

# Preparing Brexit

How ready is Whitehall?



# About this report

The UK Government, both ministers and officials, is grappling with one of the biggest, most complex peacetime challenges in its history – Brexit. This paper sets out the progress made to date and the challenges ahead.

## Our Brexit work

Following the UK's vote to leave the European Union (EU), the Institute for Government launched a major programme of work looking at the negotiations, the UK's future relationship with the EU and how it governs itself after Brexit. Keep up to date with our comment, explainers and reports, read our media coverage, and find out about our events at:

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# Summary

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Whitehall is grappling with the 'biggest and most complex task in its peacetime history'. The shape, size and focus of government is changing dramatically as the clock ticks down towards Brexit.

Two years on from the European Union (EU) referendum, Whitehall is now changing gear. Negotiations on the future relationship are beginning, the bulk of new legislation is looming and the prospect of 'no deal' is fewer than nine months away. This paper looks at the progress made to date, the key issues that have affected preparations and whether Whitehall will be ready for Brexit.

## **Whitehall has done best what Whitehall usually does best**

A huge amount of work has taken place over the last two years. New departments, new functions and thousands of new staff have gone from nought to one hundred miles an hour, working on the thorniest issues Whitehall has faced in decades. Negotiations over 'withdrawal issues' achieved a major milestone at the European Council meeting in December 2017 with officials and ministers working around the clock.

The shape and size of departments are changing, in some cases very significantly. The Department for Environment, Food and Rural Affairs (Defra) has grown by more than 65% since the EU referendum – with 1,200 Brexit roles added by March this year.<sup>1</sup> Whitehall is having to deal with nuts and bolts organisational issues that are vital to keep things moving – from security clearance to desk space (the Department for Exiting the EU (DExEU) is currently split over three sites) – while also setting up new boards and groups to tackle the big policy questions that criss-cross departmental boundaries – the border being the biggest and trickiest.

Over £2 billion (bn) has been allocated to fund Brexit preparations up to March 2019.<sup>2</sup> The Treasury, DExEU and the Cabinet Office have worked together to ensure departments can access the cash they need, showing agility and streamlining the traditional processes.

All this has been achieved while under political pressure to deliver Brexit; grappling with complex issues and constricted timelines.

## **Whitehall is struggling with many of the things it has struggled with before**

Brexit has put huge pressure on the government machine. This has exacerbated some of the issues that Whitehall – including both ministers and officials – has been trying to manage for a long time.

Putting in place structures for collaboration, co-ordination and managing competing interests is one thing. But making difficult, politically sensitive trade-offs is much harder.

As John Manzoni, Chief Executive of the Civil Service, says, Whitehall does too much to do it all well.<sup>3</sup> One area where Whitehall continues to struggle is in making difficult

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decisions on priorities. It was true before the referendum, as we have also argued, but now Whitehall is attempting to do Brexit on top.<sup>4</sup>

The problems of the civil service jobs market are also being laid bare: in particular, high turnover of staff and the institutionalised incentives to move jobs, often departments, every 18 months to two years in order to get a promotion. Rapid job creation in response to Brexit has meant more opportunities, and that means moves are becoming more frequent. In some instances, people are moving on after only six months in a new role and departments are being forced to promote less experienced staff to avoid losing them to other parts of government.

### **But the big problems stem from the politics: lack of clear direction and a culture of extraordinary secrecy are hampering preparations**

The greatest challenges faced by Whitehall now stem from splits within the Cabinet on major policy decisions. These divisions are reflected in the Conservative Party and in Parliament. Two years on from the referendum, Whitehall is working to a sketchy vision of future relations with the EU, built on a fragile Cabinet consensus, that no one in the Government can expect to survive negotiations with Europe.

As a result of these deep divisions, a culture of extraordinary secrecy has developed. This goes well beyond documents that contain sensitive negotiating material, with even rudimentary planning guidance kept locked away and largely inaccessible to the teams – all across government – that need to use it. Key documents are over-classified, important information is not being shared between departments and those with a legitimate reason to be informed, such as Parliament, are kept in the dark.

In this environment, effectively co-ordinating work across almost 20 departments, devolved administrations and a large number of public bodies is impossible. No clear end-state, poor information flow and competing ministerial preferences make delivering Brexit extremely difficult.

We identify five key challenges Whitehall has been grappling with:

#### **1. Delayed decisions and an inability to make trade-offs**

The usual system of cross-government boards and committees used for reaching agreement is in place, but that does not mean decisions are being made. The Government has found it extremely difficult to make the necessary trade-offs, losing opportunities to influence in Europe as a result.

#### **2. Inordinate secrecy and a lack of transparency**

The political climate has created a culture of extraordinary secrecy, which is incompatible with a task that is so dependent on co-ordination. The Government can't afford to stifle information flow when it is managing detailed negotiations and implementation across departments, public bodies and devolved administrations.

#### **3. Inconsistent assumptions and the difficulty of aligning plans**

Despite efforts from DExEU and the Cabinet Office, as well as initiatives like the Border Planning Group, there is concern that plans don't add up. Secrecy, divergent ministerial preferences and the sheer scale of the task make aligning plans very difficult. Political agreement on transition has made co-ordination harder, because of a lack of clarity about what happens to contingency planning.

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#### 4. **Ineffective external engagement and a lack of detail**

Whitehall has been largely on 'receive mode' for two years, with lots of high-level meetings between ministers or officials and chairs, chief executives and other senior representatives from external organisations. But that is no longer good enough. Key groups outside government, including those with their own major implementation challenges such as traders, need much more detailed engagement if they are to be ready for Brexit. Likewise, if negotiators are to get vital input from business and other groups, they need structured consultation.

#### 5. **Struggling to get the right people and keep them**

Around 10,000 new Brexit roles have been created within the civil service since the EU referendum, with new staff coming in after years of shrinking numbers. Departments are rapidly trying to acquire the skills they need, overcoming issues of security vetting and training up staff on the internal ways of Whitehall. But keeping staff in their posts is proving difficult, with people jumping departments and moving jobs regularly on promotion.

### **What needs to be done?**

The biggest challenges facing Whitehall are not easily fixed – political divisions, parliamentary arithmetic, inbuilt uncertainty and impossibly tight timelines.

But there are a number of steps that the Government could take to mitigate some of the issues we identify:

1. **DExEU and the Cabinet Office should set out the formal structures that will be used for negotiations after March 2019.** Departments need to know what will be required of them and need time to get the right staff in post and ready to support negotiations.
2. **DExEU and the Cabinet Office should work with the Department for International Trade (DIT) to set out formal structures for engaging stakeholders in Brexit negotiations.** Negotiators need to be able to quickly and reliably draw on the expertise of business and other groups. They can't rely solely on Whitehall officials and ad hoc external conversations.
3. **The Prime Minister should make a minister and official responsible for overall Brexit readiness.** Delivery requires clear accountability and leadership, with clarity on who's responsible for ensuring plans line up. The individuals need to be seen as honest brokers with the clout to manage competing interests. The Cabinet Office Minister, David Lidington, and the Chief Executive of the Civil Service, John Manzoni, are the two that fit these criteria.
4. **Departments need to conduct a strategic prioritisation exercise, supported by their non-executive directors and the lead non-executive director in the Cabinet Office.** Whitehall is doing too much and there is insufficient bandwidth at a senior level to do Brexit on top of existing initiatives. Some departments have started to prioritise, but often with too much focus on slowing down projects or stopping small projects. There needs to be a more serious and systematic look at the major initiatives across government and their deliverability alongside Brexit.
5. **DExEU must give its staff certainty on the future of the department.** The department was always intended to be temporary and there's now speculation about how long it will last. The roles played by the department and the capability

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within it will be vital until at least the end of the transition period. To reduce the level of staff turnover at such a critical time, the Government should end the uncertainty caused by questions over how long the department will last. As a start, permanent contracts should be given to the staff that are working on two-year contracts – a process that is getting underway.

## **Will Whitehall be ready for Brexit?**

One of the few fixed aspects of Brexit is the timeline; a two-year Article 50 period which either ends in 'no deal' or in a transition period – the so-called 'implementation period' from March 2019 to December 2020.

The UK and EU had not started talking about what the future relationship might look like when they agreed the length of the transition, the period in which preparations are supposed to take place. Both sides made speed a priority, settling on a 21-month period ending in December 2020 – a date largely driven by the EU budget cycle.

Ministers will have to accept that their vision of Brexit, as articulated in the Mansion House speech, will not be ready for December 2020.

During the transition period, the civil service will still have to plan for different versions of the future, needing to be ready in case talks collapse and the outcome is no deal. There will also be limited information on what any 'negotiated outcome' could look like, as the detailed talks will take place alongside Whitehall's implementation work. When it comes to designing and implementing new border systems or regulators, the detail matters. So does time.

Many businesses will want certainty before they start making their own Brexit preparations. They too want time.

When the EU changed its customs regulation, creating the new Union Customs Code, it involved new systems and changes to border processes. There were seven years between the agreement on the design and the point at which governments and businesses needed to be ready.<sup>5</sup> The end of the 'implementation period' is now two and a half years away, but the UK hasn't even agreed on its opening position for negotiations.

Whitehall will ensure something will be ready if it needs to be, but on the current timetable it will be sub-optimal with workarounds in places and some disruption inevitable. Government will soon have to make a choice: a messy Brexit in December 2020 or buying more time to do the job properly.



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# 1. Introduction

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“...the British people voted for change. They voted to shape a brighter future for our country. They voted to leave the European Union and embrace the world... And it is the job of this government to deliver it”<sup>6</sup>

Theresa May, Prime Minister, January 2017

Two years on from the EU referendum, the Government is at a critical juncture. Talks in Brussels are turning to the future relationship, critical parliamentary votes are approaching and significant time, money and effort is being spent on putting new institutions and systems in place.

This activity is being driven by Whitehall – the ministers and officials responsible for turning the Prime Minister’s Brexit commitments into a reality.

With the Brexit countdown clock ticking, we spoke to senior civil servants across government departments and public bodies that are playing a critical role in preparations. In this paper, we show the progress that has been made and highlight the challenges which Whitehall is grappling with. We highlight areas where change is necessary and, finally, ask ‘will Whitehall be ready for Brexit?’.

## **This paper**

In chapter one, we look at the scale of the Brexit task. We assess progress and set out the key jobs that will need to be completed by the time we leave the EU.

Chapter two shows how Whitehall is organised to deliver Brexit. We describe the structures and process that have been put in place and explain the roles played by departments and their ministers.

In chapter three, we highlight the five key problems facing Whitehall as they enter this next phase of Brexit. We explain the effect they’ve had on the process to date and why change is imperative.

Chapter four focuses on what Whitehall can do to address some of these issues, putting forward recommendations and proposals.

Finally, we ask whether Whitehall will be ready for Brexit and set out the choice that Theresa May will need to make.

## 2. What is the task?

“I would not wish for a moment to minimise the scale of the challenge. It is huge and it keeps me awake at night”<sup>7</sup>

Clare Moriarty, Permanent Secretary, Department for Environment, Food and Rural Affairs, March 2018

In July 2017, Sir Jeremy Heywood, Cabinet Secretary, said that Brexit is the ‘biggest and most complex challenge’ faced by the UK government in its peacetime history.<sup>8</sup> Eleven months later, and with fewer than 10 months to go before the formal date of EU exit, the task looks, if anything, more complex and more challenging.



There are three key tasks for Whitehall as it prepares for Brexit: negotiating, legislating and implementing. This chapter looks at the lessons to be drawn from the two years since the referendum and what needs to happen next.

### Negotiating Brexit

In her Article 50 letter to European Council President Donald Tusk, the Prime Minister set out the UK’s intention to negotiate in parallel the terms of its withdrawal from the EU and its ambitious future partnership – both ready to go by March 2019, but with a time-limited ‘implementation period’.<sup>9</sup>

In practice, as soon as formal negotiations got going, the UK acquiesced to the EU27’s (the 27 EU member states) preferred sequencing; focusing in phase one on the Withdrawal Agreement, and only moving to the ‘transition’ and future relationship once ‘sufficient progress’ was achieved. The original hope was to secure agreement on ‘sufficient progress’ by October 2017 – but that only came in December – and it was not until the March 2018 Council that the EU27 endorsed the guidelines to open discussion on the future relationship.

**Figure 1: Negotiation timetable**

	2017	2018	2019	2020
<b>Article 50</b> 	[Blue bar spanning 2017, 2018, and early 2019]			
1. Withdrawal	[Blue bar spanning 2017 and 2018]			
2. Future framework		[Blue bar in 2018]		
Ratification		[Blue bar in 2018]		
<b>Transition</b> 			[Pink bar spanning 2019 and 2020]	
3. Future relationship			[Pink bar spanning 2019 and 2020]	
Ratification*				[Pink bar in 2020]

Source: Institute for Government analysis.

\* We have assumed ratification will take six months. A more detailed discussion of the negotiating timeline can be found in the final chapter of this paper.

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The UK now faces negotiations on three separate agreements with the EU (see Figure 1).

### **1. Finalising the Withdrawal Agreement**

The expectation is that an agreed legal text will be finalised by the autumn of 2018 and then signed and ratified before the end of the Article 50 window in March 2019. But although much of the text is agreed, there are still hugely difficult outstanding issues on the border in Ireland and on governance of the Withdrawal Agreement.

### **2. Agreeing the framework for the future relationship**

The EU cannot formally negotiate a new trading relationship with the UK until it has left the bloc. Before that, according to EU law, the two sides can only seek to agree a 'framework for the future relationship', which will be a political agreement reached before the Withdrawal Agreement is concluded. Formal talks began in April 2018, but the form of the framework and the level of detail likely to be included are still in question. There is a very clear difference of view between those who expect it to be 20–30 pages of high-level aspiration, and Brexit Secretary David Davis who wants to agree something that looks much more like the final future relationship agreement.<sup>10</sup>

### **3. Negotiating a future relationship**

The draft Withdrawal Agreement envisages a 21-month transition period during which the UK will, to all intents and purposes, continue to be an EU member but without representation in the political institutions. This period will be used to negotiate and (if possible) approve the future relationship between the UK and the EU. It's not yet clear whether this will take the form of a single association-style agreement or multiple agreements covering different areas, such as trade or security and defence. But there is a huge amount of contentious detail to agree even before the potentially time-consuming ratification process begins.

Alongside this process, the UK is having to negotiate the 'rollover' of international agreements signed by the EU with third countries, which range from free trade agreements (FTAs), to aviation agreements and data sharing. That is before the UK contemplates any new post-Brexit trade agreements.

### **What comes next?**

To date the UK has been forced into accepting the European Commission timetable and approach, while progress has been slower than expected. The Commission Task Force has had the monopoly on producing legal texts, with the UK setting out its position in a series of prime ministerial speeches, a few *Future Partnership* papers published between mid-August and mid-September 2017 as well as recent discussion documents and slide packs.

The key remaining tasks facing the UK Government are:

- **Wrapping up the Withdrawal Agreement**, including agreement on the role of the European Court of Justice (ECJ) and the Irish border. The deal can only be locked down when it is both agreed and ratified by both the European and UK Parliament. That means transition is unlikely to be certain until early 2019 at the earliest.

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- **Agreeing the 'future framework'**, with some disagreement inevitable over both form and content.
  - **Completing future relationship talks by December 2020.** The timetable for negotiating the detailed future relationship – even with transition – is extremely demanding and much more complex than the phase one negotiations.

## Legislating Brexit

The UK's close relationship with the EU is reflected in its statute book. It is estimated that there are almost 8,000 statutory instruments that have put EU legislation into UK law.<sup>11</sup> To give legislative effect to Brexit and avoid legal uncertainty at the point the UK leaves, the UK Government has three important tasks:

### **1. Repealing the European Communities Act and bringing EU law onto UK books – passing the EU Withdrawal Bill**

The EU Withdrawal Bill will repeal the 1972 European Communities Act, ending the mechanism through which EU law takes effect in the UK. In order to prevent a legal 'cliff edge', it also brings EU law on to the UK statute book – all laws and regulations that apply in the UK currently will continue to do so after Brexit. To ensure that the statute book makes sense after the UK leaves the EU, the bill gives ministers significant powers to use secondary legislation to make changes to EU-related laws and regulations, for example, removing references to EU institutions of which the UK will no longer be a part.

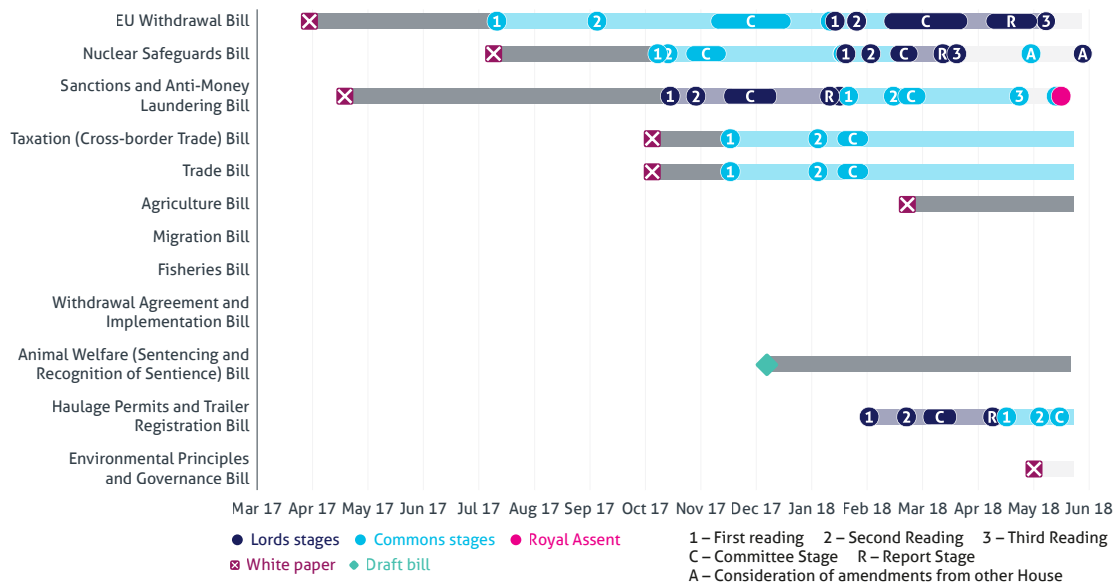
The bill has proven extremely contentious and prompted lengthy debate in both the Commons and the Lords. Particular flashpoints have been over the wide-ranging powers ministers have sought, the arrangements for scrutiny of secondary legislation, arguments with the devolved administrations over repatriation of powers, and the nature of the parliamentary votes required to agree the Withdrawal Agreement and framework for the future relationship.

### **2. Passing new bills in areas of EU competence – or where significant policy changes are envisaged**

The EU Withdrawal Bill is about continuity; other Brexit bills will bring about change. The Queen's Speech last June announced seven bills in areas where the Government needs new powers to legislate on issues previously governed by the EU (such as customs or trade policy) or where the UK plans to run new regimes (like agriculture and fisheries).

Since then, the Government has announced four further bills – either as a result of parliamentary pressure (animal sentience) or where new issues were identified (road haulage).

**Figure 2: Parliamentary progress of legislation introduced to implement Brexit**



Source: Institute for Government analysis of parliament.uk.

The content of these bills has also proved highly contentious and, for those that have been introduced, the difficulties in their passage have been exacerbated by the Government’s fragile parliamentary position. As with the EU Withdrawal Bill, there have been a lot of concerns about the powers ministers want to take. But the bills have also been vehicles for Parliament to try to influence the shape of Brexit.

These difficulties mean that, at the time of writing, half the bills have yet to be introduced and only one is on the statute book. In the case of migration and fisheries, white papers are still outstanding (Figure 2).

### 3. Passing legislation to reflect the UK’s withdrawal from the EU

The UK Government has also committed to enshrining the Withdrawal Agreement in domestic law through the Withdrawal Agreement and Implementation Bill (WAIB). It will cover the agreements reached in areas such as citizens’ rights as well as providing the legal basis for transition.

#### What comes next?

Despite an objective of readiness for March 2019, the legislative timetable has already slipped, with delays and deferrals. The Government may be able to delay some of the key bills, and secondary legislation, if a standstill transition of the sort envisaged in the Withdrawal Agreement is agreed. But if everything needs to be in place by March 2019, there will be huge pressure on parliamentary time and capacity (for ministers and officials as well) from Autumn 2018.

To be ready for Brexit, the Government needs to:

- **Get Royal Assent to the EU Withdrawal Bill (necessary before secondary legislation can start to be introduced).** The Government originally planned to pass the bill before summer recess. It is far from clear that the Government can achieve that given the amendments proposed by the Lords, agreement on which will need to be hammered out through ‘ping pong’. Even if it did, there would be less than a year to take through the estimated 800 pieces of secondary legislation.<sup>12</sup> Parliament usually has capacity to manage around 1,000 statutory

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instruments (SIs) in a year.<sup>13</sup> With other SIs needed on non-Brexit subjects, any delay will have serious repercussions for an already tight timetable.

- **Put other key Brexit bills onto the statute book – and in many cases follow up with secondary legislation.** It needs to develop a clear view of what its timetable is for a 'deal' and 'no deal' scenario, with a particular focus on the essential legislative requirements for the latter – and what can be delayed.
- **Navigate the big political crunch on the motion the Government has promised on its deal – and pass the Withdrawal Agreement and Implementation Bill after that.** We have set out in detail the obstacles the Government faces in getting the UK ready if there is an agreement.<sup>14</sup> Passing the WAIB in the time available will be a challenge. If the timetable runs to plan, the bill will have just five months to make its way through Parliament, fewer than all previous changes to EU treaties.

## Implementing Brexit

Outside the EU, the UK Government – and its devolved counterparts – will have new responsibilities. They may need to be ready to take over regulatory functions and they need to have new customs and migration regimes running.

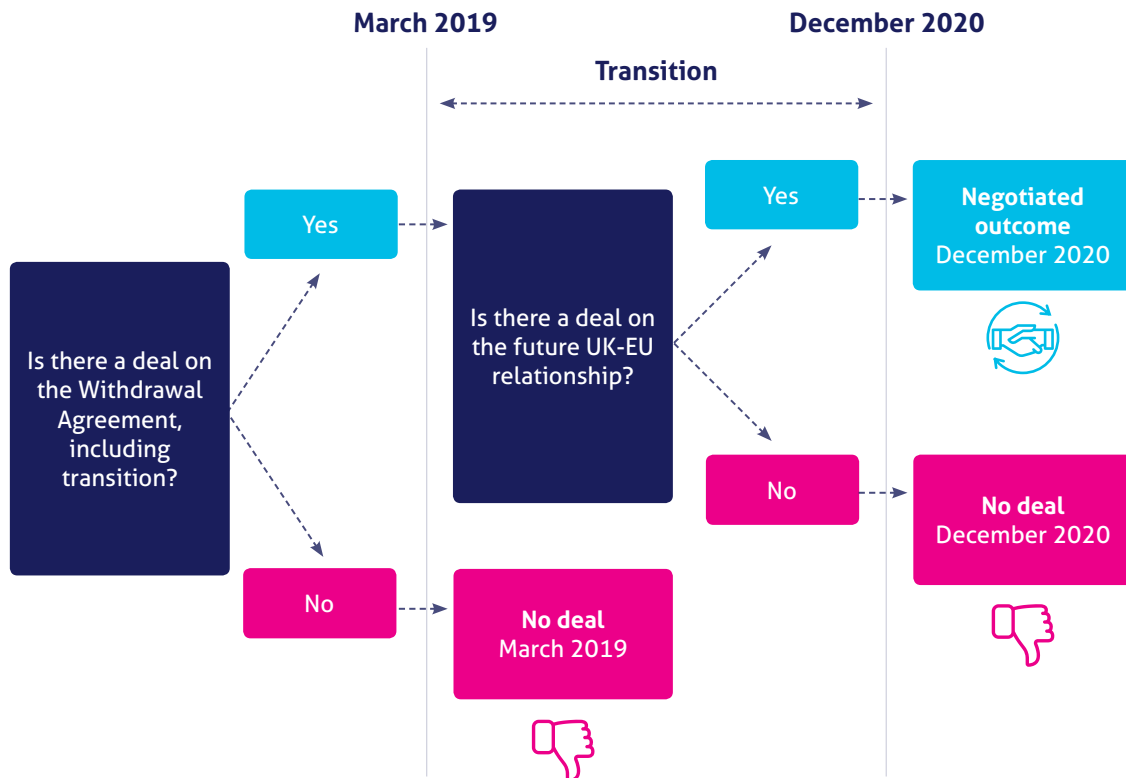
The depth of the UK-EU deal, or whether there is a deal at all, will determine the precise systems, processes and institutions that Whitehall needs to have in place and by when.

Before we leave the EU on March 2019, there are two possibilities in play: we reach a Withdrawal Agreement, including a transition; or we leave with no deal. If we have an orderly withdrawal, we can then progress to conclude a new relationship with the EU – but those negotiations could also fail to conclude before the 21-month transition ends.

That leaves three broad scenarios that Government must prepare for, as set out in Figure 3:

- The UK leaves the EU without a deal in March 2019.
- The terms of withdrawal are agreed but it proves impossible to agree on a future relationship, meaning that there is no overarching agreement on trade or security co-operation at the end of transition.
- The final, preferred scenario of both the UK and EU teams sees a deal reached on a future relationship – referred to inside Whitehall as the 'negotiated outcome'.

**Figure 3: Brexit implementation scenarios**



Source: Institute for Government analysis.

The phrase 'negotiated outcome' itself covers too wide a range of outcomes to allow departments to plan in a meaningful way. To manage this, Whitehall has been told to prepare plans for two types of 'negotiated outcome'. The first is based on a 'low alignment' scenario, where a Comprehensive Economic and Trade Agreement (CETA)-style FTA is taken as a guide for what the UK-EU deal would look like. The second is 'high alignment', which assumes the two sides agree very deep access and co-operation.

The Department for Exiting the EU (DExEU) has identified over 300 workstreams across almost 20 departments, each responsible for implementing different elements of Brexit.<sup>15</sup> Every workstream has multiple plans, covering the different scenarios, which have been submitted to DExEU, while funding has been allocated by the Chancellor on the basis of their costed 'no deal' plans. Departments are sending funding updates to the Treasury and are submitting regular progress reports to DExEU, who compile the information and share it with ministers.

Some areas are not dependent on future negotiations, such as the settlement scheme to provide status to EU nationals after Brexit, meaning officials do not have to cope with multiple scenarios. But these are the exception. For others the uncertainty means that departments have to work on multiple plans in parallel. HM Revenue and Customs (HMRC), for example, needs to be ready for post-Brexit customs if there's no deal in March 2019 or if talks end in failure come December 2020, as well as having plans for the Government's two options for a possible future relationship. Each of the four plans, with their different constraints and requirements, would be, at best, extremely ambitious if they were the only scenario the department was working to.

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## What comes next?

For many areas, from animal welfare to chemicals regulation, there is a clear link between negotiation and implementation – the negotiations will determine both what has to be implemented and the timetable Whitehall is working to.

- **Until transition is agreed, work will continue on contingency plans.** There is no guarantee of the additional 21-month transition – or ‘implementation period’ – until the Withdrawal Agreement is signed and ratified. The critical decision for government (and for business) is the extent to which the provisional agreement reached at the March European Council allows them to scale back their preparations for a ‘no deal’ Brexit in March 2019.
- **Transition would buy important time for preparations, but it does not remove uncertainty.** The transition would give departments an important additional 21 months to prepare. But they will still be managing significant uncertainty during the transition; detailed negotiations will still be taking place and the end-state far from agreed.
- **Effective implementation extends well beyond central government departments.** It’s not just Whitehall that has to be ready for Brexit. So do regulators, frontline services, the devolved administrations (and there is currently no Executive in Northern Ireland) – and every business which operates across borders or employs EU nationals. But many of them are reliant on progress – or direction – from the UK Government.
- **All the big implementation challenges lie ahead.** The Government’s focus so far has been on scenario planning and design work – there are limited examples of Whitehall spending large sums of cash to turn those plans into reality.

That is beginning to change. With the allocation of Brexit money by the Chancellor and a number of ministerial directions being issued, there is evidence that Whitehall is beginning to buy new IT systems and put the groundwork down for new regulators such as the Trade Remedies Authority. But major changes are still in the early design phase. There is yet to be a firm negotiating position on future border systems, let alone an indication of what could be agreed with Brussels. There are questions still over what post-Brexit agricultural support will look like in the UK and a proposal on the future immigration system could be as much as a year away.



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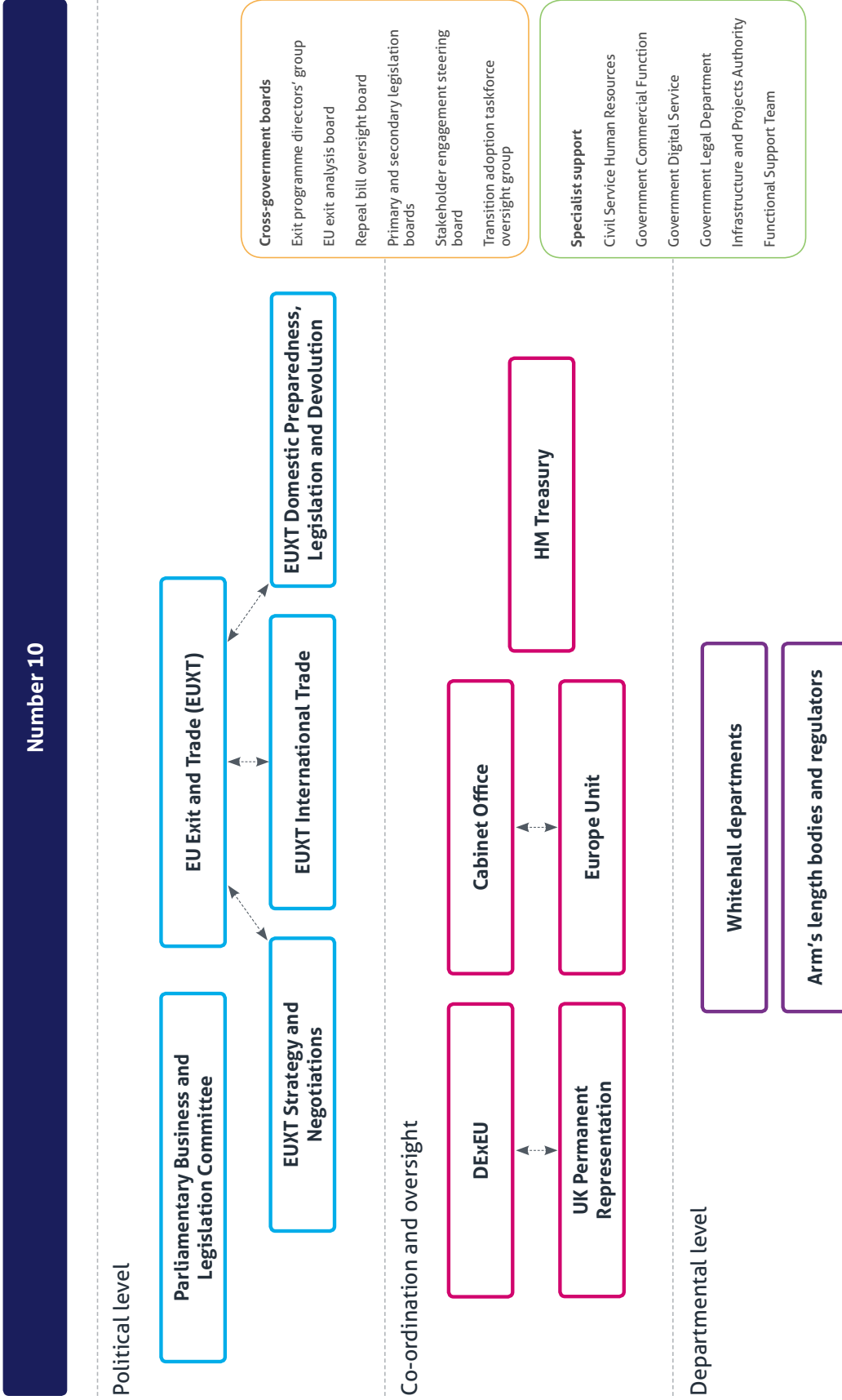
## **The scale of the task**

Whitehall is having to carry out these three major Brexit tasks simultaneously. It is having to prepare legislation for a deal that is not yet agreed and design new systems for scenarios that have been all but ruled out by the Government.

Political and legal constraints mean it is not possible to take a sequential approach. Brexit cannot be done in a process where negotiations are followed by legislation, after which implementation of the agreed outcome can begin.

The task of Brexit has been compared to delivering the Olympics, a major cross-government delivery project with a hard deadline. This comparison makes Brexit look far too easy. The degree of uncertainty makes it like delivering an Olympics without knowing the year, the location or whether it is the summer or winter games. It fails to take into account the effort needed at the same time to support the negotiations and the need for a minority government to get contentious legislation through. Moreover, there is a travelling cadre of experienced people to be hired to help stage each Olympics – and the International Olympic Committee on hand to keep the host government transparently on course. On Brexit, the Government is going where no government has gone before.

Figure 4: Whitehall bodies involved in preparing for Brexit



Source: Institute for Government analysis of National Audit Office, *Implementing the UK's Exit from the European Union: The Department for Exiting the European Union and the centre of government*, 2017.

# 3. How is Whitehall organised?

“This is a classic cross-departmental project, but of unprecedented scope and importance”<sup>16</sup>

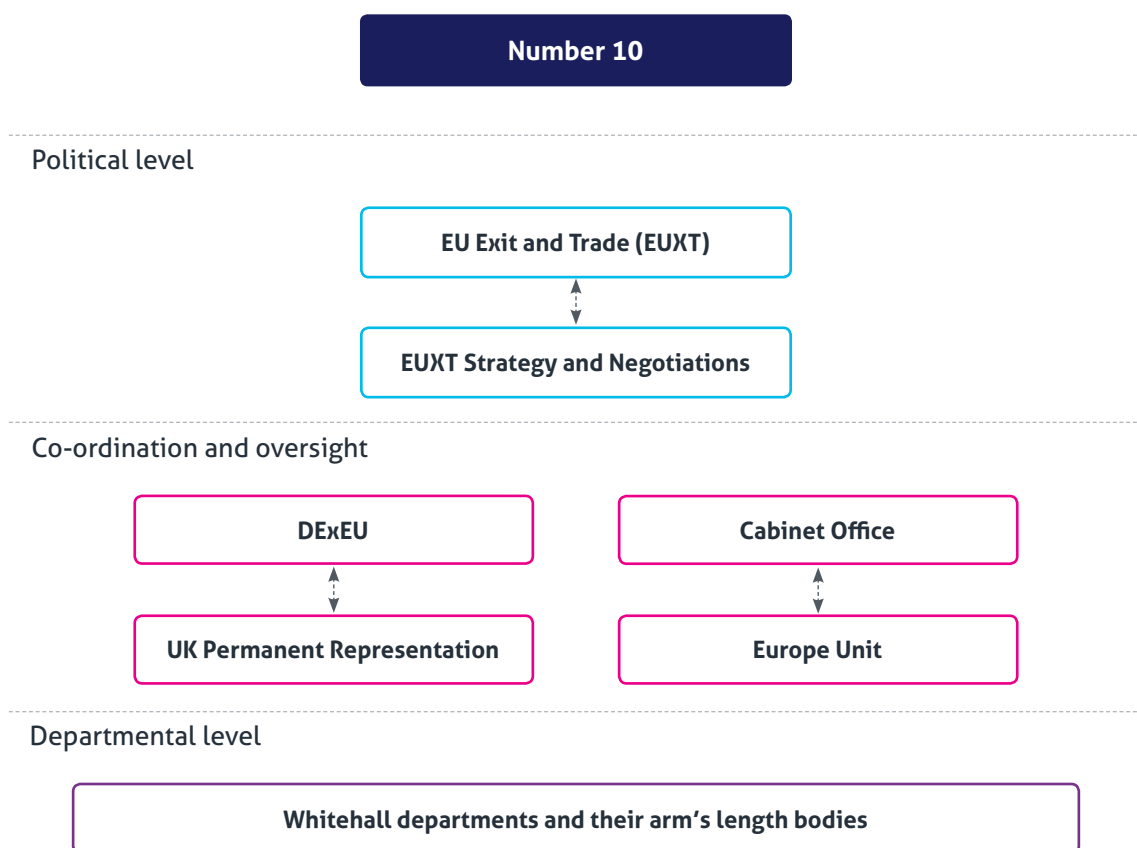
Jeremy Heywood, Cabinet Secretary, July 2017

One of Theresa May’s first moves as Prime Minister was to restructure Whitehall in the light of Brexit. Two new departments were established: DExEU on a temporary basis to manage the process of EU exit and the Department for International Trade (DIT) to prepare the UK to conduct an independent trade policy after exit.

In this chapter, we look at how Whitehall’s organisation has changed in response to Brexit and the mechanisms the Government has established to make decisions and co-ordinate departmental plans (see Figure 4).

## Negotiating Brexit

Figure 5: Main Whitehall bodies involved in negotiating Brexit



Source: Institute for Government analysis of National Audit Office, *Implementing the UK’s Exit from the European Union: The Department for Exiting the European Union and the centre of government*, 2017.

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## **DExEU is co-ordinating negotiations, but the centre of power now sits in the Cabinet Office**

The initial plan was for DExEU, under Secretary of State David Davis and Permanent Secretary Olly Robbins, to run the EU negotiations, with Robbins acting as the Prime Minister's Europe Adviser (a role formerly in the Cabinet Office). We argued that was likely to create tensions with the Prime Minister – who would ultimately be responsible for the success or failure of the negotiations – and with departments who would see DExEU as a departmental player, rather than as a more conventional broker.<sup>17</sup>

So it proved. In September 2017, the Prime Minister appointed Olly Robbins, then Permanent Secretary at DExEU, as her Europe Adviser in the Cabinet Office. He left DExEU, being replaced by Philip Rycroft, and the strategic centre of the Brexit negotiations shifted.

Until that point, DExEU had been the focal point. Its Secretary of State was chief negotiator, its Permanent Secretary was the official level co-ordinator and it was supplying the cabinet committee with analysis upon which positions were to be taken. When the UK published the details of its top-level negotiating team in June 2017, more than half were DExEU officials.<sup>18</sup>

In some ways, the Robbins move changed relatively little. Davis is still lead negotiator, the department still does the co-ordination function for talks and they work with the Cabinet Office to support committees.

## **The Europe Unit is now firmly established as the Prime Minister's Brexit team, driving negotiations and policy options**

The Europe Unit is a relatively small team. It started at around 15 people strong and it is estimated it could grow to be around 30. But this is the nerve centre of the Brexit negotiations in the UK Government.

The team still draws heavily on DExEU resources and work, as well as co-ordinating with other departments directly. Indeed, key players in the Europe Unit were originally key players in DExEU and the relationship continues. Many say that the new unit simply institutionalised the reality of how the department was working and the role Robbins was already playing. It also meant he no longer has to 'wear two hats', formally reporting to the Prime Minister as well as to David Davis as Secretary of State (something we warned against when arguing against the establishment of a Brexit department in June 2016).<sup>19</sup>

It was this team that choreographed, on behalf of the Prime Minister, the meetings in February and March 2018, including the Chequers 'away day' for the 'War Cabinet'. They were the ones responsible for co-ordinating the policy work that underpinned the Mansion House speech, with DExEU and others feeding in. Departments are prepared to see the Europe Unit as the honest broker across Whitehall. They are prone to see DExEU, with its own ministers, as having its own departmental agenda.

The Europe Unit also has the complete confidence of the Prime Minister. Before it was established, cross-government Brexit meetings would be attended by Theresa May's team in Number 10. Now it is the Europe Unit that represents her.

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## **There were a limited number of other big departmental players in phase one**

The other big players in the negotiations over the Withdrawal Agreement were the Home Office on citizens' rights and HM Treasury on the financial settlement. It was less clear which team or department was leading on Ireland. The early talks on the Irish border were led by a Director General in the UK Representation to the EU (UKRep), but, after the issue surfaced as a major stumbling block in autumn 2017, that post moved over to DExEU. Most sensitive Irish issues usually end up in Number 10.

## **DExEU has negotiation co-ordination responsibilities beyond just the EU**

The Government was late to identify the number and importance of the wide range of international agreements to which the UK is party through its membership of the EU. DExEU is responsible for overseeing the renegotiation of hundreds of bilateral agreements with other countries, covering issues from customs co-operation to aviation. The responsibilities lie with the relevant departments, but DExEU chairs the oversight board, as it does with most other Brexit boards.

## **The key decision-making forum is the EU Exit and Trade (Strategy and Negotiations) Sub-Committee**

A large, single cabinet committee was established in July 2016 to oversee the Brexit negotiations. But, with 16 members, it was too big and unwieldy to keep pace with the demands of Brexit.

In March 2017, shortly after the triggering of Article 50, the Prime Minister established a new sub-committee to focus on negotiations. This smaller group is her Brexit 'War Cabinet' and it is supposed to take the big decisions. Less cumbersome than the overarching committee, it can meet more frequently and, in theory, reach agreement more quickly. This mirrors the approach taken by past governments when they have been required to react rapidly to events such as conflict or disease outbreak.

**Figure 6: Changes in Brexit 'War Cabinet' membership over time**

Department	EUXT (Strategy and Negotiations) Sub-committee			
	March 2017	November 2017	February 2018	April 2018
PM (Chair)	May	May	May	May
CO	Gummer	Green	Lidington	Lidington
HMT	Hammond	Hammond	Hammond	Hammond
HO	Rudd	Rudd	Rudd	Javid
FCO	Johnson	Johnson	Johnson	Johnson
DExEU	Davis	Davis	Davis	Davis
DIT		Fox	Fox	Fox
BEIS		Clark	Clark	Clark
Defra		Gove	Gove	Gove
MoD		Fallon	Williamson	Williamson
NIO			Bradley	Bradley

Backed Remain
  Backed Leave
  Swing voter\*

Source: Institute for Government analysis of Cabinet Office data on cabinet committee membership.

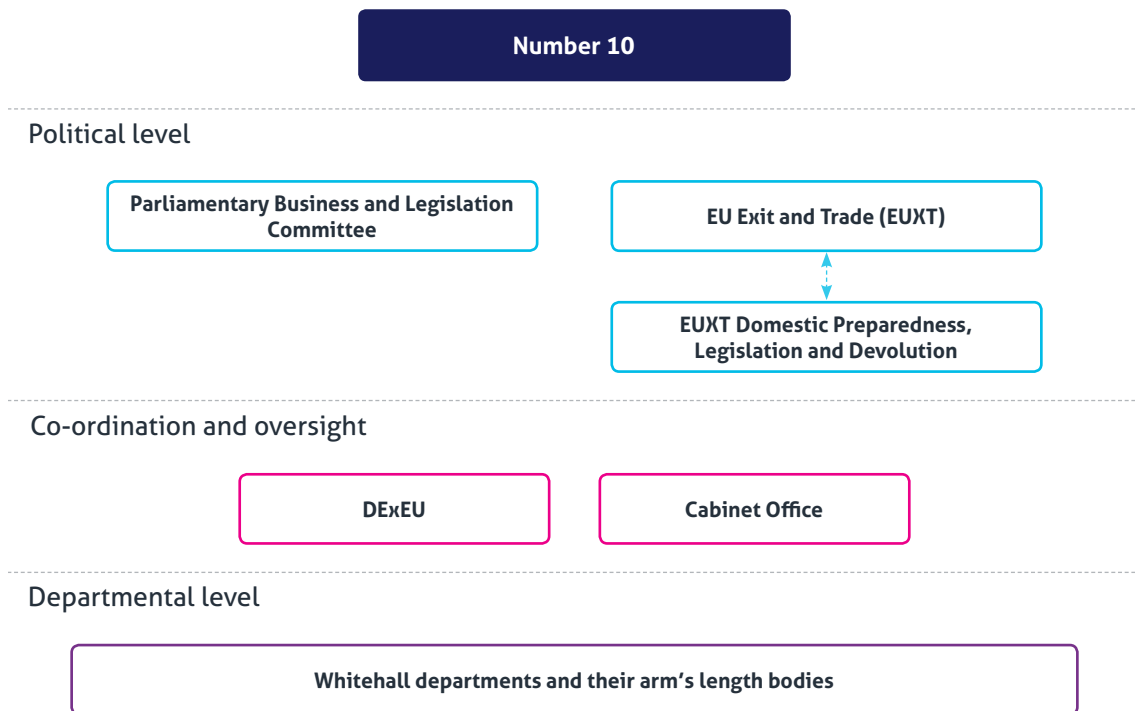
The committee began with a membership of six, but has grown in size twice since then – now comprising 11 members (see Figure 6). Its political balance is supposed to ensure that its decisions will be endorsed by the full Cabinet, but although it managed to reach agreement on the content of the Mansion House speech, agreement has proved less easy to reach on the choice of customs relationship. Like the other Brexit cabinet committees, the ministerial committee is shadowed by a committee of senior officials.

\* 'Swing voter' defined by *Financial Times* assessment of pro-Leave sentiment. Parker G and Blitz J (2018), 'What options does Theresa May have in Brexit customs battle?', *Financial Times*, 3 May 2018, [www.ft.com/content/1243faf2-4ed9-11e8-a7a9-37318e776bab](http://www.ft.com/content/1243faf2-4ed9-11e8-a7a9-37318e776bab)

## Legislating Brexit

Legislative activity is spread widely across government (see Figure 7).

**Figure 7: Main Whitehall bodies involved in legislating Brexit**



Source: Institute for Government analysis of National Audit Office, *Implementing the UK's Exit from the European Union: The Department for Exiting the European Union and the centre of government*, 2017.

### DExEU is responsible for getting the two flagship Brexit bills through Parliament

DExEU has two main roles when it comes to Brexit legislation. The first is the co-ordination of Brexit legislation across Whitehall, working with the Cabinet Office to shepherd through all of the key bills and secondary legislation in a timely fashion. The second is ownership of two critical Brexit bills – the EU Withdrawal Bill and the Withdrawal Agreement and Implementation Bill (WAIB).

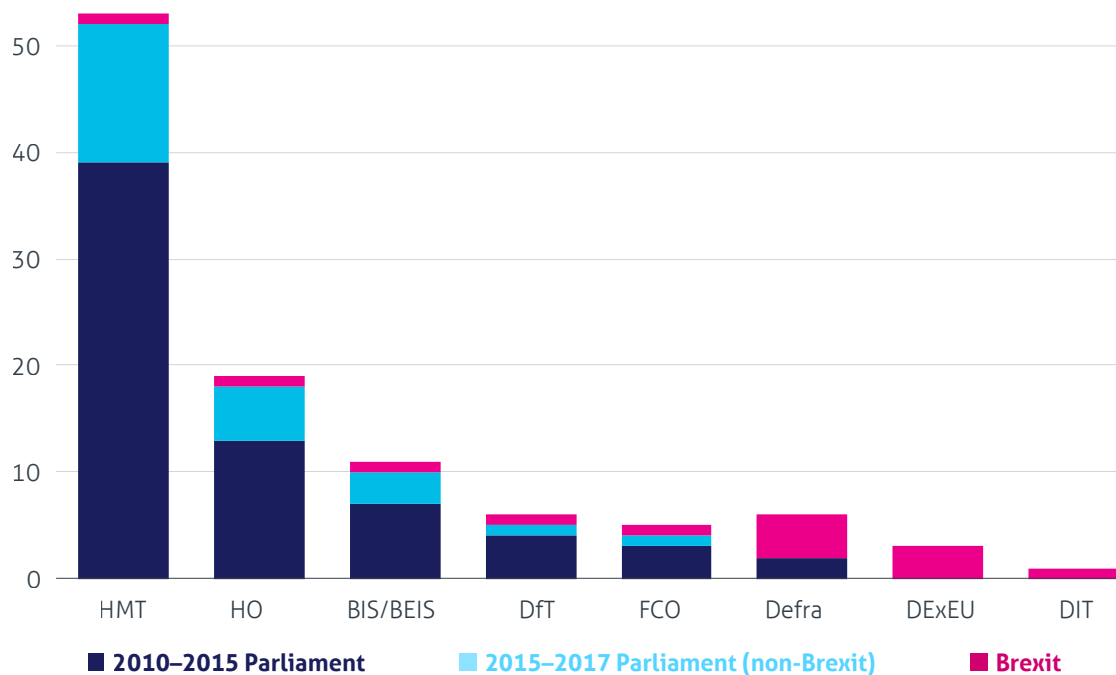
Both bills require a degree of cross-Whitehall working. DExEU officials, alongside government lawyers, will do much of the drafting and provide support to their ministers as they see the bills through both Houses.

### Defra has three major bills – and potentially other legislation to come

Defra has not been a department that does much primary legislation, because most of its legislative framework was set by the EU. Ironically that puts it centre stage for the post-Brexit legislative effort. The Queen's Speech committed to bills on the new regimes for agriculture and fisheries – and since then the Environment Secretary has promised a new environment act and less substantial legislation on animal sentience. Those four bills would be a major legislative load at any time, but it is a particular challenge for a department that has only passed two pieces of primary legislation since 2010 and has to pass more Brexit-related statutory instruments before March 2019 than it usually does in a full year.<sup>20</sup>

Other Brexit primary legislation is spread more evenly across departments (see Figure 8).

**Figure 8: Number of government bills passed by department 2010–2017, compared to Brexit bills**



Source: Institute for Government analysis of [services.parliament.uk/bills](https://services.parliament.uk/bills) and House of Commons Sessional Returns.

### Legislation is complicated by interplay with the devolved administrations

A number of the bills affect areas where powers are devolved – within the framework of UK membership of the EU. This has led to a prolonged stand-off on the Withdrawal Bill – but there are also risks to other legislation which may require legislative consent from the devolved administrations.<sup>21</sup> Parts of Defra’s Fisheries and Agriculture Bills will need consent, for instance – particularly if they establish new UK-wide frameworks. The devolved administrations have already said they will refuse consent to the Trade Bill.\*

The Minister for the Cabinet Office leads on relationships with the devolved administrations. In this, he is supported by the Governance Group in the Cabinet Office – which is headed by Philip Rycroft, who is also the Permanent Secretary at DExEU. Rycroft moved first to DExEU as Second Permanent Secretary, before the Olly Robbins move, to strengthen DExEU’s devolved capability after the Scottish First Minister threatened to use Brexit as a pretext to call a new independence referendum.

\* We have looked elsewhere at the way in which the intergovernmental machinery within the UK needs a reboot to cope with the additional demands of Brexit, highlighting the need for much greater and more positive collaboration. See Owen J, Thimont Jack M, Paun A, Kellam J (2018) *Devolution after Brexit: Managing the environment, agriculture and fisheries*, Institute for Government, [www.instituteforgovernment.org.uk/publications/devolution-after-brexit](https://www.instituteforgovernment.org.uk/publications/devolution-after-brexit)



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## Oversight of legislation is split between two cabinet committees

There are two committees that oversee the legislative effort on Brexit.

The sub-committee on EU Exit and Trade (Domestic Preparedness, Legislation and Devolution), known around Whitehall as DPLD, was created in October 2017, around the time questions were being raised about the UK's preparations for no deal.

Unlike the 'War Cabinet', DPLD is left to David Lidington, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, to chair. It's also much bigger. The task here is less one of agility and rapid decision making, more co-ordination across the key figures responsible for preparing the UK for Brexit. DPLD's remit goes beyond legislation into implementation (though it also looks at relations with the devolved administrations).

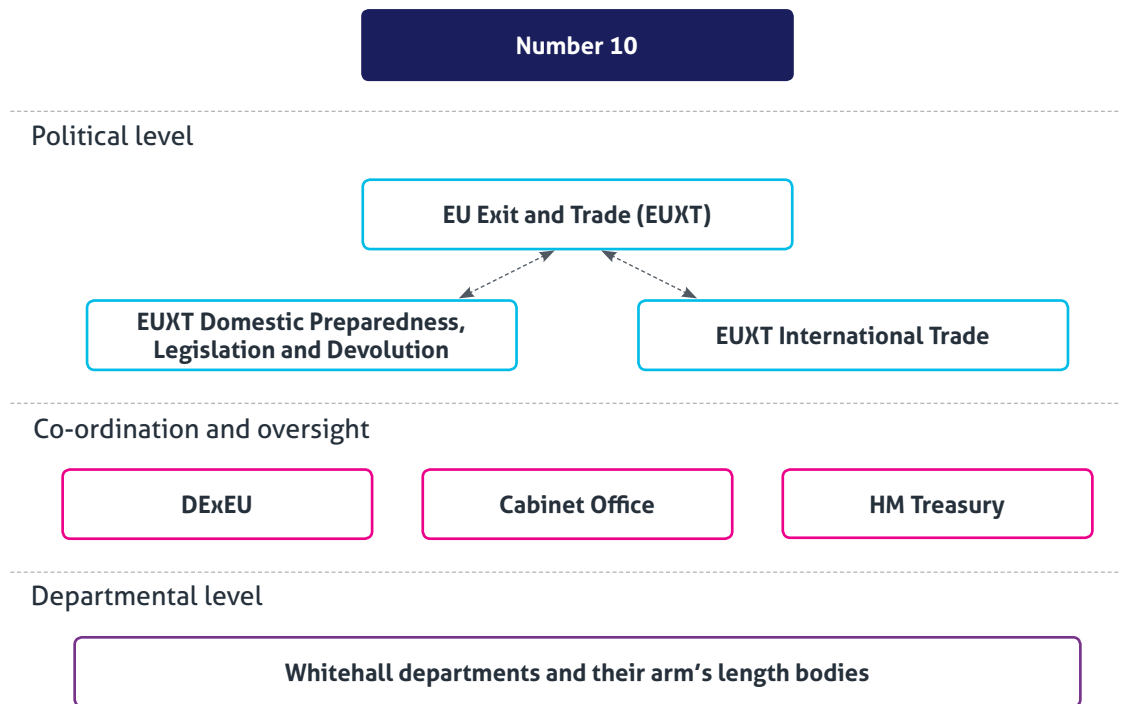
Attendees include the secretaries of state responsible for the devolved administrations, the chief whip and attorney general, as well as Steve Baker, a junior minister at DExEU who is a key figure in its implementation and legislation work.

The other key committee is the Parliamentary Business and Legislation Committee. A permanent fixture in the cabinet committee system, it is chaired by Andrea Leadsom and is responsible for driving the Government's whole legislative agenda. The committee plays an important EU exit role though, managing the Brexit legislation in the context of the wider legislative programme.

The centre is closely co-ordinating the 800-odd pieces of secondary legislation required before exit, with DExEU working alongside the Parliamentary Counsel team in the Cabinet Office. There are three official boards looking at legislation – one on the EU Withdrawal Bill, one on primary legislation and one on secondary legislation.

## Implementing Brexit

Figure 9: Main Whitehall bodies involved in implementing Brexit



Source: Institute for Government analysis of National Audit Office, *Implementing the UK's Exit from the European Union: The Department for Exiting the European Union and the centre of government*, 2017.

### DExEU co-ordinates implementation, but responsibility for delivery sits elsewhere

DExEU's Policy Delivery and Coordination directorate leads on domestic preparations. It has three broad roles. The first is strategic, working with the Cabinet sub-committees, in particular DPLD, to agree the Government's overarching approach to preparations in different scenarios. The second is providing cross-government support to departments, issuing planning assumptions, compiling analysis and helping to identify resourcing issues. Finally, it has a role as a kind of 'Project Management Office' for Brexit.

DExEU is not, however, responsible for delivery. It is departments, public bodies and, in some cases, the devolved administrations that are implementing Brexit. DExEU receives regular updates from them on their Brexit projects, flagging risks and tracking progress against plans. More than 300 workstreams, identified by DExEU but sitting in departments across Whitehall, submit these reports. The DExEU team has 'desk officers' responsible for liaising with different departments on their submissions, scrutinising updates and collating reports. The information then goes up the chain to the Cabinet Office and Number 10.

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## **Implementation planning and delivery falls to departments**

The centre of government sets some of the parameters – the assumptions departments should work to, and the money or specialist skills available. But it is departments that have to manage their own 'portfolio' of Brexit projects, which for some contain well over 50 individual initiatives (see Figure 10). They have to liaise with public bodies, many of whom could see the most significant change as a result of leaving the EU, and they are the ones liaising with the devolved administrations. Departments are also often the public face to their key stakeholder groups.

DExEU does not see all of the detailed plans, it tends to get a high-level view of progress and key risks or interdependencies. Departments hold the pen and they carry the responsibility for implementing Brexit.

## **New cross-government boards have been set up to support implementation**

There are a number of boards and working groups, made up of officials from across government, to support the cabinet committees. Just as there is an officials group shadowing the 'War Cabinet', there is one for DPLD, focusing on domestic preparedness.

In November 2017, there was a total of seven cross-government boards sitting beneath DPLD (Officials), which in turn were supported by eight working groups.<sup>22</sup> The key board for implementation is the Exit Delivery Board, chaired by the Cabinet Secretary, which comprises the key officials from across government who are tasked with putting new systems and processes in place for Brexit.

One of the most critical official groups is the Border Planning Group, co-chaired by HMRC Chief Executive Jon Thompson and the Second Permanent Secretary at the Home Office, formerly Patsy Wilkinson. Set up on the back of a DExEU recommendation, its aim is to co-ordinate the 20+ departments and agencies responsible for making the border work after Brexit.

## **The Cabinet Office is taking an increasing role, providing assurance and support to departments on implementation alongside DExEU**

The Cabinet Secretary, Jeremy Heywood, has taken an active role in assuring departmental plans for Brexit. DExEU ran two sets of detailed 'stock-takes' for each department in 2017; for the most Brexit-affected departments the meetings were chaired by Heywood.<sup>23</sup> These exercises involved each department reporting on progress, including preparedness, legislation and resource requirements, allowing the centre to 'kick the tyres' and identify priorities and issues. At the end of last year there was a further effort to focus on some of the issues that cut across departmental boundaries. The Cabinet Office has also established a 'Functional Support Team', to work alongside the Policy Delivery and Coordination directorate in DExEU. The team, led by a new Director General, is comprised of government project managers, digital specialists, and commercial and HR professionals. It brings together the Infrastructure Projects Authority, Civil Service HR, the commercial team and other cross-cutting functions.

If DExEU goes 'broad and shallow', the Cabinet Office team goes 'narrow and deep'. Each of the 300-odd Brexit workstreams across departments has a priority rating of 0 to 3. The Functional Support Team's focus is those in the top priority band, providing either detailed assurance or consultancy style support, with additional skills and resource supplied.

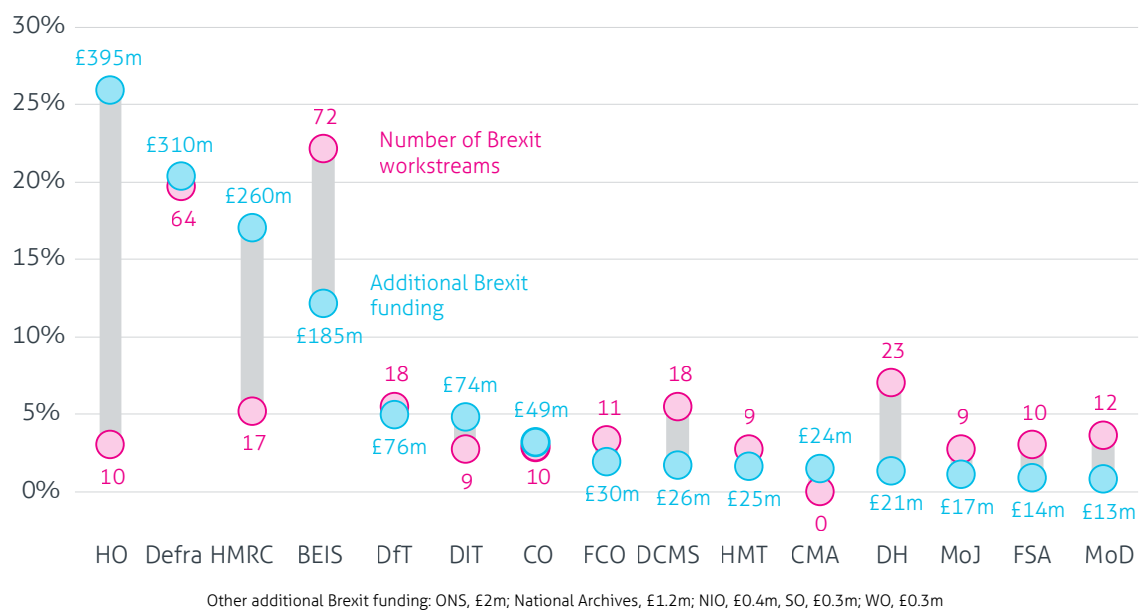
## The Treasury has managed Brexit funding and the allocation of the Chancellor's extra cash

The Treasury has its own specific Brexit workstreams, covering issues including the financial settlement, the future of financial services and the replacement of EU-funded programmes after the UK leaves. But it also plays a central role: allocating Brexit funding to departments.

The Chancellor has dealt out around £2 billion (bn) for preparations already. The money has been allocated by the General Expenditure Policy team in the Treasury, working closely with departmental spending teams. Around £250 million (m) was distributed to departments in the 2017/18 financial year.<sup>24</sup> With Brexit plans still being developed, the money came in two tranches, with departments applying for the first in December 2016, and the second in July 2017. Most of the extra cash went on new staff.

A third tranche of £1.5bn has been provisionally allocated to departments for 2018/19. The sharp increase in available funding reflects a shift from policy to implementation work across government as exit day approaches. The cash was allocated on the basis of requests by departments to the Treasury alongside the 'critical path' plans drawn up by departments and submitted to DExEU. The Treasury asked for these plans to be costed month by month and complemented with profiles showing the number of full-time equivalent (FTE) staff they are likely to require.

**Figure 10: Brexit workstreams and 2018/19 funding as a percentage of the totals, by department**



Source: Institute for Government analysis of Written Statement HCWS540, and Philip Rycroft letter to the Chair of the Public Accounts Committee, dated 30 April 2018.

## The spending approvals process has been adapted to help departments manage Brexit

Departments are still required to submit business cases to the Treasury in order to get spend signed off. The Chancellor's allocation is available to them, but Whitehall spending controls still apply before money can be spent.

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Brexit put that system of controls under pressure. The inherent uncertainty and the speed at which money must be spent to keep pace with plans means the volume of requests increases while departments can't necessarily answer all of the questions usually asked of them during the controls process.

The Treasury, along with spending control teams in the Cabinet Office, have recognised this and made changes. The process has been streamlined, the turnaround times for central approval have been shortened and the threshold of spend at which controls kick in has been increased. Government Digital Service used to put controls on any public facing IT system, or at least any that cost more than £100K. That figure has gone up to £1m for Brexit spend and the commercial team in the Cabinet Office has increased their control level from £20K to £1m, to make it easier for departments to bring in external support.

The changes have been well received and the process is seen to be working well. It is seen as a pragmatic balance between the need for important scrutiny on one hand, and a recognition of urgency and uncertainty on the other.

**There has been an increased use of inter-ministerial groups, avoiding the process and procedure of cabinet committees but reducing transparency**

Ministers are being forced to work across departmental boundaries more and more in order to support the huge co-ordination task. Issues like the border don't neatly sit within the usual territorial boundaries or lines of accountability (see Appendix, Figure 16).

Cabinet committees are the traditional mechanism for this ministerial co-ordination. But important Brexit ministerial meetings are happening outside of this formal structure. 'Inter-ministerial groups' have been set up, allowing ministers to meet and discuss key Brexit issues outside of the formalities of the cabinet committee system. There is no formal secretariat provided by the Cabinet Office, no publication of what groups exist or who is on them. But these groups are playing an increasingly influential role on Brexit.

We were told of two Inter-Ministerial Groups (IMGs) supporting Brexit implementation – one general and one focused on the border. The EU Exit IMG has its secretariat provided by DExEU's Policy Delivery and Coordination team. It meets weekly during parliamentary business periods and is comprised of senior government ministers and civil servants.

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## 4. The challenges of delivering Brexit

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Almost two years on from the referendum, the focus of Whitehall is shifting. On the Government's planned current timetable, the UK will have agreed a legal text on withdrawal and the 'framework for the future relationship' in a few months' time. The imminence of deadlines, both for a possible transition and the end of the implementation period, means Whitehall is changing gear – moving from policy to implementation.

Reaching the decision of 'sufficient progress' in December 2017, establishing and staffing over 300 workstreams across Whitehall, even just putting in place the overarching structures discussed in the previous section, are all significant achievements and reflect the hard work being done in Whitehall. But there is still much to do.

This chapter looks at the lessons from the process so far. It highlights some of the key challenges Whitehall has been grappling with, showing the progress that has been made and the issues that remain.

### **Delayed decisions and an inability to make trade-offs**

"There is a big premium on being able to find... our preferred option list, so that it can be part of the negotiations"<sup>25</sup>

Greg Clark, Secretary of State, Department for Business, Energy and Industrial Strategy, May 2018

### **The machinery for making decisions is in place**

In the early stages of Brexit, the first year of Theresa May's premiership, decision making took place behind the door of Number 10. The Prime Minister and her Downing Street advisers were in near complete control.

The June 2017 general election, the subsequent loss of the Government's majority and the departure of the Prime Minister's advisers, all contributed to a change in style. Decision making was opened up and a more consensual approach was adopted. Departments now feel they are more able to make their case through the conventional decision-making structures – cabinet committees and sub-committees with shadowing official committees – even if ministers have not refrained from debating options in public.

### **But decisions are still not being made: the Government is struggling to make the necessary trade-offs**

The presence of decision-making machinery does not guarantee decisions are being made.

Important decisions and trade-offs were made on withdrawal issues, notably the financial settlement and the transition. But these were done, often at the eleventh hour, on the understanding that they were necessary to get to negotiations on

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the desired future relationship. All sides agreed the prize was getting the right deal at the end. But agreeing what that desired future relationship looks like is proving extremely difficult.

By the time the EU declared 'sufficient progress' had been made in December 2017, the details of the UK's desired end-state, and the obligations that would be acceptable in order to secure it, remained unclear. Aside from a handful of *Future Partnership* papers, published in Summer 2017, and some more recent discussion documents and slide packs, which avoided most of the contentious issues, ministers have struggled to reconcile their different visions of Brexit and the competing priorities underpinning them.

It was only at the beginning of March 2018, after two months of Cabinet consultation, that the UK had a starting offer – and even then it left two options on the table for the future customs relationship. The Mansion House speech was crafted to allow the Prime Minister to unify her Cabinet – and her party. But the vision it set out lacked concrete detail and the EU27 rapidly made clear that many elements were unacceptable.

### **Negotiations within the Cabinet have impaired the UK's ability to influence the talks in Brussels**

It took the Government a year, from the point at which it chose to trigger Article 50, to come up with this sketchy vision of what the future relationship should look like.

The focus of ministers, and often their key officials, is on what can and cannot be agreed around the Cabinet table. The unique challenges of minority government mean the Prime Minister must also listen more carefully to her back benches and take in to account the views of the Democratic Unionist Party (DUP).

The process is slow and key meetings are often less than decisive. The time and effort spent corraling opinion in the corridors of Whitehall is time and effort that could be used influencing in Brussels and European capitals.

The UK Government has, to date, preferred speeches to legal texts or detailed white papers. The approach may have benefits domestically, not least in drafting around disagreements. But it has meant the EU has monopolised the production of the key negotiating texts in its formal guidelines and legal texts. It has used this formality to its advantage: 'boxing itself in' on key issues, reducing its own room for compromise and putting the onus on London to find a solution.

The EU spent the first quarter of 2018 working up its 'guidelines' for the future relationship, which were ratified at the European Council at the end of March. The first phase of negotiations had shown that, once the EU sets its position, it is very difficult to force movement. The Cabinet lost its best chance to influence the shape of those guidelines by spending those months arguing with itself.

### **The UK's position will need to evolve to reach a deal, but it's not clear whether the Prime Minister has much room to manoeuvre**

The Mansion House speech is an opening position; it will naturally need to evolve as talks progress and part of that will involve making concessions. But it is not yet clear whether the tortuously stitched-together compromise and unity of Mansion House can be sustained when negotiations require movement.

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UK negotiators, particularly those with former EU experience, are already having to adapt to a situation unlike any they will have experienced. Rather than corridor conversations or operating in the margins of European Councils, the UK team finds itself on the other side of the table to the EU. Meetings with fixed agendas, conducted to fixed timelines, take place in large rooms with microphones and metres of space between the two teams. To be effective in this situation, the negotiating team must be given a mandate to negotiate in real time. It needs to know where there is flexibility in its position.

If the Prime Minister needs to reconvene her 'War Cabinet' to sign off every deviation from the Mansion House script, negotiations will move too slowly to meet the planned timetable. The Cabinet needs to be clear on what space there is to move, and quickly.

Likewise, the EU team will want to know that its UK counterpart can keep to its word when it is making trade-offs. The more fragile the consensus, the harder it will be to make the necessary progress in negotiations.

### **Decisions need to be made quickly, to keep negotiations and implementation on track**

Crunch time is approaching. If the Government wants to reach an agreement on the 'framework for a future relationship' that goes beyond broad ambitions, it will need to make a number of important decisions between now and October. If it fails to do so, MPs will have to vote on the Withdrawal Agreement with little idea of what is to replace EU membership.

But the Prime Minister and her Cabinet can't defer decisions indefinitely. After March 2019, the UK will have 21 months to negotiate and agree its future relationship, or face another cliff edge. The less prescriptive the 'future framework', the more there will be to do. There is no provision in the Withdrawal Agreement, as currently drafted, for extending the transition.

Decisions are also vital for those in Whitehall tasked with implementation. To date, very little has been ruled out – they are still working on contingency plans as well as various incarnations of a deal, covering the spectrum of options from broad continuity to major change. It's impossible to nail down the precise outcome at this stage, but that does not mean the Government can afford to continue with everything still on the table.

### **Inordinate secrecy and a lack of transparency**

"The nature of this internal work could be sensitive to ongoing negotiations, we will not be publishing the full list [of Brexit workstreams requested by Parliament]"<sup>26</sup>

[Robin Walker, Minister, DExEU, November 2017](#)

### **Divisions in the Cabinet, Conservative Party and Parliament have all contributed to a culture of extraordinary secrecy**

The fraught atmosphere around Brexit – with ideological divisions in the Cabinet reflected in the Conservative Party and Parliament – has led the Prime Minister and those advising her to create a culture of extraordinary secrecy. The public manifestations of this are the Government's refusal to publish impact assessments, the absence of formal policy papers in important areas and limited external engagement.



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But the Government is not just keeping information from the public. Secrecy is also affecting those working on Brexit within government. Officials are obliged to give papers extraordinarily high levels of security classification and very limited distribution lists. In an exercise that is dependent on co-ordination and cross-government working, this kind of approach is counterproductive.

The Government has argued that a high level of secrecy is necessary to protect the UK's negotiating position and avoid getting a 'bad deal'. That argument does not hold up: the EU knows most of the options facing the UK and understands its priorities. The EU has also published its own detailed sets of analysis, impact assessments and information for contingency plans. While there are, undoubtedly, a small number of documents that require very careful handling to protect negotiations, they are the exception rather than the rule. The main motivation for this level of secrecy is the desire to avoid domestic political embarrassment.

### **Important documents are restricted to reading rooms, the offices of permanent secretaries and special computer terminals**

Towards the end of 2017, a decision was taken to increase the already high level of security surrounding Brexit.

Key documents, including the guidance issued to departments on planning assumptions, are heavily restricted. A handful of hard copy papers are available to only a limited number of people and they can only access them in designated Whitehall reading rooms or their permanent secretary's office.

To try to ease access, the Government has accelerated the roll-out of new, secure computers. The Cabinet Office, supported by the National Cyber Security Centre (part of Government Communications Headquarters (GCHQ)), are putting these so-called 'Rosa terminals' in place across Whitehall.<sup>27</sup> The project had started before the EU referendum, but more and more terminals are being put in to allow those working on Brexit to access information. Only those with 'SC' level security clearance – the second highest level of clearance – and special profiles set up can use the machines. Crucially, they are only available in lockable, limited access rooms, which are not easy to come by in an increasingly open-plan Whitehall.

### **This secretive approach is incompatible with the complexity of delivering Brexit**

This model might be viable for issues which require the involvement of only a few civil servants working with ministers on policy positions and scenario planning. It is not compatible with implementation which extends deep into departments, to their frontlines, to their public bodies and to the devolved administrations.

Nor will it work for the detailed phase of the future relationship negotiations. These negotiations, while they might continue to be on close hold until October, will involve departments across government and need a cross-Whitehall structure involving large numbers of civil servants. If information cannot flow down the chain properly, there are risks to the quality of information that goes back up.

There is an even bigger problem with information flows to arm's length bodies who have specialist knowledge of many areas of EU regulation and are responsible for significant elements of implementation. They are detached from Whitehall reading rooms and secure computers. Their ability to influence policy and understand

emerging positions is limited by secrecy – and that risks important detail and nuance being overlooked.

Ministers must change tack and prioritise the effective flow of information over political sensitivities. There is concern in Whitehall that this might not happen and, instead, the increasingly secretive approach could become the new normal.

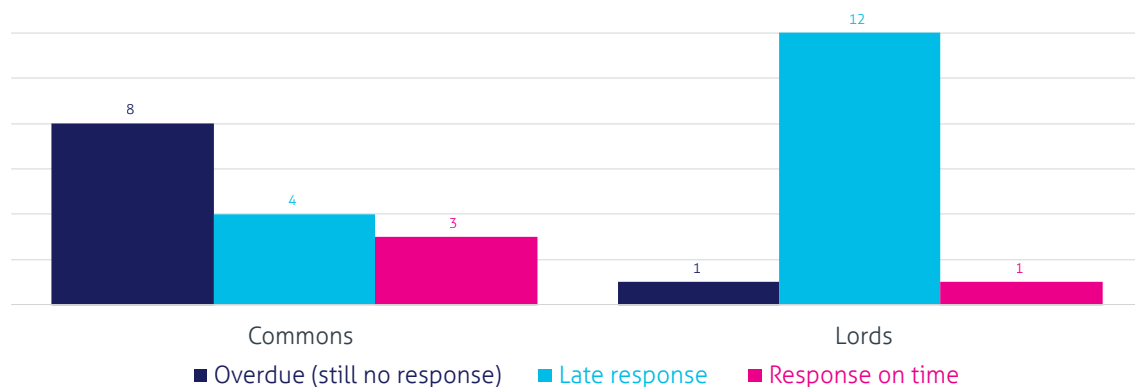
### **Parliament’s ability to scrutinise government effectively is being undermined by a lack of concrete information**

The Government is also keeping Parliament in the dark on Brexit issues. Often this includes issues that should be published as a matter of process, rather than sensitive issues.

For example, the Government is refusing to share the list of 325 Brexit workstreams. Together these workstreams received a total of £1.5bn in this financial year, but the Government refuses to tell Parliament the broad areas in which money is being spent.<sup>28</sup> This information is not, as the Government claims, ‘sensitive to ongoing negotiations’, it is simply the way the Government has chosen to divide the huge task of Brexit. Negotiations will not be prejudiced by a list of workstreams.\*

Government also fought a long battle to keep impact assessments, or ‘sectoral analyses’, from Parliament, with disclosure ultimately forced by the use of an arcane parliamentary procedure by the Opposition. Governments regularly supply impact assessments to Parliament for minor policy changes. The Government has said that it will make a full economic impact assessment available before the so-called ‘meaningful vote’ in the autumn – but its track record so far is unpromising.

**Figure 11: Government responses to Brexit-related inquiries published in the 2017 Parliament**



Source: Institute for Government analysis of select committees inquiries pages on parliament.uk. Last updated 1 May 2018.

Select committees in both the Commons and the Lords have complained about the ‘general decline’ in the quality of engagement they are getting from government. One indicator of this is late or non-existent responses to select committee reports (see Figure 11). The Government has failed to respond to more than half of the reports produced by Commons select committees in the 2017 Parliament, while all but one of the reports published by the Lords were late or overdue.

\* In response to parliamentary pressure, DExEU provided a summary of areas each department is working on but no comprehensive list.

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## Inconsistent assumptions and the difficulty of aligning plans

"At the end of the day, this is all about focus and making sure that the departments have a very, very clear line of sight on what needs to be done"<sup>29</sup>

[Philip Rycroft, Permanent Secretary, DExEU, December 2017](#)

### With few scenarios ruled out, government is having to run with multiple plans

Whitehall is still having to plan for no deal in March 2019, many possible variants of a negotiated outcome in December 2020 as well as no agreement on the long-term relationship. The state of the negotiations means that over a year into the Article 50 process, few options can be ruled out.

"Our lives will be much simpler – and our confidence levels in the deliverability of plans [will be higher] – when we move to a single scenario world"

[Alex Chisholm, Permanent Secretary, Department of Business, Energy and Industrial Strategy, January 2018](#)<sup>30</sup>

Preparing for just one of the scenarios would be an unprecedented task. There are over 300 'EU exit workstreams' across almost 20 departments. But each of these workstreams is having to prepare for multiple scenarios with different deadlines and different outcomes. Perhaps most critically, all of these plans must add up to a single, coherent response from government.

### There are real concerns that departmental plans don't add up, with secrecy making a difficult task even harder

Secrecy has generally bedevilled planning for Brexit. Nowhere is that more acute than with the planning guidance for the Brexit scenarios. In March 2017, departments were given a guidance document to inform their planning work. Issued by the Cabinet Secretary, Jeremy Heywood, the documentation was developed largely by the DExEU Policy and Delivery Coordination Directorate and signed off by David Davis and the Prime Minister. It sets out the planning assumptions that should underpin departments' work on the different Brexit scenarios to ensure consistency on issues such as timelines and treatment of no deal and transition. In many cases, agreeing these assumptions required politically contentious decisions and careful handling.

The difficulty in getting political agreement, combined with the sheer volume of areas where guidance was necessary, means that there are inevitable gaps in the document. But unnecessary levels of restrictions on access have hampered its usefulness as well. The lengthy document, with little – if any – content of a sensitive nature, was kept under lock and key in the reading rooms and the office of permanent secretaries for months, with very limited access. Departments were asked to draw up plans for new systems and institutions, involving thousands of new staff and costing £1.5bn this year alone, on the back of guidance that very few had seen. By last autumn, the restrictions were somewhat relaxed, but it's still only available only to a handful of specific individuals.

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## **Ministers are making their own decisions and prioritising their preferences**

The gaps and lack of readily accessible guidance mean departments are making their own assumptions, informed by their minister's view of potential outcomes. There are real concerns across Whitehall that, if you pieced together the work of different departments for any given scenario, Brexit plans would not add up to a coherent approach. For delivery plans where interdependencies bounce between Whitehall departments, this would leave the UK facing major issues on 'day one' outside the EU.

The area where there is most concern that plans would not add up is in preparation for 'no deal', either in March 2019 or December 2020. With complex policy decisions and uncomfortable political trade-offs required, collective agreement on planning assumptions has been difficult.

Despite formal agreement being reached, there are still differing views among ministers on what 'no deal' would look like in practice – for example, on whether or not 'flanking agreements' on issues such as data or aviation could be reached with the EU to soften the impact of a 'no deal' Brexit.

Ministers also have different opinions on what any future UK-EU relationship could and should look like. With departments having to prepare for multiple Brexit scenarios using limited resources, some ministers are prioritising the scenarios they favour most.

This toxic interplay of politics and planning presents a major risk. If ministers and their officials take different approaches between departments, there is significant potential that the UK will be left unprepared.

## **DExEU and the Cabinet Office are trying to keep the show on the road and ensure coherence, but scale makes that difficult**

Whitehall knows that these issues are affecting preparations and that, to a certain extent, they are inevitable in planning a task of this size. But a failure to identify individual cases where assumptions are not aligned or to ensure plans are in place for all scenarios could result in major disruption come March 2019 or December 2020. DExEU and the centre of government are taking a number of steps to try and manage the risk.

In theory, it's the role of the DExEU team to spot misaligned assumptions or variance between departments. In practice, their ability to conduct detailed assurance is limited. Submissions are often either relatively high level and difficult to analyse, or extremely technical, requiring deep expertise in order to pick apart the plans. For a relatively small group of generalists in the centre with responsibility for over 300 workstreams, it is impossible to cover every plan for each scenario to the level of detail necessary to guarantee consistency.

Even with the Functional Support Team in the Cabinet Office doing detailed assurance and the reporting to DExEU, gaps in understanding and missed interdependencies are inevitable. Part of the reason for this is that departments have very limited access, if any, to the plans elsewhere in Whitehall. Despite DExEU encouraging them to come together on planning, departments are not always comfortable sharing planning information with one another given the political climate, and the culture of secrecy that stems from it. A more open approach, allowing officials to interrogate one another's plans to spot issues or misalignments, could ease the co-ordination job of DExEU and the Cabinet Office.

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But between the stock-takes, DExEU regular reporting and Cabinet Office deep dives, issues are being identified. They are resolved and monitored at an official level where possible, either directly or through one of the official groups or boards like the 'Exit programme directors group', featuring the key officials leading the implementation programmes. But there are areas where ministerial agreement is necessary for a breakthrough. Here it has proved harder to make progress.

### **The Border Planning Group is an important mechanism for aligning departmental plans on one of the most critical Brexit delivery challenges**

The Border Planning Group was set up before the summer of 2017, under the Chairmanship of Jon Thompson, Chief Executive of HMRC, and Patsy Wilkinson, (now former) Second Permanent Secretary at the Home Office. It brings together the wide range of departments and public bodies that play a role at the border. Over 20 government organisations are involved in either policy or operations, so ensuring they are working to the same assumptions and scenarios is vital (see Appendix, Figure 16).

It was DExEU that pushed for the group to be established, after concerns that the border issue needed closer scrutiny and more active co-ordination. It spotted the issue and worked with departments to get the appropriate support in place, forming this critical group. The relevant departments and agencies now meet monthly at a director general level to try and work through issues and options for the border.

The group is supported by a Director General and a dedicated team. They can identify and surface issues, resolving them where possible, but until recently there has been insufficient ministerial oversight to break through on the more difficult ones. A new inter-ministerial group was set up, following a review from John Manzoni, which has given the group a more direct line in to Cabinet.

However, there remain concerns as to whether or not that ministerial group has fixed the problem. Jon Thompson told the Public Accounts Committee in late April 2018 that there is a view that oversight still 'needs to go to a slightly different level'.<sup>31</sup>

The Border Planning Group has also been hampered somewhat by the limited scope of its role, another focus of the Manzoni review. Previously it was focused just on co-ordination, but the review recommended it takes on more delivery responsibility.

The most sensitive border issue of all is the land border in Northern Ireland. Despite the fact that the Border Planning Group brings together the UK's border expertise, that border was excluded from its original remit. The Border Planning Group was only given oversight of the Irish land border in April 2018.<sup>32</sup>

### **The March political agreement on transition has made planning more difficult**

Transition – or as the Prime Minister calls it, the implementation period – is supposed to make things easier, by giving an extra 21 months for preparation. But there is some evidence that it is actually making the task of co-ordinating plans in Whitehall harder. The political agreement is not a watertight guarantee of avoiding a 'no deal' Brexit. Reports suggest there are already ministers calling for no deal preparations to stop, potentially avoiding nugatory expenditure and allowing departments to focus on the December 2020 deadlines.<sup>33</sup> Departments are also concerned about the message that any visible contingency work would send business and citizens, who have been promised certainty and the avoidance of the cliff edge as a result of March's agreement.

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This is a key area where central direction is needed. There must be a common approach to planning, based on an agreed appetite of risk – how confident is the UK Government there will be a deal and how prepared is it to gamble on it? Ministers need to answer those questions urgently and decide how much they want to invest in no deal preparations, then develop a coherent approach to external communication.

## **Ineffective external engagement and a lack of detail**

**"A major acceleration in the partnership between business and the UK Government is needed to make a success of Brexit"<sup>34</sup>**

Carolyn Fairbairn, Director General, Confederation of British Industry, April 2018

### **A number of more formal structures have now been put in place for business engagement – but it took too long and there are significant gaps**

We heard repeatedly that, in its external engagement, Government has been in 'listening mode'. This was understandable at the start of the Brexit process, when government was canvassing opinions from business and beyond to inform policy and negotiating positions.

But even this could have started many months earlier. Discussions with business were few and far between before the general election in 2017, and it was some months later before the structures that now exist had fully materialised.

The Prime Minister's business advisory group – which covers issues beyond Brexit, but where Brexit is a key topic of discussion – started meeting more regularly after June 2017, and has now become central to the engagement architecture. Meanwhile, the Chancellor, Business Secretary and David Davis have a similar business advisory group, focused on Brexit and containing the five largest business organisations. The Department for Business, Energy and Industrial Strategy (BEIS) currently oversees a network of 18 groupings of 'stakeholder bodies', and the Government has hosted a number of roundtables and Chevening meetings with senior business figures.

### **Secrecy and a lack of political direction are still making external engagement difficult**

On some issues, the impression from business is that engagement has come after key decisions have already been made. The big issues that businesses are grappling with, the ruling out of a post-Brexit customs union and the UK's relationship with the Single Market, were decisions taken before any real engagement with business.

With less than a year until March 2019, the expected shift by the Government, from a one-way exchange to a 'meaningful dialogue', is yet to start in earnest.

A lack of clarity on the direction of travel at a senior political level is one of the main reasons engagement is still one-way. Departments do not feel able to offer reliable answers to questions that businesses consider to be increasingly urgent – either because they do not know the answers, or because they are not allowed to give them.

This is causing frustration. While the Cabinet's understanding of the implications of Brexit for different sectors is much improved, businesses themselves have not heard much more than the 'big picture messages'.

The lack of adequate direction is forcing them into action. The Prime Minister's timeline for making decisions does not match up with the one being followed in some boardrooms around the country. Business revolve around the financial year, annual

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general meetings and other fixed points, they don't adapt to parliamentary votes or European Councils. Firms in the financial services sector, for instance, started enacting contingency plans for a 'no deal' scenario months ago, after general reassurances from the Chancellor and Treasury failed to persuade. Manufacturing firms, in particular in the automotive and life sciences industries, are also now pressing the button on contingency plans without guidance from government.

### **Government needs a strategy for engaging with less organised sectors and ensuring issues are not missed**

Engagement has typically prioritised larger, more established sectors such as the pharmaceuticals and professional services industries – people who are already well connected to government. But while these are important voices, Brexit preparations need to go much wider to the smaller businesses whose voices are not as loud. These businesses have less scope to influence and may not understand the practical implications of the Government's decisions. It is unclear how far government has the capacity to engage with less organised sectors effectively in what remains of the Brexit process.

Some have also expressed doubts about how systematic the approach to external engagement has been, with the risk that not all issues raised in the process are ultimately addressed. If a business voices a concern in a meeting with an individual department, but addressing this concern does not fall within the department's remit, businesses are not clear they can rely on that message being relayed appropriately. Similarly, engaging with business by sector means that cross-cutting issues, which may not top anyone's priority list but will appear somewhere on the list for most, are likely to be given less attention than they merit.

### **The Government needs to develop a new approach to support the detailed negotiations on the future relationship**

Engagement so far has involved senior figures talking at a high level about broad outcomes. This might have been (just about) sufficient for discussions about transition and withdrawal, but negotiations with the EU will soon enter a new, more detailed phase. There is widespread acknowledgement that different people, with more technical expertise, will need to be brought into the room to inform the UK's position. Some may also need to be on call during the negotiations themselves. But Whitehall appears to be unsure how best to manage this shift.

DIT officials are thinking about what kind of system needs to be in place for engagement on future trade policy, but DExEU's planned approach to the EU negotiations has been unclear. This needs to be addressed urgently. Countries with track records of trade negotiations have established structures for consulting business (and civil society) throughout the process in order to ensure that they deliver deals that are valuable and do not run into late-stage political roadblocks. The deal with the EU is the biggest trade deal that the UK has to negotiate, so there is no sense developing machinery for follow-on deals but having nothing in place for the most important one.

### **Effective implementation requires extensive communication**

Implementation is the other area where, if the UK is serious about Brexit readiness, government needs to start showing its workings, and detailed plans, to business. The Border Planning Group (BPG) has been managing to get into this detail, with discussions freed up by the relevant parties signing non-disclosure agreements. This

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has helped the BPG with its own planning, and made it better able to reassure groups that sensible decisions are being made. However, inevitably that is confined to a small group of companies.

This is one of very few examples we heard of government going from 'listening' to 'broadcast mode' – a move that will be crucial to the effectiveness of any implementation work. Changes to customs and immigration arrangements, for instance, will not only affect large organisations, but some of the very smallest enterprises. At the moment, government does not appear to be giving these groups any direction at all.

Jim Harra, Second Permanent Secretary at HMRC, has said that his department has yet to engage directly with traders who may have customs obligations for the first time after EU exit.<sup>35</sup> The BPG, meanwhile, has been focused on groups providing infrastructure at the border, rather than organisations that are actually trading. It hoped to step up discussions with these organisations after the March Council. But, as with so much in Whitehall's work on Brexit, that depended on ministerial decisions.

The Home Office faces an even bigger task – communicating with EU citizens who want to use the settled status scheme once it goes live. So far it has set up an email alert system, but it will face a major challenge in making people aware of the new system, and persuading them to make use of it. It will also need to communicate to all the employers and landlords who are on the frontline of immigration enforcement – there is already evidence that many seem to misunderstand their obligations. But the early engagement on the design of the new settlement scheme system that is being carried out, showing user and stakeholder groups the new technology and process, is an important and positive early step.

## **Struggling to get the right people and keep them**

**"We are competing for skills that are pretty rare"<sup>36</sup>**

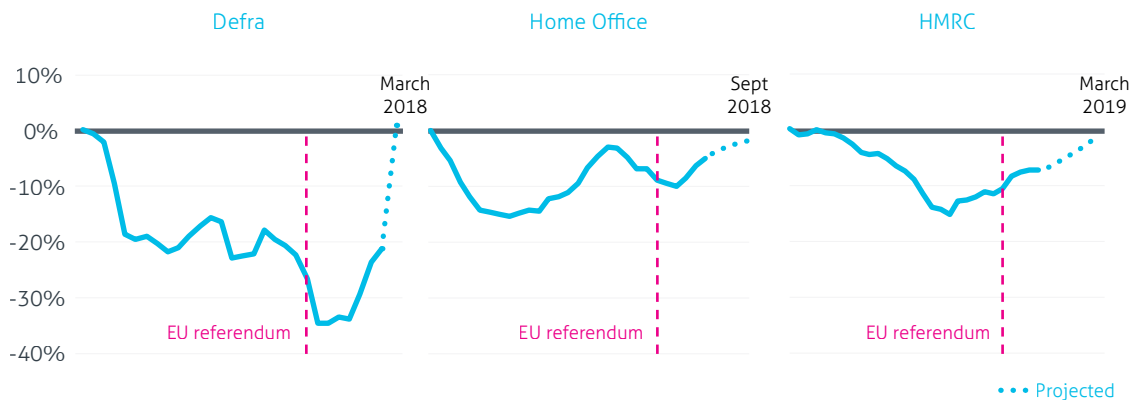
[John Manzoni, Chief Executive of the Civil Service, December 2017](#)

## **Brexit has prompted a civil service expansion, but bringing in new people takes time**

Since the EU referendum, around 10,000 new Brexit roles have been created.<sup>37</sup> At some of the departments most affected by Brexit, such as the Home Office and HMRC, staff numbers look set to return to 2010 levels, reversing years of cuts (see Figure 12). Defra's core department has already grown by 65%.<sup>38</sup>



**Figure 12: Percentage change in staff numbers (full-time equivalent) since September 2010, at three of the departments most affected by Brexit**



Source: Institute for Government analysis of Office for National Statistics Public Sector Employment data, and public statements of planned staff increases.

We were told that 96% of gaps identified by departments in 2017/18 were filled. This rapid resourcing included a significant number of new hires to the civil service. External recruitment often takes around six months when you factor in fixed constraints like notice periods. As a result, some departments have struggled to get people in as quickly as they had hoped, meaning there were some underspends on newly allocated Brexit money. DExEU, for example, failed to spend over £20m of its allocated cash in 2017/18, although that partly reflects the uncertainty over what DExEU would need to look like when its funding was allocated in 2016.<sup>39</sup>

Once hired, new civil servants also need to be trained. Complex policy areas require new technical knowledge to be built up and, importantly, it takes some time to learn the ropes of life inside the civil service – including submissions, write rounds and other relatively unique ways of working. New recruits get training courses and workshops on things from understanding Parliament to EU essentials, but there is no substitute for practice.

While bringing in new civil servants is not quick and often requires a not insignificant investment of management time, it has its pluses as well: there is a sense that fresh perspectives and new skills have been hugely valuable. This new blood can bring benefits beyond just the Brexit effort.

### **Security vetting has been a major problem, but a priority track has been made available for Brexit hires to smooth the process**

The influx of new staff and increasing security classification of Brexit documents has created a surge of applications for security clearance.

This increased demand coincided with the merging of the Government’s two security vetting organisations, piling pressure on the newly created United Kingdom Security Vetting (UKSV).

Departments were reporting that, at the start of 2018, ‘Security Check’ (SC) clearance, required for access to the wealth of ‘secret’ documents on Brexit, was taking approximately three months. ‘Developed Vetting’ (DV), for staff expected to be working with ‘top secret’ information, was taking closer to nine months. Departments told us they were losing hires in the period between them accepting a job and starting

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because of these delays. Some settled for bringing in staff to carry out different, less sensitive roles while they waited for clearance to come.

Civil Service HR, at the centre of government, put in place a priority scheme for Brexit hires, helping them get up to SC level clearance more quickly. The scheme now has capacity to clear 250 people per month, with an average turnaround time of two weeks. For the smaller numbers who require DV, particularly those who will be key for negotiations, the problem of security clearance remains.

### **Staff turnover is a major challenge for Whitehall: the internal jobs market does not reward stability**

Turnover is a persistent issue in Whitehall and Brexit has made it worse. The hiring spree, combined with the challenges of external recruitment – timeframes and security vetting – means the internal jobs market has become even more competitive. Civil servants have greater incentives to move roles and departments, with more potential for promotion and the higher pay that comes with it. The problem is that important knowledge is lost, and teams take time to adjust to new personnel or find people to replace them.

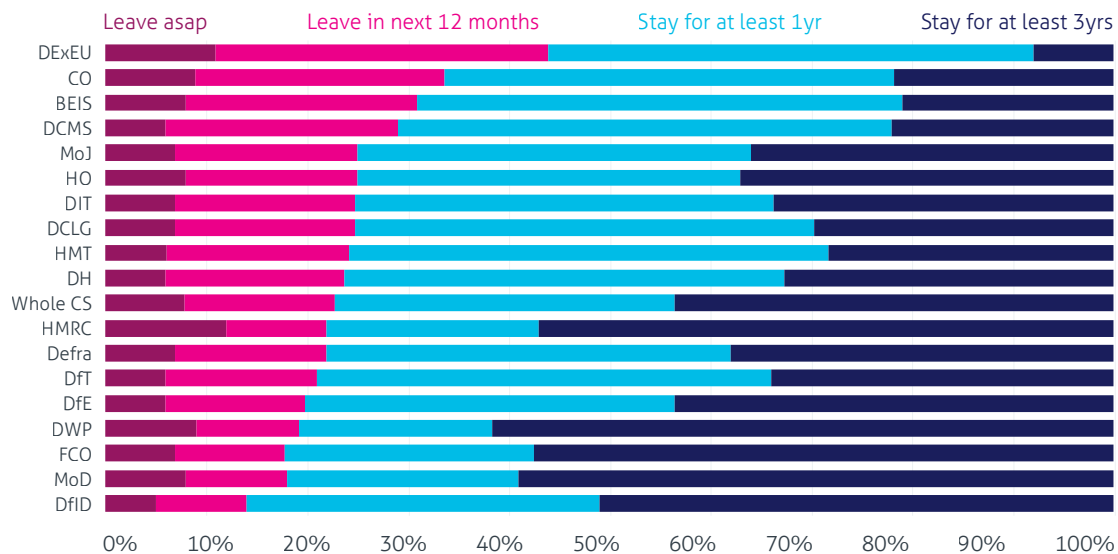
This is a long-term challenge for Whitehall, with no immediate fixes. Progression and reward comes from moving between departments, with many in Whitehall seeing 18 months to two years as the point to move on (see Figure 13). With a 21-month transition, there's potential for a significant amount of movement and disruption.

**“Civil servants... feel that the only way that they can advance their career is to move upwards and across, so there is a constant loss of stability within the Civil Service”<sup>40</sup>**

[Oliver Dowden, Parliamentary Under-Secretary, Cabinet Office, May 2018](#)

Departments are taking different approaches in an attempt to mitigate and manage churn, but they are far from perfect. Recruitment and retention allowances are being used selectively to offer key staff increased pay, but can cause a headache for managers if individuals are aware of the special treatment being received by others. If an individual gets a job on promotion from a new department, the current department sometimes offers to match it, but that disrupts the recruitment processes in the new department. Departments are also putting increasing focus on mitigating the impact of churn, holding skill shares and putting significant effort in to managing handovers.

**Figure 13: Indication of departmental turnover from Civil Service People Survey. Question: 'Which of the following statements most reflect your current thoughts about working for [your organisation]?'**



Source: Institute for Government analysis of Cabinet Office, Civil Service People Survey, 2017.

At the end of 2017, turnover at DExEU was running at 9% a quarter.<sup>41</sup> The civil service average was 9% *a year*.<sup>42</sup> In part that reflects a young department, with fast streamers who are always going to move around, and some of that churn is into departments to work on relevant areas of Brexit, so is beneficial within the system as a whole. But it is also likely to reflect the uncertainty of working in a department with an unknown shelf-life on a time-limited contract, as many new hires have. This uncertainty is in the process of being addressed, with hires being assured that a permanent civil service role is waiting for them at the end of the Brexit process.

Placing a freeze on interdepartmental transfers is one option available to minimise turnover. But that is unlikely to cover promotions, which are the reason for a large proportion of moves. The issue of turnover is something we will be returning to in a forthcoming report.

### **Uncertainty makes it difficult for departments to identify the skills they are going to need**

While departments have largely got the people and skills they've requested in the last financial year, getting the right resources for the coming year and beyond is likely to be more of a challenge.

Articulating exactly what is needed and when is difficult for departments juggling multiple plans and significant uncertainty. While generalists have been sufficient to make up a significant proportion of Brexit capacity to date, as focus shifts to implementation, there will be a greater demand on functional specialists such as project delivery, digital, legal, commercial and operations staff. Identifying the mix of skills required is a challenge, as detail is necessary – for example, whether they need data specialists, software designers or quality assurance and testers.

Civil Service HR has established an EU Exit Capability and Capacity programme, aimed at ensuring every department has the skills and resource they need. It is working closely with departments to identify what is necessary and trying to support them

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in filling gaps, such as centrally run external advertising, deploying new graduates and encouraging loans between departments – moving resource to priority Brexit areas. But there have been some issues with reprioritisation attempts to date – either departments are unwilling to let staff move or have been offering up poor performers.

**Departments need to know what role they will need to play in negotiations, so they can put the right resources in place**

As well as uncertainty around implementation needs, it's not yet clear to departments what kind of role they will be playing in negotiations come March next year.

While it is not an immediate issue, if it takes close to six months to hire staff externally and new teams are necessary to support talks, departments need clarity over the coming months in order to staff up.

That is particularly true if there is a requirement to run staff through DV clearance. If the process is taking nine months, the process must begin in June 2018 if it is to be concluded in time for March 2019.

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## 5. What needs to be done?

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Brexit presents some inescapable challenges: the sheer volume of work, high levels of uncertainty and the political handling issues that come with minority government. It is the hardest project the Government has ever had to deliver.

Tony Meggs, Chief Executive of the Government's Infrastructure and Projects Authority, is head of the project delivery profession in government. In a recent *Civil Service Quarterly* article, he wrote about the 'Valley of Death' – the gap between developing policy and putting it in to effect – and the 'six sins of project failure':<sup>43</sup>

1. Lack of clarity around project objectives
2. Lack of alignment among stakeholders
3. Unclear governance and accountability
4. Insufficient resources, whether people or money
5. Inexperienced project leadership
6. Overambitious schedule and cost.

Brexit fails most of these tests. Some are outside government control – even if ministers were crystal clear on their objectives for Brexit, there would still be uncertainty about what could be agreed with the EU27. But for others, there are steps the Government can take to avoid those 'sins' and address the challenges we identify, helping it navigate Brexit through the 'Valley of Death'.

### **The Government must set out the formal structures that will support detailed negotiations**

The UK Government hopes to begin detailed trade talks with the EU after March 2019. Unlike the current phase of negotiations, which is largely run through a small, centralised team that draws on very senior departmental officials, this will be a much bigger task involving multiple departments – possibly including public bodies and devolved administrations – with hundreds of civil servants assembled into working groups, thrashing out detailed legal texts.

Departments need time to make sure they have the right people in place. As we have shown, both recruitment and security vetting can take months to complete. If the UK wants to be ready to hit the ground running next year, it must quickly start putting the groundwork in place, setting out the expected level of involvement for departments, public bodies and devolved administrations. Without that clarity from the centre, departments cannot prepare.

Part of this will involve clarifying – and carefully managing – the relationship between the negotiations on the EU future relationship and the trade deals DIT plans to start negotiating. The two are interdependent: the EU relationship will be the starting point for other future trade relations. They will also rely on the same departmental expertise. There is a real risk that departments will face simultaneous demands for support on the two negotiations, overstressing limited capacity.

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Clarity is also needed on the role of the devolved administrations. At the moment they are kept in the dark like other external stakeholders and parts of Whitehall. They need to be told whether they can expect to be in the room in Brussels when talk turns to devolved matters, or engaged like others outside Whitehall.

### **Government also needs a formal process for engaging stakeholders in the future relationship negotiation**

The UK Government must put forward how it plans to consult key stakeholders. The negotiating teams must be able to quickly and reliably access expertise from across business and other groups. The UK cannot rely on Whitehall knowledge and relatively informal external conversations, often based on established relationships.

The US has 28 different private sector advisory committees, with a total of 700 advisers who provide confidential information based on proposed trade agreements or draft texts. We have already argued that the UK should set up a similar system of advisory councils to inform trade policy.<sup>44</sup> These could be used to manage the Brexit negotiations, with councils covering the different chapters of the agreement. Each council should involve business voices as well as non-governmental organisations and consumer groups.

These groups will need to access sensitive documents; high-quality engagement needs to be underpinned by relevant information. In the US, advisers have access to negotiating documents and policy papers, just like any employee of the Trade Representative. These advisers sign non-disclosure agreements, a measure the UK may want to consider depending on the level of access that is granted.

Putting this kind of system in place would signal a mind-set shift from government. It would facilitate a more productive dialogue with external stakeholders and break from the increasingly secretive approach to Brexit.

We are told this thinking is happening. For example, some of the existing groups used by government for Brexit engagement are supposed to be evolving into 'sectoral panels'. These new panels will be based around the kind of headings likely to feature in the 'future framework' – involving policy experts and businesses of different shapes and sizes.

But there is very little time to set something up. Previous Institute research suggests it can take bodies like these 18 to 24 months to develop the mutual understanding and trust necessary to effectively contribute to policy.<sup>45</sup> There is less than a year until detailed negotiations could begin, so work would need to start quickly to have something workable in place. But once established the groups could be used by DIT for shaping future UK trade policy.

### **There needs to be clearer accountability for Brexit readiness**

There is little doubt that the Prime Minister is ultimately accountable for the successful delivery of Brexit. But a prime minister is ultimately accountable for many things their government does and must delegate to their ministers and officials.

David Davis is clearly the lead secretary of state responsible for negotiating Brexit, even if ultimately this lands on the Prime Minister's desk. Olly Robbins, Head of the Europe Unit, heads up the negotiations from the civil service.

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But the hub and spoke model adopted for legislation and implementation means that the accountability for overall Brexit readiness is unclear – it lies with individual departments, but is only as strong as its weakest link. Clear accountability, with individuals empowered to cut through departmental boundaries to align work, is critical to managing some of the challenges identified in this paper.

The Prime Minister needs to appoint a kind of 'Senior Responsible Owner' (SRO) for Brexit preparedness at both ministerial and official level. These individuals would be responsible for aligning incompatible plans, reporting to the Prime Minister and Parliament and ensuring the different pieces of the jigsaw are all ready for Brexit.

The minister needs to be a member of the Cabinet, with enough political power to broker agreement out of (sometimes competing) departmental interests and ministerial preferences. David Lidington, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, is a prime candidate. His role in the Cabinet Office makes him an honest broker without policy interests, he already chairs DPLD and is responsible for the relationship with the devolved administrations. The buck will still stop with the Prime Minister, that is inescapable, but she needs greater Cabinet-level leadership for the huge co-ordination task of implementing Brexit. There needs to be someone who can bang heads together when necessary, bringing in the Prime Minister as a last resort.

A minister for Brexit readiness needs a civil service counterpart, accountable to the Prime Minister, Cabinet Secretary and Civil Service Board for preparations. Such an individual would similarly need to be seen as an honest broker, with the ability to offer support to departments delivering specific projects or programmes. John Manzoni, Chief Executive of the Civil Service and Cabinet Office Permanent Secretary, has said that he has "a responsibility to say 'we've got to be ready for this'", particularly from an implementation perspective.<sup>46</sup> With the functional support the Cabinet Office is offering to departments and the ability to unlock progress with additional resource, Manzoni should become the civil servant responsible for overarching Brexit readiness.

### **The Government needs to undertake a serious and strategic prioritisation across government**

For those accountable for Brexit readiness, a key role is ensuring departments have the resources they need. In part, that has been addressed by the Treasury's allocation of £1.5bn and the Capability and Capacity review led by Cabinet Office.

But 'bums on seats' do not necessarily result in the capacity required. New hires, who tend to be junior and mid-ranking civil servants, don't bring the experience and authority of the senior civil service. They also don't unlock extra hours in a permanent secretary's or minister's diary.

**"I do not believe it is possible to take 250 existing programmes of change and simply add Brexit on"**

*Jon Thompson, Chief Executive, HM Revenue and Customs, October 2017<sup>47</sup>*

Brexit requires departments to prioritise. Most of Whitehall is still trying to do Brexit on top of everything else. There have been some efforts to rationalise, including a major prioritisation exercise at HMRC and projects postponed at the Financial Conduct Authority.<sup>48</sup> But most departments have focused on cutting internal initiatives or 'pet projects' of junior ministers. There is yet to be any major, systematic prioritisation that factors in a department's whole workload.

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## “There is nothing we have stopped doing so far”

Patsy Wilkinson, former [Second Permanent Secretary, Home Office, November 2017](#)<sup>49</sup>

Defra, for example, is putting out new initiatives on plastics, running a major departmental transformation programme and is still expected to make savings of £130m to its resource budget this year. But it is also one of the departments most affected by Brexit. With 80% of its work affected by Brexit, it needs to support negotiations, repatriate regulatory functions, help with border preparations and design, legislate and implement new systems for agricultural support, fisheries management and environmental protection. Defra’s Single Departmental Plan for 2018/19 suggests that it is beginning to reprioritise in light of its Brexit burden. But it is relatively unique in this: most departments’ plans show little to no evidence of reprioritisation for Brexit, referring to it only in passing.<sup>50</sup>

Manzoni said before the EU referendum that Whitehall was already trying to do too much. The Public Accounts Committee said the same. With Brexit layered on, the need to prioritise is now unavoidable. Departments should be leading on this work, but those responsible for Brexit – in the centre of government – need to make sure they do it. Non-executive directors on departmental boards, and the lead non-executive director in the Cabinet Office can play a critical role in helping officials confront ministers with unpalatable truths about how much else has to give to make space for Brexit.

### **Ministers need to make the future of DExEU clear**

DExEU was always a department with a limited shelf life. We will formally leave the EU in March 2019, followed by a ‘standstill’ transition period. At some point there will be no need for a dedicated Brexit department. What is less clear is when the logical endpoint comes.

We argued against the creation of a Brexit department in June 2016. The positive of clear political leadership from a secretary of state was outweighed by the challenges of dual reporting lines, the perception of departmental interests not serving the Prime Minister and staff being put off by the limited shelf life. It is also just a hassle to set up – including new corporate functions with HR and finance teams.

But, having set the department up, that doesn’t mean it should be abolished prematurely. At its core, DExEU serves three main purposes – supporting negotiations, and co-ordinating both legislation and implementation. These three functions – and the capability within them – won’t disappear until at least the end of any transition. It would be disruptive and time consuming to disband the department in March 2019, just as each of these functions is entering potentially the most demanding period.

There is a risk that the decision to disband or not will not be taken on the merits – but on when or whether their current Secretary of State seeks to move on. It would be better to set out now the Government’s thinking on the criteria that will determine how long DExEU is needed – and to start preparing where the continuing functions would move.

It is vital that DExEU staff are given as much certainty as possible. New civil servants were hired on two-year contracts, some of them almost two years ago. Fixed-term contracts and a looming decision over the future of the department are likely to be behind some turnover. Important steps have been made in giving these hires more



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certainty; some of the early two-year contracts are being renewed and there are promises (not contractually underwritten, yet) of permanent roles elsewhere in the civil service at the end of the Brexit process. But more cast-iron guarantees will be needed.

There is a risk that, once negotiations stop in October and the buzz of negotiating rounds and joint press conferences ends, the department starts losing staff who are looking for a more permanent home in Whitehall. Some turnover is inevitable, but it should not be driven by contract uncertainty.

## 6. Will Whitehall be ready for Brexit?

### The UK Government is under pressure to leave EU structures as quickly as possible

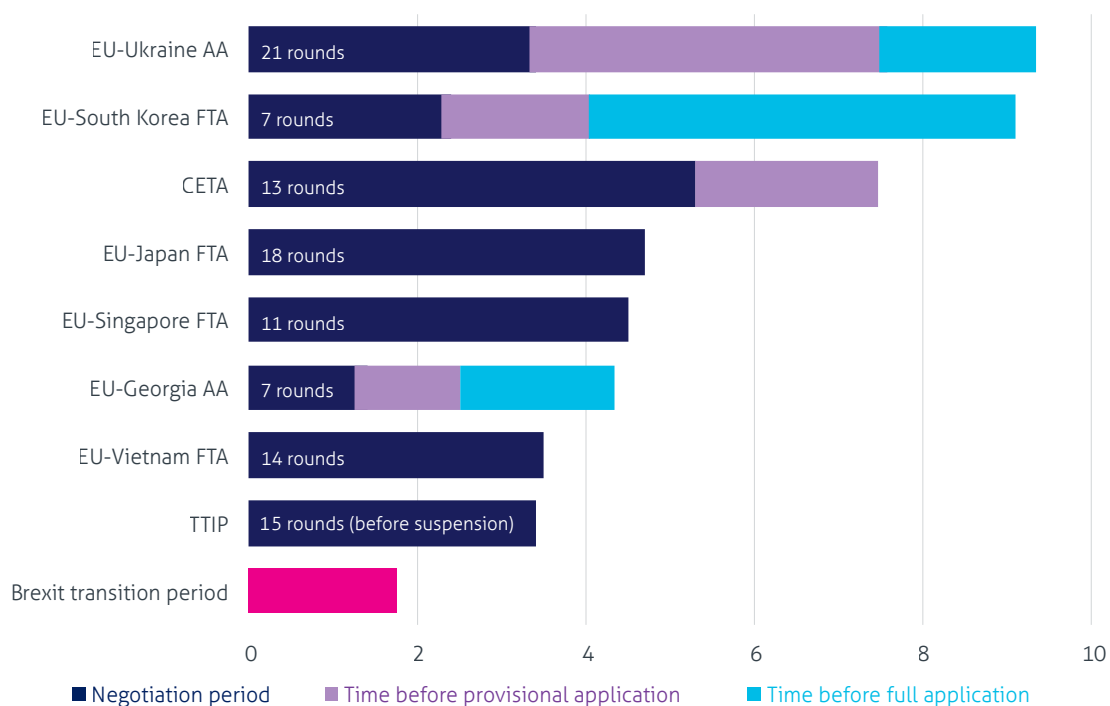
The Government is under pressure to get Brexit over and done with. Domestically, the need to deliver the 'will of the people' and a looming election no later than 2022 means the UK Government spoke of a transition that lasted 'around two years'. EU insistence on lining up the end of the transition with its budget cycle forced that down to 21 months. The formal Brexit process is set to end in December 2020, four and a half years after the referendum. Unless the Withdrawal Agreement is amended before it is finally agreed, the timeline has been fixed.

### Completing the negotiations in the transition period will be a huge challenge

The so-called implementation period will be as much about negotiation as it is implementation. And the challenge there is significant.

Past experience of the EU suggests that the more innovative the trade deal, the longer it takes to agree. The 'deep and special' partnership the UK is seeking, going beyond trade and into security, defence and foreign policy, is not a 'copy and paste' job.

**Figure 14: Time taken for EU to conclude recent FTAs, compared to length of transition period (years)**



Source: Institute for Government analysis of European Commission, Directorate-General Trade data.

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At just 21 months, the transition is significantly shorter than the time spent by the EU negotiating its recent deals (see Figure 14). The two that are often cited as potential precedents for the UK – the Ukraine deal and CETA – took almost five times as long as is available to the UK for detailed talks.

Negotiations are also unlikely to be able to take place over the full 21 months. The EU will need to seek a detailed mandate from member states which, if it is not done before March 2019, could take months out of the timeline. The elections and establishment of a new European Commission, following the replacement of Jean-Claude Juncker, will take some weeks or months. Finally, some form of ratification in the European Parliament will need to take place. The UK could find it has less than a year of negotiating time.

Ministers often point to the UK's unique starting point. They are right – complete convergence of rules is an exceptional place to begin talks and it may have advantages for negotiations. But the starting position is also unique in other, much less helpful ways. Negotiators are working to very short, very strict timelines and failure to reach a deal – unlike in other negotiations – does not result in continuity of the status quo and a missed opportunity. It results in significant disruption.

### **Prioritising speed has consequences**

In parallel to these negotiations, the UK Government will need to put in place the systems and processes necessary for life outside the EU.

But exactly what systems and processes are necessary will be far from clear. There will still be multiple scenarios, with Whitehall needing to be ready in case talks collapse and the outcome is no deal. There will also be limited information on what any 'negotiated outcome' could look like, given the detailed talks will be taking place simultaneously. When it comes to designing and implementing new border systems or regulators, the detail matters. So does time.

For both government and the private sector, the 21-month transition is necessary, but it is not sufficient for implementation of any new deal. The potential scale of change and the levels of uncertainty mean Brexit cannot be fully implemented by December 2020. But if the priority is speed and the timelines are fixed, Whitehall will need to have something ready by the end of transition.

### **Ministers must accept that not everything will be ready by December 2020**

There's a recognition in Whitehall that should the UK leave the EU in March 2019 without a deal, contingency plans can only aspire to deliver the bare bones. Referred to in Whitehall as the 'minimum viable outcome', the focus for 'no deal' preparations is ensuring the UK complies with international law at the very least. There is insufficient time to do much more. Ministers accept that 'no deal' plans are a sticking plaster, trying to hold things together so more comprehensive work can be done over a longer time period.

It is likely to be a similar story for any negotiated outcome. What is delivered by December 2020 will just be a sub-set of a longer-term plan. Work will continue, possibly for years, after Brexit. Business as usual will become Brexit as usual.

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**“There is no question in my mind that when we come to implementation we will need to prioritise”**

John Manzoni, Chief Executive of the Civil Service, Cabinet Office, December 2017<sup>51</sup>

In areas where the UK has pooled expertise, capacity and capability with the EU, for example regulation and regulatory oversight, there is not enough time for the UK to build up domestic functions to current EU standards. In many cases, the UK is part of a world-leading set-up through EU membership, which cannot be replicated in the UK within a few years.

Similarly, new border operations, if they are needed for December 2020, will not be as sophisticated as the UK would want for the long term. The Government has already said that changes could take up to five years.<sup>52</sup> If the UK needs new systems ready for two and a half years' time, it needs to accept they will need to be a temporary workaround that is below the standard they aspire to in the longer term.

### **Government needs to give business sufficient time to adapt**

The UK will need to manage with 'sticking plasters' in many areas until it can build up capability. The length of time and the amount of work to do will depend on the shape of the deal, but it could be years.

But it is not just government that is affected. Business, citizens and other external stakeholders will need to be ready for the new systems, processes and institutions. For relatively straightforward changes to customs systems in the past, traders were given 18 months to adapt, from the point at which government had concluded its implementation work. Automatic Pension Enrolment was phased in in just over five years, with some businesses given six years to prepare.<sup>53</sup> Making Tax Digital is being phased in over several years; announced in 2015 and not due to finish roll-out until 2020, with delays being caused by difficulties in getting small businesses to adapt.<sup>54</sup>

UK business, from big firms to micro-businesses, could need to adapt to new regulations, new barriers, paperwork and requirements to trade with EU as well as changes to migration rules. All of which they may need to be ready for in two and a half years' time, but without clarity until much later in the process on what they need to do.

Getting those groups ready will require a huge, co-ordinated communications plan from government. It will require difficult conversations about what is possible for business within the time period and the financial impact on businesses.

### **Brexit will not be complete until years after the planned transition ends**

The Mansion House vision of Brexit, even if it can be agreed, will not be fully implemented by December 2020. The changes it is proposing take years.

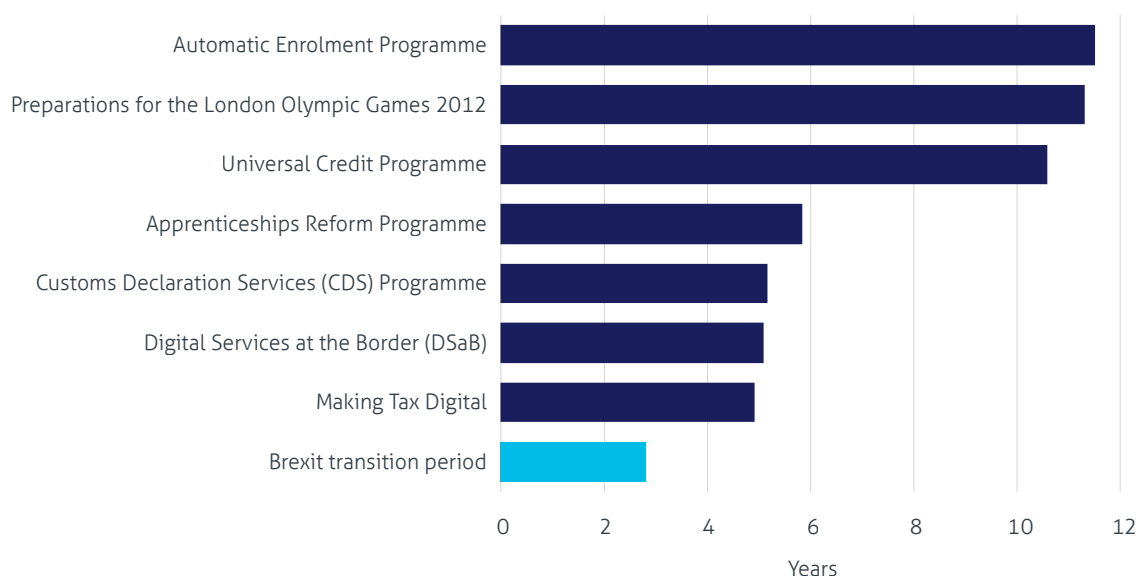
For the last major change to the border, the timeframe was seven years from design through to implementation.<sup>55</sup> It was far less ambitious than either of the two customs proposals put forward by the UK Government's *Future Partnership* paper. Even if the UK plan were to be accepted wholesale by the EU next week, there would be just two and half years to deliver it. But there is yet to be agreement on what the UK's preferred option is.

It's also unlikely that a new immigration regime will be in place by the mid-2021 timeline the UK is currently working to. The last major change was rolled out four years

after it was designed.<sup>56</sup> The change is likely to be significantly greater than those made previously and the UK is yet to publish a white paper or agree fundamental principles internally.

New regulators and public bodies are also likely to be necessary. There is no perfect comparison, given the range of changes that could be necessary after Brexit, but precedent suggests the current timeframe is a big challenge. The Office for Students was first put forward in a green paper in 2015, before a white paper and legislation followed in 2016.<sup>57</sup> It did not come in to being until 2018, after time spent recruiting senior management. The process took almost three years and largely involved moving around existing functions. The Financial Conduct Authority was established in April 2013, after being announced by George Osborne in 2010 and following consultation and legislation (originally called the Consumer Protection and Markets Authority):<sup>58</sup> again, a three-year timetable that involved a re-organisation rather than creating new functions.

**Figure 15: Time spent on major government projects, compared to length of transition period (years)**



Source: Institute for Government analysis of Government Major Projects Portfolio data.

By normal standards, 21 months is nowhere near sufficient for a programme of change of this size (see Figure 15). When you factor in the need to run multiple scenarios and the uncertainty over the end-state, the heroic becomes the impossible. Implementation will need to continue for several years after the transition period, based on the UK's current preferred outcome.

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## **Government faces a choice: accept a messy Brexit in 2020 or buy more time**

If the deadline is fixed, there will need to be workarounds and temporary solutions. Something will be ready, but it will be a work in progress and some disruption is inevitable. Ministers need to accept this. If ministers think a work-in-progress solution is unacceptable, the Government's only alternative is to seek extra time (see Appendix, Box 1).

There is no indication that the UK would want to significantly extend the period in which it is in some form of transition. Even if the Prime Minister decided it was desirable, it would take potentially difficult political handling in the UK. And although the EU indicated at the start of 2018 that the length of transition may be flexible, taking into account progress made in the negotiations, it shows no indication of wanting the process to carry on much beyond the end of 2020.

Ultimately the Government must make a choice: continue to prioritise speed – accepting delivery will be incomplete and disruption is likely – or ask the EU for more time.

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# Appendix

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## **Box 1: Extending the period for transition**

### **1. The Withdrawal Bill could be amended**

The date specified for the end of transition in the draft Withdrawal Agreement could be moved back. Alternatively, some mechanism could be written into the agreement to allow for the extension of transition if it was deemed necessary later in the process.

There are suggestions that the European Commission is considering something between the two: an optional six-month extension, to be proposed towards the end of the withdrawal negotiations. This would offer some leeway towards the end of 2020 in the event that time runs out to finalise a deal. But it is unlikely to make a substantial difference to the implementation task faced by Whitehall.

### **2. The UK and EU could enter a temporary agreement allowing for another transition after the planned period ends**

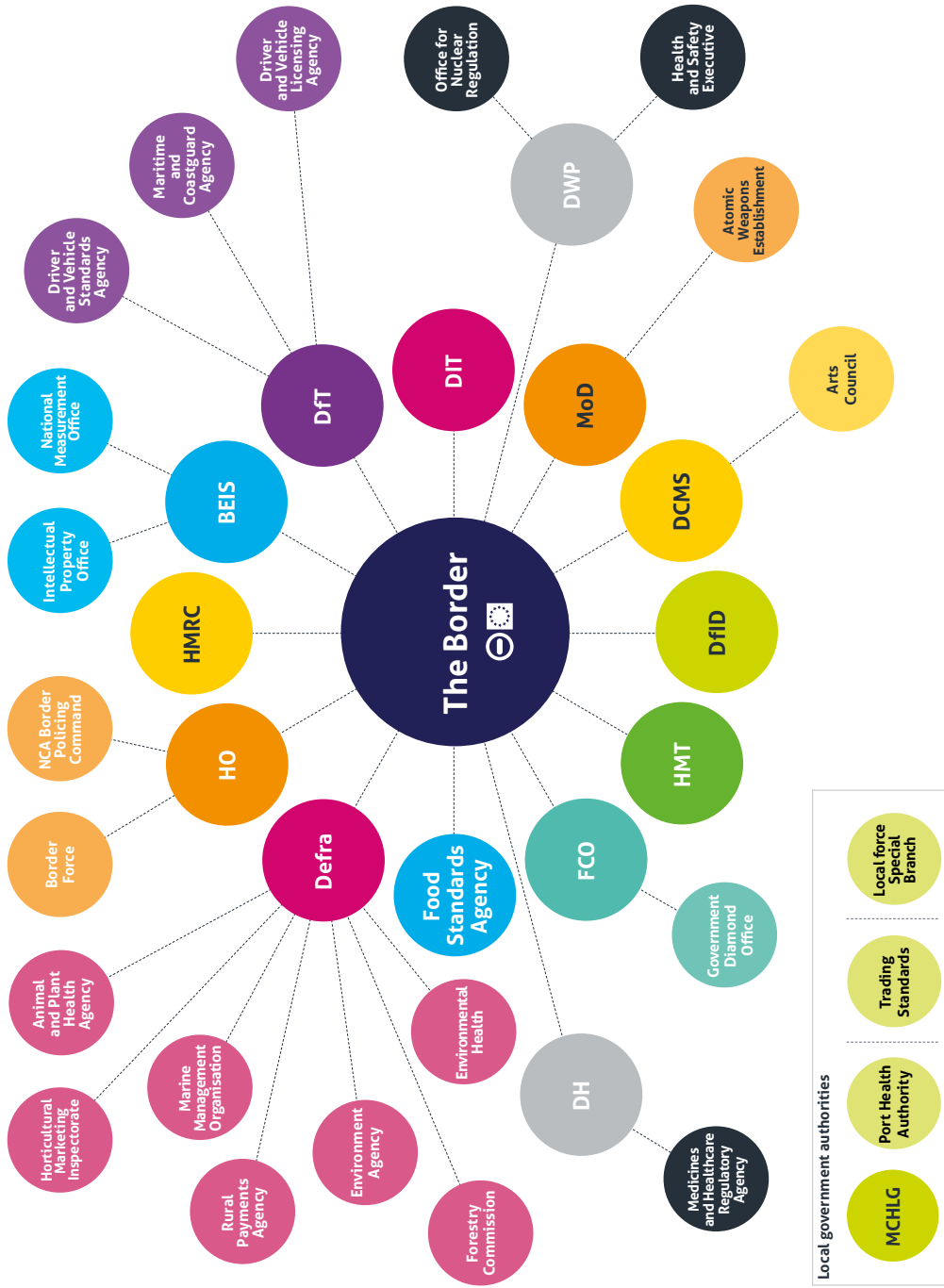
If both sides recognised that time was tight either to finalise a deal, or complete their preparations for the future relationship, an alternative, temporary arrangement could be devised.

This agreement might be narrower in scope than the initial transition. It could, for instance, keep the UK in a customs union until it had fully implemented new arrangements, but allow for divergence in other areas. One example is the proposal for the Irish border put forward by the UK Government.

### **3. Provisions for implementation could be built into the future partnership agreement**

If a future partnership deal was reached by the end of 2020, but the UK and EU both acknowledged the need for more time for implementation, provisions allowing for this could be built into the agreement. The EU's existing free trade agreements – CETA, for instance – typically include interim arrangements to cover the ratification period anyway.

**Figure 16: Government departments and public bodies with operational or policy roles relating to the border**



Source: Institute for Government analysis of Harra J, Letter to the Rt Hon Andrew Tyrie MP, 21 February 2017, [www.parliament.uk/documents/commons-committees/public-accounts/Correspondence/2017-19/HMRC-Brexit-UK-Border-270318.pdf](http://www.parliament.uk/documents/commons-committees/public-accounts/Correspondence/2017-19/HMRC-Brexit-UK-Border-270318.pdf).



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# List of abbreviations

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AA	Association agreement
BEIS	Department for Business, Energy and Industrial Strategy
BIS	Department for Business, Innovation and Skills
BPG	Border Planning Group
CETA	Comprehensive Economic and Trade Agreement
CMA	Competitions and Markets Authority
CO	Cabinet Office
CS	Civil Service
DCLG	Department for Communities and Local Government
DCMS	Department for Digital, Culture, Media and Sport
Defra	Department for Environment, Food and Rural Affairs
DExEU	Department for Exiting the EU
DfE	Department for Education
DfID	Department for International Development
DfT	Department for Transport
DH	Department of Health
DIT	Department for International Trade
DWP	Department for Work and Pensions
EUXT	EU Exit and Trade
FCO	Foreign and Commonwealth Office
FSA	Food Standards Agency
FTA	Free Trade Agreement
HMRC	Her Majesty's Revenue and Customs
HMT	Her Majesty's Treasury
HO	Home Office
MHCLG	Ministry of Housing, Communities and Local Government
MoD	Ministry of Defence
MoJ	Ministry of Justice
NCA	National Crime Agency
NIO	Northern Ireland Office
PM	Prime Minister
TTIP	Transatlantic Trade and Investment Partnership
WAIB	Withdrawal Agreement and Implementation Bill

## About the authors

**Joe Owen** is an Associate Director at the Institute for Government. He works on our Brexit programme and leads the Institute's research into Whitehall's preparation for Exiting the EU. Joe has also worked on immigration, customs and trade.

**Lewis Lloyd** is a Researcher at the Institute for Government working on the Brexit team. He graduated from the University of Cambridge with a BA in Politics, Psychology and Sociology in 2015, and has an MSc in Intelligent Systems from the University of Sussex. Lewis has previously worked for a polar explorer, a cyber-security start-up, and as a paralegal.

**Jill Rutter** is a Programme Director at the Institute for Government. She directs the Institute's work on better policy making and arm's-length government, and Brexit. Before joining the Institute, Jill was Director of Strategy and Sustainable Development at Defra. Her previous civil service jobs included periods as HM Treasury Communications Director, in private office and as the policy lead on tax, development and local government finance, as well as a period in the Number 10 Policy Unit.

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Inevitably some will not recognise the account we offer, but we hope this report provides a helpful insight in to how Whitehall is navigating such an unprecedented task. Any errors or omissions in the paper are our responsibility alone.

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 +44 (0) 20 7747 0400  +44 (0) 20 7766 0700

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**Institute for Government, 2 Carlton Gardens  
London SW1Y 5AA, United Kingdom**

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