

# Whitehall's preparation for the UK's exit from the EU

Joseph Owen and Robyn Munro



Briefing paper

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## Our Brexit work programme

Following the UK's vote to leave the European Union (EU), the Institute for Government has launched a major programme of work looking at the negotiations, the UK's future relationship with the EU and the impact of Brexit on the UK as a union.

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## Summary

Theresa May has committed herself to triggering Article 50 before the end of March 2017, a move that will signal the beginning of up to two years of talks with the European Union (EU) on how the UK will leave. If she sticks to her schedule, that is less than four months away.

Making a success of Brexit will require efforts from the whole machinery of government. Whitehall will be called upon to:

- prepare for talks: provide analysis, options and evidence to establish negotiating positions
- manage the talks: respond to emerging positions and provide policy expertise
- prepare for day one outside of the EU: plan legislation and administration, take advantage of opportunities, and minimise risks.

### There are clear signs of progress in preparations

The Department for Exiting the EU (DExEU) has established itself quickly, putting new teams in place and developing cross-government structures. Teams working across government are doing so with energy, optimism and professional dedication.

Whitehall departments have identified the big risks and opportunities presented by Brexit, and have contributed to an analysis of implications on different sectors of the UK economy. This work has been fed into DExEU. The focus has now turned to the Great Repeal Bill and identifying the wider legislation required to manage the UK's exit from the EU.

### But we found uncertainty in some departments about what they are required to do before Article 50 is triggered

Some of this stems inevitably from the uncertainty about the Government's choice of negotiating position. There are many cases where more information about that negotiating position would support departments in their planning, but Theresa May's preference is to keep these details under wraps until talks begin. The Government has recently committed to sharing a plan for Brexit, but it is not yet clear what level of detail this plan will contain. We would not expect much beyond the Government's high-level negotiating objectives to be made public.

What is clear is that for officials in DExEU there is a careful balancing act between maintaining the privacy the Government believes is required for the purposes of negotiations, and providing departments with the information they need to be able to plan and prioritise effectively.

Departments' uncertainty and concern extends beyond that point and into areas of process and planning which, if the Government addressed now, would, in our view, help to smooth the path of Brexit. DExEU are giving Whitehall departments specific requests, but these departments need to understand more about how information in their responses is being used and what is required from them before Article 50 can be triggered.

## The Government has not provided a clear plan for how negotiations will be managed

At the point of triggering Article 50, the Government should know not only what its priorities and positions are, but also the mechanics through which it will manage the talks. The parliamentary and external interest throughout the negotiations is likely to be significant. While the Government has responded to parliamentary requests for engagement during the pre-negotiation period, it is important that it clearly sets out the opportunities it will provide in Government time for the dialogue to continue during talks.

There are different models and mechanisms for how negotiations might run, but all require preparatory work to ensure they are ready to go when talks begin. Departments need to know how they are going to be involved throughout the negotiations so they can put the necessary people in place and tailor their preparation accordingly.

## There must be greater focus on preparing for day one outside of the EU

Waiting for the details of the deal is not an option if the UK is to be ready for life after Brexit. The Great Repeal Bill will set some of the legislative foundations, but we found that, although this legislation is intended to be a 'lift and shift' of EU law into UK legislation, it is much more complex than anticipated and will involve difficult policy decisions.

Departments also need to look beyond the legislation to understand the systems and institutions that might be required, from regulatory bodies to customs regimes, as well as the opportunities to reform unwieldy regulation or policy.

We found that some departments are proactively doing this forward planning; and are looking at what day one outside of the EU might look like. But other departments are more reactive and focused on responding to DExEU requests. A failure to plan for the challenges and opportunities of a post-Brexit world now will lead to delay further down the line.

## Whitehall has the skills but not the capacity or resources to deliver Brexit

Departments have many of the skills required for the tasks involved in Brexit, including analysing policy, drafting legislation and managing negotiations. But they cannot complete these tasks while also meeting a tough set of pre-existing demands: manifesto commitments, spending reductions and reorganisation plans. The Autumn Statement announced new funding for the Foreign Office, the Department for International Trade (DIT) and DExEU, but other departments were told they must keep working to spending settlements that were decided before Brexit.

More money being made available to departments could provide much needed horsepower, but there is still a question about capacity at the top. Key decision makers and experienced officials are not easily recruited, but they will be in increasingly high demand.

In this context, departments have to choose between meeting pre-existing commitments or the demands of Brexit. Some of the departments most affected by Brexit are facing challenging savings targets. The Department for the Environment, Food and Rural Affairs' (Defra) budget is

17% smaller now than it was in 2010, and will be almost 35% smaller by March 2019. For the Home Office, these figures are 16% and 21%, respectively.

If the Government does not clearly set out its priorities, there is a risk that the civil service will fail either to deliver existing commitments or to plan properly for Brexit and life afterwards.

### **Our recommendations on how to manage these challenges:**

1. The Government should provide departments with more detailed information on the process they are following, the timelines they are working to, and the expectations of what is required from departments by the point at which Article 50 is triggered.
2. The Government should decide as soon as possible how negotiations will be run and who will be involved.
3. The Government should ensure all departments are doing sufficient post-Brexit planning, including on how the opportunities offered by Brexit should be realised.
4. The Government should set out its priorities, ensure departments have sufficient staffing and money for Brexit and existing commitments, or acknowledge that plans must be trimmed.

# Introduction

Since the Institute for Government published its report, *Silence is not a Strategy*, in October, the Prime Minister has provided a little more information about her plans for taking the UK out of the EU. We have learned that Article 50 will be triggered by March 2017 and a Great Repeal Bill will be introduced in the next parliamentary session, repealing the 1972 European Communities Act.

In this paper, we ask how Whitehall is preparing to support this timetable. There are three major areas of work which must be addressed before Theresa May triggers Article 50:

- Preparing the Government's negotiating position.
- Deciding how negotiations will be run and who will be involved.
- Planning new policies and systems for life outside of the EU, including a new immigration system and alternatives to EU institutions.

Our research included interviews with senior civil servants across nine Whitehall departments, as well as key external organisations. Those we spoke to told us that significant progress has been made in the first of these areas: in setting up new departments, new teams, and gathering information from across government on key areas affected by the EU. Those working on Brexit are doing so with great energy and professional dedication to the task.

But we found that less work has been done to prepare for how Whitehall will manage the negotiation process, and to identify what needs to be done now to take advantage of opportunities and avoid a 'cliff edge' after negotiations in areas such as immigration, trade and borders.

The Government must recognise that it is attempting to deliver Brexit with a civil service that is at its smallest in decades, and already managing a myriad of commitments, change programmes and major reforms.<sup>1</sup>

## The scale of the task

Brexit will force the UK to disentangle the legislative and institutional connections which have developed over the 43 years of its involvement with the EU.

Sir Jeremy Heywood, Cabinet Secretary, has described this task as unparalleled in complexity,<sup>2</sup> and Professor Anand Menon of King's College London has said he fears the process of leaving has the potential to "test the UK's constitutional settlement, legal framework, political process and bureaucratic capacities to their limits – and possibly beyond".<sup>3</sup>

Others point, however, to the opportunities presented by Brexit to improve UK law and regulation, and are hopeful of a much less complicated 'quickie divorce' that could be sought, with basic agreements allowing the UK and the EU to get on with life after Brexit.

This disparity in assessments of the challenge is just one example of the political complexity of the task facing the Prime Minister. Expectations as to what Brexit will really mean amongst the Cabinet, Parliament or the general public, differ widely.

Theresa May and her inner circle will decide their priorities among all the possible options for leaving the EU; those will then, of course, be subject to detailed negotiations with the European Commission, and be subject to change and trade-offs. But the Prime Minister's negotiating objectives must be based on analysis and detailed preparations provided by the whole of Whitehall.

To ensure an orderly exit from the EU, there are three clear areas of work:

- Preparing options and positions for the Government: for both Article 50 talks (UK–EU 'divorce') and the future UK–EU relationship.
- Managing negotiations: setting out how the talks will work, how government departments will input to them and how (if at all) key external stakeholders will be involved.
- Dealing with the domestic consequences of leaving the EU: laying the legislative foundations through the Great Repeal Bill, removing burdensome EU regulation where desired and making sure the UK has everything it needs for day one of Brexit; whether that is replacing EU institutions, or implementing new systems.

Each of these three areas involves a different set of capabilities and will require different management processes. Some are more pressing than others, but they all feed into and influence each other. Whitehall needs to focus on all of them before negotiations begin.

## How is Whitehall set up to deliver this task?

Preparations for these tasks are taking place at three different places within government: in Number 10 and the Brexit Cabinet Committee, in DExEU, and in other Whitehall departments and the teams of policy specialists within them.

### Number 10 and the Brexit Cabinet Committee

It is clear that political ownership of decision making sits in Number 10. The Prime Minister has repeatedly stated that there will be no "running commentary" in the run up to negotiations and any minister straying beyond high-level lines agreed by the Prime Minister has been publicly rebuked. Most recently, the Government has made a commitment that a Brexit plan will be published, but it is not yet clear what that will contain.

Theresa May was quick to reshape Whitehall for its new job of exiting the EU, establishing two new departments the day after becoming Prime Minister. DIT is focusing on where and how the UK will trade once it has left the EU. DExEU has been set up to manage the divorce and the UK's future relationship with the EU.

The Prime Minister was also quick to set up a European Union Exit and Trade Committee (Brexit Cabinet Committee), with a secretariat provided by the new DExEU and the Economic and Domestic Secretariat. In October its membership was revealed.<sup>4</sup> The formal membership is evenly split between those who campaigned to leave the EU and those who wanted to stay. Other ministers attend as necessary, depending on the business being discussed.

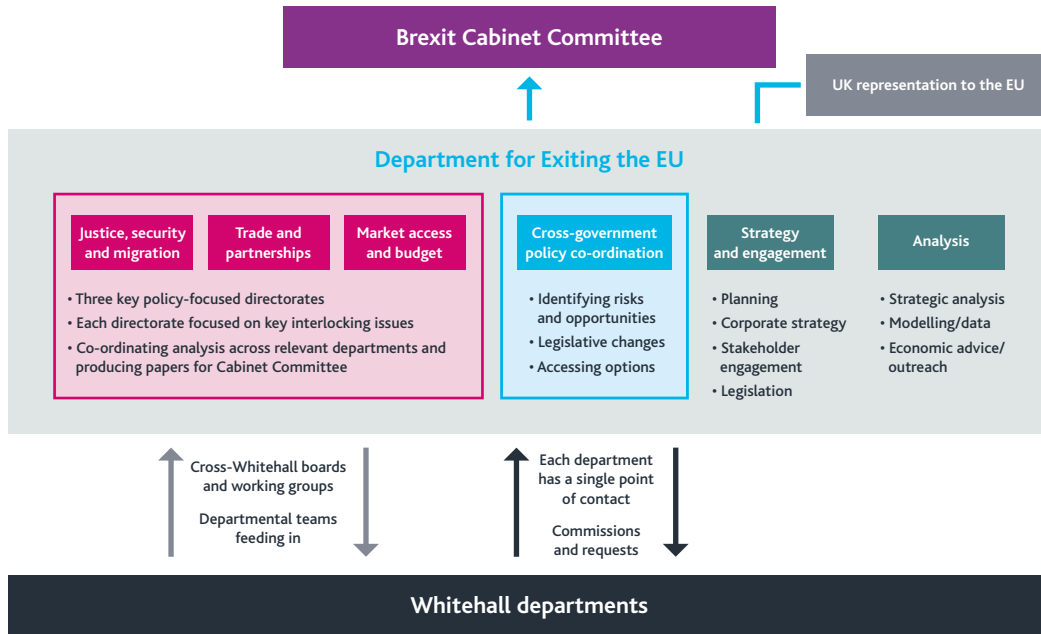
### The Department for Exiting the EU

DExEU sits between the Brexit Cabinet Committee and the rest of Whitehall, and is responsible for providing the co-ordination and overarching analysis that supports the Prime Minister and her team in decision making. The Permanent Secretary, Oliver Robbins, is also the Prime Minister's 'Sherpa' on EU issues – providing advice and likely to be leading negotiations.



Our diagram below shows how DExEU is structured, and highlights how we understand it to operate based on our interviews and published documents.

Figure 1: Department for Exiting the European Union



Source: DExEU organisation chart, December 2016, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575132/department\\_for\\_exiting\\_the\\_eu\\_senior\\_management\\_team.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575132/department_for_exiting_the_eu_senior_management_team.pdf); Institute for Government interviews.

Policy expertise is retained in departments, which are responsible for gathering data and preparing analysis; DExEU's role is to sit in the centre directing work, co-ordinating input from departments, identifying trade-offs as they emerge, and working closely with the UK Representation to the EU (UKREP) in Brussels.

DExEU has six directorates. Three of these are focused on key areas of the negotiations: justice, security and migration; trade and partnerships; and market access and budget. These directorates work alongside cross-Whitehall boards, with representatives from all relevant departments, to co-ordinate analysis of policy options and produce papers for the Brexit Cabinet Committee.

A further directorate is focused on managing cross-government policy co-ordination (or 'domestic consequential' as it is commonly referred to), looking at the impact of EU exit decisions on domestic policy. The team contains a point of contact for each department through which DExEU is commissioning work, for example on key risks and opportunities, legislative changes indicated by Brexit, and the impact of emerging positions from the negotiation-focused directorates.

The economic analysis directorate is set up to undertake strategic analysis, manage data and modelling, as well as provide economic advice and outreach.

The final directorate is 'Engagement and Corporate Strategy' – which is developing a departmental strategy, delivery plan, engagement plan and leading on parliamentary and legislative issues.

## Whitehall departments

Each department will be affected by Brexit differently, with a spectrum dependent largely on the amount of that department's policy that is covered by EU competence, and the degree of reform that Brexit will require. For some, such as Defra, nearly all of their work areas will be affected. For others, such as the Department for Education, leaving the EU will have a more narrowly-focused impact, and preparations can therefore be managed without the need for new workstreams to be established.

Different models of managing Brexit work reflect the differing impact that Brexit will have on departments. Each department has at least one point of contact with DExEU – through its representative in DExEU's 'domestic consequential' team. If departmental policy areas intersect with one of DExEU's three negotiation-focused directorates, they will also be contributing to cross-Whitehall working groups and boards.

In each department there is a central team which manages the relationship with DExEU and acts as a project management office for Brexit. Most departments have set up a Director-General (DG) level programme board to review responses to DExEU and provide direction to their Brexit team(s).

Beyond this, different departments are approaching their Brexit work in different ways. Some, such as the Treasury and Defra, have established a number of internal workstreams covering all the areas of their work that are affected by Brexit. Other departments use their central team, who may not be dedicated to Brexit full time, to triage requests from DExEU and the departmental programme board, and liaise with existing teams across departments to generate responses.

### **SPOTLIGHT: FIVE GOVERNMENT DEPARTMENTS AND HOW THEY ARE AFFECTED**

We have picked out five Whitehall departments which are affected in different ways by the UK's exit from the EU. In some instances, leaving the EU may require departments to develop whole new policy areas, such as a UK customs regime; for other departments Brexit will have secondary implications which must nevertheless be managed. The NHS, for example, is reliant on EU workers and so Brexit may have long-term staffing consequences for it. These implications will need to be dealt with on top of pre-existing commitments, for example:

- Defra is delivering an ambitious programme of reform to streamline the department and its 33 agencies and public bodies.
- HM Revenue and Customs (HMRC) is delivering the 'Making Tax Digital' programme, while closing down 170 HMRC offices and setting up 13 regional tax centres.
- The Ministry of Justice is implementing significant reforms to prisons and the courts system.

All this is taking place in the context of departmental budgets set before the EU referendum and a civil service that is up to 35% smaller than it was in 2010. We return to these resource challenges on page 21. The boxes that follow highlight some of the ways different departments are affected. We have identified some of the departments' pre-Brexit commitments to illustrate other key areas of work.

**Department for the Environment, Food and Rural Affairs**

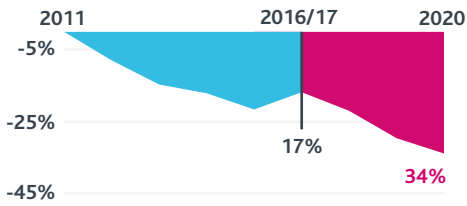
**Pre-Brexit commitments:**

- An ambitious programme of reform to streamline the department and its 33 agencies and public bodies
- 25 Year Plans: long-term policy strategy for environment and food/farming

**Current areas of EU-UK co-operation:**

- Common Agricultural Policy (£3 billion a year of EU money to farmers and land managers) and Common Fisheries Policy
- The EU sets environmental and animal health standards and protections

**Budget cuts:**



**Decisions for the UK Government (subject to negotiations):**

- How to replace the Common Agricultural Policy and Fisheries Policy
- Whether to repeal, amend or keep existing EU laws and regulations
- Work through the devolved issues for repatriating the acquis
- Approach to trading policy and level of access to EU market and new markets

**Staff reductions:**



**Department of Health**

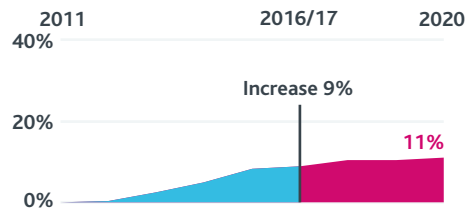
**Pre-Brexit commitments:**

- Sustainability and transformation plans across the NHS to manage integration of health and social care
- Significant number of strategic priorities including improving out of hospital care and 7-day NHS

**Current areas of EU-UK co-operation:**

- Access to European Medicines Agency – the EU sets rules for Regulation of Medicines and Healthcare Products, and Public Health
- UK and EU co-operate on cross-border health issues like prevention of pandemics

**Budget trend:**



**Decisions for the UK Government (subject to negotiations):**

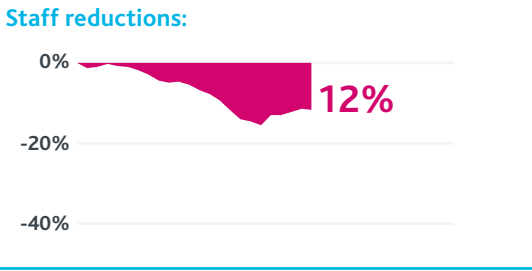
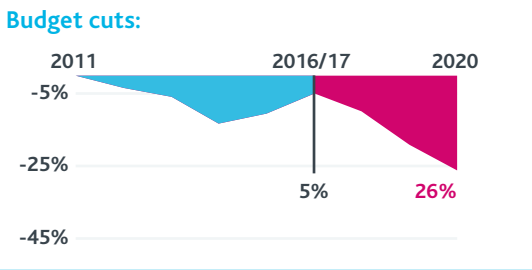
- Whether to replace the European Medicines Agency with a new UK body
- Whether to repeal, amend or keep existing EU laws and regulations
- How to support the health and social care sector to manage the impact of a new migration regime (55,000 of the NHS' 1.2 million workforce and 80,000 of the 1.3 million workers in the adult social care sector are EU nationals)
- Whether to seek continued reciprocal healthcare agreements

**Staff reductions:**



### HM Revenue and Customs

- Pre-Brexit commitments:**
- 'One Government at the Border' – joining up border management by sharing data on the movement of goods (cross-government)
  - 'Making Tax Digital' and restructuring – closing 170 HMRC offices and replacing them with 13 regional tax centres

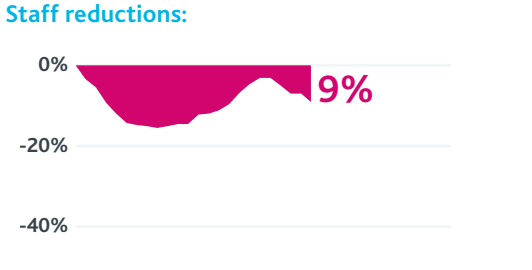
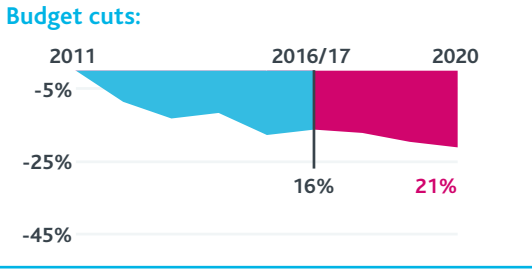


- Current areas of EU-UK co-operation:**
- The UK is a member of the EU customs union, so there are no checks or duties on goods crossing the border
  - The EU sets EU-wide rules to ease cross-border trade, such as VAT, abolition of excise duties within the EU, and the Mergers Directive to establish a common tax system from cross-border mergers

- Decisions for the UK Government (subject to negotiations):**
- Whether a new customs regime is required – also requires design and implementation, including provision for border checks which may require new infrastructure
  - Whether to repeal, amend or keep existing EU laws and regulations
  - Whether to adhere to current EU tax laws, or use other methods to enhance the UK's competitiveness and attractiveness as a place to do business

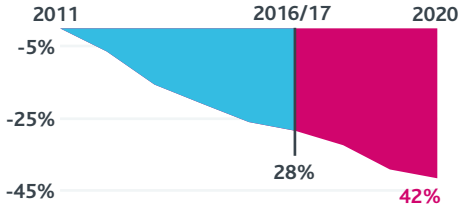

### Home Office

- Pre-Brexit commitments:**
- Reduce net migration (EU and non-EU) to 100,000 as soon as practicably possible (70% reduction)
  - Deliver a self-funded borders and immigration system



- Current areas of EU-UK co-operation:**
- Free movement of people across EU borders
  - Right of EU nationals to work in the UK and vice versa
  - Co-operation on asylum and security matters, such as the European Arrest Warrant

- Decisions for the UK Government (subject to negotiations):**
- Decide the status of EU citizens already living in the UK
  - What is the policy on EU nationals wanting to work in the UK, and any relevant screening and visa process
  - How to change the immigration regime – a new system requires design and implementation, including provision for border control which may require new infrastructure
  - Approach to cooperation on asylum and policing matters such as the European Arrest Warrant

<b>Ministry of Justice</b>									
<p><b>Pre-Brexit commitments:</b></p> <ul style="list-style-type: none"> <li>■ Build five new prisons in the next parliament, reduce re-offending, support rehabilitation and save £80 million a year</li> <li>■ Save £200 million a year from courts and tribunals</li> </ul>	<p><b>Current areas of EU-UK co-operation:</b></p> <ul style="list-style-type: none"> <li>■ European Court of Justice rulings apply to all EU member states</li> <li>■ Co-operation on criminal justice matters including prisoner transfer</li> </ul> <p><b>Decisions for the UK Government (subject to negotiations):</b></p> <ul style="list-style-type: none"> <li>■ How should courts treat precedents set by European Court of Justice rulings</li> <li>■ Whether to repeal, amend or keep existing EU laws and regulations on data protection</li> </ul>								
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<p>Sources: Staff Reductions: Institute for Government Analysis of Office for National Statistics, Public Sector Employment (Table 9), 2010 Q3 to 2016 Q2. Budget Cuts: Institute for Government Analysis of Public Expenditure Statistical Analyses 2016, Table 1.5.</p>									

# How well is Whitehall managing the task of Brexit?

We found that, while a lot of work has been done to prepare for Brexit across Whitehall, there are a number of gaps which, if not filled, will leave the UK Government in a weakened position as it leaves the EU.

## Preparations for talks are going well, but some departments would like more information about what is required before Article 50 is triggered

Of the three phases of work that Whitehall needs to carry out before negotiations begin, we found (perhaps unsurprisingly) that much of the focus has been on the first phase of gathering information about the options for the negotiating position.

### DExEU has quickly put people and processes in place to support this work...

Those we spoke to in DExEU and across Whitehall were positive about how quickly the department had 'found its feet' and started to co-ordinate work across Whitehall while still setting up its own internal processes. To move from a standing start to an organisation of over 300 staff (by mid-November 2016) is an impressive feat; resource from across government has been moved around and new people are being brought in, many on two-year fixed-term contracts. And recent civil service engagement scores show a department that has done a good job in establishing itself and motivating its workforce,<sup>5</sup> albeit with some of the inevitable growing pains involved in machinery of government changes.<sup>6</sup> There is often scepticism of central direction across Whitehall, but senior officials were positive when talking to us about how DExEU is operating. There is recognition of the sensitive political context DExEU are working in, the challenge of setting up a new department and the sheer complexity of the task.

DExEU was not designed to operate in isolation; it has neither the capability nor the capacity to do so. It has some of the 'brightest and best in Whitehall', but DExEU has been set up to draw on the sectoral expertise and analytical resource across the whole of Whitehall. The policy areas where DExEU's model is working best are where it can utilise strong cross-Whitehall relationships and structures that existed long before it was established. Trade policy, for example, has always been co-ordinated across a number of departments. The trade and partnerships team in DExEU has successfully repurposed existing forums and is utilising long-standing relationships with teams in the Treasury, the Department for Business, Energy and Industrial Strategy (BEIS), and other departments.

### ...but it's not clear how DExEU will identify top-level options

While the process of DExEU gathering information from Whitehall departments is working well in some regards, we found that there is a lack of clarity among departments as to how their information is being used and how it will contribute to the Government's negotiating position.

Officials in different departments told us it was very difficult to identify how the Brexit Cabinet Committee operates and what role it is playing in the Brexit process: we have heard it is hard to tell who the key influencers are or how they are making use of data and analysis supplied by the civil service.

But this opacity extends beyond the Committee. Civil servants close to DExEU told us that, despite their close involvement, DExEU was somewhere information was sent but limited feedback or sense of direction of travel had emerged.

### Some departments would like more information about what they need to do before talks begin

This lack of clarity is a problem because it means the teams in departments doing the analysis and providing the information to feed into the negotiating position are doing so largely unaware of the context they are working in. Departments have told us they don't have a clear sense of what 'ready for Article 50' looks like: even in their specific policy areas, they don't know which issues need to be decided as part of the negotiating position, and which can be dealt with later, once Article 50 talks are complete. This lack of clarity about what is needed before talks begin means that departments can't confidently plan and prioritise the key issues, and risk spending valuable time and resources on things that can wait.

For example, how should a departmental team support preparations and negotiations? Do they need a comprehensive list of options, including implementation timelines and costs, ahead of talks, or is it sufficient to have a sense of what they are and the relative pros and cons, and build on it as the negotiations progress? If the process and timelines for formulating a negotiating position were more clearly set out, the key domestic departments, who are providing much of the analysis upon which decisions will be made, would be able to prioritise and proactively manage their contributions.

DExEU has told us that it recognises that departments want more information than they currently have; and that it will constantly review the amount of information it shares, but for now it is providing as much as it can.

### **Recommendation 1: The Government should provide departments with more detailed information on the timelines to which they are working, and on what will be required from departments by the time Article 50 is triggered**

Of course there is sensitivity around sharing the Government's negotiating objectives, but departments need to know more about how the DExEU will work to support Theresa May in deciding her negotiating position. This includes the parameters and timelines to which they are working. Departments have the expertise in policy areas; if they are not clear on their role, there is a risk that the Government will not fully utilise their specialist knowledge and the UK's preparation for negotiations will be inhibited.

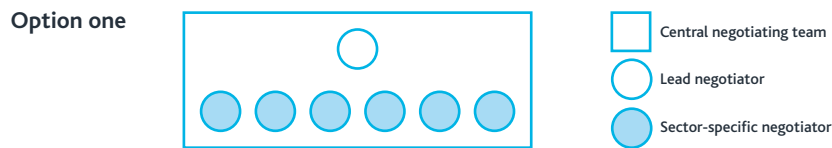
### Government needs to decide how it will run negotiations and who will be involved

A successful negotiation will require support from the whole of government. There are different options for exactly how this support could be provided, but the model needs to be established well ahead of talks. As part of this, the Government must manage the contribution of the most interested parties, from Parliament to business, who could (directly or indirectly) determine the long-term success of the deal.

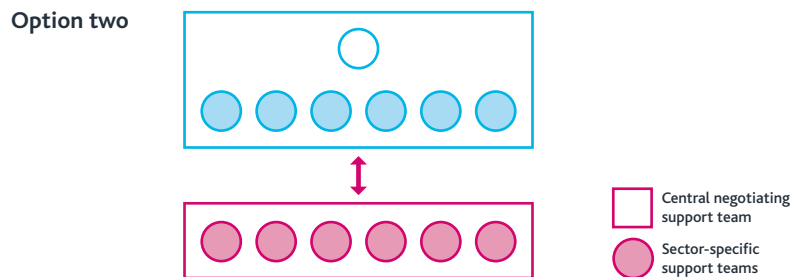
**There are different ways in which Whitehall could support Brexit talks**

Different countries set up trade negotiations slightly differently; while Brexit talks are likely to extend beyond trade, the models set out below could still apply. In all cases there is a small core negotiating team who will be 'in the room' for headline talks, driven largely by ministers and DExEU, and including UKREP. The size and composition may change slightly as the focus shifts from Article 50 and exit, to any future relationship with the EU.

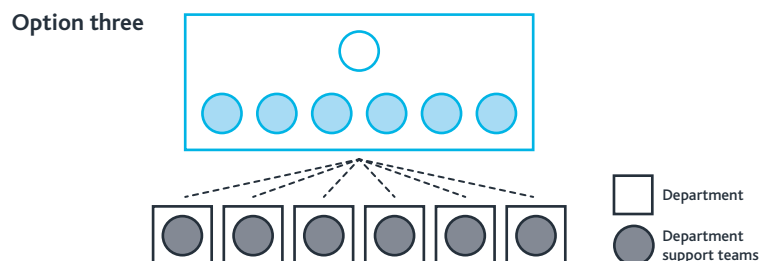
1. One option is for the core negotiating team to operate in relative isolation, working off information and positions developed before talks begin. This model has been used by Canada during trade negotiations, with sector-specific negotiators seconded from departments.



2. The second option supplements this small team with team(s) of policy specialists (possibly seconded from departments), either sitting centrally in DExEU or in special unit(s) providing full-time analytical support and engaging key external stakeholders in the talks.



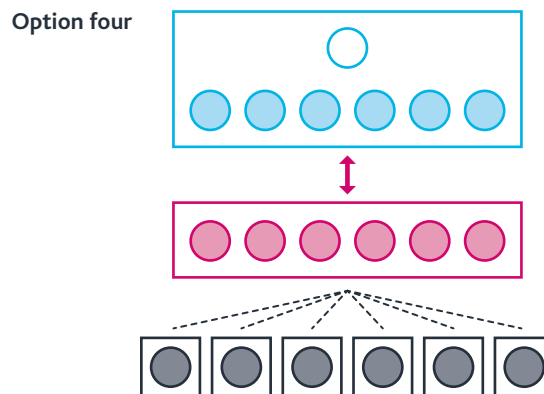
3. The third option involves the negotiating team working directly with departments, who will have teams supporting and providing analysis of options and emerging positions. This is how the EU will be negotiating, with the European Commission's negotiating team drawing on expertise from relevant areas including DG Agriculture and DG Competition, as well as DG Trade.



4. The final option is how the United States (US) manages negotiations. It combines elements of options two and three. It has a central Trade Promotion Co-ordinating Committee supporting the US Trade Representative (USTR) during negotiations. The Committee has representation from across US departments, agencies and strategic councils, and will look to them to provide support and analysis. The USTR also has specific engagement committees made up of external organisations. Non-disclosure agreements allow these external



organisations to get detailed monthly briefings, so they can review and comment on proposals before they are 'put on the table'.



### But it's not yet clear how departments will be involved...

Departments are unclear about what, if any, role they will have during both 'divorce' negotiations and talks on the future deal. They aren't clear if they will have people in the negotiating team, whether they will be called on for analysis, or if they will be left to find out the outcome. Knowing the Government's chosen approach to managing negotiations and communicating with departments matters because each option requires different preparation.

If the Government is planning for negotiations run by a small team in isolation, it must be confident that the team will have enough information to adapt to the EU's demands and make decisions cognisant of the domestic impact. The negotiating team will need to be self-reliant, meaning the information it is provided with must be without gaps.

If departments or specific policy specialists support the negotiations, for example with a Defra representative being 'in the room' for agriculture negotiations with a team supporting them, there is more scope to undertake responsive analysis based on emerging positions. But these teams must be resourced and given time to prepare themselves. The current lack of clarity makes it very difficult for departments to plan ahead to make sure they will have the resources and skills necessary to support the talks.

### ... and it's also unclear how the Government will keep Parliament and other interested parties engaged

It is in the Government's interests to keep the UK Parliament informed as the negotiations progress and deals begin to form. Parliament will have a role in ratifying the final agreement and passing any future legislation, including the Great Repeal Bill. The Government therefore needs to know whether MPs will accept the deal as it begins to emerge from the negotiations. Knowing the parameters of what Parliament will and will not accept can also help in the process of negotiating, providing weight to any statement of 'red lines' if it is clear that if they are crossed the deal will not be accepted.<sup>7</sup>

The European Council and Commission have a framework agreement which sets out how information about the progress of negotiations will be shared with the European Parliament during international negotiations. The UK Government has not explained how it plans to keep the UK Parliament similarly informed – although David Davis has promised that UK MPs will not be 'at a disadvantage' compared with their Brussels counterparts. There has been discussion of 'reading rooms' for sensitive documents, so MPs can engage in the content of negotiations.

The Government must also consider how external organisations, from business to civil society, will be engaged. Brexit will affect the legal and regulatory framework in which businesses operate. With so much at stake, organisations are easily unsettled and clear messages from the Government on how their views are being taken into account would help calm business nerves. However, we were told that experiences of government engagement to date have left some organisations confused as to how their input is being used and sceptical of the Government's ability to deliver Brexit successfully. If Government engagement does not become more structured and strategic, there is a risk of businesses leaving the UK before any deal is made. Whether or not the Government intends to share details of the positions emerging in talks, it must come up with a clear plan to provide confidence and clarity about the process of negotiations.

### **Recommendation 2: The Government should decide as soon as possible how negotiations will be run and who will be involved**

The breadth and depth of the UK's ties with the EU mean that negotiating a deal will require effort and input from all parts of Whitehall. The centre of government must decide how it wants to co-ordinate that input during talks. Departments need to know if and when they will be called on to provide resource, information or analysis to the UK negotiators, so they have the right processes in place before negotiations begin. The Government should also set out how it plans to keep Parliament informed on the progress of negotiations, so that it can be sure that any deal agreed with the EU will be ratified by the UK Parliament.

### **There must be greater focus on preparing for day one outside of the EU**

The third step that Whitehall must take before negotiations begin is making preparations for day one outside of the EU (and this should continue for the duration of talks). This should involve identifying the opportunities offered by Brexit and how to realise them, as well as identifying which new domestic institutions and policies will be needed at the point of exit. Waiting for the details of the deal is not an option if the UK is to be ready to hit the ground running once it has left the EU. There needs to be preparation for the new roles government will be required to play when involvement in EU functions ceases. We found that there is variation across Whitehall as to how much of this work departments are doing.

### **The Great Repeal Bill is proving more complex than the Government originally expected**

In October, David Davis MP announced that the Government would take a 'simple approach' to repealing the 1972 European Communities Act, saying that the Great Repeal Bill would see EU legislation transposed into UK law 'wherever practical'.<sup>8</sup> This mirroring would provide an element of legal continuity at the point of Brexit and allow the UK to gradually take advantage of the opportunities of exit in its own time. In their second commission, DExEU asked departments to identify EU legislation relating to each department as either 'operable' (that is, could be lifted into UK law without significant amendment) or 'inoperable' (in need of reform before it could be used in the post-Brexit UK).

The operable laws will work with a direct 'lift and shift', but the inoperable laws may require significant policy decisions to be made. For example, EU regulations concerning pharmaceuticals state that the European Medicines Agency (EMA) makes recommendations to the European Commission, which determines the drugs that should be licensed. If the regulations are mirrored,

there is a question of who will continue to do the regulation. Assuming continued access to the EMA post-exit or simply copying its conclusions are two options, but another policy choice would be to establish a UK body. This would require funding and time for development and implementation.

Reviewing EU legislation will involve thousands of decisions like this in policy area as diverse as environmental legislation and data protection. We were told by departmental officials that it isn't clear who is expected to make those decisions or when. This is making drafting the Great Repeal Bill a bigger challenge than some initially expected.

### **Departments need to think beyond the Great Repeal Bill to new policies and administrative systems**

Forward planning around Brexit should extend beyond the negotiations and look forward to what policies and systems will be need in the post-Brexit UK. The Government must be confident that on exit it will have necessary systems and processes in place; whether that is a border force capable of dealing with new customs or immigration requirements, a system to continue to provide certainty to farmers, or clarity for manufacturers on what regulations they must follow.

The Home Office, for example, is expecting a change in immigration policy and enforcement regime. Its current system processes 15 million non-European Economic Area (EEA) border crossings a year and 35 million from within the EEA. If EEA visitors are to go through the same process as non-EEA visitors, it will need more than three times the level of staff than are currently in place. If the solution is a digital system, such as the ESTA scheme for entrants to the US, the design and implementation timeline is years not months.

A policy change that affects 35 million visits a year, for example, cannot be done at short notice – it should be planned, with clear lead times, and needs funding available for more resources, bigger buildings and possibly new technology. This sort of thinking should not wait until the UK's future relationship with the EU is finalised, especially if the Government wants to demonstrate change on or near day one outside of the EU and avoid transitional arrangements.

Effective planning should also take into account how these changes will be funded – not just how much any proposal would be likely to cost, but also the way in which departments work with the Treasury to secure additional funds. It is not yet clear if these decisions will be made in annual budget processes, or whether the Government will allocate extra funding outside the usual processes, given time pressures and the need to avoid potential 'cliff edges'.

### **Some departments are doing more post-Brexit planning than others**

We found a lack of consistency in post-Brexit planning across Whitehall. Very few teams, even in the most prepared departments, have begun looking at this in any detail. We heard of some confusion regarding whose role this thinking was, with some looking to DExEU to provide more guidance.

All departments have started to plan. Some departments are being proactive, and have started to look not only at the negotiations but also at what domestic legislation or reform may be needed post-Brexit. The Treasury, for example, has set up several workstreams to plan for the domestic consequences of Brexit.

At the other end of the spectrum are departments whose focus is almost exclusively on preparing for negotiations. In these departments, Brexit preparation is limited to responding to DExEU requests; teams are waiting for guidance and commissions from DExEU. This approach is too reactive. We were told by an official leading Brexit preparations in a large department that the Government needs a comprehensive picture of what legislation and reform will be required after Brexit, so it can allocate parliamentary time, resources and funding accordingly. If one department fails to do this forward planning, this could have consequences across Whitehall. It is here that the 'domestic consequential' team in DExEU is key; this team is responsible for looking across Whitehall and collating departmental work.

DExEU is keen that departments should pursue their own post-Brexit planning; it characterises the most effective departments as those which have grasped the initiative and are starting to look beyond preparation for negotiations and to what might be needed in the post-Brexit world. This view is shared by some in departments: one interviewee told us that departments simply needed to use their initiative and start working on the domestic implications of Brexit, without waiting for guidance from the centre of government. But this is easier said than done. Another official – from a small, policy-focused department – told us that being proactive is difficult when there is no sense of what is coming next.

### There is little focus on the opportunities presented by Brexit

Departments see the Great Repeal Bill as providing continuity, a chance to ensure that important regulations and legislation are carried over beyond Brexit. We heard some concerns among officials that not enough is being done to consider the 'sunlit uplands' of Brexit and to identify pieces of legislation or regulation that might usefully be jettisoned after the UK leaves the EU. The first commission from DExEU to departments was to identify 'risks and opportunities' presented by Brexit – but while we were told that there is some work underway in Whitehall on the opportunities, we found that the risks are occupying more time.

Sharon White, Chief Executive of Ofcom, pointed out in a keynote speech at the Institute for Government the opportunity that Brexit provides to amend or modify EU laws to better meet British needs.<sup>9</sup> For example, repealing EU state aid rules would allow greater public investment in broadband in rural areas.<sup>10</sup> Assessment of mergers and acquisitions on competition grounds might include a public interest element, in the way that EU rules currently forbid. Departments' forward planning should include identifying similar opportunities to repeal and improve. But focusing on making the most of opportunities presented by Brexit will take time and more resources – two things departments don't have.

### **Recommendation 3: The Government should ensure all departments are doing sufficient post-Brexit planning, including how to realise the opportunities offered by Brexit**

The UK must be ready for exit. While much of Whitehall's focus is on preparing for negotiations, planning about what happens after the UK leaves the EU cannot be neglected. But the degree of post-Brexit planning going on currently is too variable. If policy, legislative and implementation planning is left too late, there is a risk the UK will be unprepared for day one outside of the EU. DExEU must make clear to departments that they have a responsibility to plan for the domestic consequences of Brexit and to ensure that the UK has the right systems in place, and avoids legal uncertainty.

Because of its key role in spending decisions, the Treasury has an important role to play as well. If it is to become the 'enabler for good, effective spending across government' that Philip Hammond wishes,<sup>11</sup> it must recognise the inherent ambiguity facing certain departments. Spending departments and the Treasury must begin a constant and supportive dialogue to drive the responsive decision-making (and spending) that will be required to ensure the UK is prepared for day one outside of the EU.

### Whitehall has the skills but not the capacity to deliver

Immediately after the EU referendum, the Cabinet Office launched an EU capability review to establish exactly what skills were required. It asked each department what skills it would need in the short, medium and longer term, what the EU did that could be repatriated, and what its dependency was on EU nationals. The short-term skills requirement was clear: departments needed capability that was core to the civil service, namely legislation, policymaking and analysis.

Until recently, much commentary on whether the civil service has the skills required to make a success of Brexit has focused disproportionately on a need for trade negotiators and an apparent lack of them. This is misleading. To develop positions on Brexit and potential domestic consequences, what government needs are individuals with expert understanding of their particular policy area who can inform detailed and technical discussions. The UK Government has this detailed policy knowledge. Civil servants in EU-facing parts of Defra, BEIS or the Treasury have experience negotiating with the EU and representing the UK's view to EU institutions.

### But Whitehall's resources are over-committed

But while Whitehall has the skills it needs, these officials are over-committed to delivering their 'business as usual' (work with the EU must continue over the next two years) and pre-existing programmes. The challenge for Whitehall is not skills, but capacity.

Figure 2: Percentage change in Civil Service staff numbers (FTE) – Spending Review 2010 to March 2016, by department



Source: Institute for Government analysis of Office for National Statistics Public Sector Employment (Table 9), 2010 Q3 to 2016 Q1.

CO, Cabinet Office; DCLG, Department for Communities and Local Government; DCMS, Department for Culture, Media and Sport; DECC, Department of Energy and Climate Change; DfID, Department for International Development; DfE, Department for Education; DfT, Department for Transport; DH, Department of Health; DWP, Department for Work and Pensions; FCO, Foreign and Commonwealth Office; FTE, full-time equivalent; HMT, HM Treasury; HO, Home Office; MoD, Ministry of Defence; MoJ, Ministry of Justice.

The civil service is at its smallest since before the Second World War,<sup>12</sup> and 20% smaller in terms of headcount than it was at the start of the Coalition Government in 2010.<sup>13</sup> Some of the most affected departments had their budgets reduced significantly at the start of the last parliament, and face further reductions by 2020:

- The Home Office Resource Departmental Expenditure Limit (RDEL)<sup>14</sup> is now 16% smaller than in 2010, and will be 21% smaller by 2020.
- The Defra RDEL is now 17% smaller than in 2010, and will be 34% smaller by 2020.
- The HMRC RDEL is now 5% smaller than in 2010, and will be 26% smaller by 2020.

As a result, even before the additional challenge of Brexit, departments were reorganising while delivering ambitious policy programmes. The successful implementation of some of these big change programmes could make implementing any Brexit outcomes less complicated and less expensive.

For example, we were told that the HMRC-led 'One Government at the Border' programme will make customs more effective and reduce the financial impact of potential increased checks after Brexit. But layering the task of delivering Brexit on top of these pre-existing demands has created significant pressure on departments – especially upon those for whom leaving the EU represents a significant policy and regulatory change. So while HMRC's role in 'One Government at the Border' might lay much of the groundwork for a new customs regime, the department will have to complete these reforms – and potentially design and implement further significant changes to the UK border system – with 26% fewer staff and over 25% less funding than in 2010.

If Brexit is at the top of the Government's list of priorities, departments need to differentiate between the activity that will support them in delivering it and the distractions. They must be able to divert resource accordingly and de-prioritise less critical programmes to cover Brexit demands.

John Manzoni, Civil Service Chief Executive, last month said that the civil service is 30% over-committed and should re-prioritise ongoing work to take account of Brexit.<sup>15</sup> Despite this, the order to departments to date has been that nothing can stop – they must continue with existing policy commitments as they were and find a way to deliver Brexit as well. But we heard from Whitehall interviewees that departments need more resources.

### **It's not clear whether additional resource will be forthcoming, or when**

While our interviewees all recognised that Brexit creates new resource pressures, no one knew if or when something would happen to resolve them. One official told us that they thought departments that were relatively unaffected by Brexit would be encouraged to lend staff to other departments; others told us that they expected funding to be made available to boost capability, but didn't know when this would be done.

The Autumn Statement announced £412 million for DExEU, DIT and the Foreign Office over the next parliament. This represented the running costs required for the new departments and a chance for the Foreign Office to strengthen its trade policy capability. But it did not allocate new Brexit money to other departments.

If the model for delivering Brexit is to continue to rely on departments for expertise and analysis, they must be supported as well – with either more staff or fewer commitments. Given the challenge ahead, we were told that Senior Civil Servant numbers had risen – with around 100 new roles identified to date.

For the specialist EU capacity that does exist, we have been told there is a risk of burn out. The staff concerned are likely to have been involved in Cameron's renegotiation, they will no doubt have had additional work throughout the EU referendum, and now Brexit is the 'biggest show in town'. The Government must look to build resilience into its resourcing plans – they should look to use external resources where the market provides the skills they need, and protect their most important assets.

**Recommendation 4: The Government should set out its priorities, ensure there is enough staffing and money for Brexit and existing commitments, or acknowledge where plans may be trimmed**

If the Government does not proactively re-prioritise, there is a risk that it will fail to deliver critical existing departmental commitments or undermine the development of a robust negotiating position. The core skills exist in Whitehall; the challenge is capacity. The Government can use the market to provide contingent labour in some areas, but the biggest demands are on core civil service skills – legislation and policymaking. The Government must reconsider, in the light of Brexit, which of the manifesto commitments, reform programmes and organisational change initiatives are necessary – as some will have to wait. Some of the opportunities presented by Brexit could allow the civil service to remove regulatory and reporting burdens, but resources are required to identify and utilise these opportunities in the short term.

## Conclusion

While the big decisions over the next few years will ultimately be taken by a small group of people, they will be supported by the whole machinery of government.

Right across Whitehall there is recognition of the unique complexity and scale of the task ahead, and a commitment and dedication to work collectively to ensure it is completed successfully. This paper has outlined the Government's current approach to Brexit and identified some of the areas where changes should be considered.

Whitehall departments are essential components of the Brexit machinery. They need the information and, critically, the resource to effectively plan and prioritise their contributions to government preparations for Brexit.

But Whitehall's focus must now go beyond March 2017 and Article 50. The Government must be clear about how negotiations will run and who will be involved to ensure it begins talks on the front foot. March 2019 will quickly become the key date, and the Government should consider what will be required and how it might deliver it, ensuring the transition is as smooth as possible.



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2 Carlton Gardens  
London SW1Y 5AA

Tel: +44 (0) 20 7747 0400

Fax: +44 (0) 20 7766 0700

Email: [enquiries@instituteforgovernment.org.uk](mailto:enquiries@instituteforgovernment.org.uk)

Web: [www.instituteforgovernment.org.uk](http://www.instituteforgovernment.org.uk)

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