

EU Withdrawal Bill: amendments and debates

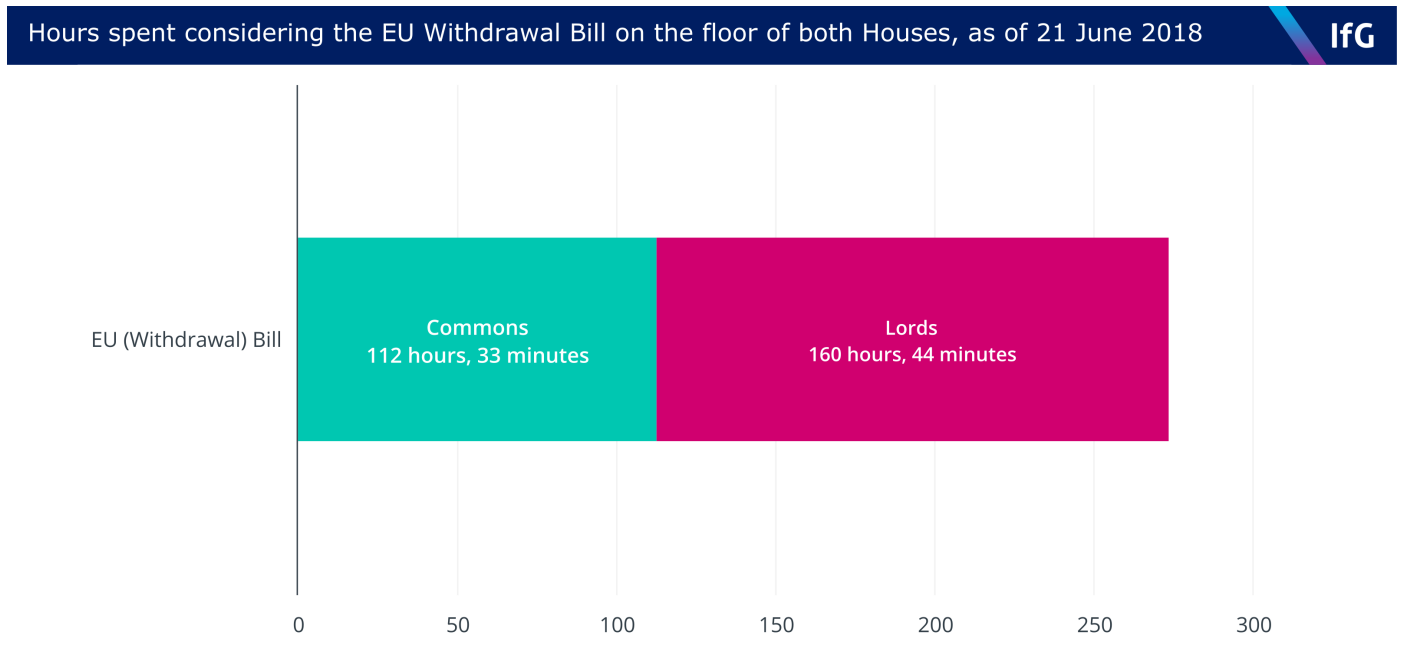


What is the current progress of the EU Withdrawal Bill?

The EU Withdrawal Bill has completed 'ping-pong'. The Government avoided defeats in the Commons by conceding on issues where defeats were possible. In the end, the Lords accepted both the Government's amendments and the Commons' response to each of their 15 amendments, and did not 'insist' on any of them.

The bill is now ready for Royal Assent to become an Act of Parliament.

In total, Parliament has spent an estimated over 272 hours debating the bill: 112 hours, 33 minutes in the Commons, and 160 hours, 44 minutes in the Lords.



Source: IfG analysis of data from Hansard and parliamentlive.tv. Where times differ, timings from Hansard are used.



Time spent considering the EU Withdrawal Bill on the floor of both Houses (Updated: 06 Jun 2019) ^[2]

^[3]

^[4]

What is the final text in the bill? ^[5]

The Lords made significant changes to the bill. The Government lost 15 votes, with a number of Conservative peers rebelling including previous government ministers. Peers also accepted 170 amendments ^[6] proposed by the Government.

The Government accepted one, and ended up making concessions on eight of the 15 amendments.

Topic (and tabled by)

Customs Union (amendment 1, 2)

Lord Kerr, crossbench peer

What the amendment means

Would prevent the European Communities Act 1972 ^[7] from being repealed until the Government has laid before Parliament a statement outlining the steps it has taken to negotiate the UK's participation in a customs union with the EU. The amendment says this would need to happen by 31 October 2018.

Both Houses accepted the Government's amendment in lieu. This would require the Government to lay a statement before Parliament, before October 2018, outlining the steps taken to negotiate an agreement for the UK to participate in a *customs arrangement* with the EU.

Enhanced scrutiny procedure (amendment 4)

Baroness Hayter, Shadow Deputy Leader of the House of Lords

What the amendment means

Would mean that secondary legislation used to amend certain retained EU law would be subject to an enhanced scrutiny procedure. This includes retained EU law relating to employment and equality rights, health and safety protections, and consumer and environmental standards.

Both Houses accepted the Government's amendment. This requires the affirmative scrutiny procedure, or an enhanced scrutiny procedure, to be used when amending retained EU law which originally implemented EU directives which were negotiated at the EU level. Previously these could only be modified within EU law.

The affirmative procedure means that statutory instruments would have to be actively approved by both Houses of Parliament.

Charter of Fundamental Rights (amendment 5)

Lord Pannick, crossbench peer

What the amendment means

Would transfer the Charter of Fundamental Rights into domestic law, excluding the preamble and Chapter V of the Charter. Chapter V sets out the rights of citizens living in the EU (such as the right to stand as a candidate in European Parliament elections and freedom of movement) and would therefore not make sense if contained in domestic law.

This amendment was rejected.

Challenges to retained EU law (amendment 52)

Lord Beith, Lib Dem peer

What the amendment means

Removes the section of the bill which allowed ministers to use secondary legislation to establish when individuals can challenge the validity of retained EU law after exit day.

This amendment was rejected.

Challenges to retained EU law (amendment 53)

Lord Pannick, crossbench peer

What the amendment means

Would allow legal challenges to domestic law if it fails to comply with the general principles of EU law. This reflects the fact that the bill currently transfers general principles of EU law into domestic law as long as they are recognised by the European Court of Justice (ECJ) before exit day.

Both Houses accepted the Government's amendment in lieu to allow legal challenges on this basis for three years after exit day.

Scope of delegated powers (amendment 10, 43, 45)

Lord Lisvane, crossbench peer

What the amendment means

Amends clause 7 – which gives ministers powers to amend retained EU law using delegated legislation – so that ministers can only use these powers where “necessary” rather than where they think it is “appropriate”. After this was voted part of the bill, changes to delegated powers in clause 9 and 17 were accepted.

These amendments were rejected.

'Meaningful vote' (amendment 19)

Viscount Hailsham, Conservative peer

What the amendment means

A new clause which says that Parliament must approve the withdrawal agreement and transitional measures in an act of Parliament and – if possible – before the European Parliament has debated and voted on this.

The clause also sets out specific deadlines for the Government for agreeing – and legislating for – the withdrawal agreement with the EU. If the Government does not meet those deadlines, the amendment says that it “must follow any direction” approved by a resolution in the House of Commons and considered in the House of Lords. This gives the Commons – not the Lords – the power to decide the next steps for the Government.

Both Houses accepted the Government’s amendment in lieu which sets out how Parliament will approve the withdrawal agreement and that, if it does not approve, a minister will make a statement setting out how the Government “proposes to proceed” within 28 days.

In addition, the Government accepted that the Commons would have a vote on a motion ‘in neutral terms’ to consider this ministerial statement. It would also have a vote on a motion ‘in neutral terms’ to consider a ministerial statement if no deal is reached with the EU by 21 January 2019.

The big debate was whether this motion was amendable because a motion ‘in neutral terms’ is not amendable. To avoid a defeat in the Commons, the Government published a written statement confirming that it is the role of the Speaker to determine whether it is or not.

Parliamentary approval of mandate for future negotiations (amendment 20)

Lord Monks, Labour peer

What the amendment means

Would prevent secondary legislation to implement the withdrawal agreement (clause 9) from being used until after Parliament has approved a mandate for negotiations about the UK’s future relationship with the EU.

This amendment was rejected.

Rights of reunification of unaccompanied child refugees (amendment 24)

Lords Dubs, Labour peer

What the amendment means

A new clause on the ability of unaccompanied child refugees in one EU member state to join relatives in another. The new clause requires the Government to try and negotiate to maintain this arrangement.

Both Houses accepted the Government’s amendment in lieu which sets out the Government’s intention to negotiate an agreement with the EU to allow an unaccompanied child to join a relative in the UK who is a lawful resident (and vice versa).

Northern Ireland (amendment 25)

Lord Patten, Conservative peer and Chair of the 1998-99 Independent Commission on Policing in Northern Ireland

What the amendment means

A new clause which explicitly preserves North-South co-operation after Brexit and prevents the establishment of new border arrangements which did not exist before exit day, unless agreed between the UK Government and the Government of Ireland.

Both Houses accepted the Government's amendment in lieu was agreed which amends the Lords' clause to refer to the North-South co-operation in the Good Friday Agreement / Belfast Agreement (rather than list the specific areas of co-operation) and reduces the list of new border arrangements to include "physical infrastructure, including border posts, or checks and controls". It also says this should be subject to an agreement between the UK and the EU rather than the UK and Ireland.

Continuing relationship with the EU (amendment 32)

Lord Bishop of Leeds

What the amendment means

Would ensure that the act will not prevent the UK from replicating EU law made after exit day in UK law and from continuing to participate in EU agencies after exit day.

The Government accepted this amendment.

Date and time of exit (amendment 37, 39, 125)

Duke of Wellington, Conservative peer

What the amendment means

The Government amended the bill during the Commons committee stage to include these details in the bill but the Lords voted to revert to the original wording. The [Duke of Wellington said](#) ⁽⁸⁾ they wanted to give the Commons a chance to think again.

These amendments were rejected.

European Economic Area (EEA) (amendment 51)

Lord Alli, Labour peer

What the amendment means

Would force the Government to make remaining in the European Economic Area a negotiating objective. [Lord Alli said](#) ⁽⁹⁾ this was to give the Commons the opportunity to make the decision on whether the UK should remain part of the EEA.

These amendments were rejected.

Scrutiny (amendment 110)

Lord Lisvane, crossbench peer

What the amendment means

The purpose of the sifting committee is to 'sift' how statutory instruments used to amend retained EU law should be scrutinised by Parliament. Lord Lisvane's amendment would make the committee oversee all statutory instruments (giving it a wider scope) and give it the power to 'require' greater scrutiny for statutory instruments, rather than just 'recommend' there needs to be greater scrutiny (as is currently drafted).

Both Houses accepted the Government's amendment which would require ministers to make a written statement if they disagree with the scrutiny procedure for a statutory instrument the committee has recommended.

Environmental principles (amendment 3)

Lord Krebs, crossbench peer

What the amendment means

Would require the Secretary of State for Environment, Food and Rural Affairs to take steps to maintain the EU's environmental principles in domestic law after Brexit. Defra has launched [a consultation](#) ^[10] on a new Environmental Principles and Governance Bill but peers did not believe this was sufficient. The amendment lists the exact principles which need to be given effect in domestic law.

Both Houses accepted Oliver Letwin's amendment in lieu (which was supported by the Government) which sets out the same list of principles which should be included in a new environment bill.

Topic (and tabled by)	What the amendment means	What is the final text in the bill?
<p>Customs Union (amendment 1, 2)</p> <p>Lord Kerr, crossbench peer</p>	<p>Would prevent the European Communities Act 1972 ^[7] from being repealed until the Government has laid before Parliament a statement outlining the steps it has taken to negotiate the UK's participation in a customs union with the EU. The amendment says this would need to happen by 31 October 2018.</p>	<p>Both Houses accepted the Government's amendment in lieu. This would require the Government to lay a statement before Parliament, before October 2018, outlining the steps taken to negotiate an agreement for the UK to participate in a <i>customs arrangement</i> with the EU.</p>
<p>Enhanced scrutiny procedure (amendment 4)</p> <p>Baroness Hayter, Shadow Deputy Leader of the House of Lords</p>	<p>Would mean that secondary legislation used to amend certain retained EU law would be subject to an enhanced scrutiny procedure. This includes retained EU law relating to employment and equality rights, health and safety protections, and consumer and environmental standards.</p>	<p>Both Houses accepted the Government's amendment. This requires the affirmative scrutiny procedure, or an enhanced scrutiny procedure, to be used when amending retained EU law which originally implemented EU directives which were negotiated at the EU level. Previously these could only be modified within EU law.</p> <p>The affirmative procedure means that statutory instruments would have to be actively approved by both Houses of Parliament.</p>
<p>Charter of Fundamental Rights (amendment 5)</p> <p>Lord Pannick, crossbench peer</p>	<p>Would transfer the Charter of Fundamental Rights into domestic law, excluding the preamble and Chapter V of the Charter. Chapter V sets out the rights of citizens living in the EU (such as the right to stand as a candidate in European Parliament elections and freedom of movement) and would therefore not make sense if contained in domestic law.</p>	<p>This amendment was rejected.</p>
<p>Challenges to retained EU law (amendment 52)</p> <p>Lord Beith, Lib Dem peer</p>	<p>Removes the section of the bill which allowed ministers to use secondary legislation to establish when individuals can challenge the validity of retained EU law after exit day.</p>	<p>This amendment was rejected.</p>
<p>Challenges to retained EU law (amendment 53)</p> <p>Lord Pannick, crossbench peer</p>	<p>Would allow legal challenges to domestic law if it fails to comply with the general principles of EU law. This reflects the fact that the bill currently transfers general principles of EU law into domestic law as long as they are recognised by the European Court of Justice (ECJ) before exit day.</p>	<p>Both Houses accepted the Government's amendment in lieu to allow legal challenges on this basis for three years after exit day.</p>
<p>Scope of delegated powers (amendment 10, 43,</p>	<p>Amends clause 7 - which gives ministers powers to amend retained EU law using delegated legislation - so that ministers</p>	

45) Topic (and tabled by) Lord Lisvane, crossbench peer	can only use these powers where What the amendment means it is "appropriate". After this was voted part of the bill, changes to delegated powers in clause 9 and 17 were accepted.	These amendments were rejected. What is the final text in the bill?
'Meaningful vote' (amendment 19) Viscount Hailsham, Conservative peer	A new clause which says that Parliament must approve the withdrawal agreement and transitional measures in an act of Parliament and – if possible – before the European Parliament has debated and voted on this. The clause also sets out specific deadlines for the Government for agreeing – and legislating for – the withdrawal agreement with the EU. If the Government does not meet those deadlines, the amendment says that it "must follow any direction" approved by a resolution in the House of Commons and considered in the House of Lords. This gives the Commons – not the Lords – the power to decide the next steps for the Government.	Both Houses accepted the Government's amendment in lieu which sets out how Parliament will approve the withdrawal agreement and that, if it does not approve, a minister will make a statement setting out how the Government "proposes to proceed" within 28 days. In addition, the Government accepted that the Commons would have a vote on a motion 'in neutral terms' to consider this ministerial statement. It would also have a vote on a motion 'in neutral terms' to consider a ministerial statement if no deal is reached with the EU by 21 January 2019. The big debate was whether this motion was amendable because a motion 'in neutral terms' is not amendable. To avoid a defeat in the Commons, the Government published a written statement confirming that it is the role of the Speaker to determine whether it is or not.
Parliamentary approval of mandate for future negotiations (amendment 20) Lord Monks, Labour peer	Would prevent secondary legislation to implement the withdrawal agreement (clause 9) from being used until after Parliament has approved a mandate for negotiations about the UK's future relationship with the EU.	This amendment was rejected.
Rights of reunification of unaccompanied child refugees (amendment 24) Lords Dubs, Labour peer	A new clause on the ability of unaccompanied child refugees in one EU member state to join relatives in another. The new clause requires the Government to try and negotiate to maintain this arrangement.	Both Houses accepted the Government's amendment in lieu which sets out the Government's intention to negotiate an agreement with the EU to allow an unaccompanied child to join a relative in the UK who is a lawful resident (and vice versa).
Northern Ireland (amendment 25) Lord Patten, Conservative peer and Chair of the 1998-99 Independent Commission on Policing in Northern Ireland	A new clause which explicitly preserves North-South co-operation after Brexit and prevents the establishment of new border arrangements which did not exist before exit day, unless agreed between the UK Government and the Government of Ireland.	Both Houses accepted the Government's amendment in lieu was agreed which amends the Lords' clause to refer to the North-South co-operation in the Good Friday Agreement / Belfast Agreement (rather than list the specific areas of co-operation) and reduces the list of new border arrangements to include "physical infrastructure, including border posts, or checks and controls". It also says this should be subject to an agreement between the UK and the EU rather than the UK and Ireland.
Continuing relationship with the EU (amendment 32) Lord Bishop of Leeds	Would ensure that the act will not prevent the UK from replicating EU law made after exit day in UK law and from continuing to participate in EU agencies after exit day.	The Government accepted this amendment.
Date and time of exit (amendment 37, 39, 125) Duke of Wellington, Conservative peer	The Government amended the bill during the Commons committee stage to include these details in the bill but the Lords voted to revert to the original wording. The Duke of Wellington said ^[8] they wanted to give the Commons a chance to think again.	These amendments were rejected.
European Economic Area (EEA) (amendment 51)	Would force the Government to make remaining in the European Economic Area a negotiating objective. Lord Alli said	

Topic (and tabled by)	What the amendment means	What is the final text in the bill?
<p>Lord Alli, Labour peer</p> <p>Scrutiny (amendment 110)</p> <p>Lord Lisvane, crossbench peer</p>	<p>⁽⁹⁾ this was to give the Commons the power to block the withdrawal agreement if it was not approved by the Commons.</p> <p>The purpose of the sifting committee is to 'sift' how statutory instruments used to amend retained EU law should be scrutinised by Parliament. Lord Lisvane's amendment would make the committee oversee all statutory instruments (giving it a wider scope) and give it the power to 'require' greater scrutiny for statutory instruments, rather than just 'recommend' there needs to be greater scrutiny (as is currently drafted).</p> <p>Would require the Secretary of State for Environment, Food and Rural Affairs to take steps to maintain the EU's environmental principles in domestic law after Brexit. Defra has launched a consultation ⁽¹⁰⁾ on a new Environmental Principles and Governance Bill but peers did not believe this was sufficient. The amendment lists the exact principles which need to be given effect in domestic law.</p>	<p>These amendments were rejected.</p> <p>Both Houses accepted the Government's amendment which would require ministers to make a written statement if they disagree with the scrutiny procedure for a statutory instrument the committee has recommended.</p>
<p>Environmental principles (amendment 3)</p> <p>Lord Krebs, crossbench peer</p>	<p>Would require the Secretary of State for Environment, Food and Rural Affairs to take steps to maintain the EU's environmental principles in domestic law after Brexit. Defra has launched a consultation ⁽¹⁰⁾ on a new Environmental Principles and Governance Bill but peers did not believe this was sufficient. The amendment lists the exact principles which need to be given effect in domestic law.</p>	<p>Both Houses accepted Oliver Letwin's amendment in lieu (which was supported by the Government) which sets out the same list of principles which should be included in a new environment bill.</p>

The Government was only defeated once at report stage in the Commons – on an amendment to clause 9 tabled by Dominic Grieve. Clause 9 allows the Government to use statutory instruments in anticipation of the contents of the withdrawal agreement. The amendment would only allow ministers to use these statutory instruments if Parliament has voted to approve the final terms of the withdrawal agreement.

Key government amendments

Topic

ECJ judgements

What the amendment means

This set of amendments gives greater guidance to UK courts as to when they should refer to ECJ judgements made after exit day. The original text in the bill said that UK courts should do so "if it considers it appropriate" – which critics argued meant that courts would be forced to make a policy choice. The Government has amended this to say that courts should refer to ECJ judgements when it is "relevant".

Accepted

Status of retained EU law

What the amendment means

A new clause has clarified the status of retained EU law after exit day. It also sets out how this category of law should be amended after exit day, outside of the powers given to ministers under the bill. [Lord Callanan did acknowledge that](#) ⁽¹¹⁾ – given the detail of this new amendment – the Government "would be prepared to return to the issue at Third Reading" to give the Lords time to reflect. Peers accepted amendments to other parts of the bill needed as a result of this new clause.

Accepted

Scope of delegated powers

What the amendment means

Amendments to clause 7 remove the ability to establish new public bodies using delegated powers and also prevent delegated powers from being used to amend the Scotland and Wales Acts.

Amendments to remove the ability to raise fees using these powers.

The Government supported an amendment tabled by peers to remove the ability of ministers to amend the act itself using secondary legislation.

Amendments to increase the reporting requirements of ministers to Parliament when introducing statutory instruments. For example, requiring a minister to make a statement as to why there is “good reason” for the statutory instrument and why it is “a reasonable course of action”.

Accepted

Removal of clause 8

What the amendment means

This clause gave ministers the power to use secondary legislation to amend UK law so that the UK would continue to comply with international obligations after it leaves the EU. In an updated version of the delegated powers memorandum ^[12], which accompanies every piece of legislation containing delegated powers, the Government has said that as the bill has progressed through Parliament, it has become clear that the powers will be unnecessary. The Government has added that where the UK is in breach of international obligations, changes will be made through primary legislation or under other delegated powers where possible.

Accepted

Devolution

What the amendment means

Amendments on devolution which have been agreed with the Welsh Government. Although they are still opposed by the Scottish Government, during the debate Lord Keen ^[13], the Ministry of Justice spokesperson in the Lords, said he hoped the Scottish Government would decide to sign up to the agreement.

These amendments give UK ministers the power to place temporary restrictions on the devolved administrations ability to legislate in certain devolved policy areas returning from the EU. The UK and devolved governments agree that new UK-wide frameworks ^[14] will be needed in some of these areas to replace the framework currently set by the EU. The Government argues that temporary restrictions are needed to prevent divergence across the UK as new frameworks are legislated. Restrictions may only be needed in the 24 areas where UK legislation might be necessary.

Accepted 321-40 ^[15]

Topic	What the amendment means	Response in the Commons
ECJ judgements	This set of amendments gives greater guidance to UK courts as to when they should refer to ECJ judgements made after exit day. The original text in the bill said that UK courts should do so “if it considers it appropriate” – which critics argued meant that courts would be forced to make a policy choice. The Government has amended this to say that courts should refer to ECJ judgements when it is “relevant”.	Accepted
Status of retained EU law	A new clause has clarified the status of retained EU law after exit day. It also sets out how this category of law should be amended after exit day, outside of the powers given to ministers under the bill. <u>Lord Callanan did acknowledge that</u> ^[11] – given the detail of this new amendment – the Government “would be prepared to return to the issue at Third Reading” to give the Lords time to reflect. Peers accepted amendments to other parts of the bill needed as a result of this new clause.	Accepted
Scope of delegated powers	Amendments to clause 7 remove the ability to establish new public bodies using delegated powers and also prevent delegated powers from being used to amend the Scotland and Wales Acts. Amendments to remove the ability to raise fees using these powers. The Government supported an amendment tabled by peers to remove the ability of ministers to amend the act itself using secondary legislation.	Accepted
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Removal of clause 8	<p>This clause gave ministers the power to use secondary legislation to amend UK law so that the UK would continue to comply with international obligations after it leaves the EU. In an updated version of the delegated powers memorandum ^[12], which accompanies every piece of legislation containing delegated powers, the Government has said that as the bill has progressed through Parliament, it has become clear that the powers will be unnecessary. The Government has added that where the UK is in breach of international obligations, changes will be made through primary legislation or under other delegated powers where possible.</p>	Accepted
Devolution	<p>Amendments on devolution which have been agreed with the Welsh Government. Although they are still opposed by the Scottish Government, during the debate Lord Keen ^[13], the Ministry of Justice spokesperson in the Lords, said he hoped the Scottish Government would decide to sign up to the agreement.</p> <p>These amendments give UK ministers the power to place temporary restrictions on the devolved administrations ability to legislate in certain devolved policy areas returning from the EU. The UK and devolved governments agree that new UK-wide frameworks ^[14] will be needed in some of these areas to replace the framework currently set by the EU. The Government argues that temporary restrictions are needed to prevent divergence across the UK as new frameworks are legislated. Restrictions may only be needed in the 24 areas where UK legislation might be necessary.</p>	Accepted 321-40 ^[15]

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- [5] <http://twitter.com/intent/tweet?text=What%20is%20the%20final%20text%20in%20the%20EU%20Withdrawal%20Bill%3F>
- [6] <https://nortonview.wordpress.com/2018/05/10/the-eu-withdrawal-bill-not-our-finest-hour/>
- [7] <https://www.instituteforgovernment.org.uk/explainers/1972-european-communities-act>
- [8] <https://goo.gl/GKoAQD>
- [9] <https://goo.gl/Cq1gZS>
- [10] https://consult.defra.gov.uk/eu/environmental-principles-and-governance/supporting_documents/Environmental%20Principles%20and%20Governance%20after%20EU%20Exit%20%20Consultation%20Document.pdf
- [11] <http://goo.gl/vZ1mpo>
- [12] <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-supplementaryDPM3.pdf>
- [13] <http://goo.gl/VkAXiC>
- [14] <https://www.instituteforgovernment.org.uk/explainers/brexit-devolution-and-common-frameworks>
- [15] <https://goo.gl/ye2TWz>