour of extending the negotiating period: legal certainty, continuing regulatory alignment, and the maintenance of UK influence on EU law.
101. First, legal certainty. The Government has said that the UK will accept the existing structure of EU rules and regulations during the transition period, and maintaining such consistency is particularly vital to business. In achieving this goal, the option of using Article 50 to extend the UK’s EU membership is, as Catherine Barnard told us, “legally ... much more secure” than the alternatives. Adam Łazowski, Professor of EU law at the University of Westminster, agreed that “a simple extension of the two-year period would be the best way forward”.¹³⁸ ADS Group, which represents companies in the UK aerospace and defence sectors, also believed that “remaining an EU Member State during any transition period is the only way to guarantee the ‘status quo’”.¹³⁹

134 European Union Committee, *The process for withdrawing from the European Union* (11th Report, Session 2015–16, HL Paper 138), para 55

135 Armin Cuyvers, ‘Two Legal Tools to Avoid Hard Brexit: Delayed Exit and Decreasing Membership under Article 50 TEU’, *UK Constitutional Law Association Blog* (24th Nov. 2017) : <https://ukconstitutionallaw.org/2017/11/24/armin-cuyvers-two-legal-tools-to-avoid-hard-brexit-delayed-exit-and-decreasing-membership-under-article-50-teu/> [accessed 4 December 2017]

136 Supplementary written evidence from Prof Catherine Barnard (DND0047)

137 Written evidence from The Law Society (DND0046). We note, however, that the withdrawal agreement, were it to come into force later than 29 March 2019, might potentially vary the terms of the UK’s membership in the intervening period, for example by waiving the requirement for the UK to participate in the 2019 European Parliament elections.

138 Written evidence from Prof Adam Łazowski (DND0036)

139 Written evidence from ADS Group (DND0027)

102. An important area of potential legal uncertainty, if the UK's EU membership is not extended, relates to agreements with third countries, to which the UK is currently party by virtue of its EU membership. John Foster, of the CBI, underlined the importance of these agreements, focusing in particular on trade: "There are something like 57 trade agreements, and it is really important that those are replicated in their entirety, otherwise there will be further barriers to trade."¹⁴⁰ We note, moreover, that such international agreements are not limited to trade: the *Financial Times* in August 2017 published a list of 759 international agreements that it said would need to be "replaced, renegotiated or remade" following Brexit.¹⁴¹
103. A second issue is the continuing alignment of UK and EU law. While the European Union (Withdrawal) Bill "converts EU law as it stands at the moment of exit into domestic law before the UK",¹⁴² the status of EU law in the ensuing transition period is far less clear. Not only may EU law change, but the jurisprudence of the Supreme Court and the CJEU in interpreting existing law could diverge. John Foster argued that the continuing incorporation of changing EU rules should be "automatic and dynamic"¹⁴³ during transition (which would be the case were Article 50 to be extended). In contrast, the Secretary of State, in evidence to the House of Commons Exiting the EU Committee, confirmed that any EU laws agreed and implemented post-withdrawal would not take effect automatically in the UK: "It will be something for subsequent discussion as to whether we propose to follow it or not."¹⁴⁴
104. Thirdly, there is the question of UK influence. Without an extension, the UK will no longer be represented in the EU's co-legislators, the Council of Ministers and the European Parliament. It follows that if, in order to avoid regulatory divergence, the UK were to continue to incorporate EU laws adopted post-Brexit into domestic law, it would, as Miles Celic commented, do so "as a rule-taker"—something of particular concern to the City of London, as the world's leading financial centre. Asked about this by the Commons Exiting the EU Committee, Mr Davis highlighted the time taken to agree and implement new EU laws ("it takes two to five years from inception to outcome"), and argued that any new laws coming into force in the transition period would have been negotiated prior to March 2019, and would thus "already have been agreed with us in advance".
105. A related issue arises with respect to the jurisprudence of the CJEU, which will continue to develop following the UK's withdrawal, potentially binding the UK during the transition period, but without either the presence of the British judges on the CJEU, or the possibility of the UK courts seeking the CJEU's opinion on points of EU law.

¹⁴⁰ Q 47

¹⁴¹ See 'The Brexit treaty renegotiation checklist', *Financial Times* (20 August 2017): <https://ft.com/brexit-treaty-database/> [accessed 30 November 2017]

¹⁴² *Explanatory Notes to the European Union (Withdrawal) Bill*, para 11 [Bill 5 (2017–19)–EN]

¹⁴³ Q 47

¹⁴⁴ Oral evidence taken before the House of Commons Exiting the EU Committee, 25 October 2017 (Session 2017–19) Q 89

The ticking clock

The Government's view

106. As we noted at the outset, the key factor which will determine whether or not the Government can deliver a successful Brexit is time. The clock is ticking. But though time is short, the Government, at least in public, remains convinced that it can conclude both a withdrawal agreement and an agreement on the future UK-EU relationship within the two years allowed by Article 50. As Mr Davis said to the Commons Exiting the EU Committee on 25 October, “We are aiming for the conclusion of negotiations on all fronts—on the grounds that nothing is agreed until everything is agreed—by the end of March 2019”.¹⁴⁵ Even more ambitiously, he told us that he aimed to finalise the agreements by October 2018: “Our intention is to do it early ... If we hit October, nobody would be more pleased than me.”¹⁴⁶ Yet, as we have seen, he has speculated that if negotiations are still underway in March 2019, the two sides might have to “stop the clock”, to extend negotiations beyond the deadline.¹⁴⁷

The timing of a transition agreement

107. It is clear that businesses cannot wait until March 2019 to achieve certainty: investment decisions will be made, insurance policies issued, and contingency plans activated, at least a year before the deadline. John Foster, of the CBI, reported a survey showing that by March 2018 some 60% of businesses in the UK will have activated contingency plans for a ‘no deal’ Brexit; many are already doing so.¹⁴⁸ The only way to prevent this is for the two sides to reach an early agreement on transition.
108. Miles Celic underlined the particular importance of a transition agreement for the financial services sector, arguing that irrespective of the sequencing of the wider negotiations, there should be “a legally binding agreement between the UK and the EU 27 that there will be a transitional period”. He wanted to see such an agreement reached “this side of Christmas, and certainly in Q1 2018”. He also stressed that a purely political declaration, such as European Council conclusions, would “not be ample ... for many companies it would not even be sufficient”.¹⁴⁹
109. On 23 October, the Prime Minister said in the House of Commons that “the point of the implementation period is to put in place the practical changes necessary to move to the future partnership, and in order to have that you need to know what that future partnership is going to be”, therefore implying that agreement on the “implementation period” could not be reached until the shape of the future relationship was known.¹⁵⁰
110. However, the Secretary of State agreed that it would be desirable to secure agreement on transition in “the first quarter of next year”, but immediately qualified this as an agreement “in principle”. He continued: “In principle ... it will be very similar to what we currently have, with a regulatory

145 Oral evidence taken before the House of Commons Exiting the EU Committee, 25 October 2017 (Session 2017–19) [Q 20](#)

146 [Q 3](#)

147 Oral evidence taken before the House of Commons Exiting the EU Committee, 25 October 2017 (Session 2017–19) [Q 90](#)

148 [Q 41](#)

149 [QQ 25, 31](#)

150 HC Deb, 23 October 2017, [col 30](#)

structure similar to what we currently have, and the fine detail of how it will conclude will come together with the trade deal later on.” He did not accept that a transition agreement would be binding, or that it would preclude the possibility of talks on the future relationship breaking down: “We are saying that by March [2018] I hope that we will have—I intend that we will have—an implementation period. Thereafter we intend and hope that we will get a future trade relationship, but that probably will not conclude until October or thereafter.”¹⁵¹ In the absence of agreement on the future relationship, it must be assumed that any agreement whose main purpose was the implementation of that future relationship would also fall.

111. As we noted above, at the heart of the Government’s thinking is the principle which Mr Davis summarised as “the infamous—or famous—words of the European Union, nothing is agreed until everything is agreed”.¹⁵² Yet Article 50 provides only for a withdrawal agreement—any final agreement on the future UK-EU relationship will require a separate legal base (most likely to be Article 218 TFEU), and the European Council guidelines confirm that such an agreement can only be concluded once the UK is no longer a Member State. Prior to 29 March 2019, the most that can be achieved is a political agreement on that future relationship.
112. The need for transition puts the issue of sequencing into sharp focus. If the purpose of transition is merely to implement agreements already entered into, then no commitment to legally binding transition (such as that sought by TheCityUK) will be possible until those agreements have been concluded—nothing will be agreed until everything is agreed. If negotiations were to continue to the last possible moment in March 2019, as Mr Davis has indicated, that is when transition would be agreed. This is the logic of the Government’s position.
113. We see little prospect, therefore, that the Government will be able to secure a comprehensive and legally secure agreement on transition by March 2018. A more credible possibility is that the Government will secure a political agreement, possibly as early as January 2018, that there should be a transition phase, at the same time agreeing a timetable for reaching final agreement. This will seek to provide reassurance to the wider economy, and to citizens, that a final agreement is indeed attainable, though the evidence we have heard suggests that it will not satisfy businesses across the economy, who may then, if they have not already done so, activate contingency plans.
114. If a legally secure agreement on transition is to be reached in early 2018, it will require greater clarity on the purpose and legal basis of transition than has yet been forthcoming. In particular, the Government will have to disentangle the standstill element of transition, which will be vital if negotiations continue beyond March 2019, from the two elements that together make up the implementation phase—the orderly shedding of the obligations of EU membership, and the establishment of the obligations and institutions that will underpin the new relationship.
115. Such an agreement may come at a price, requiring the UK to make a binding commitment to the outline of a withdrawal agreement, in effect abandoning the threat of ‘no deal’. This will not be easy, and John Foster, of the CBI, called on the Government “to acknowledge that hard choices and

151 [Q 11](#)

152 [Q 3](#)

compromises will have to be made in order to ensure that the economics is put at the forefront of the negotiations”. He also urged the Government “to put down on paper what they want to pursue in transition”.¹⁵³

The timing of agreement on future relations

116. Finally, we turn to the status of any agreement on the future relationship that might be reached in October 2018. As we have noted, the Government’s aim is to reach agreement both on withdrawal and on the future relationship together. The overwhelming weight of evidence suggests that while the withdrawal agreement will have to be agreed by this date, to allow consideration by the European Parliament (a precondition for its ratification), as well as by the UK Parliament, it will not be possible to reach a detailed agreement on the future relationship.
117. If this is the case, what is the best that the Government can hope to achieve before the date of withdrawal? John Foster envisaged “a heads of terms agreement for what the future economic relationship would look like”.¹⁵⁴ Miles Celic also looked for agreement on “heads of terms: the broad principles under which the free trade agreement would operate and what would be included in it”.¹⁵⁵
118. This begs the question of whether a ‘heads of terms’ agreement can be sufficiently persuasive to give certainty to businesses and citizens that both sides will see through any commitments they have entered into. The best precedent for such an agreement is the abortive ‘New Deal for the United Kingdom’, agreed by the European Council in 2016. In our report on the New Deal, we acknowledged that there could be “no guarantee” that proposals it contained would be agreed “in exactly the form proposed”. But we also concluded that the agreement entered into by the European Council was “an intergovernmental agreement which is binding under international law”.¹⁵⁶

Conclusions

The Government’s proposed timetable

119. **The Government has repeatedly stated that the UK will leave the EU on 29 March 2019, two years after the Prime Minister’s notification letter was sent.**
120. **The consent of the European Parliament is needed before any withdrawal agreement can be ratified, and the European Parliament may decide, before voting on the agreement, to refer questions of law to the Court of Justice of the European Union; individual Member States enjoy the same right under the Treaties. The Government has also undertaken that the withdrawal agreement will be enshrined in primary legislation. To allow time for these procedures, the Government’s deadline for withdrawal means that the withdrawal agreement will probably have to be finalised in October 2018.**

¹⁵³ [Q 41](#)

¹⁵⁴ [Q 43](#)

¹⁵⁵ [Q 28](#)

¹⁵⁶ European Union Committee, *The EU referendum and EU reform* (9th Report, Session 2015–16, HL Paper 138), paras 105–110

'Nothing is agreed until everything is agreed'

121. The Government has consistently stated that the withdrawal agreement and any agreement on the future UK-EU relationship are “inseparable”. We agree that they are linked, and in particular that arrangements for the Irish land border will depend in large part upon the future trade and customs relationship between the UK and the EU.
122. But the logic of the Government’s approach goes further. If the withdrawal agreement and the agreement on the future relationship are indeed inseparable, and if the UK is to leave the EU on 29 March 2019, the two sides will need to conclude an agreement on the future UK-EU relationship by October 2018.
123. An early and comprehensive agreement would, in our view, be the best solution for all sides, and we support the Government’s efforts to achieve this outcome. However, precedent, and the overwhelming weight of evidence, suggest that it will not be possible. Negotiations on the future relationship have yet to start, and the strong likelihood is that they will continue well beyond March 2019.

A phased approach?

124. A more feasible objective for the Government is to conclude a withdrawal agreement by October 2018, alongside a political agreement on the principles that will underpin the future UK-EU relationship, which will then be negotiated further. How binding this political agreement would be remains to be seen: the precedent of the ‘New Deal’ with the UK agreed by the European Council in February 2016 suggests that an agreement can be binding on the parties (the European Council and the United Kingdom) in international law, even if the detail of its implementation remains to be finalised. The Government would then aim to continue negotiations with the EU on the future relationship, with a view to having a comprehensive ‘shadow agreement’ in place and ready to be implemented within days of the UK’s withdrawal in March 2019.
125. But in this scenario it would be impossible, as early as October 2018, to guarantee that a comprehensive ‘shadow agreement’ would be concluded in time for the UK’s withdrawal. It follows that there will need to be a separation between the withdrawal agreement and the agreement on future relations, no later than October 2018. This will allow the process of ratifying the withdrawal agreement to proceed in an orderly manner, on the basis of a settled text and binding undertakings on both sides to adhere to the agreed terms.
126. This will require the Government to abandon its policy that ‘nothing is agreed until everything is agreed’, and the UK could lose some leverage as a result. But the alternative would be to leave open the possibility that the UK could at the last moment decline to ratify the withdrawal agreement, leading to a ‘chaotic Brexit’ in March 2019. As we have seen, this would be the most damaging possible outcome for both sides.

127. Therefore, while we understand the Government's aim to conclude agreements both on withdrawal and on future relations by October 2018, we also conclude that if, in order to enable the UK to leave the EU on 29 March 2019, a withdrawal agreement has to be concluded in advance of an agreement on future relations, there will have to be a clear separation between the two.

The purpose and legal basis of transition

128. The Government has stated that it wishes to reach agreement on a transition or implementation period no later than March 2018. Such an agreement is vital to give reassurance to citizens and businesses both in the UK and the EU. It is also, as the Chancellor of the Exchequer has said, a 'wasting asset': if an agreement is not concluded in the first quarter of 2018 its value will be substantially diminished, as businesses activate contingency plans in preparation for a possible 'cliff edge' in March 2019.
129. The Government has not explained clearly enough what transition is intended to achieve. Instead, it has merged two aspects of transition: a 'standstill period', the promise of which is needed urgently to provide reassurance to businesses, and which may also (although this is not accepted by Government) buy time to finalise an agreement on the future relationship; and an implementation or adaptation period, during which the two sides will move across to the terms of the new relationship in a controlled fashion.
130. The Prime Minister has also suggested that the transition period is likely to last around two years. This may turn out to be the right length of time, but we note that most witnesses felt that more time would be needed. We call on the Government to acknowledge that the main drivers for the length of transition are the timing of any agreement on future relations and the time the UK and EU economies need to adapt to its terms.
131. The component parts of transition may need different legal bases. The Government has said that Article 50 provides a legal basis for transition, but Article 50 refers only to the "arrangements for withdrawal". The withdrawal agreement will thus set out the arrangements for implementing the withdrawal agreement. But it is not clear whether, in the absence of an agreement on future relations, Article 50 would provide a legal basis for an open-ended 'standstill period' (during which the Government has said EU rules will continue to apply and the CJEU will continue to have jurisdiction). It also seems unlikely that Article 50 could provide a legal basis for the implementation of the agreement on future relations, which the Government has conceded will have a separate legal base in EU law, such as Article 218 TFEU. Any or all of these questions could fall to be determined by the CJEU, following references by the European Parliament or by a Member State, before withdrawal takes effect.
132. We therefore recommend that, as a matter of urgency, the Government should set out its views on transition, including on the bases in EU law for the various elements that make up transition. If possible, the

Government should secure agreement on these issues with the EU's Chief Negotiator.

133. **We welcome the Government's intention to embody the withdrawal agreement (and any transitional arrangements set out within that agreement) in primary legislation. This should ensure the maximum possible legal certainty in domestic law.**

The ticking clock

134. **At the root of the Government's difficulties is the 'ticking clock' of the Article 50 deadline. While we support the Government's efforts to complete negotiations by October 2018, in order to secure agreement both on withdrawal and on the future UK-EU relationship ahead of March 2019, the weight of the evidence suggests that this will not be possible. The consequences of a 'no deal' outcome would be so damaging that a fall-back position is now needed.**
135. **As we have noted, the Government's first aim in transition is to secure early agreement, no later than the first quarter of 2018, that there will be a 'standstill period', during which the Government itself has said that EU rules will apply, the UK will pay into the EU budget, the CJEU will continue to have jurisdiction, and EU nationals will have free access to the UK. Such a standstill period will also buy time if, as seems likely, negotiations on the future relationship continue up to and beyond March 2019.**
136. **The second phase of transition, once the terms of the future relationship have been agreed, will be an implementation phase, to allow institutions, citizens and businesses on both sides time to adapt.**
137. **As we indicated above, we doubt whether the reference to the "arrangements for withdrawal" in Article 50 TEU offers a secure basis in EU law for a 'standstill period', and we note also that this question could fall to be determined by the CJEU in advance of any withdrawal agreement being concluded. Reliance upon this provision to provide the basis for transition is thus a high-risk strategy.**
138. **There are, in contrast, two secure means by which the status quo (in other words, the UK's EU membership) could be extended under Article 50 TEU. Either the European Council (EU 27) could, by unanimous agreement, accede to a request from the UK to extend the negotiating period for a specified period; or the Article 50 withdrawal agreement could set a date later than 29 March 2019 for the UK's withdrawal from the EU to take effect. Either of these approaches could in principle ensure a legally watertight and time-limited 'standstill period'.**
139. **But the fact that both these approaches would extend the UK's EU membership, and the legal obligations that flow from that membership, for a limited period, means that they are politically highly controversial in both the UK and the EU. We nevertheless note that a limited extension of EU membership would have the crucial advantage, for the UK and the EU, of buying more time for negotiations on the future relationship: only in the event of an extension do we see any credible prospect that the Government's**

preferred approach of concluding the withdrawal and future relations agreements simultaneously can be achieved.

- 140. We note TheCityUK’s proposal for an ‘off-the-shelf’ solution based on temporary EEA or EFTA membership. We have not explored this proposal in detail, but note that while it may have some merit, it does not offer the certainty of a time-limited extension of EU membership, and that it may be subject to elements of risk and complexity.**
- 141. There is still a risk of a chaotic ‘no deal’ Brexit, and for the reasons we have set out in this report, we are not confident that a legally certain and binding transition deal can be reached by March 2018, the point at which the existing uncertainty is likely to inflict more serious damage on the UK economy. While the EU as a whole may appear to have less to lose, specific sectors and regions in the EU could also pay a heavy price for this uncertainty.**
- 142. While we reiterate our support for the Government’s goal of securing a comprehensive agreement by October 2018, the uncertainty over the feasibility of that aim means that the overriding UK and EU interest is now to secure an orderly and legally certain transition, as early as possible. To this end, we call on the Government, alongside its consideration of the legal basis for transition, to review the options for securing a time-limited extension to the UK’s EU membership that are legally available under Article 50; to open discussions on these options with the EU negotiators; and to report its conclusions to Parliament at the earliest opportunity, and at all events before the end of March 2018.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

No deal

The impact of 'no deal'

1. A complete 'no deal' outcome would be deeply damaging for the UK. It would bring UK-EU cooperation on matters vital to the national interest, such as counter-terrorism, police, justice and security matters, nuclear safeguards, data exchange and aviation, to a sudden halt. It would place the status of UK nationals in the EU, and EU nationals in the UK, in jeopardy, and would necessarily lead to the imposition of controls at the Irish land border. (Paragraph 48)
2. The wider economic impact of an abrupt departure from the EU single market and customs union, and the adoption of WTO conditions for trade, would be felt across a range of sectors, including financial services, the agri-food sector, and aviation. It would have a particularly disruptive impact on cross-border supply chains. The short-term impact on trade in goods would also be grave: the UK's ports would be overwhelmed by the requirement for customs and other checks. There is simply not enough time to provide the necessary capacity, IT systems, human resource and expertise to deal with such an outcome. (Paragraph 49)
3. While the evidence we received focused on the impact on the UK, no deal would also have a damaging impact on the EU. It too would feel the negative effects of a loss of trade with a major trading partner, and restrictions on the movement of goods and services, new customs checks and the breakdown of aviation arrangements would be mirrored on the EU side. In addition, the EU would feel the loss of police and security cooperation, scientific and research collaboration, and of access to the City of London as a motor of the EU's financial services industry, and to the City's capital markets. (Paragraph 50)

The prospects for a 'bare bones' deal

4. The Secretary of State for Exiting the EU has argued that a complete 'no deal' outcome is "very, very, very improbable". He has also said that, in the "unlikely" event that a trade deal cannot be reached, it will be possible to agree a 'bare-bones' deal covering fundamental issues of shared concern. We are concerned that a 'bare-bones' deal would, in the words of the CBI, still be a "very bad deal". (Paragraph 51)
5. The Secretary of State's confidence that at least a 'bare-bones' deal could be agreed skates over the potential obstacles, including the technical and legal complexity of such a deal, as well as its timing. We were also concerned by his lack of clarity in outlining the "fundamental issues" that a 'bare-bones' agreement would cover. (Paragraph 52)
6. Furthermore, Mr Davis did not specify whether, in the event of a 'bare-bones' deal, the UK and EU would also have reached agreement on core withdrawal issues, such as the financial settlement, citizens' rights, and the Irish border. As our report on Brexit: UK-Irish relations concluded, the imposition of a hard border on the island of Ireland could have serious economic, social and political repercussions, and must be avoided. In the

absence of agreement on these issues, there can be no guarantee that even a ‘bare-bones’ deal will be agreed by the EU. (Paragraph 53)

7. We urge the Government therefore to clarify, as a matter of urgency, the relationship between a hypothetical ‘bare-bones’ deal and the Article 50 withdrawal agreement, and also to set out which “fundamental issues” it believes should, of necessity, be included in a ‘bare-bones’ deal. (Paragraph 54)
8. In addition, we reiterate the call in our 2016 report on *Brexit: acquired rights* for the Government to offer a unilateral guarantee to EU citizens resident in the UK outlining how their position will be protected, whatever the outcome of negotiations. It would then be for the EU and its 27 remaining Member States to respond in kind. (Paragraph 55)

Is no deal better than a bad deal?

9. Given the overwhelming evidence of the destructive effect of ‘no deal’, the Government’s assertion that “no deal is better than a bad deal” was not helpful. If the two sides were negotiating a free trade agreement from scratch, failure to reach agreement would simply mean a continuation of the status quo—but that is not an option in the case of Brexit, where ‘no deal’ would mean the abrupt cessation of over 40 years of economic, political and legal partnership. It is difficult, if not impossible, to envisage a worse outcome for the United Kingdom. (Paragraph 56)
10. The Secretary of State told us that “we need no deal as an option literally right up to the moment of signing”. This approach only ratchets up the pressure on the negotiations and the political rhetoric that surrounds them on both sides. It also risks becoming a self-fulfilling prophecy by leading to a breakdown of trust, making an unintended ‘no deal’ more likely. (Paragraph 57)
11. The way in which both sides are now treating ‘no deal’ as a realistic possibility illustrates the point. While it is sensible for them to undertake contingency planning for ‘no deal’, both the UK and the EU must ensure that the very act of such preparations does not increase the likelihood of this outcome. (Paragraph 58)

The time factor

12. It is clear that the later ‘no deal’ emerges as the outcome of the negotiations, the more damaging its effects will be. To hold out the prospect of a ‘no deal’ outcome until the eleventh hour, and even to suggest that the clock could be ‘stopped’ to allow negotiations to continue beyond that point, even when there is no obvious legal mechanism to do so, would be irresponsible. For one thing, it guarantees that uncertainty for business and citizens will continue, and even increase, as ‘Brexit day’ approaches. (Paragraph 59)
13. At the same time, we urge the EU to show flexibility in its negotiating stance, to ensure that the UK is not driven to a position where it sees ‘no deal’ as the only realistic option. Both sides must work to find ways to allow discussions to move on as soon as possible to considering the future relationship between the UK and the EU. In particular, the breadth and depth of the issues to be discussed between the parties mean that in our view the parties should commence at least scoping discussions as a matter of urgency. The longer that discussions on the future relationship are delayed, the more likely ‘no deal’ becomes. (Paragraph 60)

14. The key factor adding to the risk of ‘no deal’ is the lack of time—as Michel Barnier has said, the clock is ticking. The rigidity of the Article 50 deadline of 29 March 2019 in itself makes a no deal outcome more likely. But the Article 50 deadline could, in an emergency (for instance, if negotiations were unfinished, but close to completion) be extended, by unanimous agreement of the European Council. For the Government to compound the rigidity of Article 50 by enshrining the same deadline in domestic law would not, we believe, be in the national interest. (Paragraph 61)

Transition

The Government’s proposed timetable

15. The Government has repeatedly stated that the UK will leave the EU on 29 March 2019, two years after the Prime Minister’s notification letter was sent. (Paragraph 119)
16. The consent of the European Parliament is needed before any withdrawal agreement can be ratified, and the European Parliament may decide, before voting on the agreement, to refer questions of law to the Court of Justice of the European Union; individual Member States enjoy the same right under the Treaties. The Government has also undertaken that the withdrawal agreement will be enshrined in primary legislation. To allow time for these procedures, the Government’s deadline for withdrawal means that the withdrawal agreement will probably have to be finalised in October 2018. (Paragraph 120)

‘Nothing is agreed until everything is agreed’

17. The Government has consistently stated that the withdrawal agreement and any agreement on the future UK-EU relationship are “inseparable”. We agree that they are linked, and in particular that arrangements for the Irish land border will depend in large part upon the future trade and customs relationship between the UK and the EU. (Paragraph 121)
18. But the logic of the Government’s approach goes further. If the withdrawal agreement and the agreement on the future relationship are indeed inseparable, and if the UK is to leave the EU on 29 March 2019, the two sides will need to conclude an agreement on the future UK-EU relationship by October 2018. (Paragraph 122)
19. An early and comprehensive agreement would, in our view, be the best solution for all sides, and we support the Government’s efforts to achieve this outcome. However, precedent, and the overwhelming weight of evidence, suggest that it will not be possible. Negotiations on the future relationship have yet to start, and the strong likelihood is that they will continue well beyond March 2019. (Paragraph 123)

A phased approach?

20. A more feasible objective for the Government is to conclude a withdrawal agreement by October 2018, alongside a political agreement on the principles that will underpin the future UK-EU relationship, which will then be negotiated further. How binding this political agreement would be remains to be seen: the precedent of the ‘New Deal’ with the UK agreed by the European Council in February 2016 suggests that an agreement can be binding on the parties (the European Council and the United Kingdom)

in international law, even if the detail of its implementation remains to be finalised. The Government would then aim to continue negotiations with the EU on the future relationship, with a view to having a comprehensive ‘shadow agreement’ in place and ready to be implemented within days of the UK’s withdrawal in March 2019. (Paragraph 124)

21. But in this scenario it would be impossible, as early as October 2018, to guarantee that a comprehensive ‘shadow agreement’ would be concluded in time for the UK’s withdrawal. It follows that there will need to be a separation between the withdrawal agreement and the agreement on future relations, no later than October 2018. This will allow the process of ratifying the withdrawal agreement to proceed in an orderly manner, on the basis of a settled text and binding undertakings on both sides to adhere to the agreed terms. (Paragraph 125)
22. This will require the Government to abandon its policy that ‘nothing is agreed until everything is agreed’, and the UK could lose some leverage as a result. But the alternative would be to leave open the possibility that the UK could at the last moment decline to ratify the withdrawal agreement, leading to a ‘chaotic Brexit’ in March 2019. As we have seen, this would be the most damaging possible outcome for both sides. (Paragraph 126)
23. Therefore, while we understand the Government’s aim to conclude agreements both on withdrawal and on future relations by October 2018, we also conclude that if, in order to enable the UK to leave the EU on 29 March 2019, a withdrawal agreement has to be concluded in advance of an agreement on future relations, there will have to be a clear separation between the two. (Paragraph 127)

The purpose and legal basis of transition

24. The Government has stated that it wishes to reach agreement on a transition or implementation period no later than March 2018. Such an agreement is vital to give reassurance to citizens and businesses both in the UK and the EU. It is also, as the Chancellor of the Exchequer has said, a ‘wasting asset’: if an agreement is not concluded in the first quarter of 2018 its value will be substantially diminished, as businesses activate contingency plans in preparation for a possible ‘cliff edge’ in March 2019. (Paragraph 128)
25. The Government has not explained clearly enough what transition is intended to achieve. Instead, it has merged two aspects of transition: a ‘standstill period’, the promise of which is needed urgently to provide reassurance to businesses, and which may also (although this is not accepted by Government) buy time to finalise an agreement on the future relationship; and an implementation or adaptation period, during which the two sides will move across to the terms of the new relationship in a controlled fashion. (Paragraph 129)
26. The Prime Minister has also suggested that the transition period is likely to last around two years. This may turn out to be the right length of time, but we note that most witnesses felt that more time would be needed. We call on the Government to acknowledge that the main drivers for the length of transition are the timing of any agreement on future relations and the time the UK and EU economies need to adapt to its terms. (Paragraph 130)
27. These component parts of transition may need different legal bases. The Government has said that Article 50 provides a legal basis for transition,

but Article 50 refers only to the “arrangements for withdrawal”. The withdrawal agreement will thus set out the arrangements for implementing the withdrawal agreement. But it is not clear whether, in the absence of an agreement on future relations, Article 50 would provide a legal basis for an open-ended ‘standstill period’ (during which the Government has said EU rules will continue to apply and the CJEU will continue to have jurisdiction). It also seems unlikely that Article 50 could provide a legal basis for the implementation of the agreement on future relations, which the Government has conceded will have a separate legal base in EU law, such as Article 218 TFEU. Any or all of these questions could fall to be determined by the CJEU, following references by the European Parliament or by a Member State, before withdrawal takes effect. (Paragraph 131)

28. We therefore recommend that, as a matter of urgency, the Government should set out its views on transition, including on the bases in EU law for the various elements that make up transition. If possible, the Government should secure agreement on these issues with the EU’s Chief Negotiator. (Paragraph 132)
29. We welcome the Government’s intention to embody the withdrawal agreement (and any transitional arrangements set out within that agreement) in primary legislation. This should ensure the maximum possible legal certainty in domestic law. (Paragraph 133)

The ticking clock

30. At the root of the Government’s difficulties is the ‘ticking clock’ of the Article 50 deadline. While we support the Government’s efforts to complete negotiations by October 2018, in order to secure agreement both on withdrawal and on the future UK-EU relationship ahead of March 2019, the weight of the evidence suggests that this will not be possible. The consequences of a ‘no deal’ outcome would be so damaging that a fall-back position is now needed. (Paragraph 134)
31. As we have noted, the Government’s first aim in transition is to secure early agreement, no later than the first quarter of 2018, that there will be a ‘standstill period’, during which the Government itself has said that EU rules will apply, the UK will pay into the EU budget, the CJEU will continue to have jurisdiction, and EU nationals will have free access to the UK. Such a standstill period will also buy time if, as seems likely, negotiations on the future relationship continue up to and beyond March 2019. (Paragraph 135)
32. The second phase of transition, once the terms of the future relationship have been agreed, will be an implementation phase, to allow institutions, citizens and businesses on both sides time to adapt. (Paragraph 136)
33. As we indicated above, we doubt whether the reference to the “arrangements for withdrawal” in Article 50 TEU offers a secure basis in EU law for a ‘standstill period’, and we note also that this question could fall to be determined by the CJEU in advance of any withdrawal agreement being concluded. Reliance upon this provision to provide the basis for transition is thus a high-risk strategy. (Paragraph 137)
34. There are, in contrast, two secure means by which the status quo (in other words, the UK’s EU membership) could be extended under Article 50 TEU. Either the European Council (EU 27) could, by unanimous agreement,

accede to a request from the UK to extend the negotiating period for a specified period; or the Article 50 withdrawal agreement could set a date later than 29 March 2019 for the UK's withdrawal from the EU to take effect. Either of these approaches could in principle ensure a legally watertight and time-limited 'standstill period'. (Paragraph 138)

35. But the fact that both these approaches would extend the UK's EU membership, and the legal obligations that flow from that membership, for a limited period, means that they are politically highly controversial in both the UK and the EU. We nevertheless note that a limited extension of EU membership would have the crucial advantage, for the UK and the EU, of buying more time for negotiations on the future relationship: only in the event of an extension do we see any credible prospect that the Government's preferred approach of concluding the withdrawal and future relations agreements simultaneously can be achieved. (Paragraph 139)
36. We note TheCityUK's proposal for an 'off-the-shelf' solution based on temporary EEA or EFTA membership. We have not explored this proposal in detail, but note that while it may have some merit, it does not offer the certainty of a time-limited extension of EU membership, and that it may be subject to elements of risk and complexity. (Paragraph 140)
37. There is still a risk of a chaotic 'no deal' Brexit, and for the reasons we have set out in this report, we are not confident that a legally certain and binding transition deal can be reached by March 2018, the point at which the existing uncertainty is likely to inflict more serious damage on the UK economy. While the EU as a whole may appear to have less to lose, specific sectors and regions in the EU could also pay a heavy price for this uncertainty. (Paragraph 141)
38. While we reiterate our support for the Government's goal of securing a comprehensive agreement by October 2018, the uncertainty over the feasibility of that aim means that the overriding UK and EU interest is now to secure an orderly and legally certain transition, as early as possible. To this end, we call on the Government, alongside its consideration of the legal basis for transition, to review the options for securing a time-limited extension to the UK's EU membership that are legally available under Article 50; to open discussions on these options with the EU negotiators; and to report its conclusions to Parliament at the earliest opportunity, and at all events before the end of March 2018. (Paragraph 142)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Armstrong of Hill Top
 Lord Boswell of Aynho (Chairman)¹⁵⁷
 Baroness Brown of Cambridge
 Baroness Browning
 Lord Crisp
 Lord Cromwell
 Baroness Falkner of Margravine
 Lord Jay of Ewelme (Acting Chairman)
 Baroness Kennedy of The Shaws
 The Earl of Kinnoull
 Lord Liddle
 Baroness Neville-Rolfe
 Lord Selkirk of Douglas
 Baroness Suttie
 Lord Teverson
 Baroness Verma
 Lord Whitty
 Baroness Wilcox
 Lord Woolmer of Leeds

Declarations of interest

Baroness Armstrong of Hill Top
Chair, Changing Lives (a charity based in Tyneside which may benefit from European Union funds)
Member, Advisory Board, GovNet Communications (publisher and event organiser)
Trustee, Africa Governing Initiative Trustee, Voluntary Service Overseas

Lord Boswell of Aynho (Chairman)
In receipt of salary as Principal Deputy Chairman of Committees, House of Lords
Shareholdings as set out in the Register of Lords' Interests
Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottage and grazing
Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received (interest ceased 2 November 2017)
House in Banbury owned jointly with wife, from which rental income is received
Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

Baroness Brown of Cambridge
Vice Chancellor of Aston University (to September 2016): significant research income, ERDF Funding from EU. Large number of EU (non-UK) staff and students. EIB Loan
Former Governing Board member of the European Institute for Innovation & Technology
Shareholdings as set out in the Register of Lords' Interests

¹⁵⁷ Due to ill health, Lord Boswell of Aynho did not take an active part in this inquiry. Lord Jay of Ewelme was appointed as Acting Chairman for the duration of the inquiry.

Baroness Browning*Chair of the Advisory Committee on Business Appointments***Lord Crisp***Honary Professor at London School of Hygiene and Tropical Medicine**Chair, Advisory Board, King's Centre for Global Health**Member of Council, University of Reading***Lord Cromwell***Partner in a UK farming partnership**Shareholdings as set out in the Register of Lords' Interests***Baroness Falkner of Margravine***Visiting Professor, King's College London**Member, Advisory Board, Cambridge YouGov Stone (market research and events agency)**Member, British Steering Committee: Koenigswinter, The British-German Conference**Vice President, Liberal International: The International Network of Liberal Parties**Member, Advisory Board, British Influence Member, Advisory Board, Demos**Ownership of a house in Italy, jointly owned with member's husband**Member, House of Lords Foreign Policy Network***Lord Jay of Ewelme***Trustee (Non-Executive Director) Thomson Reuters Founders Share Company Chairman, Positive Planet (UK)**Member, European Policy Forum Advisory Council**Member, Senior European Experts Group**Patron, Fair Trials International***Baroness Kennedy of The Shaws***Chair, Justice***Earl of Kinnoull***Executive Consultant, Hiscox Group (insurance)**Trustee, Blair Charitable Trust (running of Blair Castle and estate; a farm subsidy is received under the EU farm subsidy scheme)**Trustee, Red Squirrel Survival Trust and Director of associated private company (in receipt of EU funds)**Director, Horsecross Arts Limited (Perth) and trustee of related registered charity (in receipt of EU funds)**Member of Supervisory Board, Fine Art Fund Group funds**Farmland and associated cottages in Perthshire from which rental income is received and a farm subsidy is received under the EU farm subsidy scheme**Shareholdings in Hiscox Ltd and Schroders PLC (fund management)***Lord Liddle***Chair, Policy Network and Communications Ltd (think-tank)**Co-author of a report which the City of London Corporation commissioned Policy Network to write on developments in thinking on the regulation of financial services in the European Union**Personal assistant at Policy Network carries out secretarial work which includes work in relation to the member's parliamentary duties***Baroness Neville-Rolfe***Chair, Assured Food Standards Ltd (Red Tractor Assurance)**Shareholdings as set out in the Register of Lords' Interests*

Lord Selkirk of Douglas

Director, Lennoxlove House Limited (remunerated as a Director)
Chairman of Directors, and Director, Douglas-Hamilton (D Share) Ltd
(small family company: agriculture and property; the Member's financial
interest derives from his directorship, which is now paid as an annual sum
above the registration threshold)
President, Scottish Veterans' Garden City Association (national charity)
Chairman, Scottish Advisory Committee, Skill Force (national charity)
Diversified investment portfolio in McInroy & Wood Income Fund managed
by third party

Baroness Suttie

Associate with Global Partners Governance Limited
Liberal Democrat House of Lords Spokesperson on Northern Ireland
Trustee, Institute for Public Policy Research (IPPR)

Lord Teverson

In receipt of a pension from the European Parliament
Director, KCS Trade Print Ltd (card & label products)
Director, Wessex Investors Ltd
Director, Wessex Hotel Operators Limited (interest ceased 27 April 2016)
Director, KCS Holdings Ltd
Director, Anchorwood Developments Limited (property)
Board Member, Marine Management Organisation
Trustee, Regen SW (renewable energy agency for South West England)
Board Member, Policy Connect (think-tank)

Baroness Verma

No relevant interests declared

Lord Whitty

President, Road Safety Foundation
Chair, Cheshire Lehmann Fund
President, Environmental Protection UK
Member, GMB
Vice President, Local Government Association
Vice President, Chartered Institute for Trading Standards

Baroness Wilcox

President, National Consumer Federation
Vice President, Chartered Institute for Trading Standards
Shareholdings as set out in the Register of Lords' Interests

Lord Woolmer of Leeds

No relevant interests declared

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-interests/register-of-lords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/brexit-deal-no-deal> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

- | | | |
|----|--|--------------------------|
| * | Ruth Lea CBE, Economic Adviser, Arbuthnot Banking Group | QQ 1–9 |
| * | John Longworth, Co-Chairman, Leave Means Leave | |
| * | Roderick Abbott, Senior Adviser on Trade Policy, ECIPE | QQ 10–20 |
| ** | Professor Catherine Barnard, Professor of European Union and Employment Law, University of Cambridge | |
| * | Professor Anand Menon, Professor of European Politics and Foreign Affairs, King's College London | |
| ** | Miles Celic, Chief Executive, TheCityUK | QQ 21–31 |
| * | Lord Darling of Roulanish | QQ 32–40 |
| * | John Foster, Director of Campaigns, CBI | QQ 41–50 |
| * | Owen Tudor, Head of European Union and International Relations, TUC | |

Alphabetical list of all witnesses

- | | | |
|----|--|-------------------------|
| * | Roderick Abbott, Senior Adviser on Trade Policy, ECIPE (QQ 10–20) | |
| | ADS Group | DND0027 |
| | American Chamber of Commerce to the EU | DND0012 |
| | Association of British Insurers | DND0034 |
| | Dr Stephen Barber | DND0005 |
| ** | Professor Catherine Barnard Professor of European Union and Employment Law, University of Cambridge (QQ 10–20) | DND0047 |
| | British Chambers of Commerce | DND0004 |
| | British Food Importers Distributors Association | DND0020 |
| | British Heart Foundation | DND0032 |
| | British in Europe | DND0035 |
| | British Institute of International and Comparative Law | DND0019 |
| | British Retail Consortium | DND0011 |

★	CBI (QQ 41–50)	
	Professor Feargal Cochrane	DND0025
	Commercial Litigation Association	DND0041
	Confederation of Paper Industries	DND0008
	Council of British Chambers of Commerce in Europe	DND0016
	Dairy UK	DND0031
★	Lord Darling of Roulanish (QQ 32–40)	
	Dr Theodore Konstadinides, with Dr Anastasia Karatzia and Dr Noreen O’Meara	DND0007
	Freight Transport Association	DND0023
	Fresh Produce Consortium	DND0009
	Dr Andrew Glencross	DND0001
	GuildHE	DND0014
	Institute for Government	DND0010
	Johnson & Johnson	DND0039
	Professor Adam Łazowski	DND0036
★	Ruth Lea CBE, Economic Adviser, Arbuthnot Banking Group (QQ 1–9)	
	Lloyd’s	DND0028
	Loan Market Association	DND0006
	Dr Tobias Lock	DND0003
	London Chamber of Commerce and Industry	DND0017
	London First	DND0022
★	John Longworth, Co-Chairman, Leave Means Leave (QQ 1–9)	
★	Professor Anand Menon, Professor of European Politics and Foreign Affairs, King’s College London (QQ 10–20)	
	MillionPlus	DND0013
	Motor Cycle Industry Association	DND0026
	NFU England & Wales	DND0024
	Open Britain	DND0030
	Personal Investment Management & Financial Advice Association (PIMFA)	DND0045
	Producers Alliance for Cinema and Television	DND0042
	Graham Stevens	DND0040
	The Law Society	DND0046
	The Russell Group	DND0044

**	TheCityUK (QQ 21–31)	DND0015
*	TUC (QQ 41–50)	
	Turkish Industry and Business Association	DND0043
	The UK Trade Policy Observatory	DND0033
	Unite the Union	DND0029
	US Chamber of Commerce, US-UK Business Council	DND0037
	Simon Whiteley	DND0002
	Wine and Spirit Trade Association	DND0018
	Dr Matthew Wood	DND0021
	Zurich Insurance	DND0038

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords EU Select Committee is today launching a new inquiry, entitled Brexit: deal or no deal? This inquiry will examine the key components of any implementation, or transition period, including its legal basis, the institutional structures that will be needed to support it, and the likely cost to the UK, particularly in form of ongoing budgetary contributions. On the other side of the coin, the Committee will consider the implications of a failure to reach agreement on transition—a ‘no deal’ scenario. Key questions the Committee will consider include:

- Is the Prime Minister’s Florence speech a good basis for the UK and EU to reach agreement in the Article 50 negotiations?
- What potential stumbling-blocks remain? Under what scenarios might the outcome of the negotiations be ‘no deal’?
- What would be the implications, good and bad, of ‘no deal’?
- Is a transition arrangement a necessary component of any lasting agreement, and if so, why?
- What will be the key components of a transition arrangement?
- How will the UK-EU relationship be conducted during the transition period? How long should the transition period last?

The Committee welcomes the views of stakeholders on the issues outlined above. Any submissions should be sent to the Committee, at euclords@parliament.uk, no later than 26 October 2017.