

Planning Brexit: Silence is not a strategy

Briefing paper



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Our Brexit work programme

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Summary

Whitehall has begun to build the machinery of Brexit but the Government doesn't yet know what to do with it

In this briefing paper we assess the progress the Government has made towards planning for Brexit. We identify the likely costs of the Government's approach and what capability the Civil Service needs to support it.

The Government will need an extra 500 new staff, costing up to £65 million a year, just to plan its approach to Brexit

Two new departments have been created to deliver Brexit – the Department for Exiting the EU (DExEU) and the Department for International Trade (DIT). Respectively, their roles are to coordinate policy between other departments while negotiating the UK's exit from, and new relationship with, the EU, and to develop the UK's new trade policy.

The plan is for them to be lean in staff numbers, and to draw on the rest of the Civil Service. Both have absorbed some staff from other policy teams and agencies, but are also in the process of recruiting new staff from across and beyond the Civil Service. To reach full strength, David Davis, Secretary of State for Exiting the European Union, has said that DExEU will need to take on at least an additional 320 staff (making a total of around 400). If DIT models itself on the trade department of a country like the United States (US), it will need to recruit an extra 200 staff. Looking at the costs of departments with a similar grade structure, we estimate that these additional staff will add up to £40 million to DExEU's administration budget, and as much as £25 million to that of DIT, for every year that the departments operate.

These are the additional staff that will be required simply to plan the Government's approach to Brexit – more will be required to undertake negotiations and deal with the consequences of leaving.

Turf wars between ministers have wasted valuable time and energy

In July we argued that Brexit would be best managed by a beefed-up unit in the Cabinet Office, to avoid the distraction and costs of setting up new departments, and to make it clear that the Prime Minister was in charge. Theresa May chose a different path, creating two new departments to deliver Brexit alongside the Foreign Office. This triple departmental structure risks creating fragmentation and incoherence, and a lack of clarity about the roles and responsibilities of the new departments has caused distractions and delayed work on Brexit.

The Prime Minister now needs to move swiftly to stamp out potential turf wars between her Brexit ministers and make clear who does what.

We need to know more about how the Government plans to reach a negotiating position

The Prime Minister's silence about how she intends to reach an initial negotiating position is proving problematic. She clearly stated that she will not be providing a "running commentary" on Brexit negotiations; undoubtedly there will be aspects of the content of negotiations which need to remain confidential until they are agreed. But in the short term, Theresa May needs – at the very least – to clarify the process and timescales through which she intends her government to agree the UK's initial negotiating position. This will need to involve both effective external engagement – not traditionally a strength of the UK Civil Service – and strong internal coordination, to ensure that her government develops, and sticks to, agreed positions.

In the absence of a clear plan, 'Kremlinology' and off-the-cuff remarks are filling the void. The current position of the outside world trying to divine the Government's position from the personal musings of individual ministers is creating unhelpful uncertainty – frustrating those looking for an early exit, perplexing those with whom we have to negotiate, and unsettling those looking to do business with the UK.

Ministers need to be clear on how they intend to engage beyond Whitehall

Brexit will affect every sector of the economy and every part of the country. Formulating a UK position depends on understanding those impacts. The Government needs to undertake a massive engagement exercise with other levels of government and affected sectors of the economy – their views need to feed into government deliberations. That process needs to be set out clearly so that people know how and when they can expect to be consulted. The current ad hoc approach to engagement risks confusion, duplication and some constituencies falling through the gaps.

Whitehall must offer ministers its best shared analysis of the options they have – to provide a robust basis for the political choices they will need to make

The three Brexit ministers entered office with strong political convictions about what Brexit should look like. The Prime Minister will have her own views. Every member of the Cabinet will be weighing up the Brexit they would like to see against the Brexit they think can be agreed – in the Cabinet, in Parliament, in the country, and with the EU.

The role of the Civil Service is to provide ministers with the evidence and analysis they need to make well-informed choices on the public's behalf. The positions the Government takes need to be based on the best shared analysis across Whitehall – not the lowest common denominator approach that all too often emerges from the Cabinet Committee process. DExEU needs to take charge of that work – as they have begun to do.

Introduction

In July we argued that Whitehall would need to deliver three phases of Brexit:¹ preparing for negotiations; undertaking negotiations; and implementing the deal. We said that the initial coordination work for Brexit would be best led by a beefed-up Cabinet Office – fulfilling its traditional coordination role. This would have avoided the distraction of setting up new departments and made clear that the Prime Minister was in charge.

In this paper we assess the Government's progress towards establishing the model for which the Prime Minister opted: tasking two new ministries, DExEU and DIT, to deliver Brexit alongside the Foreign Office. We identify the likely ongoing costs of the Government's approach and what capability the Civil Service needs to support the Government to reach its initial negotiating position.

What progress has been made?

Key structures and personnel are now starting to be put in place...

In the months since Theresa May became Prime Minister, the shape of the organisational landscape she intends to use to deliver Brexit has gradually become clear. Broadly speaking, responsibilities are divided as follows:

- DExEU,² headed by David Davis, leads on coordinating Whitehall to: prepare for the UK's exit from the European Union; establish the UK's future relationship with the EU; and manage the UK's input into the normal EU policy negotiations (to which the UK remains party for as long as it remains an EU member).
- DIT,³ headed by Liam Fox, has absorbed much of Whitehall's understanding of trade negotiations and World Trade Organization (WTO) matters. It has taken on responsibility for: formulating the UK's new trade and investment policy; trade promotion; and negotiating the UK's new multilateral and bilateral trading arrangements – which can make progress once the UK has left the EU.
- The Foreign and Commonwealth Office (FCO), headed by Boris Johnson, remains responsible for bilateral relations with individual member states – which could prove crucial during the negotiations, international relations generally and for external aspects of the UK's relationship with the EU.

...including dual responsibilities and reporting lines which harbour potential for confusion

In all this, it is apparent that the final decisions on Brexit will be taken by the Prime Minister – within the bounds of what is possible to agree. Consequently, the Permanent Secretary of DExEU, Oliver Robbins, is also the Prime Minister's 'Sherpa' on EU issues – her personal adviser and representative in negotiations with EU counterparts. Meanwhile, the most senior UK official in Brussels, the head of the UK Permanent Representation (UKRep), Sir Ivan Rogers, now has a dual reporting line to both David Davis and Boris Johnson. While they make sense, these dual responsibilities and parallel reporting lines will need to be managed carefully to avoid confusion and conflict.

The new Brexit departments are still some way from reaching full capacity...

When it comes to resourcing Brexit, it is not absolute numbers that will matter – it is having the right people in the right place, and tasked appropriately. DExEU is aiming to be a policy-coordination department, working across Whitehall rather than bringing wider expertise under its own roof. David Davis has said that DexEU will end up with about 400 people (not including 130 at UKRep in Brussels) – it has currently reached about half that level, having inherited about 80 in total from the European and Global Issues Secretariat in the Cabinet Office and the FCO, and through some initial appointments. A headcount of 400 would still leave it as one of the smallest Whitehall departments. For a coordinating department, there are real diseconomies of scale. Too big a department would mean that resources are wasted either on internal coordination or on duplicating work that could be done by other departments.

DIT already has staff and accompanying administration budgets from its takeover of UK Export Finance (UKEF; 230 people) and UK Trade and Investment (UKTI; 530 in the former Department for Business, Innovation and Skills [BIS], 180 in the FCO and 1,200 FCO locally engaged in 2014/15), and from the export control function within BIS (50 staff who now sit in DIT's trade policy group). All these people are continuing to perform the roles they were undertaking before Brexit. Unless they are re-tasked, delivering Brexit will require additional staff. Liam Fox has said that he does not want his department to become a "standing army of bureaucrats that would be expensive to the taxpayer". But it is clear he will need to add some numbers to his existing staff to add capacity on trade negotiation, even if it proves possible to realise his vision of mobilising external capacity around specific deals. So far, an external recruitment drive has been launched to fill 25 trade analyst and policy posts.⁴

...meanwhile, existing departments have begun to respond to Brexit

The extent of the impact on any given department depends on how far its policies are affected by EU membership. The departments feeling the greatest impact include the Department for Environment, Food and Rural Affairs (DEFRA), the Department for Business, Energy and Industrial Strategy (BEIS) and the Home Office, with significant implications also being worked through in departments like Transport. The Treasury will have a big role to play – both because of the possible major impact of EU exit on financial

services, and because it will need to deal with the spending consequences of EU exit. If the UK leaves the Customs Union, HM Revenue and Customs (HMRC) will need to expand customs facilities and systems, and employ new customs officers. Other domestic departments like Defence or Communities and Local Government will experience relatively little impact.

What will this cost?

The creation of two new departments will increase headcount and administrative costs...

By comparing the gross administration costs at a number of departments that have grade structures likely to be similar to DExEU, we have been able to estimate the possible administration costs at the new department once it is at full capacity.⁵ DExEU will need to hire around 320 additional staff to reach the total of 400 suggested by David Davis. Comparison with other departments suggests that these extra 320 staff are likely to add between £28 million and £40 million to DExEU's annual administration budget.

Looking at international examples of how civil services are organised to support trade negotiations, we have estimated how big DIT might need to become.⁶ If DIT were aiming for a model analogous to that of the US' Office of the US Trade Representative (USTR), it would need to add around 200 new staff to its trade policy team. In 2013, USTR was operating on a budget of just over US\$50 million and employing around 250 staff, including in three overseas offices – Geneva, Beijing and Brussels.⁷ Comparing with other similar UK departments again, the additional administration costs involved would be £17 million to £25 million a year.

If either DExEU or DIT is compelled to offer higher salaries than departments with comparable grade structures – for instance to attract global talent – then these costs will increase. Similarly, if the new departments end up using more consultancy or legal services than the departments with which we have compared them, costs would again be higher. As a point of comparison, the last time government had to make a great deal of use of consultants at short notice to cope when it had very limited capacity was during the 2008 financial crisis. During that period it ran up a £100 million consultancy bill to develop the Asset Protection Scheme.⁸

The net cost to the Civil Service will of course depend on the extent to which the people moving into the new posts in DExEU and DIT are replaced by the departments they leave, and whether offsetting cuts are made where people are hired externally.

...while other parts of Whitehall will also incur additional costs

Sir Simon Fraser, former permanent secretary of the Foreign Office, argued in June that a UK going it alone will need to invest much more heavily in bilateral diplomacy.⁹ In his view, the capacity of existing embassies will need to be enhanced and “a very considerable uplift” will be required in the FCO’s budget to facilitate this.

UKRep will probably scale back from its current headcount (which at the moment is augmented with staff who had been recruited to deliver the UK’s 2017 EU presidency, now cancelled following the Referendum), but whatever the terms of the UK’s departure, the relationship with the EU will remain key. Other European countries who are not members of the EU – such as Norway¹⁰ – nevertheless maintain a substantial diplomatic presence in Brussels, not least because, without a seat at the table, they have to invest more in lobbying to try to influence EU decision-making.

Inevitably the Brexit process will create a significant additional call on government lawyers and parliamentary counsel, who will be required to draft new legislation, as ministers and officials work out how to give effect to Brexit in UK law. There has already been some media coverage of the recharge costs incurred by DExEU in their use of advice from the Government Legal Service.¹¹

As yet, the Civil Service does not appear to have a clear idea of the legislative implications of Brexit – in part because these will depend on the nature of the final Brexit deals and in part because the questions involved are complex: what new legislation will be required? What should be repealed or amended? What consequential amendments will be required? Finally, how should all this work be prioritised and sequenced? Inevitably the demands of Brexit will crowd out the Government’s capacity to bring forward as much other domestic legislation as might otherwise have been expected.

There may be additional burdens on the Civil Service if the terms of the new Brexit deals require significant new UK policies or administration systems to be set up, for instance in agriculture or customs.¹²

What capability does Whitehall need to support the Brexit process?

Whitehall must offer ministers its best shared analysis of the options they have – to provide a robust basis for the political choices they will need to make

Every member of the Cabinet will be weighing up the Brexit they would like to see against the Brexit they think can be agreed – in the Cabinet, in Parliament, in the country, and ultimately with the EU. Political disagreements are inevitable.

But Theresa May can minimise the scope of these disagreements by establishing a common evidence base for Brexit. While there will be debate about who should be the winners and losers from Brexit, the scale of these wins and losses should be a matter of common understanding across Whitehall. This will require DExEU to pool analysis from across Whitehall, without reverting to the 'lowest common denominator' approach that too often characterises the Cabinet Committee process (whereby what emerges are the simplest, most uncontroversial things that everyone can agree on).

The Civil Service must ensure it has the right skills to support Brexit

Capability depends on skills, knowledge and resources. Many of the tasks involved in the initial preparations for the UK's exit from the EU require classic Civil Service skills – analysis, coordination and hammering out positions within Whitehall. A key issue right now is to ensure that these core skills are available to deliver Brexit work, alongside the Government's other priorities.¹³ Other more specialist skills will also be required, some of which may need to be brought in from the outside.

Prioritisation and coordination will be vital given the scale of the task

The difference between Brexit and other tasks faced by the Civil Service is the scale of the coordination required – David Davis has described Brexit as likely to be the "most complicated negotiation of modern times".¹⁴ For the Government, there are multiple counterparts to negotiate with and multiple interests to reconcile, which link to important domestic policies and interests. This is not just an issue for negotiations with the European institutions once Article 50 is triggered. In the preparation phase, there will be huge complexities in reconciling the positions of the devolved and UK governments.¹⁵ The Scottish Government and Northern Ireland Assembly, whose people voted Remain, have ambitions to maintain single market access and, for Northern Ireland, an open border with the Republic.

Whitehall has lots of experience of the EU and EU negotiations...

DExEU's staff include the 40 staff of the former Cabinet Office European and Global Issues Secretariat (EGIS), which has extensive experience of coordinating the UK's lines in European meetings, and 30–40 officials who were previously working in the FCO's European Internal directorate. EU negotiation is the bread and butter of the 130 staff of UKRep, who now report into DExEU for Brexit purposes. There has been a conscious decision not to denude other departments of the EU expertise which will be needed to coordinate their input into the preparations. Across Whitehall there are a lot of people who have worked in the EU or on EU issues at some point in their careers, but are currently in jobs that do not utilise that knowledge. A review is underway to map this capacity and ensure that it is properly utilised in the Brexit process.

...but no recent experience of negotiating as a third party with the EU or of trade negotiations...

Obviously no one, whether in the UK or the EU, has experience of a major country negotiating an exit from the EU – for the simple reason that none has tried. On the other hand, the most analogous process to EU exit is probably joining the EU, and the EU has plenty of recent knowledge of negotiating accession deals with other countries. Croatia was the most recent country to join and Montenegro, Serbia and Turkey are all currently in the course of membership talks.

As the UK has relied on the EU for trade negotiations since it joined the EU in 1973, there has been no requirement for the UK Civil Service to retain trade negotiation skills and knowledge. The few UK civil servants who have worked on trade policy and export promotion have, until now, operated within the trade framework negotiated by the EU.

There is an urgent need for the UK to acquire knowledge and draw on the experience of people who have negotiated with the EU and within the WTO, as well as those who have knowledge of how to conclude free trade agreements.

...though this expertise could be acquired from elsewhere

The expertise the UK needs can probably best be acquired by attracting people from overseas with relevant experience. Numbers will be less important here than having the right people who can impart and apply their knowledge effectively. DIT has just launched a 'global search'¹⁶ for a new permanent secretary – opening up the possibility of recruiting someone who has played a similar role in another government. Whoever is appointed, their first task should be to work out what the UK needs to: negotiate the new terms of UK membership of the WTO and any future trade deal with the EU; and work out which bilateral deals to prioritise.

One specific question will be about the optimum balance between negotiation skills (likely to sit in DIT) and detailed sectoral knowledge (likely to remain in departments). The actions identified in the Civil Service Workforce Strategy¹⁷ about recruiting, inducting and retaining the best external talent will be important to ensure the skills and capability required to deliver Brexit can be secured and preserved.

Whitehall will also need to draw on detailed policy knowledge...

Crucial to support the negotiations will be a deep understanding of the likely future impact and opportunities of Brexit on different economic sectors, and the policies that will be required to exploit or mitigate these. This will be important both to enable ministers to formulate their initial negotiating position and to help them prioritise trade-offs emerging as negotiations progress. There is some existing sectoral knowledge in relevant 'sponsor' departments, for example in BEIS, DEFRA, the Department for Education (for higher education), the Department for Transport and the Treasury.

Detailed policy knowledge will also be needed to develop the UK's post-Brexit policy regime. This may encompass new UK (or more accurately, English, Welsh, Scottish and Northern Irish) agriculture, fisheries

and environmental policies, health and safety regulations, and a new immigration regime. UK government departments have been responsible for negotiating and implementing EU policies in these areas, but much of the detailed expertise that will be required lies not in the departments themselves, but in their arm's length bodies. In the past, some ministers have been reluctant to accept policy advice from organisations they do not see as directly working for them. Where that is an issue, departments may need to reabsorb the expertise in those bodies into core departments.

As the UK moves into the 'implementation phase' of Brexit, there will be areas where the UK has previously relied on the technical expertise of EU institutions and regulators, where it has not made sense to develop or maintain expertise at a UK level. Whitehall will need to undertake a comprehensive audit of all the areas where the UK is currently reliant on EU institutions, in order to assess what additional expertise may be required after Brexit (depending on the terms of the deal).

...and be talking to other people to gather information

Previous Institute research has found that, the past, traditional Whitehall ways of working have not invested in mechanisms for joint decision-making with devolved governments,¹⁸ in large part because there has not been a pressing need for this. In the context of Brexit, dialogue with the devolved governments will be vital, to understand how different options are likely to play out in different places. Early indications have been positive – Theresa May has said she wants all parts of the UK to be 'fully engaged' in Brexit talks. The Scottish and Welsh Governments and the Northern Ireland Executive will be effective advocates for their nations, but the UK Government will need to understand the differential impacts on all the English regions too.

In the past, mechanisms for government to engage in in-depth external engagement with outside interests have been weak. But with Brexit there are many other external actors who want a say – from local authorities in England, to businesses, universities and other interests who see potential impacts on their sectors. How this task is approached in the context of Brexit will depend partly on the appetite of ministers to invest time and effort in the engagement that the Prime Minister has indicated she wants. Speaking to the Lords EU Committee, David Davis indicated that he wanted the consultation process to be as 'scientific' as possible, saying that he would be asking industry representatives to make an empirical assessment of the risks and opportunities of Brexit, and what policies would best tip the balance in their favour.¹⁹

So far though, the Government's engagement processes over Brexit seem to have been somewhat haphazard. Reports²⁰ that retail chief executives declined to attend a meeting convened by DExEU to discuss the pros and cons of exiting the EU because it was convened at short notice, coincided with the publication of their annual results and looked 'like a tick box exercise' suggest that stakeholder management will need to become rather more sophisticated. Other reports have suggested that departments are failing to coordinate their conversations with the private sector, with one business representative reporting having met with three separate departments since July.²¹

It may be possible to tap into existing established relationships between sectors and departments, such as the 11 'sector councils' run by BEIS. Previous Institute research²² has found that these are most successful in sustaining an effective dialogue between government and industry when they: achieve

broad representation across an industry; are jointly owned by industry and government; engage senior stakeholders; and allow time to let trusting relationships develop. Unfortunately time may prove to be a scarce commodity here.

Some departments have set up new mechanisms specifically in response to Brexit. But many interest groups want to engage directly with senior ministers rather than have their views conveyed through an intermediary. Some sectors have taken the initiative to organise mechanisms for engagement themselves – an example being the Financial Services EU Taskforce chaired by Baroness Shriti Vadera²³ to coordinate contact between the financial services industry and ministers. But there remains a risk that certain sectors – neither prioritised by the Government nor in a position to organise their own effective engagement mechanisms – may fall through the gaps.

To bring all this together, effective coordination within government will be key

To bring all these efforts together, Whitehall will need effective internal mechanisms, and senior ministers committed to using them. Ironically, one of the aspects of the UK Civil Service which other EU countries used to envy was our effective coordination arrangements which ensured that the Government properly prioritised between competing departmental interests and spoke with a single voice in European Council meetings.

These arrangements need to be built upon to enable government to agree the UK's negotiating stance and then oversee the progress of negotiations. Theresa May has already established a Brexit Cabinet Committee which – it has been announced – she is chairing. It is a pity that its membership has not been made public via the publication of a Cabinet Committee list, as is usual.

If the Brexit Cabinet Committee is to mimic the successful Cameron innovation of the National Security Council (NSC)²⁴, the Prime Minister will need to stay committed to chairing it (highly likely); membership needs to be stable and senior (again, likely); frequent face-to-face meetings will be needed so that ministers are properly engaged; and it needs to be underpinned by a committee of very senior officials. This is to ensure it receives high-quality papers and its decisions are communicated directly to relevant departments, then followed up. The NSC also benefits from having lead officials attend, not just as observers, but as participants. It is not clear whether the Brexit Cabinet Committee is following this model, but it would be beneficial for it to do so – involving the permanent secretaries of DExEU, DIT and the Treasury, and the Head of UKRep.

One of the hardest things in Cabinet Committees is to get the Treasury to play ball. In the case of the National Economic Council, established by Gordon Brown, there was a decision to have a secretariat largely drawn from the Treasury, and even then the Treasury was reluctant to use the mechanism for decisions it needed to take – as opposed to where it needed to work through others. The top echelons of DExEU do not include any officials who have moved directly from the Treasury. A key test of the effectiveness of any arrangements will be whether the Treasury is prepared to operate through them.

Going forward, a large Brexit Cabinet Committee may be too big to oversee the detail of negotiation. The Prime Minister may want to establish something that looks more like a war cabinet that can meet and make decisions more quickly. This should be a formal Cabinet sub-committee to avoid some of the issues that the Chilcot Report highlighted with informal Cabinet meetings.²⁵

Conclusion

Whitehall has responded quickly to organise itself to implement Brexit. Now that the key organisational mechanisms and staff seem largely to be in place, the first task – currently underway – is to understand exactly what will be involved in the Brexit process, the best way to sequence decision-making and actions, and how best to use resources to support that. There is no doubt the task is immense and the work involved will occupy Whitehall and Westminster for at least a decade.

In the longer run, delivering our exit from the EU will necessitate further reshaping of Whitehall. Exactly how will depend to an extent on the shape of a final deal and how radically we want to use the new policy freedoms afforded by leaving the EU. Exploiting those freedoms within existing resources will only be possible if ministers are prepared to pare back ruthlessly some of their domestic ambitions.

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