



## BRIEFING PAPER

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# Brexit and transport

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## Summary

On 23 June 2016 the United Kingdom voted to leave the European Union. The Prime Minister, Theresa May, triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit.

The UK is currently in the process of negotiating its exit from the EU, to take effect on 29 March 2019, a transition period and the shape of our future relationship with the EU. As those negotiations are ongoing, we do not yet know with any certainty what the effects of Brexit on transport policy, industry, services and operations will be.

This paper discusses some of the pertinent issues in the four main transport policy areas: aviation, railways, roads and road-based transport, and ports and maritime. It explains what preparations are being made for exit in the form of secondary legislation and what the Government has said about the implications of a possible 'no deal' in the technical notices it began to publish in August 2018.

Select committees across both Houses of Parliament have produced reports on Brexit and its potential impacts on various aspects of transport policy and have taken evidence from ministers and civil servants about how negotiations and preparations are progressing.

The UK Government's transport priorities since the vote to leave the EU in July 2016 have been focused on air transport rights to fly, continuing membership of the European Aviation Safety Agency (EASA), road haulage and delays at UK ports, particularly Dover. In June 2018 the Department for Exiting the European Union (DExEU) published a framework for UK-EU partnership on transport post-Brexit. This was followed by a White Paper on the future relationship in July 2018. The White Paper sets out the UK's broad ambitions for a Brexit deal, these are:

- an **Air Transport Agreement** which seeks to maintain reciprocal liberalised aviation access between and within the territory of the UK and the EU, alongside UK participation in **EASA**;
- exploring options for **road transport**, including reciprocal access for UK and EU road hauliers and passenger transport operators;
- close cooperation on **maritime**, including with the European Maritime Safety Agency (EMSA); and
- **bilateral rail agreements** with relevant Member States to support the continued operation of services through the Channel Tunnel and on the Belfast-Dublin Enterprise line.

This paper will be updated as more information is published, and new issues emerge.

For more briefings on Brexit, visit the [House of Commons Library Brexit portal](#).

*If you have a Parliamentary email account* you can find a selection of articles and reports about Brexit and transport by [following this link](#).

# 1. Where do things stand with Brexit?

**This section provides only a very brief summary of where the negotiations with the EU and legislative progress in the UK Parliament stand *at time of publication*.**

**There is more detailed, expert analysis in a series of briefings published by the House of Commons Library and available via the [House of Commons Library Brexit portal](#).**

## 1.1 The negotiations

Before each phase of the Article 50 negotiations the European Council has adopted guidelines setting out the remit and broad principles for the negotiators in each phase. These are followed by more detailed negotiating directives, which the Commission must follow in its negotiations with the UK.

The EU Withdrawal Agreement cannot at the same time provide for UK withdrawal and the details of the future EU-UK relationship; this will be the subject of a future agreement or agreements which will be concluded and enter into force only once the UK is a third state outside the EU. However, Article 50 TEU provides that the Withdrawal Agreement should ‘take account of’ the framework for the leaving State’s “future relationship with the Union”. The guidelines provide the broad outline of the framework; the next set of supplementary directives will provide further detail.

The UK has no direct input in these guidelines; they are drawn up by the European Council of the EU27 Member States, who may take into account any UK positions expressed on future relations.

On 7 March 2018 draft guidelines were published for the third phase of the Brexit negotiations, on the framework for future EU–UK relations.<sup>1</sup> The European Council (EU27) set out new guidelines on 23 March 2018, setting out the model the EU envisages for future EU-UK relations.<sup>2</sup> They stipulate that the earlier guidelines of 29 April and 15 December 2017 will continue to apply in full and that their principles must be respected in the next phase of negotiations (Article 2). The guidelines also take note of the European Parliament resolution on future relations of 14 March 2018.<sup>3</sup>

The framework for future relations will be contained in a Political Declaration “accompanying and referred to in the Withdrawal Agreement”. It will be the basis for detailed negotiations on the future EU-UK relationship once the UK has left the EU in March 2019 and the

<sup>1</sup> [European Council \(Art. 50\) \(23 March 2018\) - Draft guidelines](#), 7 March 2018

<sup>2</sup> [European Council \(Art. 50\) \(23 March 2018\) - Guidelines](#), 23 March 2018

<sup>3</sup> [European Parliament resolution on the framework of the future EU-UK relationship](#), 2018/2573(RSP), 14 March 2018

transition period has ended. Alex Barker, writing in the *Financial Times*, said: “The declaration would frame expectations of what is possible in that negotiation. The detail could vary between 20-30 pages, to something more substantial and precise”.<sup>4</sup>

The choice of the term “Political Declaration” is determined by the shared assumption that a fully articulated draft treaty governing the future relationship between the UK and the EU could not be achieved in the time available before the anticipated withdrawal date in March 2019. British ministers have referred to the intended Political Declaration as a “framework” and while they have not defined the level of detail to be expected in the framework, the Prime Minister has said “it is essential that we have clarity about the terms of that relationship when we ask the House to agree the implementation period and the rest of the withdrawal agreement in the autumn”.<sup>5</sup>

The Council will publish more detailed negotiating directives, which the Commission must follow in its negotiations with the UK. The parties released a joint statement on the progress of the negotiations on 19 June 2018.<sup>6</sup>

### 1.2 In Parliament

The [European Union \(Withdrawal\) Act 2018](#) gained Royal Assent on 26 June 2018, becoming law. The Act cuts off the source of European Union law in the UK by repealing the *European Communities Act 1972*, converts EU law and preserves EU-related domestic law onto the post-exit day statute book and provides delegated powers to make secondary legislation in order to prepare for leaving the EU.

As the UK leaves the EU, it is converting most EU law into a new type of domestic law. ‘Retained EU law’ is created by the 2018 Act and will come into effect on Exit Day (29 March 2019).

The 2018 Act includes powers to make regulations to convert EU law onto the post-exit day statute book. Schedule 7 specifies that regulations that do certain things (such create a criminal offence) would be subject to the draft affirmative procedure. Other regulations would be subject to the negative resolution procedure, although ministers could choose to lay such regulations in draft (such drafts would be subject to the affirmative resolution procedure).

Negative Statutory Instruments are subject to a special sifting process. In the House of Commons a new select committee, the [European Statutory Instruments Committee](#), is sifting the proposals for negative SIs. In March 2017, the Government estimated that “the necessary

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<sup>4</sup> “[The EU’s plans for ties with Brexit Britain – annotated](#)”, *Financial Times*, 7 March 2018

<sup>5</sup> [HC Deb 26 March 2018, c524](#)

<sup>6</sup> [Joint statement from the negotiators of the European Union and the United Kingdom Government on progress of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union](#), TF50 (2018) 52 – Commission to EU 27, 19 June 2018



corrections to the law will require between 800 and 1,000 statutory instruments”.

Separately, there is the question of the *Withdrawal Agreement and Implementation (WAI) Bill*. The Government’s stated position has long been that Parliament will have the opportunity to approve the final agreement through a motion “to be voted on by both Houses of Parliament before it is concluded”.<sup>7</sup> In December 2017 the then Secretary of State for Exiting the European Union, David Davis, gave details of the procedures for both the approval and implementation of EU Exit Agreements. He explained that the approval process is separate from the process of implementing the agreement through primary and secondary legislation.<sup>8</sup>

Parliament must legislate to implement the Withdrawal Agreement. Only then can it be ratified and come into force in domestic law. David Davis explained that the Government intends to do this, if the proposed resolution is passed in both Houses, through the WAI Bill. The WAI Bill would need to be passed before exit day 29 March 2019. If it is not passed by then, any provisions in the Withdrawal Agreement that need to be given legal effect, like transitional arrangements or citizens’ rights, would have no legal basis.

### 1.3 What happens if there is ‘no deal’?

Article 50 of the Treaty on European Union provides for an EU Member State to leave the EU with or without a withdrawal agreement or ‘deal’. If there is no withdrawal agreement, and no UK request or no EU agreement to extend the negotiations, or if either the UK Parliament or the European Parliament or the other 27 EU Member States do not endorse a withdrawal agreement, there will be no deal and the EU Treaties will no longer apply to the UK from 29 March 2019.

Another point at which ‘no deal’ could occur is at the end of the proposed 21-month transition (implementation) period if there is no detailed agreement on the future EU-UK relationship or if such an agreement is not in force.

While both sides in the negotiations agree that ‘no deal’ is not what they want they have been preparing for such an event:

- The European Commission has been drafting amendments to EU legislation to take account of the UK’s exit in transport and other areas. The Commission is identifying the legal acts that will have to be adapted in the context of Brexit by “preparedness acts” that will fill legislative gaps and “contingency measures to remedy negative impacts in the cliff-edge situation”, which would take effect in the event of a ‘no deal’ scenario.<sup>9</sup>

For more information on what ‘no deal’ is and how it could come about, see HC Library briefing paper [CBP 8397](#)

<sup>7</sup> DExEU, [Legislating for the United Kingdom’s withdrawal from the European Union](#), Cm 9446, 30 March 2017, para 1.19

<sup>8</sup> [Procedures for the Approval and Implementation of EU Exit Agreements: Written statement - HCWS342](#), 13 December 2017

<sup>9</sup> See: EC press notice, [“Brexit: European Commission publishes Communication on preparing for the UK’s withdrawal from the EU”](#), 19 July 2018 [IP/18/4545]

## 8 Brexit and transport

- The UK Government has said that preparations for no deal are part of its overall Brexit preparation strategy. The Prime Minister's [Statement](#) on the Cabinet away day at Chequers in July 2018 included a pledge to step up preparedness for all possible outcomes to the negotiations, including no deal, and the Prime Minister has assured Parliament that the Government is preparing for 'no deal' as well as other scenarios. The Government believes a 'no deal' scenario could be managed in an "orderly" fashion and on 23 August 2018 the Department for Exiting the EU began to publish 'technical notices', on how to prepare for Brexit if there is 'no deal'.<sup>10</sup>

Information on 'no deal' and the implications for individual transport modes are set out further in the relevant sections, below.

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<sup>10</sup> DExEU, [UK government's preparations for a 'no deal' scenario](#), 23 August 2018



## 2. EU's current role in UK transport policy

The EU's competences in transport are set out in the EU Treaties, which provide the basis for any actions the EU institutions take.

### EU transport legislation

There is a significant amount of transport law and regulation in the UK that applies as a direct result of our membership of the EU. The **key** legislation is set out in: HMG, [Key EU transport legislation](#), 14 May 2013

The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the Member States. There are three different types of competence. Transport is a 'shared' competency, meaning that either the EU or the Member States may act, but the Member States may be prevented from acting once the EU has done so.<sup>11</sup>

The development of the EU's Common Transport Policy (CTP) has resulted in the focusing of action in five policy areas, specifically:

- **Economic** – including the creation of a single market in transport services that facilitates the free movement of goods, services and people, and the creation of an integrated transport system;
- **Social** – including the promotion of high safety standards, security and passengers' and workers' rights;
- **Environmental** – including ensuring that the transport system works in a way that does not impact negatively on the environment (including reducing the impact of noise, pollution, harmful emissions and greenhouse gases);
- **Infrastructure** – including the creation of a Trans-European Transport Network (TEN-T) connecting national networks together, making them interoperable and linking outside regions of the EU; and
- **External relations** – including developing relations with third countries and, in some cases, allowing the EU to act collectively at an international level.<sup>12</sup>

The specific provisions of the CTP are contained in Title VI of the [Treaty on the Functioning of the European Union \(TFEU\)](#) on Transport (Articles 90 to 100).

Broadly, there is a balance between the common perceived benefits of EU Membership (e.g. the single market for transport services which has brought down costs through liberalisation and competition) and the burdens, (e.g. disproportionate or excessive regulation). There have long been concerns about EU regulatory burdens and the costs these impose, and about the difficulties in finding the right level of legislative

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<sup>11</sup> HMG, [Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union: Transport](#), 14 May 2013, p5

<sup>12</sup> Ibid., pp9-10

prescription which achieves the stated aims without being disproportionate. This is particularly important in an area like transport, which is heavily regulated at a European level.

One of the common issues discussed with relation to specific examples below is how much Brexit will impact the standards and regulations the UK chooses to apply in its transport sector. In many instances they are likely to be similar if not identical to the EU. This is because of the role the UK played in establishing those standards to our own satisfaction in the first place. For example, the UK has been a leading advocate for the development of the single market in transport across all modes. To which end the UK has usually found itself aligned with the European Commission in promoting liberal market-based aviation and maritime sectors. In rail, UK domestic policy has been seen as one of the models for EU proposals, given the market reforms and liberalisation introduced in the UK 25 years ago.

All of this suggests that transport *in the UK* post-Brexit may not look wildly different to how it looks now, the bigger question is how UK transport providers and businesses will interact with the EU in future and whether the benefits they currently enjoy when operating *within* the EU can be preserved. Much remains unclear and will continue to be so until negotiations are concluded.

## 3. UK and EU negotiating positions on transport

### 3.1 UK Government position

The UK Government's transport priorities since the vote to leave the EU in July 2016 have been focused on air transport rights to fly, continuing membership of the European Aviation Safety Agency (EASA), road haulage and delays at UK ports, particularly Dover.<sup>13</sup>

In July 2018 the [Haulage Permits and Trailer Registration Act 2018](#) received Royal Assent. The Act creates the architecture for a number of scenarios, including a 'no deal' Brexit. It would allow the Secretary of State to deal with the consequences of a range of exit scenarios on the UK haulage industry by creating an international road haulage permit scheme. It also provides for a registration scheme for trailers in international circulation. The Government has published a consultation document on the implementation of the Act, focusing on how a haulage permits scheme should operate in the future.<sup>14</sup>

In June 2018 the Department for Exiting the European Union (DExEU) published a framework for UK-EU partnership on transport post-Brexit. This was followed by a White Paper on the future relationship in July 2018. The White Paper sets out the UK's broad ambitions for a Brexit deal, these are:

- an **Air Transport Agreement** which seeks to maintain reciprocal liberalised aviation access between and within the territory of the UK and the EU, alongside UK participation in **EASA**;
- exploring options for **road transport**, including reciprocal access for UK and EU road hauliers and passenger transport operators;
- close cooperation on **maritime**, including with the European Maritime Safety Agency (EMSA); and
- **bilateral rail agreements** with relevant Member States to support the continued operation of services through the Channel Tunnel and on the Belfast-Dublin Enterprise line.<sup>15</sup>

The June 2018 framework document provided more detail. It is part of a series produced by the UK negotiating team for discussion with the EU. It is intended to inform the development of the framework that will set out the terms of the future relationship, to be translated into legally binding agreements after the UK's withdrawal. It stated that the UK and the EU would "conclude the future framework alongside the

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<sup>13</sup> See, e.g. [HC Deb 23 November 2016, c952](#); Transport Committee, [Departmental priorities and annual report and accounts](#), HC 745, 17 October 2016; and DExEU, [The United Kingdom's exit from and new partnership with the European Union](#), Cm 9417, 2 February 2017, paras 8.32-33

<sup>14</sup> Further information is provided in section 8.1, below, and in HC Library briefing paper [CBP 8297](#)

<sup>15</sup> DExEU, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018

Withdrawal Agreement later this year”.<sup>16</sup> Further details from the framework document are included in the relevant sector-specific sections, below.

### 3.2 EU27 position

On the EU side, as mentioned in section 1.1, above, the European Council adopted new negotiating guidelines on 23 March 2018. On transport, they stated:

... regarding transport services, the aim should be to ensure continued connectivity between the UK and the EU after the UK withdrawal. This could be achieved, inter alia, through an air transport agreement, combined with aviation safety and security agreements, as well as agreements on other modes of transport, while ensuring a strong level playing field in highly competitive sectors.<sup>17</sup>

This is similar to the ambitions expressed in the White Paper, above. The guidelines followed the publication of a number of Brexit preparedness notices issued to the EU27 by the European Commission in February 2018. The notices set out what aspects of EU law will have to change to take account of Brexit (i.e. by the UK becoming a third country) irrespective of what deal is reached. Further notices have since been published.<sup>18</sup> The EC has also begun publishing legislative instruments to give legal effect to these changes.<sup>19</sup>

On 19 August 2018 the Commission published a communication on preparing for Brexit. It highlighted three specific transport-related legislative proposals:

Proposal for a Regulation complementing EU type approval legislation in the area of motor vehicles, etc. This will allow holders of UK type approvals to apply for new type approvals with EU27 type-approval authorities for the same types on the basis of the documentation and test reports presented in the context of the earlier UK type approvals [...]

Proposal to amend the Regulation on the Connecting Europe Facility to adjust the alignment of the North Sea-Mediterranean corridor and design a new maritime route to link Ireland with the continental part of the corridor.

Proposal to amend the Regulation on common rules and standards for ship inspection and survey organisations to ensure that the task of participating in the regular assessment of two recognised organisations is transferred from the United Kingdom to the EU27.<sup>20</sup>

The European Commission has also issued Notices to Stakeholders on various aspects of Brexit and transport.

These are all discussed further in the relevant sections, below.

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<sup>16</sup> HMG, [Framework for the UK-EU partnership: Transport](#), June 2018, p2

<sup>17</sup> Op cit., [European Council \(Art. 50\) \(23 March 2018\) - Guidelines](#), Article 11(i)

<sup>18</sup> EC, [Preparedness notices](#), February-July 2018

<sup>19</sup> Available at: EC, [Legislative initiatives](#) [accessed 7 November 2018]

<sup>20</sup> EC, [Communication preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019](#), 19 August 2018, p9

### 3.3 The Swiss model

It is perhaps worth looking at Switzerland's relationship with the EU in a little more detail, as it gives one model for how a third country geographically close to the EU has secured various transport-related rights and undertaken particular obligations.

The [\*Agreement on the European Economic Area \(EEA\)\*](#) basically extends the EU internal market to Norway, Iceland and Liechtenstein. Annex XIII of the EEA Agreement covers all methods of transport, including road, rail, aviation, maritime transport and horizontal transport issues. Switzerland on the other hand has two bilateral agreements on aviation and land transportation (road and rail). Broadly, this applies the rules, regulations and their associated costs and benefits of the European Common Aviation Area to Switzerland and much of the common rules on road and rail without the market pillars.

The **EU-Swiss Air Transport Agreement**, signed in 2002, contains some interesting features from the perspective of the UK, preparing for Brexit. For example:

- Article 13 effectively prohibits state aid except in certain circumstances defined in that Article;
- Article 15, importantly, states that EU and Swiss air carriers "shall be granted traffic rights between any point in Switzerland and any point in the Community" and that "two years after the entry into force" of the Agreement, "Swiss air carriers shall be granted traffic rights between points in different EC Member States". It also permitted further amendment to secure traffic rights for Swiss carriers between points within Member States;
- Article 16 states that Article 15 supersedes the relevant provision of existing bilateral arrangements between Switzerland and Member States, however "existing traffic rights which originate from these bilateral arrangements and which are not covered under Article 15 can continue to be exercised, provided that there is no discrimination on the grounds of nationality and competition is not distorted";
- Article 21 provides for the establishment of a Joint Committee, composed of representatives of the contracting parties, to administer the Agreement and manage its implementation. Under other articles it has various powers as regards dispute resolution between the parties, and consultation on various matters; and
- The Annex to the Agreement lists those EU legislative instruments which would also apply with Switzerland as in the same way to any EU Member State and to Swiss air carriers in the same way as to EU carriers. It includes all the main liberalisation measures and compensation requirements.<sup>21</sup>

Information on Switzerland's broader relationship with the EU can be found in HC Library briefing paper: [\*Switzerland's relationship with the EU\*](#) (CBP 6090), 20 October 2011

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<sup>21</sup> [\*Agreement between the European Community and the Swiss Confederation on Air Transport\*](#), 30 April 2002

It should be noted that Switzerland does not have the same access as European Common Aviation Area (ECAA) carriers as they do not have cabotage rights. This is because they have yet to implement reciprocal rights for EU carriers within Switzerland.

The **EU-Swiss Road and Rail Agreement**, also signed in 2002, contains the following:

- Title II, Parts A and B refer to **road haulage**. Articles 5 to 7 provide for common standards for Swiss and EU road hauliers, and the relevant social and technical standards including HGV weights. Articles 9 and 10 provide for the carriage of goods between and across the territories of the contracting parties. Article 14 importantly, forbids Swiss companies from transporting goods between two points within an EU Member State;
- Title II, Part C refers to **bus and coach travel**;
- Title III refers to **rail**. Article 23 commits both parties to separating the management of the railway infrastructure from the provision of railway transport services, at least at the accounting level and forbidding the transfer of aid between the two;
- Title IV refers to a **coordinated transport policy**. Article 30 commits both parties to, where necessary, developing a coordinated transport policy covering passengers and goods, with the aim of combining efficiency and environmental protection. It also states that they will make “every effort to create broadly comparable transport conditions, including tax arrangements, in their respective territories”. Article 31 states that this shall include “healthy competition” between modes of transport and facilitating “more environmentally sound means of transporting passengers and goods”. It also provides for ‘appropriate’ road charges, more detail of which is given in Articles 38 to 42;
- Article 51 refers to the establishment of a Joint Committee, composed of representatives of the contracting parties, to administer the Agreement and manage its implementation. Under other articles it has various powers as regards dispute resolution between the parties, and consultation on various matters; and
- The ten annexes to the Agreement list those EU legislative instruments which would also apply with Switzerland as in the same way to any EU Member State and to Swiss air carriers in the same way as to EU carriers.<sup>22</sup>

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<sup>22</sup> [Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road](#), 30 April 2002



## 4. DfT preparations for Brexit

In May 2018 the DfT published an exchange of letters between the Department's Permanent Secretary, Bernadette Kelly, and the Secretary of State, Chris Grayling requesting and confirming a ministerial direction relating to EU exit preparations.<sup>23</sup>

In July the National Audit Office (NAO) published a report looking at how the DfT is organising itself to support a successful exit from the EU, and set out what the Department had done to date to prepare for exit. The key figures from the report were that:

- 18 out of 314 EU Exit work streams the Department for Transport is responsible for delivering and reporting progress on to the Department for Exiting the European Union as at June 2018
- 63 statutory instruments still to be introduced by the Department for Transport by March 2019, on top of 64 business-as-usual statutory instruments, as at April 2018
- 14 work streams out of the 18 reported to the Department for Exiting the European Union that were on track in March 2018 for delivery of the contingency solution by March 2019. One work stream was not reported on.
- 52.5 additional full-time equivalent staff needed in 2018-19 to work on EU Exit, on top of 84 existing full-time equivalent staff
- 100,000 – 7 million estimated range of the number of International Driving Permits (IDPs) to be issued in the first year in the event of no deal being reached
- £180 million amount the Department for Transport and its arm's-length bodies have estimated they will spend on EU Exit by March 2022
- £3.1 million out of £5.6 million actual HM Treasury funds spent on EU Exit by the Department for Transport in 2017-18, against HM Treasury funds authorised in the Supplementary Estimate<sup>24</sup>

The NAO stated that the DfT has two EU Exit objectives:

- to maintain and develop the current levels of transport connectivity between the UK and the EU to underpin the UK's future trading relationship; and
- to continue to collaborate, in certain areas, with the EU and international agencies to maintain critical regulatory arrangements, and to manage transport impacts at the border resulting from any change, for example in customs.<sup>25</sup>

To meet these objectives DfT is:

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<sup>23</sup> DfT, [EU exit preparations: DfT ministerial direction](#), 29 May 2018

<sup>24</sup> NAO, [Implementing the UK's Exit from the European Union: Department for Transport](#), HC 1125 2017-19, 19 July 2018, p4

<sup>25</sup> *Ibid.*, para 3

- supporting the government’s negotiations on those issues where the Department has a direct interest;
- preparing the necessary primary and secondary legislation; and
- planning for both a ‘no deal’ scenario and a negotiated settlement for 18 of the 314 work streams (as at June 2018) supporting EU Exit across government.<sup>26</sup>

The NAO’s summary of these 18 workstreams is replicated below:<sup>27</sup>

<b>Mode of transport</b>	<b>Summary of workstreams</b>
<i>Aviation</i>	air traffic management systems; the air service agreement with the EU; future access to the European Aviation Safety Agency; air service agreements with other countries; the future of security regimes; and UK participation in the EU-wide emissions trading scheme.
<i>Roads</i>	rights for UK private motorists to drive in the EU; rights for UK hauliers to carry goods in the EU; rights for UK bus and coach companies to carry passengers in the EU; and motor insurance and frictionless travel to the Green Card free zone.
<i>Maritime</i>	the Marine Equipment Directive; and future access to the European Maritime Safety Agency
<i>Vehicles</i>	vehicle type approval for manufacturers; and emissions and manufacturers’ CO2 targets
<i>Rail</i>	ongoing recognition of documentation of operators and drivers to support continuation of cross-border rail services.
<i>Cross-cutting</i>	funding for projects in the Connecting Europe Facility, an EU-funding instrument that targets infrastructure investment; Operation Stack, the plans to manage traffic congestion on the M20 motorway; and transport infrastructure at the border.

The NAO’s key findings about DfT’s preparedness were as follows:

- The Department’s programme of work to support EU Exit represents a significant and complex challenge;
- The Department’s internal assessments of progress are, in most instances, more cautious than the progress it reports to the Department for Exiting the EU (DExEU);
- Inconsistencies between reporting systems make it harder for senior managers in the Department and in the centre of government to gain a consistent picture of progress;

<sup>26</sup> Ibid., para 4

<sup>27</sup> Ibid., Figure 1, p7

- The Department has put significant effort into helping to develop the government's negotiating plans and is planning to recruit more people to support the next phase of discussions;
- The Department laid draft primary legislation to address the contingency scenario before Parliament within a week of its target [this relates to the *Haulage Permits and Trailer Registration Act 2018*];
- The Department has planned, reduced and reprioritised its programme of secondary legislation but the timetable for laying this legislation is now seriously compressed;
- Considerable work still needs to be completed on contingency preparations;
- The Department has to date not spent all the money allocated to it for EU Exit contingency preparations, reflecting changes to its plans; and
- The Department has given clear responsibilities to its delivery teams but it needs to significantly strengthen its capacity to manage the overall programme.<sup>28</sup>

## 4.1 Funding

In the March 2018 Spring Statement, it was announced that the Treasury had allocated funding to Government Departments to help them prepare for Brexit. The 2018-19 allocation for the Department for Transport (DfT) is £75.8 million.<sup>29</sup> The Secretary of State for Transport, Chris Grayling, said that this would be spent on "work to develop a new road haulage permit system, put in place new systems to support market access for hauliers and private motorists, and changes to DVSA facilities".<sup>30</sup> Departments will be invited to bid for 2019/20 EU Exit preparation funding later in 2018.<sup>31</sup>

In its July 2018 report the NAO found that DfT had not spent all the money allocated to it for EU Exit contingency preparations. Spending to March 2018 totalled £6.6 million, of which £3.5 million was funded from its existing budgets (£1.6 million in 2016-17 and £1.9 million in 2017-18) and £3.1 million from the Treasury's contingent reserves (all in 2017-18). However, spending from Treasury's reserves in 2017-18 was less than planned, largely because of the DfT's decision to change its planned approach to issuing International Driving Permits (IDPs) from a digital to a paper-based system.<sup>32</sup>

As stated above, for 2018-19 the DfT has an allocation from the Treasury of £75.8 million. NAO reported that in addition to this it

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<sup>28</sup> Ibid., paras 9-17

<sup>29</sup> The fifth highest, after the Home Office, Defra, HMRC and BEIS, see: [Spring Statement: Written statement - HCWS540](#), 13 March 2018

<sup>30</sup> [Department for Transport: Public Expenditure: Written question – 133182](#), 27 March 2018

<sup>31</sup> [Department for Transport: Brexit: Written question – 168910](#), 11 September 2018

<sup>32</sup> Op cit., [Implementing the UK's Exit from the European Union: Department for Transport](#), para 2.32

expects to spend an extra £20.5 million (taking total spend to £96.3 million for the year). The difference between the two figures consists of £20 million on Project Brock (traffic control for the M20) and small additional amounts on a variety of projects across different directorates. Expenditure above the £75.8 million awarded by the Treasury “will need to be sourced from making efficiencies or changing its budgetary priorities”.<sup>33</sup>

Finally, NAO reported that DfT and its arm’s-length bodies have estimated that they will spend about £180 million on projects for EU Exit by March 2022.<sup>34</sup>

## 4.2 Contingency preparations

As part of its July 2018 report the NAO conducted detailed scrutiny of six areas of DfT’s preparations, including four in which it intended to put in place IT and other infrastructure. NAO found that in all four instances, by mid-June 2018 “significant work had still to be completed”.<sup>35</sup> The four projects are the trailer registration scheme; International Driving Permits (IDPs); European Maritime Safety Agency (EMSA); and lorry queueing and traffic flow at the border.

There is further information in the relevant sections of the paper, below.

## 4.3 Secondary legislation

In its July 2018 report the NAO reported the DfT’s estimate that:

... it still has to prepare 127 SIs [statutory instruments, or secondary legislation] before 29 March 2019 – 64 of which relate to ‘business-as-usual’ activities, and 63 of which relate to exit. It has laid 45 ‘business-as-usual’ SIs since December 2017. Programming and preparing the legislation will be a significant challenge for the rest of 2018 and early 2019.<sup>36</sup>

However, NAO did say that DfT had “done a significant amount of work to reduce, reprioritise and plan its programme of secondary legislation to make the programme manageable”. This included ‘triage’ exercises, which challenged DfT to reduce the number of secondary instruments as much as possible” and creating a specific ‘Legislation Programme Board’ to oversee the preparation of exit-related legislation.<sup>37</sup>

NAO further stated that between December 2017 and May 2018, the planned laying dates for 38 Statutory Instruments (SIs) were moved back (Largely due to the extra time it took the Withdrawal Act to pass through Parliament). NAO remarked that “the timetable for laying all the SIs is now further compressed and adds further pressure to the already tight programme across government”.<sup>38</sup> It further stressed that

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<sup>33</sup> Ibid., para 2.34

<sup>34</sup> Ibid., para 2.34

<sup>35</sup> Ibid., paras 2.29-2.30

<sup>36</sup> Ibid., para 2.22

<sup>37</sup> Ibid., para 2.23

<sup>38</sup> Ibid., para 2.25

many SIs “are linked and delays may have a knock-on effect on the programme”.<sup>39</sup>

In October 2018 the Hansard Society reported that DfT had laid the most Brexit SIs of any Government Department (18).<sup>40</sup> It has a further 50 to deliver by March 2019.<sup>41</sup>

Proposed negative SIs relating to transport, made under the Withdrawal Act, are listed on the [Gov.uk website](#). At time of publication of this paper, there were 12 SIs listed. These are discussed further in the relevant sections, below.

As set out in section 1.2, above, before the SIs are formally 'laid' in Parliament, they have to go through a new sifting process to determine whether the negative procedure is appropriate or whether they should be debated. The process is set out on the [Parliament website](#).

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<sup>39</sup> Ibid., para 2.26

<sup>40</sup> “[Westminster Lens: Brexit Statutory Instruments Dashboard](#)”, *Hansard Society*, 26 October 2018

<sup>41</sup> [Letter from Bernadette Kelly to Meg Hillier MP](#), 18 October 2018

## 5. Multi-modal issues

### 5.1 State aid

State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the EU.

The definition of state aid is very broad because 'an advantage' can take many forms. It is anything which an undertaking (an organisation engaged in economic activity) could not get on the open market.

State aid rules can (among other things) apply to grants, loans, tax breaks and/or the use or sale of a state asset for free or at less than market price.

Some state aid is beneficial to the economy and supports growth and other policy objectives. State aid can be given to support a wide variety of activities including research and development, environmental protection and aid for small to medium-sized businesses. The state aid rules allow for 'good aid', which is necessary to deliver growth and other important objectives.<sup>42</sup>

For transport, state aid rules are particularly pertinent in aviation and maritime and effectively allow the state to subsidise routes and services that would not otherwise be available commercially. It also creates a 'level playing field' across the EU and helps to prevent anti-competitive practices. For example, by not permitting actions which disrupted the single market, such as port blockades. Others have argued that they are not tough enough and allow states to support failing companies with subsidy, which creates an unfairness.<sup>43</sup>

Out of the EU, the UK could provide subsidies at its own discretion, in line with national competition and procurement regimes. However, it may be that any agreement with the EU post-Brexit, would require the UK to continue to apply state aid rules in common with the EU. Switzerland is an interesting case here. The Lords EU Internal Market Sub-Committee stated in its February 2018 report on Brexit, competition and state aid:

COMBAR pointed out that Switzerland was an exception to the general requirement to comply with EU State aid rules. Hogan Lovells explained that there were some State aid provisions in the 1972 EU-Swiss FTA and the 1999 EU-Swiss air transport agreement, but neither of these agreements contained enforcement powers, and Switzerland was not required to establish a national enforcement authority to ensure compliance. Mr Peretz, however, emphasised that the EU had expressed "extreme unhappiness" over its arrangements with Switzerland

More information on state aid can be found in HC Library briefing paper [CBP 6775](#).

<sup>42</sup> BIS, [State Aid Guidance](#), 10 July 2015

<sup>43</sup> DfT, [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), February 2014, p57



on State aid. It was “very unlikely that the EU would extend that historical accident to us”.<sup>44</sup>

In Scotland there has been some debate about whether Brexit would enable the highlands and islands ferry service to be run in the public sector, without the need for tendering under state aid rules.<sup>45</sup>

There has also been some debate recently about how far EU state aid rules on Public Service Obligations (PSOs) might prevent an expanded Heathrow from providing airport-to-airport subsidised domestic routes, in line with the Government’s commitment.<sup>46</sup>

In August 2018 the Government published guidance on state aid in the event of a ‘no deal’ Brexit. It states that if there is ‘no deal’ after 29 March 2019 “The government will create a UK-wide subsidy control framework to ensure the continuing control of anti-competitive subsidies”.<sup>47</sup>

## 5.2 Public procurement

According to Linklaters, businesses with any EU presence would continue to need to comply with EU competition law.<sup>48</sup> This is also a factor when it comes to the issue of public procurement. During the 2010 Parliament EU procurement rules caused some public concern when they resulted in contract awards going to companies based in other EU states rather than a local company. One particular example of this was the award of the multi-billion-pound Thameslink trains contract to Siemens Germany, rather than to Bombardier. The result was considerable uncertainty for those employed at the Bombardier factory in Derby, and calls to re-tender the contract to achieve a different outcome.<sup>49</sup>

The terms of the Treaty on the Functioning of the European Union (TFEU) mean that public bodies cannot in general require that the goods they buy are British, or are from particular regions or areas within the UK (unless the contract is so small that it ‘would be of no interest to economic operators located in other Member states’).

That said, procurement can be designed in ways that encourage local growth without explicitly favouring local companies (e.g. buying things in a way that helps boost local economies indirectly, such as with associated requirements that lead to more local people being trained).

In a debate on Brexit and transport in November 2016 the Secretary of State for Transport, Chris Grayling, said that Brexit presented an “opportunity to shape our own procurement rules”. He said:

More information on public procurement rules can be found in HC Library briefing paper [CBP 6029](#); it is also addressed in the Brexit *Trade Bill*, see [CBP 8073](#).

<sup>44</sup> Lords EU IMSC, [Brexit: competition and State aid](#) (12th Report of Session 2017–19), HL Paper 67, 2 February 2018, para 181

<sup>45</sup> “[Beyond Brexit: Will Brexit end CalMac’s routes being tendered?](#)”, *Herald Scotland*, 13 November 2016

<sup>46</sup> See, e.g. Transport Committee, [Airports National Policy Statement](#) (Third Report of Session 2017–19), HC 548, 23 March 2018, Annex A

<sup>47</sup> DExEU, [State aid if there’s no Brexit deal](#), 23 August 2018

<sup>48</sup> Linklaters, [EU Referendum – risk assessment overview](#), 8 March 2016

<sup>49</sup> More information on this can be found in HC Library briefing paper [SN3146](#)

... it is reasonable for us to say, for example, "If you're coming to do business with us by being involved in the construction of HS2, we want you to leave a skills footprint in this country. We want apprenticeships and technical skills, and we want the engineers of the future to be trained and developed, and to be working on these projects so that they can carry on beyond them to build us further projects for the future." That is our intention.<sup>50</sup>

### 5.3 Passenger rights & compensation

For many years, there has been a 'patchwork' approach across transport modes towards passenger rights and compensation. The UK has long-established domestic rules which have gradually been supplanted by EU ones in rail, bus and coach, air and sea (ferries and cruise ships). However, the UK has 'opted out' of or applied exemptions from a number of EU requirements in different modes.

As indicated above, the current arrangements will be transposed into UK law under the EUW Act 2018. How far any subsequent change is possible may depend on what sort of agreement the UK reaches with the EU – for example, as indicated above, the EU-Switzerland Air Transport Agreement requires Switzerland to apply the somewhat controversial EU aviation compensation regulation.

Since the EU legislated to provide a comprehensive system of air passenger rights in 2004 increased awareness of those rights and the ability to complain and appeal has led to a significant increase in the number of people doing so. This has been supplemented by a number of court cases that have ruled on the circumstances in which airlines must pay compensation; appeals against some of these judgements have meant that some airlines have been reluctant to pay out compensation until the legal position is absolutely clear. The Civil Aviation Authority (CAA) takes the view that the position *is* clear, that payments should be made and is taking action to require enforcement by some airlines.

There may be some pressure on a post-Brexit Government to overhaul this system. Responses to the Government's 2013-14 Balance of Competences review reflected wide-spread concerns across the travel industry. Thomas Cook Group was of the view that rights to compensation had been stretched unfairly in the courts and that rulings by the ECJ on aviation passenger rights legislation had gone too far in favouring passengers. The Airport Operators' Association (AOA) noted that obligations must be proportionate and not unduly prescriptive.<sup>51</sup> Other airlines, such as easyJet, had more positive views.<sup>52</sup>

However, in April 2018 the Government published its 'next steps' document for its long-term future aviation strategy. This stated that:

The government needs to ensure that consumers are protected when things go wrong. The current system of compensation for delay, cancellation and denied boarding provided by EU

More information on passenger rights and compensation across all modes, including the EU laws that currently apply in the UK, can be found in HC Library briefing paper [CBP 3163](#).

<sup>50</sup> [HC Deb 23 November 2016, cc955-6](#)

<sup>51</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p43

<sup>52</sup> Ibid., p42

Regulation 216/2004 provides strong levels of consumer protection, and **the UK will not fall below current standards of protection when we leave the EU**, but the process by which compensation is accessed is often difficult for the consumer to navigate.<sup>53</sup>

This might mean that the UK and the EU systems could diverge in the future, if for example the EU27 were to weaken its consumer protection provisions after Brexit. This could introduce added complexity for UK travellers.

Bus Users UK, the main approved Alternative Dispute Resolution (ADR) body for bus and coach passengers, told the Lords EU Internal Market Sub-Committee in September 2018 that Brexit provides “an opportunity to simplify some of the more convoluted aspects of the [bus and coach passenger rights] Regulation in due course”.<sup>54</sup>

It is also worth mentioning that the same principles apply to the rights of **disabled travellers and passengers with reduced mobility (PRMs)**. The UK first legislated on access to transport for disabled people more than 20 years ago, in the *Disability Discrimination Act 1995* and the regulations made under it, but since then much of the UK legislation has been either been overridden or supplemented by EU law. The Government has indicated during debates on specific mode-related parts of EU legislation in this area that it has no intention of diminishing the rights of disabled people. For example, in March 2017 with regards to bus driver training, the then Transport Minister, Andrew Jones, said that “even after we have left the European Union, our policy objective of ensuring that bus drivers are equipped with the knowledge and skills to assist disabled passengers will not change. That obligation will not be removed”.<sup>55</sup>

More information on passenger rights for disabled people, can be found in HC Library briefing paper [CBP 601](#).

In February 2018 the European Commission published a Notice to Stakeholders on consumer protection and passenger rights. This explains how EU passenger rights would apply after Brexit once the UK is a third country under the relevant legislation, for example:

- **Air passenger rights** granted by EU law would continue to apply to passengers departing from the UK to an airport situated in the territory of an EU27 Member State with a Community carrier;
- Certain **PRM rights**, such as assistance by air carriers, would continue to apply to air passengers departing from a UK airport to an EU27 airport if the operating carrier is a Community air carrier;
- EU law on **ship passenger rights** would continue to apply on and after the withdrawal date to passengers where the port of embarkation is in the EU27 or in the UK, provided that the port of disembarkation is in the EU27 and the service is operated by a carrier established within the territory of a Member State or offering passenger transport services to or from a Member State (a ‘Union carrier’);

<sup>53</sup> DfT, *Beyond the horizon – the future of UK aviation: next steps towards an aviation strategy*, 7 April 2018, para 2.15 [emphasis added]

<sup>54</sup> Lords EU IMSC, *Written Evidence – Bus Users UK (TRA0009)*, 14 September 2018

<sup>55</sup> [PBC Deb 16 March 2017, c107](#)

- EU law on rights of passengers in **bus and coach** transport would continue to apply on and after the withdrawal date to passengers travelling with regular services to or from the UK where the boarding or the alighting point of the passenger is situated in the EU27, and the scheduled distance of the service is 250km or more; and
- EU law on **rail passengers'** rights would continue to apply on and after the withdrawal date to rail passenger services in the territory of the Union, provided that the railway undertaking is appropriately licensed.<sup>56</sup>

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<sup>56</sup> EC, [\*Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on Consumer Protection and Passenger Rights\*](#), February 2018, pp5-6

## 6. Aviation

### A word on terminology...

The EU's internal market for air transport is referred to by a number of different names, depending on the publication, organisation or person talking about it. For the sake of clarity, this paper uses the following terms:

- The EU internal aviation market is referred to throughout as the **European Common Aviation Area (ECAA)**; it is comprised of the EU28, Norway, Iceland, the Balkan countries and Lichtenstein and is founded on the single aviation market which was developed across the EU in the early 1990s;
- The term **'open skies'** is sometimes used to refer to the single aviation market (including by airlines and others in the industry). This paper only uses the term to refer to the EU-US Open Skies Agreement.

### 6.1 Access to the European Common Aviation Area (ECAA)

#### What is the ECAA?

The advent of cheap short haul flights across Europe in the early 1990s has revolutionised both the way people travel and the airline industry. It owes a large part of its success to the liberalisation of air transport across the EU and the single aviation market, or European Common Aviation Area (ECAA).<sup>57</sup> This created a number of 'freedoms' for EU-registered airlines which have allowed them to have a base in one Member State and operate on a 'cabotage' basis within other Member States. For example, easyJet, registered in the UK, can fly without restriction from the UK to other Member States, wholly between other markets (e.g. France-Germany) and wholly within countries (e.g. domestic Italy).

Respondents to the Government's Balance of Competences Review were generally of the view that liberalisation had broken down restrictive trade and operating barriers that had previously existed. They credited it with encouraging growth in the sector with deregulation facilitating new business models, such as the low-cost carriers. Over a period of 25 years or so, these new business models have increased competition in the industry, driving down prices and forcing efficiency savings.<sup>58</sup> Sophie Dekkers, UK Country Director at easyJet, told the Lords EU Internal Market Sub-Committee in 2017 that the "liberation of the EU aviation market was part of the growth and the basis on which we grew as an airline and low cost [travel] grew within Europe". She

<sup>57</sup> More details are given in HC Library briefing paper [CBP 182](#); the ECAA was extended to the Balkan countries in the mid-2000s and already applied to Norway and Iceland. It covers 36 countries and more than half a billion people, for more information see: European Commission, [International Aviation – ECAA](#) [accessed 12 April 2018]

<sup>58</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p24

noted that “average fares are now down by 40% in real terms” since 1996, and “numbers of routes have increased by 180%”.<sup>59</sup>

### Airline ownership rules

At the moment, EU majority-owned and -controlled airlines have the right to establish themselves in any EU Member State and operate freely within the borders of the EU.<sup>60</sup> As Andrew Haines, then Chief Executive of the CAA, said in a December 2016 speech, “If the UK is no longer a member of the EU, then these rights can’t be assumed to continue – especially the rights to operate domestic routes within a third country, and the rights to fly between two third countries”.<sup>61</sup> This is a major part of some airlines’ business models, particularly low cost operators like easyJet.

There have been reports that UK-registered airlines with this sort of business model have been ‘warned’ by the EU that they would need to relocate their headquarters or sell off shares to EU nationals if they want to continue flying routes within continental Europe after Brexit.<sup>62</sup> Some airlines have already started preparing for Brexit by obtaining EU operating licences.<sup>63</sup> Conversely, some EU-registered airlines are also applying for a UK operating licence.<sup>64</sup> There have been reports about particular concerns for British Airways and its parent company, IAG, which could face conflicting priorities between preserving its EU market and any US-UK aviation deal in the event of a ‘no deal’ Brexit.<sup>65</sup>

### What does the industry want?

Airlines want the UK Government to negotiate continuing access to this liberalised regime. The most obvious way of doing this would be by remaining a member of the ECAA, post-Brexit. In a speech given on 1 December 2016 the then Chief Executive of the CAA, Andrew Haines, set out the UK’s options on access, on a “sliding scale of liberalisation”:

- Staying in the European Common Aviation Area (i.e. UK airline treated as if part of the EU, with full access – in many ways highly desirable for both sides in this negotiation). But Aviation is likely to be caught in the crossfire- so on what conditions would this be possible and will they be potentially acceptable?
- A UK “Open Skies” deal with Europe? (i.e. UK treated as a third country, like the USA)
- Negotiating a single bilateral agreement with the EU as a whole if Member States give the EU a mandate to negotiate on their behalf. Or the UK could still negotiate bilateral agreements with individual member states; for

<sup>59</sup> Lords EU IMSC, *Brexit: trade in non-financial services* (18th Report of Session 2016–17), HL Paper 135, 22 March 2017, para 212

<sup>60</sup> The European Commission has published new ‘interpretative guidelines’ on ownership and control of EU airlines, see: [C\(2017\) 3711 final](#), 8 June 2017

<sup>61</sup> *The future of open skies post-Brexit*, GAD Speech by Andrew Haines, Chief Executive of the CAA, 1 December 2016

<sup>62</sup> See, e.g. “Airline investors face forced share sale after Brexit”, *Financial Times*, 27 January 2017 and “UK-based airlines told to move to Europe after Brexit or lose major routes”, *The Guardian*, 22 March 2017

<sup>63</sup> See, e.g., easyJet press notice, “[easyJet Europe now operational after award of Austrian AOC and licence](#)”, 20 July 2017

<sup>64</sup> See, e.g. “[Ryanair seeks UK operating permit in Brexit move](#)”, *Financial Times*, 2 January 2018; and “[Another airline has applied for a new licence to get ‘Brexit-ready’](#)”, *City A.M.*, 18 October 2017

<sup>65</sup> See, e.g. “[BA owner warned it will have no special treatment after Brexit](#)”, *Financial Times*, 16 October 2018



instance, if member states wish to or find the EU-led process too slow. (Any state that wanted to go down that route would have to notify the EU and negotiate in a way that is compatible with EU law, but this is a possible scenario.)

- Enhanced 'UK open skies deal' – what are the prospects of the UK securing better deals because of its inherent strengths than pan European deals have secured.<sup>66</sup>

Airlines support the ECAA option.<sup>67</sup> However, membership of the ECAA effectively requires acceptance of EU aviation law across all areas, so where the UK might want to move away from current EU rules with which it is not entirely satisfied, compromise would be required.

In its July 2017 report the Independent Transport Commission (ITC) stated that:

Aviation needs to be treated separately from trade agreements: comprehensive air services agreements are the pre-condition for the success of trade deals. Any agreement should aim to replicate the benefits of membership of the Single Aviation Market in a new format, in light of the fact that the UK was the driving force behind its creation. It should also replicate in new agreements the traffic rights enjoyed by UK airlines under the EU's multilateral aviation agreements. Failure to do so could severely limit UK aviation's – and by extension the UK economy's – ability to generate jobs and economic growth. It could also result in increased costs to the consumer and risk-reduced connectivity, particularly from smaller airports.<sup>68</sup>

## Will a deal be done?

The **UK Government** has remained consistently optimistic that a deal can be done. As set out in section 3.2, above, the latest European Council negotiating guidelines are aiming for "continued connectivity between the UK and the EU ... through an air transport agreement".<sup>69</sup>

In November 2016 the Government and [Airlines UK](#) issued a joint statement emphasising the importance of aviation to the UK economy. It stated that "Market access remains a top priority, and we want to make sure we have liberal access to European aviation markets. We will also work closely to explore new opportunities for further liberalisation".<sup>70</sup>

Later that month, in a debate on Brexit and transport, the Secretary for State for Transport, Chris Grayling, said that he was:

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<sup>66</sup> Op cit., [The future of open skies post-Brexit](#); see also: op cit., [Brexit: trade in non-financial services](#), chapter 7 and [Internal EU27 preparatory discussions on the framework for the future relationship: "Aviation"](#), TF50 (2018) 24 - Commission to EU 27, 17 January 2018

<sup>67</sup> See e.g. EasyJet press notice, "[Response to result of UK referendum on membership of the European Union \("EU"\)](#)", 24 June 2016; and CAPA, [Brexit and aviation Part 1: Open Pandora's box and anything can happen. But status quo is likely](#), 27 June 2016

<sup>68</sup> ITC, [How will leaving the EU affect UK transport? Key issues](#), ITC Occasional Paper No. 10, July 2017, para 2.3.5; the ITC is a land use and transport think tank

<sup>69</sup> Op cit., [European Council \(Art. 50\) \(23 March 2018\) - Guidelines](#), Article 11(i)

<sup>70</sup> DExEU et al. press notice, "[Joint statement between the UK Government and Airlines UK](#)", 14 November 2016

... absolutely [in] no doubt that we will secure in good time and effectively the agreements that our aviation sector needs to continue to fly around the world and within the European Union. Not doing so is in no one's interests. Many parts of the EU depend economically on the contribution made by British airlines flying to regional airports. It is in all our interests that that continues.<sup>71</sup>

Appearing before the Transport Select Committee in October 2017 Mr Grayling again expressed confidence in a deal:

There is absolutely no benefit to anybody in having a situation where the current international aviation structures are weakened as a result of problems between us and the European Union. I am sure that is not what they want. I have a very good relationship with the European Transport Commissioner. I am absolutely certain that over the coming months we will have mutual sensible arrangements put in place, but we are obviously preparing for all eventualities, as you would expect [...] The day after we have left the European Union, the world from our airports will look very similar to the day before.<sup>72</sup>

In its June 2018 framework document on transport post-Brexit the Government said that the UK "can be informed by, and take inspiration from established precedents [in the field of aviation], but need not be constrained by them".<sup>73</sup> Specifically on air services it said:

- The EU has aviation agreements with several countries which are each tailored to their particular circumstances.
- Provisions on fair competition are included in agreements, but are proportionate to the access granted in the agreement.
- The EU-US Agreement liberalises services to and from the EU/US with some additional rights. Both parties commit to allow airlines to compete fairly and equally.
- The EU-Switzerland Agreement goes further, providing rights for services between any countries within the agreement. Consequently, the parties have aligned regulations.<sup>74</sup>

As time has passed, the **industry** has also become increasingly confident that a deal can be done. For example, Willie Walsh, chief executive of International Airlines Group (IAG), told the Transport Committee in October 2017 that:

I think the Secretary of State is optimistic and I share his optimism that the world will continue as it has. There are issues to be dealt with, and I am confident that they can be dealt with well in advance of the beginning of April 2019.<sup>75</sup>

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<sup>71</sup> [HC Deb 23 November 2016, cc952-3](#)

<sup>72</sup> Transport Committee, [Oral evidence: Policy priorities for the Department for Transport](#), HC 430, 16 October 2017, Qq118 & 126

<sup>73</sup> Op cit., [Framework for the UK-EU partnership: Transport](#), p11

<sup>74</sup> Ibid., p11

<sup>75</sup> Transport Committee, [Oral evidence: Aviation and Brexit](#), HC 531, 30 October 2017, Q2; Sophie Dekkers, UK director for easyJet agreed with this assessment

Also, in November 2017 witnesses representing the aviation sector before the Lords EU Internal Market Sub-Committee “expressed confidence that a deal would be reached to cover the sector”.<sup>76</sup>

Not everyone in the industry is as optimistic. For example, the Chief Executive of Ryanair, Michael O’Leary, and the Chief Financial Officer, Neil Sorahan, have consistently argued that there is little evidence of progress towards an agreement being reached.<sup>77</sup>

There have also been concerns about the **European Commission’s** approach to negotiations on the aviation question and the relationship between the Commission and the UK Government. For example, there were reports in June 2018 that the Commission was “refusing to agree to any back-channel discussions between UK and EU aviation agencies to avert a crisis in the event of a “no-deal” outcome to Brexit”.<sup>78</sup>

In September 2018 there were further reports that the Secretary of State for Transport, Chris Grayling, intended to write to his opposite numbers in the EU27, seeking to negotiate aviation deals with individual countries, circumventing the Commission.<sup>79</sup> There were subsequent reports that the Brexit Secretary, Dominic Raab, had been “reprimanded” by the EU’s chief Brexit negotiator, Michel Barnier.<sup>80</sup>

## 6.2 Air service agreements with third countries

The UK has long had bilateral agreements with many of its important markets, such as the US, which were superseded by EU-third party agreements. The ITC has said that as a result of EU membership UK airlines benefit from 42 Air Services Agreements entered into by the EU with countries inside and outside the EU including the US and China.<sup>81</sup>

Once it has left the EU, the UK would need to have negotiated new agreements with those countries or to have negotiated with the EU and those countries to continue as a party to the agreements as a non-Member State.

In their joint statement issued in November 2016 the Government and UK airlines said that Brexit provided “greater freedom to seek new agreements between the UK and some third countries. This includes looking at possible bilateral agreements to strengthen economic and

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<sup>76</sup> Lords EU IMSC, [Brexit: deal or no deal](#) (7th Report of Session 2017–19), HL Paper 46, 7 December 2017, Box 5, p15

<sup>77</sup> See, e.g. “[Fears flights between Britain and the EU could be halted after Brexit](#)”, *The Independent*, 5 July 2017

<sup>78</sup> “[Aviation industry: EU blocks talks to avert 'no-deal' Brexit crisis](#)”, *The Guardian*, 18 June 2018; see also: “[Brexit: Brussels bars aviation chiefs from preparing for no-deal](#)”, *The Times*, 18 June 2018; and “[Aerospace body warns that Brussels is risking Brexit disruption](#)”, *Financial Times*, 11 September 2018

<sup>79</sup> “[Britain draws up 27 different pacts to protect flights if there's no Brexit deal as new government papers will accept possibility UK planes WON'T be able to take off and land on the continent](#)”, *Daily Mail*, 6 September 2018

<sup>80</sup> “[Barnier confronts Raab over discovery of Brexit no-deal letters to EU27](#)”, *The Guardian*, 11 September 2018

<sup>81</sup> Op cit., [How will leaving the EU affect UK transport? Key issues](#), para 4.4.1

cultural ties even further with countries such as the US and Canada”.<sup>82</sup> In a debate on Brexit and transport later that month Mr Grayling said that leaving the EU would give the UK “more freedom to make our own aviation agreements with other countries beyond Europe”.<sup>83</sup>

## Open Skies Agreement with the United States

Once the UK leaves the EU it ceases to be a party to third country agreements between the EU and those countries (unless some sort of arrangement is made).

Given its importance to the UK, the Government has commented specifically on the future of the [EU-US Aviation Agreement](#), commonly called ‘Open Skies’.<sup>84</sup> When Open Skies was agreed back in 2007 the UK market was one of the key attractions for the US – at the time the UK accounted for a 40% share of the EU-US market.

In evidence to the Transport Select Committee in October 2016 the Secretary of State for Transport, Chris Grayling, said that his “expectation and my intention would be that we retain the open skies arrangement for the United States. I cannot conceive of any US Transport Secretary who would not want that to be the case”.<sup>85</sup>

In a debate on Brexit and transport in November 2016 Mr Grayling said that he had had “positive discussions” with the US Transportation Secretary under President Obama and that he intended to reprise those discussions with President Trump’s Transportation Secretary (Elaine Chao).<sup>86</sup> Updating the Transport Committee in October 2017 Mr Grayling said:

I expect us to have a very similar arrangement with the United States after we leave. I have a very good relationship with my US counterpart. We have had very constructive discussions. I have no doubt that those arrangements will be put in place in good time. Talks between the two Departments are ongoing on a variety of issues, including this one.

As to the future, whether we choose further liberalisation, on areas such as ownership, is a matter for after we have left. Right now, I am not looking to do significant renegotiation of existing agreements. We simply want to grandfather those arrangements, so that there is a smooth transition. After that, we can look at other things that we want to do, on further liberalisation, for example.<sup>87</sup>

In March 2018 there were press reports that the US was offering the UK a ‘worse’ aviation deal than it has as an EU member and that ‘secret talks’ in January “were cut short after US negotiators offered only a standard bilateral agreement. These typically require airlines to be majority owned and controlled by parties from their country of

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<sup>82</sup> Op cit., “[Joint statement between the UK Government and Airlines UK](#)”

<sup>83</sup> [HC Deb 23 November 2016, c952](#)

<sup>84</sup> More details are given in HC Library briefing paper [SN455](#)

<sup>85</sup> Transport Committee, [Departmental priorities and annual report and accounts](#), HC 745, 17 October 2016, Qq74-5

<sup>86</sup> [HC Deb 23 November 2016, c952](#)

<sup>87</sup> Op cit., [Oral evidence: Policy priorities for the Department for Transport](#), Q124

origin".<sup>88</sup> This was later refuted,<sup>89</sup> and was followed by reports that a deal was 'imminent'. *The Telegraph* quoted the view of Nick Calio, Chief Executive of [Airlines for America](#), that:

Everyone understands there is a problem to be solved but it is being worked out and we believe there will be a framework in place very shortly ... The issue will be taken care of so that British carriers can fly to the US without challenge. In terms of the timetable, we hope something will be in place as early as the end of the month or the beginning of April.<sup>90</sup>

Most recently, in May 2018, there were reports that a deal was 'close' and that:

UK and US negotiators have agreed that major transatlantic airlines must be covered despite them being foreign owned - a break with the normal rules.

That means flights from Virgin, Norwegian Air and British Airways owner IAG - all majority-owned outside of the UK and US - would continue after Brexit [...]

A fresh round of talks will take place next month with officials and well-placed industry sources increasingly confident an agreement is within reach.<sup>91</sup>

There has been no further update.

If there are difficulties reaching agreement it is not entirely clear what happens, specifically whether UK-US arrangements would revert back to the Bermuda II bilateral agreement, signed by the two countries in 1946 and last amended in 1991. The aviation market has changed considerably since then and any reversion to Bermuda II could cause disruption to UK airlines and transatlantic trade and passenger routes. The US negotiator (now independent of the US Government) responsible for the EU-US talks, John Byerly, has said, "it is impossible for me to believe that [reversion to bilaterals] is really what would happen in the real world".<sup>92</sup>

## 6.3 Safety and EASA

The [European Aviation Safety Agency \(EASA\)](#) develops common safety and environmental rules at the European level. It monitors the implementation of standards through inspections in the Member States and provides the necessary technical expertise, training and research.<sup>93</sup>

The UK's involvement with EASA and the standards and safety regulation it is responsible for is a key issue which will need to be resolved in any Brexit negotiations. The Government has explicitly stated that it would like to negotiate some sort of ongoing membership of

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<sup>88</sup> "[US offers UK inferior open skies deal after Brexit](#)", *Financial Times*, 5 March 2018

<sup>89</sup> "[Walsh sees clear skies after Brexit](#)", *The Times*, 7 March 2018

<sup>90</sup> "[Deal to prevent post-Brexit grounding of US flights possible by end of month](#)", *The Telegraph*, 15 March 2018

<sup>91</sup> "[Britain 'open skies' deal with US due this summer as negotiators agree key terms](#)", *The Telegraph*, 28 May 2018

<sup>92</sup> Op cit., *Brexit and aviation Part 1: Open Pandora's box and anything can happen. But status quo is likely*

<sup>93</sup> EASA, [About EASA](#) [accessed 12 April 2018]

EASA after Brexit.<sup>94</sup> Specifically, in her speech on 2 March 2018 the Prime Minister said:

We want to explore with the EU, the terms on which the UK could remain part of EU agencies such as ... the European Aviation Safety Agency. We would, of course, accept that this would mean abiding by the rules of those agencies and making an appropriate financial contribution.<sup>95</sup>

As to the likelihood of such an arrangement being agreed, the March 2018 European Council negotiating guidelines state that “the aim should be to ensure continued connectivity between the UK and the EU after the UK withdrawal. This could be achieved, inter alia, through an air transport agreement, combined with aviation safety and security agreements”.<sup>96</sup> In its March 2018 paper on Brexit, *MLex Market Insight* interpreted this as follows:

... it foresees a bilateral aviation safety agreement, with the UK’s Civil Aviation Authority taking on responsibility for testing and licensing aircraft and components in the country. A streamlined system that simplifies the certification of UK products would be possible with “sufficient trust” in the UK regime, the European Commission said.<sup>97</sup>

In its June 2018 framework document on transport post-Brexit the Government said that the UK “can be informed by, and take inspiration from established precedents [in the field of aviation], but need not be constrained by them”.<sup>98</sup> Specifically on safety agreements it said

- The EU has aviation safety agreements with, for example, US, Canada and Brazil.
- They provide for regulatory cooperation, but each party maintains their own regulatory frameworks which may diverge.
- Requirements for certification are reduced, but automatic mutual recognition is not possible.
- The parties have a dialogue but do not work in partnership to prepare identical regulations.<sup>99</sup>

There is widespread agreement that continued membership of EASA would benefit the UK and the EU. For example, in a speech given on 1 December 2016 the then Chief Executive of the CAA, Andrew Haines, argued that it was in the UK’s best interests to remain an active member of EASA and that it would mean a significant increase in the regulatory burden if the UK sought to establish its own regime. He highlighted the fact that the UK and France provide two-thirds of all the rule making input on European safety regulation and together undertake close to 90% of EASA’s outsourced activities. He also said that post-Brexit the

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<sup>94</sup> See, e.g. “[UK wants to remain in EU aviation safety agency](#)”, *Financial Times*, 1 December 2017

<sup>95</sup> [PM speech on our future economic partnership with the European Union](#), 2 March 2018

<sup>96</sup> Op cit., [European Council \(Art. 50\) \(23 March 2018\) - Guidelines](#), Article 11(i)

<sup>97</sup> MLex Market Insights, [Rival Visions of a Brexit Deal](#), March 2018, p8

<sup>98</sup> Op cit., [Framework for the UK-EU partnership: Transport](#), p11

<sup>99</sup> Ibid., p11

UK can “continue to play a very active role in ICAO – indeed strengthening but it is not a substitute for European engagement” .<sup>100</sup>

In a September 2017 paper the Royal Aeronautical Society (RAS) said:

Far from diminishing UK influence in global aviation, the EASA regime has provided a conduit for UK influence on aviation safety and security within Europe and beyond on behalf of the UK passengers flying on airlines around the world; indeed, the UK has been a major driver of ever-closer alignment on regulatory matters across Europe and the negative impacts of its withdrawal would be felt across the continent, to such an extent that EASA would likely be diminished in stature as an organisation.<sup>101</sup>

It went on to outline three options open to the UK and the EU:

- the UK could remain a full member of EASA; or
- take an off-the-shelf participation option as Switzerland and Norway have done; or
- withdraw from EASA and repatriate all regulatory powers back to the UK Civil Aviation Authority (CAA), potentially contracting some activities back to EASA.

It concluded that “the case for the first option is very strong: the UK should remain within EASA” .<sup>102</sup>

In its July 2018 report the NAO stated that the Department had estimated the costs of possible future membership of EASA at £18 million between 2019-20 and 2021-22, based on information on Switzerland’s contribution as a non-EU state.<sup>103</sup>

## 6.4 Airspace change and Single European Sky

Airspace is a complex thing to understand, the easiest way to think of it is as a motorway network in the sky. Airspace is the volume of space above ground level and extends as far as aircraft can fly. UK airspace contains a network of corridors, or airways. These are usually ten miles wide and reach up to a height of 24,000 feet from a base of between 5,000 and 7,000 feet. Airspace is either considered to be ‘controlled’ or ‘uncontrolled’:

- **controlled** airspace, there is a system of structured routes and aircraft which are managed by air traffic control (ATC) services;
- a large volume of airspace in the UK is **uncontrolled**, this is where the pilot of the aircraft does not receive a service from the ground but has to “see and avoid” other aircraft and navigate independently.

More information on airspace change and modernisation can be found in HC Library briefing paper [CBP 7889](#).

<sup>100</sup> Op cit., [The future of open skies post-Brexit](#), ICAO is the [International Civil Aviation Organization](#), an agency of the UN that codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth

<sup>101</sup> RAS, [Civil Aviation Regulation: What Future After Brexit?](#), 28 September 2017, pp5-6

<sup>102</sup> Ibid., p6

<sup>103</sup> Op cit., [Implementing the UK’s Exit from the European Union: Department for Transport](#), para 2.35



The current legal and policy framework for airspace is set by Government, in accordance with international and European standards and requirements. Member states of the International Civil Aviation Organization (ICAO), including the UK, collaborate on a common regulatory framework and agree international standards on various issues, including the access to and use of airspace. EU laws implement several of ICAO's resolutions.

The main EU initiative in this area is the Single European Sky (SES), launched in 1999 to reform the architecture of European air traffic management. Its implementation is intended to increase the overall efficiency of the European air transport system. The UK and Ireland are planning to meet the SES requirements through its Future Airspace Strategy, published in June 2011, with a programme to modernise airspace across the UK out to 2030. In February 2017 the DfT published a consultation on UK airspace policy reform. In October the Government announced it would proceed with most of the main proposals in the paper.

There is general support for proceeding with this work on SES and airspace modernisation more generally at a European level.<sup>104</sup> Norway and Switzerland, which are both outside of the EU, are a part of SES so this may be something to which the UK could be party to after Brexit with relative ease.

In evidence to the Transport Select Committee in October 2016 the Secretary of State for Transport, Chris Grayling, was asked about airspace. He made no specific comment but stated that "my expectation is that it will be in the interests of everyone involved for aviation to continue to function in the way it does now".<sup>105</sup> In December 2016 the European Scrutiny Committee reported that the Government had told it that the UK "will remain part of the Europe wide air traffic management network, by virtue of its Eurocontrol membership".<sup>106</sup>

In a March 2018 report on SES, the European Scrutiny Committee noted Government comments that post-Brexit there would be a need to ensure interoperability between the UK's arrangements for managing air traffic and those of the EU and that it would be important to settle whether the UK remains part of the UK-Ireland Functional Airspace Block (FAB) as part of the negotiations with the EU. There are mechanisms other than FABs, such as the [Borealis Alliance](#), for organising air navigation services on a cross-border basis.<sup>107</sup> The Committee concluded that:

... the Single European Sky (SES) regime will cease upon withdrawal to apply to the UK... Although the UK could unilaterally retain some aspects of SES rules in UK law ... many

<sup>104</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p33

<sup>105</sup> Op cit., [Departmental priorities and annual report and accounts](#), Q76

<sup>106</sup> ESC, [Air traffic management](#), HC 71-xx, 13 December 2016; [Eurocontrol](#) is the European Organisation for the Safety of Air Navigation. It is an intergovernmental organisation with 41 Member and 2 Comprehensive Agreement States. Its primary objective is the development of a pan-European ATM system

<sup>107</sup> ESC, [Single European Sky](#), HC 301-xvi, 6 March 2018

SES provisions are cross-border and reciprocal in character, and will therefore no longer function outside the Union.

We note that European third countries that conclude agreements with the EU can participate in the SES airspace and regulatory regime, and that participation has been extended to signatories of the European Common Aviation Area Agreement (ECAA); however, these countries apply the EU aviation acquis as well as a wide range of associated environmental, social and consumer protection rules. Participation also entails accepting the indirect jurisdiction of the Court of Justice of the European Union (CJEU).

Implications for UK air traffic management of an exit from the SES include: the need to renegotiate on a bilateral basis ATM arrangements with the EU (including charging arrangements); the effects of a likely reduction over time in the interoperability between UK and EU ATMS, as the UK becomes less involved in the development of the EU system; the loss of EU funding relating to ATM initiatives; and the cost to the UK of developing its own ATM technological research programme. While these issues pose policy challenges, we consider them less critical than other challenges facing the sector, such as traffic rights, participation in the European Aviation Safety Agency (EASA), and other arrangements affecting trade in goods. In the context of the Article 50 negotiations, we note that it is unclear to what extent these issues can be disaggregated, and that the European Commission's slides on aviation suggest that it may treat them as a package.<sup>108</sup>

## 6.5 Air fares

Liberalisation has helped bring down UK air fares to the EU at a much greater rate than to other parts of the world:<sup>109</sup>



It may be that if the UK's access to the ECAA post-Brexit is limited in some way or if there is no access at all, this could potentially lead to higher air fares. As CAPA says: "any reversal of the liberalisation process, leading to increased restrictions on market access (e.g. by UK airlines on intra-EU routes, not just from the UK to the new EU, or by EU airlines flying from the UK to third party EU countries), could result

<sup>108</sup> *Ibid.*, paras 5.6-5.8

<sup>109</sup> *Op cit.*, [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p25

in fare increases". Consultancy Oxera has estimated that such restrictions on market access could lead to UK passenger fares rising by 15% to 30%.<sup>110</sup> Fares could also be affected by dramatic currency fluctuations.

However, higher fares are by no means a certainty and it will depend on the deal the UK secures. For example, Bjorn Kjos, the chief executive of Gatwick-based, low-cost carrier Norwegian Air, told ITV before the referendum that he did not think fares would rise post-Brexit. He said: "We are here providing low fares to everybody... whether you are in the EU or not that's not the problem".<sup>111</sup>

## 6.6 General aviation: drones, recreational & model aircraft

As the Government's Balance of Competencies review put it, the general aviation community (that is, the private and recreational flying sector) felt unfairly burdened by EU legislation which they considered was made without regard to their interests but, rather, to those of the commercial air transport industry. As a result they felt their sector to be governed by an overly prescriptive approach and a lack of proportionality.<sup>112</sup>

For a long time private and recreational flying has sought a more nuanced approach for light aircraft and sports and recreational aviation. The CAA has agreed that there is some overly intrusive and costly regulation in this area. Much of general aviation, especially on the operational side, does not have single market implications, and some of it is not even international in nature.<sup>113</sup> The sector's most recent concerns have been about the EU's plans to regulate small drones.<sup>114</sup>

This may be an area where the UK chooses to apply its own more liberal regime post-Brexit, but there has been nothing to indicate that such would be the case.

## 6.7 Exit preparations

As set out in section 4.3 above, the UK Government has started to publish negative SIs relating to transport, made under the Withdrawal Act; some of these have already been sifted by the relevant Committees.<sup>115</sup>

There are three SIs relating to aviation, published to date:

<sup>110</sup> CAPA, [Brexit and aviation Part 2: lower air traffic, economic uncertainty. UK-EU relations up in the air](#), 28 June 2016; the Chief Executive of Ryanair, Michael O'Leary, voiced similar concerns, see: "[Airfare hikes ahead unless Brexit talks turn, warns Michael O'Leary](#)", *Daily Telegraph*, 7 November 2016

<sup>111</sup> "[The boss of one of Europe's biggest budget airlines says Brexit would not end cheap fares](#)", *ITV News*, 31 March 2016

<sup>112</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p55

<sup>113</sup> Ibid., p55

<sup>114</sup> For more information see HC Library briefing paper [CBP 7734](#)

<sup>115</sup> The process is explained on the Parliament website, see: [Statutory instruments relating to Brexit](#) [accessed 4 October 2018]

- [Airports \(Groundhandling\) \(Amendment\) \(EU Exit\) Regulations 2018](#);
- [Airport Charges \(Amendment\) \(EU Exit\) Regulations 2018](#); and
- [Civil Aviation Act 1982 \(Amendment\) \(EU Exit\) Regulations 2018](#)

Also relevant, though somewhat tangentially, are the [Computer Reservation Systems \(Amendment\) \(EU Exit\) Regulations 2018](#).

In each case the sifting committees have agreed with the Government that these SIs do not require a debate in Parliament, though one may still occur.

The EU27 is also preparing for Brexit. The European Commission has issued Notices to Stakeholders on the implications of Brexit in the fields of air transport, aviation safety and aviation security.<sup>116</sup>

## 6.8 No deal

### Government technical notices

As stated in section 1.3, above, on 23 August 2018 DExEU began to publish 'technical notices', on how to prepare for Brexit if there is 'no deal'. On 24 September the Department for Transport published three papers on aviation, covering flights, safety, and security.

On **flights between the EU27 and the UK** in the event of 'no deal', the relevant paper states that:

UK and EU licensed airlines would lose the automatic right to operate air services between the UK and the EU without seeking advance permission. This would mean that airlines operating between the UK and the EU would need to seek individual permissions to operate.<sup>117</sup>

It goes on to state that in this scenario the UK envisages granting permission to EU airlines to continue to operate and would "expect EU countries to reciprocate in turn". If such permissions are not granted, there could be disruption to some flights. In these circumstances the UK approach would be as follows:

In order to ensure permissions were granted and flights continued, the UK's preference would be to agree a basic arrangement or understanding on a multilateral basis between the UK and the EU. Alternatively, bilateral arrangements between the UK and an individual EU country could be put in place, specifying the conditions under which air services would be permitted. By definition any such agreement would be reciprocal in nature.<sup>118</sup>

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<sup>116</sup> EC, [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Air Transport](#), 19 January 2018; [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Aviation Safety Rules](#), 13 April 2018; and [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the field of Aviation Security and Maritime Security](#), 5 July 2018

<sup>117</sup> DfT, [Flights to and from the UK if there's no Brexit deal](#), 24 September 2018

<sup>118</sup> Ibid.; at the AOA conference in October 2018 Mr Grayling stated that one cause of disruption to flights could be EASA refusing or delaying the certification of UK-certified planes [["UK-EU Flight Disruption 'Theoretically Possible' in the Event of a No-Deal Brexit, Admits Chris Grayling"](#), *The Independent*, 29 October 2018]

On **flights to and from the rest of the world**, it states that there would be two approaches:

- For airlines from one of the 111 countries with whom the UK has a bilateral Air Services Agreement (ASA), including China, India and Brazil, there would be no change; and
- For airlines from one of the 17 non-EU countries with whom air services to the UK are currently provided for by virtue of the UK's membership of the EU, replacement arrangements will be in place before Exit Day.

The paper states that the UK "has already agreed a number of these agreements, and is confident the remaining agreements will be agreed well in advance of the UK leaving the EU".<sup>119</sup>

On **air traffic management**, the paper states that the UK would no longer be able to directly participate in the EU's SES initiative (see section 6.4, above), but that the UK "would continue to work through EUROCONTROL to ensure the safe and efficient management of airspace across its 41 members. The UK will continue to lead the way in providing safe and efficient air traffic control services".<sup>120</sup>

A separate paper on **aviation security** states that if the UK leaves the EU in March 2019 with no agreement in place on aviation security, the existing regulations and procedures will still be retained in domestic law under the EUW Act. It states that:

Given this, and the higher standards of aviation already in place in the UK, there is no reason for the UK's aviation security regime not to be recognised by the EU as equivalent, which would mean no additional security restrictions would need to be imposed by either the EU or the UK. However, if the EU does not recognise the UK's standards, there would be a number of possible implications for passengers and cargo.<sup>121</sup>

These could include passenger and baggage rescreening at EU airports for UK passengers catching an onward flight. The paper notes that the European Commission has "indicated that they will not recognise the UK aviation security system", with potentially "significant operational and cost implications for ... EU airports, and passengers may have to factor increased time for rescreening into their travel schedule".<sup>122</sup>

As regards cargo, the Commission has set out that, in the absence of any agreement, the default regulatory position will require carriers to hold ACC3 designations<sup>123</sup> from an EU Member State in order to transport cargo from the UK into the EU. The paper states that the EU "has not yet provided details of how carriers should apply for

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<sup>119</sup> Ibid.

<sup>120</sup> Ibid. [Eurocontrol](#) was created via an international convention in 1960. It is an intergovernmental organisation with 41 Member and 2 Comprehensive Agreement States. The aim behind the creation of Eurocontrol was to have an organisation that would be entirely responsible for upper airspace in Europe. Its primary objective is the development of a pan-European air traffic management system.

<sup>121</sup> DfT, [Aviation security if there's no Brexit deal](#), 24 September 2018

<sup>122</sup> Ibid.

<sup>123</sup> Air Cargo or Mail Carrier operating into the Union from a Third Country Airport

an ACC3 designation". The paper states that an outcome where the EU does not immediately recognise UK security standards as equivalent (given standards are higher than in the EU) would "have significant implications for the EU air cargo industry, their supply chains, and the consumers of the products to be shipped" and that the UK therefore expects that its recognition of EU security standards "will be reciprocated in turn by the EU".<sup>124</sup>

A separate paper on aviation safety deals with **EASA**. It states that in the event of 'no deal', the functions currently performed by EASA in relation to approvals for UK designed aeronautical products and approvals for third country organisations would be conferred on the CAA.<sup>125</sup> The CAA has set up a [microsite](#), explaining in more detail what would happen in the event of 'no deal'. The site contains detailed advice for the following:

- [Aerospace design organisations](#);
- [Aerospace maintenance organisations](#);
- [Aerospace production organisations](#);
- [Air Navigation Service Providers](#);
- [Airlines and AOC holders](#);
- [Airports](#);
- [Approved Training Organisations](#);
- [Cabin crew](#);
- [Commercial pilots](#);
- [Continued Airworthiness Management Organisations](#);
- [Declared entities](#);
- [Drones](#);
- [Engineering training organisations](#);
- [Flight training examiners](#);
- [Licensed engineers](#);
- [Private pilots](#); and
- [UK-registered aircraft: qualified owners](#)

The CAA has also created this short introduction to what a 'no deal' means for aviation safety regulation. One issue it deals with is that of commercial pilots.<sup>126</sup> The CAA states that for most UK-registered commercial pilots, there would be little impact from 'no deal' as a

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<sup>124</sup> Ibid.

<sup>125</sup> DfT, [Aviation safety if there's no Brexit deal](#), 24 September 2018; the *Civil Aviation Act 1982 (Amendment) (EU Exit) Regulations 2018* (see section 6.7, above) prepare for this contingency

<sup>126</sup> Following some concerns from the CAA about how the issue had been reported by the media, see, e.g. CAA press notice, "[CAA statement on Sky News aviation and Brexit story](#)", 11 September 2018

consequence of global aviation rules.<sup>127</sup> Pilots with UK licences who want to fly EU-registered aircraft post-Brexit would need to transfer their licence to another EASA member state before Brexit, or seek a second licence. If pilots currently hold a commercial licence from another EASA member state, they would need to seek validation from the CAA to operate UK-registered aircraft if they want to fly outside the UK. The CAA states that it “is currently developing processes to make this as seamless as possible”.<sup>128</sup>

UK airlines, aircraft manufacturers and other members of the aviation industry are now able to register with EASA as a ‘third country’, in preparation for a ‘no deal’.<sup>129</sup>

## Impact

The impact of ‘no deal’ on aviation has been widely debated. For example, in its December 2017 report on a ‘no deal’ Brexit, the Lords EU Internal Market Sub-Committee stated that “The consequences of failure to reach a deal [on aviation] would be grave”.<sup>130</sup> There has been speculation that the UK-Spain market could be particularly badly hit.<sup>131</sup> In a March 2018 report the Business, Energy and Industrial Strategy Select Committee set out the potential consequences of a UK exit from EASA:

If the UK is to make a managed departure from EASA, it would require a transition period in which special arrangements are made with the EASA, the US Federal Aviation Authority and other global regulators. The Civil Aviation Authority would need to undergo a major investment and recruitment programme if it is to take over the functions of EASA at some point in the future, and Bilateral Aviation Safety Agreements with mutual recognition agreements would need to be negotiated with the EU, US and other major markets. Given the complexities involved, this transition may need to last beyond the two years that the Prime Minister has said is likely to be appropriate for the economy-wide implementation period. This disruptive and costly process is unlikely to result in any significant divergence in regulation.<sup>132</sup>

The UK in a Changing Europe stated in a September 2018 paper that:

Brexit in any form will be disruptive for airlines, but failure by the UK and the EU to reach agreement would leave the industry in chaos. Because the sector has its own system of regulation, based on the 1944 Chicago Convention, there is no WTO safety net in aviation. Moreover, although the Chicago system has provided a stable framework for the development of aviation since the

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<sup>127</sup> Under the [International Civil Aviation Organization \(ICAO\)](#)

<sup>128</sup> CAA, [The CAA's guide to Brexit No Deal & Aviation Safety](#), CAP 1714, 24 September 2018, pp5-6

<sup>129</sup> EASA, [Brexit](#) [updated 2 October 2018]

<sup>130</sup> Op cit., [Brexit: deal or no deal](#), Box 5, p15

<sup>131</sup> [“No-deal Brexit would halt most UK-Spain flights, industry says”](#), *The Guardian*, 24 October 2018

<sup>132</sup> BEIS Committee, [The impact of Brexit on the aerospace sector](#) (Sixth Report of Session 2017–19), HC 380, 19 March 2018, para 47; see also: European Select Committee, [EU Aviation Safety Agency \(EASA\)](#), HC 301-xiv, 27 February 2018



second world war, it is unwieldy, difficult to change and restrictive.<sup>133</sup>

It went on:

Some argue that ... fears are exaggerated and that it is in the economic interests of both the UK and the EU to avoid [no deal]. It is true that contingency measures could be mobilized to retain basic connectivity – for example, the UK could grant access unilaterally – but such steps would merely limit the damage. They would certainly not provide for a continuation of the advanced system that currently exists. A UK-EU air services agreement, as well as UK bilaterals with third countries, would take years to negotiate, as each side aims to secure the best deal for its airlines under uncertain conditions.<sup>134</sup>

Watson Farley & Williams argued in a March 2017 paper that “the connection between aviation and the EU Single Market is not inherent and compromise may be possible, but will require both sides to be bold”.<sup>135</sup> It further stated that:

... the logic of requiring the UK to leave the single aviation area because it is leaving the Single Market is not easy to follow ... it would be perverse to allow the creation of new restrictions on flying between the UK and the EU when third countries such as Canada, on another continent, have the possibility of securing fully open skies provided ownership and control restrictions on both sides are eliminated [...]

It would be wrong to say the EU-Canada agreement could be a “model” for a future UK-EU aviation deal; it would be more correct to say it shows the link between membership of the Single Market and the single aviation market is not essential.<sup>136</sup>

The Institute of Economic Affairs (IEA) published a ‘no deal fear checker’ in August 2018. This stated that there is mutual self-interest on the part of the UK and the EU27 in ensuring that planes can still fly:

First, the UK is a world leader in aviation, which means it has plenty of leverage. The UK market itself is the largest in the EU, and the third largest globally, after only the US and China [...]

Second, the mutual interests are strong. Grounding UK airlines would be hugely damaging for the EU economy, particularly in areas like tourism. And, of course, foreign airlines presumably want to continue to fly to and from the UK as well. Since these agreements are reciprocal, it is unlikely that other countries would deny the UK the most important rights when they would then almost certainly lose them too.

Third, even if this is left to the last moment, there are several quick fixes. In particular, the UK and EU (or a third country like the US) could agree at least a temporary extension of the current arrangements by something as simple as a memorandum of understanding.<sup>137</sup>

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<sup>133</sup> The UK in a Changing Europe, [Cost of No Deal Revisited](#), 3 September 2018, p27

<sup>134</sup> Ibid., p27

<sup>135</sup> WFW, [Keeping Skies Open After Brexit](#), 29 March 2017, p4

<sup>136</sup> Ibid., p5

<sup>137</sup> IEA, [“No Deal” Fear-checker No. 1: “Planes won’t fly”](#), 27 August 2018, p2

The International Air Transport Association (IATA) has urged “an early resolution for aviation in the Brexit discussion” in order to ensure that passengers have security about their travel arrangements:

Time is precious. The Brexit clock is ticking towards a deadline of March 2019. But the aviation deadline is earlier. Normally passengers can book travel about a year in advance. At a minimum, the flight schedules and seat and cargo inventories must be available at least six months in advance. So that puts the airlines’ deadline at October 2018...<sup>138</sup>

There were reports towards the end of 2017 that some airlines were tightening their terms and conditions for flights booked in advance for after Brexit, warning customers that they may not take off and that airlines will not pay compensation if planes are grounded.<sup>139</sup>

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<sup>138</sup> IATA press notice, “[UK Aviation Priorities: Clarity on Brexit and Expanding Heathrow](#)”, 8 November 2017

<sup>139</sup> “[Airlines may not guarantee flights after exit from EU](#)”, *The Times*, 18 October 2017; see also: “[Ryanair confirms roll out of "Brexit clause" in tickets](#)”, *City A.M.*, 31 January 2018

## 7. Rail

It is worth briefly setting out how the British railway industry is set up so that Brexit can be put into context – this is particularly important to understand the impact of e.g. EU law on integration and publicly-run railways (see section 7.4, below).

Following privatisation in 1993, British Rail was divided into two main parts: one part being the national rail infrastructure (track, signalling, bridges, tunnels, stations and depots) and the second being the operating companies whose trains run on that network.

The **infrastructure** is owned, maintained and operated by [Network Rail](#), with the exception of the HS1 route through Kent, which is maintained and operated by a private company as part of a concession agreement. Network Rail is **regulated** by the [Office of Rail and Road \(ORR\)](#), which is also the safety regulator. Railway **stations** are owned by the network operator, most being leased to the TOC that is the main user of that station. Network Rail retains the operation of the main passenger terminals.

**Rail services** are run by privately-owned train operating companies (TOCs) and freight operating companies (FOCs). Passenger services are let as multi-year franchises by the DfT except in London and Merseyside where they are let as concession agreements by the relevant local body.<sup>140</sup> There are a limited number of 'open access' operators on the network, who run rail services outside of the franchising process by securing timetable slots from the regulator. The **trains** (rolling stock) are owned by private rolling stock leasing companies (ROSCOs) and leased to the TOCs.

The [Rail Delivery Group \(RDG\)](#) brings together passenger and freight operators, as well as Network Rail; it represents the industry and develops policy on its behalf with the stated aim of enabling its members to "succeed in transforming and delivering a successful railway, benefiting customers, taxpayers and the economy".<sup>141</sup> The RDG has published a policy document summarising the industry's 'key asks' from Brexit, including smooth cross-border transport; reciprocal market access; access to skills; and the clear application of railway standards.<sup>142</sup>

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<sup>140</sup> Rail franchising is devolved in Scotland and Wales and the railways in Northern Ireland are state-run

<sup>141</sup> RDG, [About us](#) [accessed 12 April 2018]

<sup>142</sup> RDG, [Brexit and the Rail Industry: Policy Asks](#) [accessed 4 October 2018]

## 7.1 Rail interoperability/technical standards

The main legislation as it relates to railways is contained in four ‘railway packages’.<sup>143</sup> The individual pieces of legislation which make up these packages are far-reaching and, for example, legislated for the [European Union Agency for Railways \(EUAR\)](#) – with extensive powers – and the detailed [Technical Standards of Interoperability \(TSIs\)](#), which set out the technical requirements for the whole railway. They also prescribe how railways can be structured, financed and run.<sup>144</sup>

[EU Regulation 2016/796](#) allows countries which are not members of the EU to participate in the EUAR. The Swiss Confederation requested such participation in 2013. The UK Government is “carefully considering the implications” of the terms of Swiss participation within EUAR, in light of a future EU-UK relationship.<sup>145</sup>

The Balance of Competencies review revealed some, though not a great deal of, dissatisfaction with interoperability. For example, one respondent argued that due to the UK’s restricted loading gauge, most trains that run in the UK will be built solely for use in this country and the interoperability of technical standards in particular is therefore ‘an unnecessary burden’.<sup>146</sup>

The [Rail Safety and Standards Board \(RSSB\)](#) said that the harmonisation of standards “is both necessary for the functioning of the market and desirable in its own right” and that in the field of standards and harmonisation it believes that the “organisational framework, interface standards and the requirements for safety are best set at the EU level”.<sup>147</sup> The RSSB pointed out, however, that there were many aspects of running a railway system which could be managed in different ways without compromising technical compatibility. Other respondents stated that the EU should go further and align standards with those used internationally, for example in the US or Japan.<sup>148</sup>

The RDG’s Brexit paper (see above) states that:

If the UK were to stop applying TSIs, there would be implications for international routes and rail supply chain imports and exports. Whilst there are some potential benefits in modifying elements of railway standards domestically, this must be undertaken in consultation of the whole industry and based on a thorough impact assessment on all players of the UK railway sector.<sup>149</sup>

Information on the EU’s four railway packages can be found in HC Library briefing paper [CBP 184](#).

<sup>143</sup> The main legislation is summarised on the [ORR’s website](#)

<sup>144</sup> The European Commission has published a notice to stakeholders on how Brexit will affect the EU27, particularly in terms of interoperability, see: EC, [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Rail Transport](#), 18 July 2018

<sup>145</sup> European Scrutiny Committee, [Ninth Report of Session 2017–19](#), HC 301-ix, 16 January 2018, section 4

<sup>146</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p28

<sup>147</sup> Ibid., p40

<sup>148</sup> Ibid., pp40-41

<sup>149</sup> Op cit., [Brexit and the Rail Industry: Policy Asks](#), p3

It goes on to explain how the industry envisages managing technical deviation in the future:

In the medium-term, the industry will continue to apply all EU standards. Convergence or divergence from EU Regulations, TSIs and standards will be managed through a central industry mechanism (Technical Authority) to ensure a coherent and integrated suite of regulations that is responsive and is influenced by the needs of the sector. This central mechanism will have to be agreed with the whole industry and decisions made with a holistic view of costs and benefits. The industry will need support and potentially financing from the Government for this activity.<sup>150</sup>

At a Brexit and rail conference in February 2018 Darren Caplan, Chief Executive of the Rail Industry Association (RIA), said that “there is no huge desire in the UK rail sector to deviate on standards”.<sup>151</sup> The RIA told the Lords EU Internal Market Sub-Committee in October 2018 that:

If the UK were to stop recognising EU railway standards, there would be legal and regulatory implications for EU-based companies in the UK market. There would also be implications with imports from and exports to the EU. Similarly, the ability of UK companies to bid for EU contracts would be impacted. Divergence would also create potential difficulties in attracting inward technology investment.

Such divergence risks creating a ‘bespoke’ domestic market, requiring EU and overseas manufacturers to establish a separate product line solely for the UK. This could add cost, reduce competitiveness and make the UK a less attractive market. Ultimately, this could disincentivise investment and could result in jobs and manufacturing being moved out of the UK [...]

If the UK diverges from TSIs, it could reduce its export potential, at a time when the UK is seeking new Free Trade Agreements with countries that are key overseas markets for rail, including Australia, the US and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).<sup>152</sup>

The Community of European Railway and Infrastructure Companies (CER) gave the Lords Committee a similar view in its evidence:

... with more than 11 million passengers and 22 million tonnes of freight goods cross the border between the UK and the EU every year, the maintenance of a close relationship is of major importance. The greater the divergence following withdrawal, the greater the possibility that trains might no longer legally be allowed to cross these borders. To enable smooth travel across borders, trains need to conform to technical standards which are mutually recognised by both the UK and the EU. Train drivers also need their licences and certificates to be mutually recognised by both the UK and the EU. If train drivers are not licenced to work in the EU (or vice-versa), or if technical standards are not mutually recognised, it could become legally impossible for a train service to travel through the border into the destination country.<sup>153</sup>

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<sup>150</sup> Ibid., p3

<sup>151</sup> “[‘Don’t forget rail’ in Brexit talks, urge UK industry leaders](#)”, *Euractiv*, 23 February 2018

<sup>152</sup> Lords EU IMSC, [Written Evidence – Railway Industry Association \(TRA0005\)](#), 13 September 2018

<sup>153</sup> Lords EU IMSC, [Written Evidence – CER \(TRA0023\)](#), 3 October 2018

In August 2018 there were reports that Network Rail was considering disapplying TSIs to cut costs. The RSSB said that it “would be a mistake for Network Rail to discard EU rules too quickly” and cautioned that moving away from a uniform approach could reduce the value of trains because they would be able to operate on fewer lines, and new freedoms had to be used “in a controlled way”.<sup>154</sup> The Department for Transport told the Lords EU Internal Market Sub-Committee in September 2018 that:

Before any changes are made we would work closely with the industry and passengers to identify risks and opportunities. We would ensure that we only diverge where it is clearly in the UK’s interests, and that any divergence is subject to consultation so that the impacts are fully assessed.<sup>155</sup>

### Convention concerning International Carriage by Rail (COTIF)

Both technical notices on ‘no deal’ in the rail sector (see section 7.8, below) state that the UK would:

... continue to meet our obligations as a member of the Convention concerning international carriage by rail (COTIF) in all scenarios. COTIF establishes uniform rules that govern international rail transport. The EU and the UK are parties to COTIF and these uniform rules.<sup>156</sup>

The [Convention concerning International Carriage by Rail \(COTIF\)](#) is a long-standing inter-governmental agreement between 49 Member States (and the EU), which provides a system of international law for the carriage of goods, passengers and luggage by rail on international journeys. It avoids the need for large numbers of bilateral agreements between rail service operators in Europe, the Middle East and North Africa. Uniform systems of law have been in operation for many years: the first International Convention concerning the Carriage of Goods by Rail was signed in 1890.<sup>157</sup>

The first Convention concerning International Carriage by Rail was COTIF 1980, which entered into force in 1985. At present the basic legal instrument is COTIF 1999 and its seven appendices.

[COTIF 1980](#) had several sets of rules, known as ‘uniform rules’ which made provision for:

- contracts for the international carriage of passengers (known as the CIV uniform rules); and
- contracts for the international carriage of goods or freight (known as the CIM uniform rules) with annexes dealing with, amongst

<sup>154</sup> “[Network Rail looks to save money by ditching EU standards](#)”, *Financial Times*, 24 August 2018

<sup>155</sup> Lords EU IMSC, [Written Evidence – Department for Transport \(TRA0012\)](#), 14 September 2018, Q6

<sup>156</sup> Op cit., [Rail transport if there’s no Brexit deal](#)

<sup>157</sup> It created an Administrative Union according to the rules of international law of that time, with its headquarters in Berne, supervised by the Swiss Government. In 1956, the supervisory function was transferred to an Administrative Committee, made up of representatives from some of the Member States [OTIF, [Intergovernmental Organisation for International Carriage by Rail \(OTIF\)](#), August 2010, p1

other things, the carriage of dangerous goods (known as the RID Regulation).

[COTIF 1999 and the 1999 Vilnius Protocol](#) provided new CIV uniform rules, new CIM uniform rules and made RID a free-standing appendix. It introduced the following:

- new uniform rules for contracts of use of vehicles in international rail traffic (CUV);
- contracts of use of infrastructure in international rail traffic (CUI);
- the validation of technical standards and prescriptions applicable to railway material intended to be used in international traffic (APTU); and
- the technical admission of railway material used in international traffic (ATMF).

COTIF 1999 brought within its scope certain matters that are within the competence of the EU, for example the APTU and ATMF appendices.

In terms of implementation in the UK, the UK acceded to COTIF in the 1950s.<sup>158</sup> The UK Government obtained new primary powers in section 103 of the [Railways and Transport Safety Act 2003](#) to give effect to COTIF 1999 by regulations, rather than relying on the [International Transport Conventions Act 1983](#), which was considered not sufficiently flexible to deal with the new agreement. The *Railways (Convention on International Carriage by Rail) Regulations 2005* ([SI 2005/2092](#)) were made in July 2005 and amended in 2010.

In August 2009 the European Commission brought forward a revised proposal to provide for the EU's accession to COTIF 1999. Accession had been delayed due to the incompatible legal regimes between the two.<sup>159</sup> The EU [acceded](#) to COTIF in June 2011.

DfT explains that COTIF is a "mixed agreement where both the European Union and the 26 EU Member States which have railway networks are contracting parties".<sup>160</sup> In areas where the EU has exclusive competence, it alone votes and not the Member States. Where there is shared competence either party can vote. When the EU votes it has the combined number of votes of all Member States that are party to COTIF.

From 1 January 2019 the UK Government has announced its intention to re-impose its reservation regarding Appendix E of COTIF (CUI) "in order to ensure international rail traffic would not risk additional financial burdens".<sup>161</sup>

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<sup>158</sup> DfT, [Explanatory Memorandum on European Union document 11482/18](#), 10 August 2018, para 1

<sup>159</sup> For a fuller explanation, see: [COM\(2009\) 441 final](#), 31 August 2009

<sup>160</sup> Op cit., [Explanatory Memorandum on European Union document 11482/18](#), para 11

<sup>161</sup> Ibid., para 16



## 7.2 Cross-border international rail services

As set out in section 3.1, above, the July 2018 Brexit White Paper set out the UK Government's intention to negotiate bilateral rail agreements with relevant Member States to support the continued operation of the UK's two cross-border rail services:

The EU and the UK have agreed that the UK will pursue bilateral agreements with France, Belgium and the Netherlands to ensure the continued smooth functioning and operation of services through the Channel Tunnel, and with Ireland to do the same for the Belfast-Dublin Enterprise line. Beyond those cross-border services, the UK will have the flexibility to shape its own domestic railway legislation to meet the needs of its passengers and freight shippers, and reflect the unique characteristics of the rail network within the UK.<sup>162</sup>

The RDG's Brexit paper (see above) states that:

Smooth rail transport between Britain and France via the Channel Tunnel and from ports onto freight trains must be guaranteed. Passenger and freight train operators need to access rail infrastructure without undue cost, delay or operational boundaries. The capacity of IT systems, human resource, space and physical infrastructure to support these additional burdens – such as new customs-checks at the border – must be ready for 'day one'.

A temporary implementation period to allow adaptation to new systems is absolutely necessary, and a new deal vital. In addition, the UK and EU must agree full mutual recognition of licences and train driver licences on the route through the Channel Tunnel.<sup>163</sup>

HS1 has cautioned that the Government's plan for bilaterals only with existing markets would be a mistake:

Deutsche Bahn came close to creating a direct service from London to Frankfurt in 2010 [...] The lack of a bilateral agreement for trains between London and Germany will stand in the way of this growth opportunity and further delay this service, costing the creation of countless British jobs and lost potential for UK economic growth [...] There is an equal case to be made for Switzerland and the future potential for a service between London and Geneva. We therefore strongly urge the British government to commit to negotiating treaties with Germany and Switzerland in parallel to those with France, Belgium and the Netherlands. This will send an important signal to the operators that this economically important rail market is open and ready to be exploited.<sup>164</sup>

### Channel Tunnel

The Channel Tunnel is governed by an [Intergovernmental Commission](#) that was established under the [Treaty of Canterbury](#). The Channel Tunnel Group (Groupe Eurotunnel/Getlink) is responsible for the operation of the tunnel until 2086, under a [concession agreement](#).

<sup>162</sup> Op cit., [The future relationship between the United Kingdom and the European Union](#), para 136

<sup>163</sup> Op cit., [Brexit and the Rail Industry: Policy Asks](#), p2

<sup>164</sup> Lords EU IMSC, [Written Evidence – HS1 Ltd. \(TRA0016\)](#), 14 September 2018

These are matters of international law and would be unaffected by Brexit.

However, the Tunnel is the UK's only surface transport link to mainland Europe and as such a different set of legal requirements apply due to the international nature of the travel it facilitates. For commercial and technical reasons it is therefore unlikely that the Tunnel and the HS1 (Channel Tunnel Rail Link) line would want to see any change in the application of EU law and TSIs (see section 4.1). There would be a continuing need for operational rules to be consistently applied both sides of the Tunnel. This in turn likely means that where HS1 interacts with the convention rail network (e.g. Ashford) there will need to be operational and legal coherence. Further, for the Channel Tunnel – as at UK ports like Dover – there is the issue of immigration and customs checks.<sup>165</sup>

Getlink told the Lords EU Internal Market Sub-Committee in October 2018 that it would:

... continue to work closely with both the UK and French governments to ensure continued passenger and freight growth on our services following Brexit [...]

Article 4 in the Treaty of Canterbury, regarding police and frontier controls, notes that 'the frontier controls shall be organised in a way which will reconcile, as far as possible, the rapid flow of traffic within the efficiency of the controls'. It is therefore crucial that the outcome of any agreement maintains the fast and frictionless movement of goods and people at the border that has contributed to the growth of trade through the Channel Tunnel.

[...] Getlink is engaging with HM Government, largely through the Border Delivery Group, to inform discussions and to ensure that the importance of the Channel Tunnel to the UK and EU economies is recognised [...] In 2015, we successfully implemented exit checks and worked with both Governments to improve security at our Coquelles terminal, and we are confident in our ability to respond to the Government's technical specification and continue to provide an attractive service for our shuttle and freight customers.<sup>166</sup>

## Eurostar

Eurostar International Limited (EIL) runs international train services through the Channel Tunnel, it has long-term access rights to the Tunnel, HS1 and at St. Pancras International. It used to be entirely publicly owned by the French state railway SNCF (55%), the Belgian state railway SNCB (5%) and the UK Government (40%). The UK Government sold its share to Caisse de dépôt et placement du Québec (CDPQ) and Hermes Infrastructure in March 2015.<sup>167</sup>

In November 2016 EIL set out its concerns about Brexit in written evidence to the Lords EU Internal Market Sub-Committee. It raised four

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<sup>165</sup> This is governed by the Le Touquet Treaty; for more information see section 8 of HC Library briefing paper [CBP 7632](#)

<sup>166</sup> Lords EU IMSC, *Written Evidence – Getlink (TRA0022)*, 2 October 2018

<sup>167</sup> HMT press notice, "[UK Government reaches agreement on the sale of its entire interest in Eurostar for £757.1m](#)", 24 March 2015

particular concerns including rights to work and rights to remain (40% of EIL's workforce in the UK are non-UK citizens); ease of doing business and clarity of future intentions; and ease of movement (e.g. joint and rapid processing of UK and EU citizens at the border).<sup>168</sup> Its fourth concern was about regulatory divergence. If divergence between UK and EU rules were to happen, EIL argued that this would lead to "significant cost and complexity for our business. This in turn would affect our competitiveness and, depending on the nature of any differences between systems, it may not be possible to operate either from an economic or practical standpoint".<sup>169</sup> For example:

- Under the fourth railway package, we expect to have a single safety certificate with a one stop shop to obtain this for our entire operation. If UK-registered companies were not able to obtain this certificate and/or the UK were to adopt a different approach, we would face uncertainty on the compatibility of the rules between the UK and EU and ongoing additional costs were there to be an additional UK only system;
- Would train drivers be required to have more than one licence to provide services between the UK and EU? If so, what conditions and standards would need to be met and complied with in a separate UK system? This would impact cost and, potentially, the pool of available drivers that we could recruit to these positions;
- As a UK-headquartered company, would we be able to continue to benefit from the provisions of Directive 2012/34 on the single European railway area in the same manner as an operator in an EU Member State, or would a less advantageous 'third country' approach be adopted? If the latter, this could affect our competitiveness and the economics of our operation;
- If the UK was to exempt certain parts of the UK network or operators from the application of TSIs, wouldn't that create a network system that may not be interoperable with the requirements of EU Member States, thereby harming cross border trade as well as opportunities for services to/from the UK?<sup>170</sup>

## Belfast-Dublin line

The Belfast–Dublin line is a key railway route on the island of Ireland, along which operates the Enterprise cross-border rail service. Enterprise is jointly operated by Northern Ireland's Translink and Iarnród Éireann (Irish Rail). Transport in Northern Ireland is completely devolved from the rest of the UK, governed largely by separate legislation and managed in a differently way (rail is a nationalised service in NI, with the services and infrastructure operated by different companies, all owned by Translink). The NI Department for Infrastructure has transposed key EU rail legislation directly into NI law.<sup>171</sup>

<sup>168</sup> Lords EU IMSC, [Eurostar International Ltd-Written evidence](#) (TAS0074), November 2016

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> DfI, [Railway transport EU issues](#) [accessed 9 October 2018]

There were reports in the Irish press in early 2018 that Iarnród Éireann had “been drawing up worst-case scenario plans if an EU-Britain border deal fails to be reached”:

... officials have been working with the Community of European Railway and Infrastructure Companies, which has experience of passport checks between European nations, Irish customs authorities, the passport office, and colleagues in the North about the impact of a hard Brexit.

While Iarnród Éireann is working on the basis that a soft border agreement will eventually be found, [a] spokesman said one of the potential hard Brexit scenarios being examined is an “onboard model if it comes to it” of passport and border checks.<sup>172</sup>

Translink told the Lords EU Internal Market Sub-Committee in October 2018 that:

Translink ... considers that close alignment with ROI transport providers on operational and functional matters is important to ensure a common travel area in Ireland is effective. In this respect, Translink considers there are advantages in adopting and aiming towards the same technical standards as its partners in ROI. Translink sees little advantage in departing from this consistent approach to standards within Ireland.<sup>173</sup>

### 7.3 Customs checks at freight terminals

The [Taxation \(Cross-border Trade\) Act 2018](#) includes the provision for Railway Customs Areas (RCAs) – inland freight terminals with customs facilities. To continue importing and exporting goods to/from Europe, rail freight terminal and private siding operators would need to apply to HMRC to have their site designated as an RCA.

In August 2018 the Rail Delivery Group (RDG) published a strategy for RCAs at rail freight terminals to avoid the need for a single border checkpoint, and removing the prospect of congestion on the rail network in Kent.<sup>174</sup> RDG explained:

At present, rail freight inside the European Union operates without the need for customs declarations, but there is a site at each side of the Channel Tunnel for safety and security inspections. Converting the site at Dollands Moor in Kent for customs use has the potential to create significant congestion and delays which would disrupt trading and business supply chains, particularly ‘just in time’ manufacturing which minimises inefficiency and lowers costs.

With investment from the public and private sectors to provide suitable customs security measures at existing freight terminals, RCAs can be created to ensure imports reach their destination without delay. This is crucial for manufacturing supply chains as well as drinks imports. For example, car assembly parts are moved by rail to terminals in Daventry in the Midlands and Ditton in the

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<sup>172</sup> “Irish Rail drawing up ‘worst-case scenario plans’ for Brexit”, *Irish Examiner*, 14 March 2018

<sup>173</sup> Lords EU IMSC, [Written Evidence – Translink \(TRA0020\)](#), 1 October 2018, para 1.12

<sup>174</sup> RDG press notice, [“Rail industry’s customs proposal tackle post-Brexit congestion concerns and provides new opportunities for businesses”](#), 8 August 2018

North West, while bottled water from France is imported to Daventry.<sup>175</sup>

In its June 2018 evidence to the Transport Select Committee, the Freight Transport Association (FTA) observed that trouble with imports at Dover could make freight transport through the Channel Tunnel more attractive, but that RCAs would be unprepared for this:

... existing traffic is largely based around commoditised unitised loads of single products that from a security and customs perspective are regarded as lower risk than the diverse groupage traffics that ro-ro ferries and lorries carry. An increase in the latter would require more customs / security input and the freight yard at Dollands Moor was not designed for such. Other sites originally designed as inland clearance terminals include Wembley but that is to disappear under (literally) HS2 by a long lease from the owner DB Cargo to HS2 Ltd. Other potential sites are being evaluated in current work with agencies concerned though as none were built with this function in mind they do face challenges.<sup>176</sup>

## 7.4 Publicly-run rail

As mentioned in section 7.1, above, the main EU legislation as it relates to railways is contained in four 'railway packages'.<sup>177</sup> The individual pieces of legislation which make up these packages are far-reaching and, for example, prescribe how railways can be structured, financed and run.

There is a commonly-held belief that EU law 'bans' the renationalisation – or public ownership and operation – of the rail network. This is a misconception.<sup>178</sup> Current laws do not prevent the state owning and managing the rail infrastructure and (separately) operating train services – this model is commonly employed in other Member States.<sup>179</sup>

That said, the 'market pillar' of the fourth railway package is slightly ambiguous. Essentially it means that anyone would be able to bid to compete on a commercially viable network from 2020. This already happens in the UK (e.g. open access operators bidding to run services on the East and West Coast Main Lines to compete with the services offered by the franchised operator).

From 2026 private companies would also be able to bid for public service contracts that are awarded by governments on lines that are not as profitable. At the moment, the majority of domestic rail lines across the EU are operated under public service contracts. This involves countries often directly awarding rail contracts to the local incumbent, which is either compensated or granted exclusive rights on the line.

<sup>175</sup> Ibid.

<sup>176</sup> Transport Committee, *Written evidence submitted by the Freight Transport Association (FTA) (FAB0023)*, June 2018, para 24

<sup>177</sup> The main legislation is summarised on the [ORR's website](#)

<sup>178</sup> See, e.g. "[Renationalising Britain's railways – EU law not a barrier](#)", *The Conversation*, 22 May 2018

<sup>179</sup> for a summary of the infrastructure management of and private sector involvement with other EU rail systems, see annexes 18 and 19 of: EC, *Fifth report on monitoring development in the rail market*, COM(2016) 780 final, 8 December 2016

The original proposal would have introduced mandatory competitive tendering for such rail contracts (i.e. the GB system). However, opposition from Member States resulted in changes which mean that governments will be able to directly award contracts where the geographical characteristics are such that it would result in service improvements, or where they do not receive enough bids.

In announcing agreement on the market pillar in October 2016 the Council said that competitive tendering would “become the norm for public service contracts, with some exceptions. Direct award will still be possible where it leads to better quality of service or cost efficiency”. To ensure ‘continuous and well-functioning services’, Member States would also be able to limit a new operator’s right of access if the proposed new service “would compromise the ‘economic equilibrium’ of an existing public service contract”.<sup>180</sup>

The continued relevance of these provisions in the UK depends entirely on what deal the UK negotiates. It would appear from the Government’s statement in the July 2018 White Paper that it is not seeking any sort of multilateral agreement on rail and that with the exception of cross-border services, which will be subject to bilateral agreements with relevant countries (see section 7.2, above), “the UK will have the flexibility to shape its own domestic railway legislation to meet the needs of its passengers and freight shippers, and reflect the unique characteristics of the rail network within the UK”.<sup>181</sup>

Existing EU laws will all continue in force in the UK after exit day by virtue of the EUW Act.<sup>182</sup> What happens after that is a matter for Parliament.

## 7.5 HS2

HS2 is a proposed infrastructure project to build a high-speed rail line from London to Manchester and Leeds, via Birmingham, to begin operation in 2026 and be completed in 2033. It was supported by the Labour Government after 2009 and has had the support of the Conservatives in government since May 2010.

HS2 will be delivered in three phases:

- **Phase 1** from London Euston to Birmingham Curzon Street and Lichfield with intermediate stations in West London (at old Oak Common) and at Birmingham Airport;
- **Phase 2a** from the West Midlands to Crewe; and
- **Phase 2b** comprising an eastern leg from the West Midlands to Leeds New Lane with intermediate stations in the East Midlands

More details on HS2 can be found in HC Library briefing papers [CBP 316](#); [CBP 7082](#) and [CBP 8071](#)

<sup>180</sup> European Council press notice, “[Better rail services: Council adopts 4th railway package market pillar](#)”, 17 October 2016

<sup>181</sup> Op cit., [The future relationship between the United Kingdom and the European Union](#), para 136

<sup>182</sup> The UK Government is currently in the process of implementing the market pillar of the fourth rail package, see: DfT, [Rail markets: implementing the market pillar](#), 24 April 2018

and South Yorkshire; and a western leg from Crewe to Manchester with an intermediate station at Manchester Airport.

In total, the scheme is estimated to cost £55.7 billion in 2015 prices (including rolling stock).

There is no reason why Brexit in and of itself should have a significant impact on HS2. There has been some debate in the past about how far the EU TSIs (see section 7.1, above) help or hinder HS2 construction (e.g. as regards platform heights).<sup>183</sup> HS2 is also intended to be built to accommodate EU 'GC gauge'.<sup>184</sup> As set out above, we do not yet know whether the Government will disapply any of the TSIs post-Brexit.

The Government had hoped to secure some EU funding for the project. In 2015 the Government secured €39.2 million for ground investigation works for Phase 1 (London to the West Midlands), to be delivered between 2015 and 2019.<sup>185</sup> The funding comes from the Connecting Europe Facility (CEF). To put it simply, the CEF is the funding instrument for EU transport infrastructure policy, basically supporting the [Trans-European Transport Network \(TEN-T\)](#). HS2 has been included in the TEN-T programme since early planning stages. The EU has made it clear that the UK will no longer be eligible for CEF once it leaves and is planning to legislate to this effect (see section 10.2, below).

The €39.2 million represents half of the cost of ground investigation works along Phase 1. Roughly, at the current exchange rate, the EU contribution is worth about £35.5 million – a tiny proportion of the estimated £27.2 billion cost of Phase 1.

Further funding would now be unlikely. However, this would only ever have represented a small percentage of overall costs – EU contributions to previous high-speed rail projects via the TEN-T stream have equated to between four and six per cent of the overall cost.<sup>186</sup>

## 7.6 Rail fares

Regulated rail fares could rise as a result of Brexit if it leads to an uptick in inflation.<sup>187</sup> Around 45 per cent of fares are subject to regulation (by the Secretary of State in England, Welsh Ministers in Wales and Scottish Ministers in Scotland). Regulated fare increases are linked to the [RPI figure](#) for July of the previous year (e.g. fares beginning in January 2019 will be based on the RPI for July 2018). The train companies announce the increases for the coming year every November/December. The inflation link dates back to 1996.

More details on rail fares can be found in HC Library briefing paper [CBP 1904](#)

<sup>183</sup> [HL Deb 10 November 2015, HL 3171](#) and [this FOI response from late 2016](#)

<sup>184</sup> Section 6 of the [Review of the Technical Specification for High Speed Rail in the UK](#), published in January 2012, explains the decision; see also [HC Deb 1 February 2013, c1011W](#) and [HL Deb 28 October 2015, c4](#)

<sup>185</sup> [HC WPO 31957](#), 24 March 2016

<sup>186</sup> DfT, [HS2: Outline Business Case - Section 4: Financial Case](#), March 2014, para 78

<sup>187</sup> See, e.g. ["Rail fares will rise more than £100 a year after Brexit, Remain campaigners say"](#), *The Independent*, 21 June 2016



All other fares are set commercially by train operators. If their costs were to increase as a result of Brexit, this could see a rise in unregulated fares.

## 7.7 Exit preparations

As set out in section 4.3 above, the UK Government has started to publish negative SIs relating to transport, made under the Withdrawal Act; some of these have already been sifted by the relevant Committees.<sup>188</sup>

There are two SIs relating to rail, published to date:

- [\*Rail Passengers' Rights and Obligations \(Amendment\) \(EU Exit\) Regulations 2018\*](#), and
- [\*The Merchant Shipping \(Accident Reporting and Investigation\) and the Railways \(Accident Investigation and Reporting\) \(Amendment\) \(EU Exit\) Regulations 2018\*](#)

The SIs were laid on 10 and 12 October. In each case the sifting committees have agreed with the Government that these SIs do not require a debate in Parliament, though one may still occur.

The EU27 is also preparing for Brexit. The European Commission has issued a Notice to Stakeholders on the implications of Brexit in the field of rail transport.<sup>189</sup>

## 7.8 No deal

### Government technical notices

As stated in section 1.3, above, on 23 August 2018 DExEU began to publish 'technical notices', on how to prepare for Brexit if there is 'no deal'. On 12 October the Department for Transport published two papers on rail transport and rail safety and standards.

On **operator licensing** in the event of 'no deal', the relevant paper states that:

We want to give businesses greater clarity and continuity and are therefore proposing to recognise operator licences in the UK that have been issued by another EU country for 2 years following exit day in a 'no deal' scenario. At this point an operator wishing to run services in the UK would need to apply to the ORR for UK documentation. We are already aligned with EU law in this area, so we anticipate that this would have a minimal impact on business and we would work with the ORR to ensure the application process is reasonable and proportionate.<sup>190</sup>

It further states that GB-based domestic operators operating on ORR-issued licences will see no impact from a 'no deal' scenario. The ORR will continue to recognise the licences of operators in GB using licences issued by an EU27 country for up to two years after exit day. At this

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<sup>188</sup> The process is explained on the Parliament website, see: [Statutory instruments relating to Brexit](#) [accessed 4 October 2018]

<sup>189</sup> EC, [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Rail Transport](#), 10 July 2018

<sup>190</sup> DfT, [Rail transport if there's no Brexit deal](#), 12 October 2018

point they would need to apply to the ORR for a GB licence to continue operating, though they would not need to be established in the UK. Any operators currently operating on an ORR-issued licence in an EU27 country would need to apply for an operator licence in an EU27 country. DfT states that “In order to ensure certainty, we encourage those who need to re-apply for an operator licence to begin this process as soon as possible”.<sup>191</sup>

On **safety certification** in the event of ‘no deal’, the relevant paper states that in light of the European Commission’s statement that in the event of ‘no deal’ certificates and licences issued by ORR to operators currently running train services in the EU would not be valid there after exit, the Government wants to “provide businesses with greater clarity and certainty and are therefore proposing to recognise certain documentation, such as safety certificates, and train driver licences, issued by another EU country for a limited period after exit day if there’s no deal”.<sup>192</sup> The notice provides more detailed information on various certifications and authorisations.

On membership of the **EU Agency for Railways (EUAR) and technical standards**, it affirms the Government’s intention not to seek membership of EUAR but only to disapply technical standards where there are clear benefits:

The technical specifications for interoperability and the safety regime have been developed by the EU Agency for Railways (EUAR) in conjunction with EU countries and stakeholders. As new rules and standards are developed by the EU after exit, as a third country, the UK will have the flexibility to align with or diverge from these as it wishes. We will only diverge where there are clear arguments for doing so and after fully engaging with industry to assess the impact - particularly the commercial and cost impact to industry.

To enable this flexibility, we do not intend to seek formal participation in the European Union Agency for Railways (EUAR) if there’s no deal. However, we encourage UK industry to participate with EUAR at technical and working level.<sup>193</sup>

Finally, on **train driver licences**, the notice states that train drivers in the UK using licences and certificates issued in an EU27 country would be able to continue using this documentation for up to two years from Exit Day or until they expire, whichever is earlier. They would then need to obtain a GB licence from ORR. Anyone currently driving trains in an EU27 country on an ORR licence would need to obtain a new EU27 licence and certification documents from the national safety authority of the country they wish to drive into.<sup>194</sup>

## Impact

Unlike in the areas of aviation, roads and ports there has not been a great deal of discussion as to the potential impact of a ‘no deal’ Brexit on the rail industry. This is partially due to the Government’s intention

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<sup>191</sup> Ibid.

<sup>192</sup> DfT, [Meeting rail safety and standards if there’s no Brexit deal](#), 12 October 2018

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

to negotiate bilateral deals with relevant partners for cross-border travel whatever the outcome of the negotiations.

In evidence to the Lords EU Internal Market Sub-Committee in October 2018 Damian Testa from the Railway Industry Association (RIA) set out how 'no deal' could impact SMEs and expressed concerns about the mutual recognition of standards:

... in a no-deal scenario, clearly UK-EU trade will be impacted if we enter a regime where we have both border checks and tariffs that did not apply before. Our members are multinationals and SMEs. A multinational with an office in the EU and in the UK clearly has more resource with which to manage that situation. For SMEs, it will be very hard to get to grips with a new administrative system to import and export when hitherto they have never had to do that, so there is concern about that.

There is concern about the impact of tariffs on competitiveness. We still have insufficient detail about what the regime is going to be. Everyone is working on the assumption that it will be the WTO most favoured nation tariffs. That is an issue. We have the immediate issue of standards. On 29 March next year, as a member state, we will work to European technical standards for interoperability. Come 30 March, the EU will not recognise the standards in the UK because they will not be called TSIs.

There is a further complication. The current approach of the Department for Transport is to transpose those standards into UK law, but it will have to name them differently. For argument's sake, let us call them UK technical standards. Although that language would mirror the EU standard, there will not be mutual recognition of it on day one. There will be legal and regulatory implications for EU-based businesses in the UK. There will be export-import implications around the standards. There is a lot of uncertainty about what the immediate impact will be.<sup>195</sup>

As regards the operation of the Channel Tunnel after Brexit, in the event of 'no deal', John Thomas of RDG told the committee that:

I find it difficult to believe that the French would not want a bilateral agreement to ensure that cross-channel services keep running. Essentially, it would just be replicating the arrangements that we already have on driver licensing and cross-acceptance of rolling stock, along with arrangements for access, charging and suchlike. Those things happen already today, so it is just a matter of replicating them in a bilateral agreement. I find it difficult to believe that there would not be the will on both sides to do that.<sup>196</sup>

There were reports in October 2018 that the French Government was preparing in case of all eventualities, including a 'no deal' Brexit. Nathalie Loiseau, France's Europe minister, said that France had set up the mechanisms to pass emergency legislation to manage 'no deal', including the introduction of checks at the Channel Tunnel.<sup>197</sup>

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<sup>195</sup> Lords EU IMSC, [Uncorrected oral evidence: Future UK-EU transport arrangements](#), 11 October 2018, Q11

<sup>196</sup> *Ibid.*, Q19

<sup>197</sup> "[France prepares Channel Tunnel checks in case of no-deal Brexit](#)", *The Local France*, 16 October 2018; the knock-on impacts of any such checks for the domestic road network are explored in relation to Operation Brock – see section 9.3, below

## 8. Roads and vehicles

### 8.1 Road haulage

Currently, there are a lot of uncertainties for UK haulage companies around Brexit, particularly in terms of employment, drivers' hours rules, access to markets and border controls.<sup>198</sup> The Secretary of State for Transport, Chris Grayling, has long been vocal about the fact that road haulage is one of his Department's two top priorities for Brexit.<sup>199</sup>

In response to the Balance of Competencies review the Freight Transport Association (FTA) said that the EU had created a market that logistics had served for nearly half a century, benefiting British business. The Road Haulage Association (RHA) felt that for their sector the overall judgment was a fine one. They said "competences in UK road transport are finely balanced in our sector. Although we have not got a 100% solution in terms of market access we have got the most of what we think the industry would want".<sup>200</sup> This is largely a reference to 'cabotage', the practice whereby a haulier from one EU Member State (e.g. the UK) can carry goods between two other Member States (e.g. Spain and France).

As set out in section 3.1, above, the July 2018 Brexit White Paper set out the UK Government's intention to "explore options for reciprocal access for road hauliers" and made it clear that "the UK will ensure that there is no requirement in any scenario for new permits for transport services between Northern Ireland and Ireland".<sup>201</sup> The June 2018 framework document states that the UK wants "an enduring solution that negates the need for permits, additional documents, and systematic document checks for all road users".<sup>202</sup> For road haulage, this means:

Maintaining liberalised access, including cabotage and cross-trade rights ... supported by ... Mutual recognition of licences, registration documents, roadworthiness testing ... Mutual recognition of Operator licences and Certificates of Professional Competence [and] Compliance with international rules – e.g. on drivers' hours.<sup>203</sup>

The Government has already taken action in this area with the [Haulage Permits and Trailer Registration Act 2018](#). The Act has two purposes:

- 1 It creates the architecture for a number of scenarios, including a 'no deal' Brexit. It would allow the Secretary of State to deal with the consequences of a range of exit scenarios on the UK haulage

For full details about the 2018 Act and its implementation, see HC Library briefing paper [CBP 8297](#).

<sup>198</sup> Some of these are explored in: "[Brexit: What next for the road transport industry?](#)", *The Lorry Lawyer*, 27 June 2016; more generally, see HC Library briefing paper [CBP 7732](#)

<sup>199</sup> [HC Deb 23 November 2016, cc953-4](#)

<sup>200</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p30

<sup>201</sup> Op cit., [The future relationship between the United Kingdom and the European Union](#), para 134

<sup>202</sup> Op cit., [Framework for the UK-EU partnership: Transport](#), p17

<sup>203</sup> *Ibid.*, p17

industry by creating an international road haulage permit scheme;  
and

- 2 It deals with the consequences of the UK ratifying the 1968 Vienna Convention on Road Traffic, specifically as it relates to trailers, by providing the Secretary of State with powers to make a trailer registration scheme.

The Government's policy is to work towards a Brexit deal that will not require the Secretary of State to use the powers given to him under Part 1 of this Act for EU27 countries, although the powers would be used for existing and future non-EU permit schemes.

The Government has published a consultation document on the implementation of the Act, focusing on how a haulage permits scheme should operate in the future, which trailers will require registration and how a trailer registration scheme will operate. In October 2018 the Permanent Secretary at the DfT, Bernadette Kelly, told the Public Accounts Committee that the Department expects the DVSA to be able to begin to accept the first tranche of applications for road haulage permits from the end of November, supported by secondary legislation currently going through Parliament.<sup>204</sup>

In its July 2018 report the NAO stated that with regards to trailer registration, the DfT had "asked the Driver and Vehicle Licensing Agency (DVLA) to build a new trailer registration scheme to be rolled out by the end of 2018":

The Department's programme board approved the project's business case in early June 2018. The DVLA intends to use an external IT supplier to develop the new coding needed for the system but, while a preferred bidder had been selected, the contract had not yet been awarded. The prototype system, which initially the DVLA intended to have completed by April 2018, was unlikely to be ready for some months.

The roads directorate's internal report for April 2018 stated that there were "extensive pressures on timelines for: technical specification, procurement, development and testing", and for "focus to be given to alleviating these challenges and developing processes to allow development to progress at necessary pace." The report assessed delivery confidence at amber.<sup>205</sup>

In a letter to the Chair of the Public Accounts Committee in October 2018 Bernadette Kelly, said that the project remained "on track" to go live in December 2018.<sup>206</sup>

In September 2018 there were reports that the Brexit Secretary, Dominic Raab, had been "reprimanded" by the EU's chief Brexit negotiator,

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<sup>204</sup> PAC, [Oral evidence: Department for Transport: Implementation of Brexit](#), HC 1657, 24 October 2018, Q171; the draft [International Road Transport Permits \(EU Exit\) Regulations 2018](#)

<sup>205</sup> Op cit., [Implementing the UK's Exit from the European Union: Department for Transport](#), para 2.30

<sup>206</sup> [Letter from Bernadette Kelly to Meg Hillier MP](#), 18 October 2018

Michel Barnier, for asking for side negotiations on haulage (and aviation) in the event of a no-deal Brexit.<sup>207</sup>

The industry has maintained the importance of regulatory alignment for the international road freight market. However, it has also pointed to areas “where Brexit might provide an opportunity for better regulation – but only after a careful review and with involvement from industry”, such as the Working Time Directive for mobile workers; the ‘3-in-1 driver card’ and de-coupling national and international CPC exams.<sup>208</sup> As set out in section 8.7, below, the Government has already legislated to recognise the CPC post-Brexit.

## 8.2 Driver licensing and testing

Legislation on driver licensing and testing derives from EU law. The collected European Driving Licence Directives require Member States to adopt a common format licence, to harmonise categories and to provide common standards of competence and fitness to drive.

Changes to the driving requirements for HGV and bus drivers were introduced in 2009, also as a consequence of EU legislation. These require new drivers to undertake further tests and training and for those with existing licences to undergo a package of retraining (the Certificate of Professional Competence, or CPC).

There has been an EU-wide (minimum) standard for driving tests since 1991. While the tests may be different across Member States, they must all include the requirements set out the relevant Directive and meet the required standards set out in the same place.

The intention when this harmonisation began in the 1970s was to bring the licensing systems of Member States closer together as part of its efforts to facilitate the free movement of citizens across national frontiers. It was felt that the creation of a single licence document would offer advantages in terms of greater efficiency and cost-effectiveness and would allow the then multiplicity of records to be merged and fully computerised. This subsequently took the form of a common format licence across the EU; harmonisation of licence categories; and common standards of competence and fitness to drive, including medical standards.

While the benefits of Common forms of licensing and testing insofar as they have helped the single market are clear, there are some concerns in specific areas. For example, the CPC for HGV, bus and coach drivers was heavily criticised by the industry for its inconsistent application and enforcement. The British Vehicle Rental and Leasing Association (BVRLA)

More details on driver licensing and testing, motorcycle licensing and testing, and medical rules can be found in the following HC Library briefing papers: [CBP 3060](#), [CBP 3259](#) and [CBP 387](#)

<sup>207</sup> “[Barnier confronts Raab over discovery of Brexit no-deal letters to EU27](#)”, *The Guardian*, 11 September 2018

<sup>208</sup> Lords EU IMSC, [Written Evidence – Freight Transport Association \(TRA0017\)](#), 14 September 2018, paras 5-6

told the Balance of Competencies review that this was “a good example where the right balance for businesses was not struck”.<sup>209</sup>

Separately, the UK motorcycle industry, while being a strong supporter of the single market, expressed concern about the depth of detailed technical regulation, that the EU had over-reached on road safety issues, had damaged the availability of motorcycle training in the UK and halved the number of test candidates entering into motorcycling.<sup>210</sup> The FTA said that the medical rules for vocational drivers below the age of 45 were over-prescriptive.<sup>211</sup>

There is also the issue of driving licence exchange: at the moment if you move permanently from one EU country to another you can exchange your driving licence without having to take a test in the new country. This would be unaffected if the UK joined the EEA; otherwise it would be up to the remaining individual Member States to decide whether to permit exchange on these terms – the UK, for example, permits exchange of licences from a number of countries outside the EU and EEA who satisfy our driver licensing and testing requirements.<sup>212</sup>

Finally, in terms of the EU symbol on the UK driving licence, this could be phased out as licenses are replaced and renewed. The issue of displaying the EU symbol on a number plate, along with the national identifier, will likely be dealt with in the same way –phased out as plates are scrapped. Some sort of national identifying symbol may replace it, but at this stage it is too early to say. It has been possible to opt to display a national symbol on a registration plate since 2009.<sup>213</sup>

As set out in section 3.1, above, the July 2018 Brexit White Paper set out the UK Government’s intention to “explore options for reciprocal ... arrangements for private motoring”.<sup>214</sup> The June 2018 framework document provides more detail. It states that the UK wants “an enduring solution that negates the need for permits, additional documents, and systematic document checks for all road users”.<sup>215</sup> For commercial and private road users, this means:

Maintain[ing] citizens’ freedom to drive in the UK and EU without additional checks and documentation ... supported by ... Mutual recognition of licences, registration documents [and] roadworthiness testing.<sup>216</sup>

As the relevant ‘no deal’ technical notice states (see section 8.9, below), if there is ‘no deal’ with the EU, UK drivers may need to obtain an International Driving Permit (IDP) to drive in the EU in the future. There are a number of different permits for different purposes. In its July 2018

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<sup>209</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p45

<sup>210</sup> Ibid., p56

<sup>211</sup> Ibid., p52

<sup>212</sup> Details of these countries can be found in DVLA, [Driving in Great Britain \(GB\) as a visitor or a new resident \(INF38\)](#) [accessed 12 April 2018]

<sup>213</sup> For more information see HC Library briefing paper [CBP 1328](#)

<sup>214</sup> Op cit., [The future relationship between the United Kingdom and the European Union](#), para 134

<sup>215</sup> Op cit., [Framework for the UK-EU partnership: Transport](#), p17

<sup>216</sup> Ibid., p17



report the NAO stated that there is an IDP project sponsored by DfT and being carried out by the DVLA:

The Department envisages new arrangements for the issuance of IDPs to be run by the Post Office on its behalf involving up to 4,500 branch offices issuing up to 7 million new permits a year, each for a set fee, by 1 February 2019. This is against the current position where 89 post offices give out about 100,000 permits annually through a system run by external suppliers.

As yet, there is no business case and no detailed delivery plans. In May 2018, the Department formally notified the Post Office of its intentions by use of a change control notice to the existing DVLA/Post Office contract that deals with driver licence renewals. The notice announced the change required in outline form. Since then, the Post Office has been working on its detailed delivery plans for submission to the DVLA and the Department.

The roads directorate's internal report for April 2018 assessed the related driver licensing project as amber for delivery confidence. In July 2018 the Department reported to us that it regarded this project as deliverable.<sup>217</sup>

In a letter to PAC in October 2018 Bernadette Kelly said that the business case had been approved and that the contract variation between DVLA and the Post Office would be finalised by the end of October, with the roll-out of in-branch staff training to begin in November.<sup>218</sup> In evidence to the committee Ms Kelly described the process for consumers:

... it is a simple process. It will cost £5.50 and be a five-minute transaction. People will fill in the form and be issued with an IDP. It is not enormously complicated, and not unlike other things that the Post Office delivers.<sup>219</sup>

### 8.3 Vehicle standards & type approval

The setting of common standards in many areas of EU legislation, such as vehicle standards, has generally had positive impacts in terms of helping to reduce costs and allowing for the free flow of vehicles. However, it is important to note that the rules on vehicle standards are generated at a global level by the UNECE (explained below).

The FTA told the Balance of Competencies review that, on balance, the EU "creates a level-playing field of technical requirements for the construction, maintenance and operation of road vehicles. Although complex and sometimes cumbersome the EU rules are infinitely better than 27 variants all designed to protect the home markets of indigenous producers".<sup>220</sup> Further, harmonisation of vehicle design and construction standards helps with economies of scale, thus keeping costs down. The FTA further stated in 2018 that:

<sup>217</sup> Op cit., [Implementing the UK's Exit from the European Union: Department for Transport](#), para 2.30

<sup>218</sup> Op cit., [Letter from Bernadette Kelly to Meg Hillier MP](#)

<sup>219</sup> Op cit., [Oral evidence: Department for Transport: Implementation of Brexit](#), HC 1657, Q183

<sup>220</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p38

Diverging standards at national or local level would require vehicle manufacturers to develop vehicle types for very small markets - which is unlikely to happen and would not be economically viable. As a result, national or local standards would be equivalent to a traffic ban. Therefore, the relevant level for type-approval of vehicles (including the CO<sub>2</sub> components and the safety components of type-approval) is -at minimum- the EU level.<sup>221</sup>

The Royal Academy of Engineering, said that it is “hugely beneficial that the EU sets standards for road vehicles. EU approval processes make it possible for a car manufacturer to obtain approval against a set of standards knowing that the car is then free to travel or be sold across the EU without further inspections”.<sup>222</sup> The AA and RAC highlighted that the EU Type Approval legislation has also given additional benefits such as economies of scale, increased competition between manufacturers and has reduced the general price differential between Member States. This benefit is evidenced in falling purchase prices in real terms.<sup>223</sup>

The Senior European Experts Group (SEEG) contrasted the situation for hauliers before and after EU-wide standardisation:

... there were approximately 100,000 sets of technical regulations in the then EU Member States in the mid-1980s that were subsequently replaced by EU level regulations. To transport a lorry load of goods from London to Milan in 1988 required 88 separate documents; the internal market replaced them all with one piece of paper.<sup>224</sup>

While there has been some criticism of the EU-wide type approval process for vehicle in the wake of the VW emissions scandal, a return to UK-only type approval, with some sort of mutual recognition scheme for all other countries, was not entertained as a way of addressing these issues by those Parliamentarians who scrutinised the scandal.<sup>225</sup>

In a debate on Brexit and transport in November 2016 the then Minister of State at the Department for Exiting the European Union, David Jones, indicated that there would be little change in the UK as far as the implementation of international vehicle standards was concerned.<sup>226</sup>

As set out in section 8.7, below, the Government has begun to publish SIs relating to transport. Nothing has yet been brought forward on type approval to complement the EU27’s legislative proposal. In its July 2018 report the NAO explained why:

Many SIs are linked and delays may have a knock-on effect on the programme. For example, to sell or register vehicles in the EU or UK, manufacturers must ensure that the vehicle model meets EU type approval on environment standards. If no agreement is reached with the EU on exit, the UK would need to implement its own type approval regime and this would require new secondary

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<sup>221</sup> Op cit., [Written Evidence – Freight Transport Association \(TRA0017\)](#), para 12

<sup>222</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p38

<sup>223</sup> Ibid., p38

<sup>224</sup> Ibid., p38

<sup>225</sup> i.e. Transport Committee, [Volkswagen emissions scandal and vehicle type approval](#) (third report of session 2016–17), HC 69, 15 July 2016

<sup>226</sup> [HC Deb 23 November 2016, c997](#)

legislation. The Department is preparing eight business-as-usual SIs to transpose the latest EU regulation. Four of these must be laid before the exit SI can be prepared and the Department originally planned to have all four in place by the end of May 2018. Two of the four have been rescheduled to June 2018, which has had an impact on preparing the exit SI. The Department is redeploying staff to ensure that the exit SI will still make its planned laying date of December 2018. Officials attributed the delay to resource constraints and remaining policy uncertainties.<sup>227</sup>

## UNECE Membership and Regulations

The [United Nations Economic Commission for Europe \(UNECE\) World Forum for Harmonization of Vehicle Regulations](#), also known as Working Party 29 (WP.29), is a regulatory forum which seeks to reduce technical barriers to trade. UNECE Rules, Regulations and Global Technical Regulations are agreed on a quarterly basis at WP.29.

The EU and its Member States, which are members of UNECE, have a shared competence in this policy area, as a result of which the Commission delivers the collective Member States' voting position on UNECE proposals. This position is formulated in advance in the Council of Ministers on a qualified majority voting basis.

There has been speculation on what the UK would do post-Brexit, with the general assumption being that the UK would formulate its own position at meetings and directly adopt the resultant UNECE Regulations.

The European Scrutiny Committee reported in December 2017 that:

Regarding the implications of the UK's withdrawal from the EU, the Government observes that "After the UK has left the EU, our participation in the UNECE will continue, as our UNECE membership is independent of our EU membership, despite the need to collaborate whilst we are EU members." The Government does not provide an analysis of the implications for UK stakeholders of a shift from the current EU Single Market regime for type-approvals, under which the UK Vehicle Certification Agency (VCA) can issue European approvals, to that of a 'third country'. This is understandable in the context of the proposal; however, a rounded appraisal of the implications of Brexit for type-approval processes and the UK automotive sector requires that the issues be considered together.<sup>228</sup>

In June 2018 David Ward, Secretary General of the Global New Car Assessment Programme (NCAP) warned that Brexit could result in the UK being a rule-taker at UNECE, as EU27 countries would vote as a block to get their preferred rules adopted. *Autocar* reported Mr Ward's comments:

Post-Brexit, the UK will be free to exercise its sovereign rights to vote as it likes on new UNECE vehicle standards. But this will be a kind of mini-decision to be taken alongside the mega-decision already taken by the EU. And most likely we will vote the same

<sup>227</sup> Op cit., [Implementing the UK's Exit from the European Union: Department for Transport](#), para 2.26

<sup>228</sup> ESC, [Fourth Report of Session 2017-19](#), HC 301-iv, 12 December 2017, para 7.7

way as the EU to avoid being on the losing side. So, outside the EU, even in the UNECE, the UK will effectively be just a rule-taker.<sup>229</sup>

## 8.4 Passenger transport

As set out in section 3.1, above, the July 2018 Brexit White Paper set out the UK Government's intention to "explore options for reciprocal access for ... passenger transport operators".<sup>230</sup> The June 2018 framework document provides more detail. It states that the UK wants "an enduring solution that negates the need for permits, additional documents, and systematic document checks for all road users".<sup>231</sup> For road passenger transport, this means:

Maintain[ing] liberalised cross-border bus and coach travel... supported by ... Mutual recognition of licences, registration documents, roadworthiness testing... Mutual recognition of Operator licences and Certificates of Professional Competence [and] Compliance with international rules – e.g. on drivers' hours.<sup>232</sup>

The main issues for passenger transport post-Brexit relate to international, cross-border travel rather than domestic transport, though there will be impacts on EU27-registered companies and drivers working within the UK and vice-versa.

Currently UK bus and coach operators carrying out international journeys must hold a [Standard International Operator's Licence](#), along with a [Community Licence](#) for journeys to and from the EU. The Community Licence gives carriers access to international journeys 'for hire or reward' (carrying passengers in return for payment) for operations in the EU. Operators may also carry out limited [cabotage](#) (carriage of passengers within a country by a foreign operator) in some circumstances – for example, as part of an international regular journey.<sup>233</sup>

The Confederation of Passenger Transport (CPT), which has almost 1,000 members across the bus and coach industry, told the Lords EU Internal Market Sub-Committee in September 2018 that its members are active in three distinct markets for which an international licence is necessary:

- coach hire (where someone else brings a party together, such as a school skiing trip)
- coach holidays and day trips (where individuals and couples buy a complete trip from an operator, or from a third party)

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<sup>229</sup> "[Global NCAP chief: 'UK will lose car safety regulations influence post-Brexit'](#)", *Autocar*, 12 June 2018

<sup>230</sup> Op cit., [The future relationship between the United Kingdom and the European Union](#), para 134

<sup>231</sup> Op cit., [Framework for the UK-EU partnership: Transport](#), p17

<sup>232</sup> Ibid., p17

<sup>233</sup> DfT, [Operating bus or coach services abroad if there's no Brexit deal](#), 24 September 2018

- regular services (which have a timetable, and on which passengers can buy a one-way ticket)<sup>234</sup>

CPT estimates that British coaches make around 30,000 journeys into Europe (not including the Republic of Ireland) each year on hires and holidays, and around 7,000 journeys per year on regular services.<sup>235</sup> It also stated that British coaches “undertake a limited amount of cabotage in occasional services. Cabotage tends to arise in a technical sense; for example when a coach that has taken a British school party on an exchange visit takes a party made up of hosts and visitors on a local day trip”.<sup>236</sup>

The UK also participates in the [Interbus Agreement](#), because the EU as a whole is a member. This agreement allows bus and coach operators to carry out occasional services between the participating countries.<sup>237</sup> According to DfT, the UK intends to join the Agreement as an independent member and the Government is “already taking the necessary steps to ensure that this happens once we cease to be a member through the EU”.<sup>238</sup> Unlike the EU rules, the Agreement does not permit any cabotage.<sup>239</sup> CPT has stated that the Agreement “is fit for purpose for coach hire and coach holidays. It does not allow for cabotage, nor does it currently allow for regular services (although there is a prospect that its scope will be extended to cover regular services)”.<sup>240</sup> It cautioned that the Agreement does not negate the need for drivers to carry an IDP and an insurance Green Card.<sup>241</sup>

## 8.5 Car insurance

There has been speculation that UK drivers would be subject to a ‘Green Card’ system after Brexit, with extra paperwork and nominal fees of about £10 to be able to drive in the EU27. The Motor Insurers’ Bureau (MIB) describes the scheme as follows:

Green Card scheme allows vehicles to move freely across the borders of all 48 subscribing countries and ensures that when a visiting vehicle causes damage, there is easy access to compensation in the victim’s home country.

The Scheme originates from a UN recommendation and was not therefore founded by the European Union. That said, the EU later shaped the future of the system when the need to possess a Green Card and border insurance checks were abolished for vehicles from and travelling within the EEA (plus three ‘third countries’ Andorra, Serbia and Switzerland).

Whilst the Green Card Scheme is not European born, there is fear that the EU system of no border checks will no longer be

<sup>234</sup> Lords EU IMSC, [Written Evidence – Confederation of Passenger Transport \(TRA0006\)](#), 13 September 2018, para 2

<sup>235</sup> *Ibid.*, para 3

<sup>236</sup> *Ibid.*, para 4

<sup>237</sup> There are eight contracting parties – the EU28, Albania, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Turkey and Ukraine

<sup>238</sup> *Op cit.*, [Operating bus or coach services abroad if there’s no Brexit deal](#)

<sup>239</sup> *Ibid.*

<sup>240</sup> *Op cit.*, [Written Evidence – Confederation of Passenger Transport \(TRA0006\)](#), para 7

<sup>241</sup> *Ibid.*, para 8

applicable post-Brexit, meaning UK drivers travelling overseas would be required to obtain a Green Card or frontier insurance when driving across European borders.<sup>242</sup>

In May 2018 the Government said that drivers would be able to use their existing insurance policies when travelling in the EU27 after Brexit. The *Financial Times* reported:

... in a letter sent this week to insurers and insurance brokers, the British government said the UK would remain inside the “free circulation zone” after it leaves the EU, meaning drivers will be able to continue to use their existing insurance policies in the EU27 plus Serbia, Switzerland and Andorra.<sup>243</sup>

This was welcomed by the industry.

However, the ‘no deal’ technical notice published in September said that in the event of ‘no deal’ UK drivers *would* need a Green Card to travel to the EU27 (see section 8.8, below).

## 8.6 Blue Badges

The Blue Badge scheme provides a national arrangement of parking concessions for disabled people. A separate scheme operates in London. There are reciprocal arrangements for disabled drivers allowing them to park across the EU. The Blue Badge scheme does not apply to off-street car parks, whether local authority- or privately-owned.

In 1998 EU Member States made an informal agreement to recognise badges of a common format issued in EU countries.<sup>244</sup> This is made clear in the Government’s February 2012 guidance to local authorities:

There are currently no formal reciprocal arrangements in place for disabled parking badges issued outside the UK. The UK Government has informal reciprocal agreements in place with other European Union Governments to accept Blue Badges from these countries [...] Disabled parking badges from countries outside the EU vary in design and it would be hard for local enforcement officers to verify their authenticity.<sup>245</sup>

Switzerland and Norway also recognise the standard format ‘disabled parking card’ (the ‘Blue Badge’ in the UK). Though the EU does not advertise this in [its guide](#) to using the parking card across the EU, it is included in the [FIA’s guide](#).

It seems unlikely that Brexit would necessitate the UK changing the format of the Blue Badge, so there is no obvious reason why it would not continue to be recognised across Europe in the same way as those issued in Switzerland and Norway and, conversely, the UK would continue to recognise the badges of other countries in turn.

More details on the Blue Badge scheme in England can be found in HC Library briefing paper [CBP 1360](#).

<sup>242</sup> MIB, [What does Brexit mean for cross border motor travel and victim protection?](#) [accessed 11 October 2018]

<sup>243</sup> [“British drivers to avoid insurance red tape after Brexit”](#), *Financial Times*, 17 May 2018

<sup>244</sup> [Recommendation 98/376/EC](#), as amended by [Recommendation 2008/205/EC](#)

<sup>245</sup> DfT, [The Blue Badge Scheme Local Authority Guidance \(England\)](#), February 2012, section 8.3

However, while negotiations are ongoing the Government remains circumspect. In January 2018 the transport minister, Jesse Norman, said:

The Blue Badge scheme is a UK scheme, enshrined in national legislation, and will continue after the UK's exit from the EU.

The Government recognises the benefits of mutual recognition of badges across the EU for UK citizens travelling to Europe. We are considering carefully the potential implications arising from the UK's exit from the EU, including for the continued recognition of Blue Badges.<sup>246</sup>

## 8.7 Exit preparations

As set out in section 4.3 above, the UK Government has started to publish negative SIs relating to transport, made under the Withdrawal Act; some of these have already been sifted by the relevant Committees.<sup>247</sup>

There are four SIs relating to driving and road transport, published to date:

- [\*Driving Licences \(Amendment\) \(EU Exit\) Regulations 2018\*](#);
- [\*Road Vehicles \(Registration, Registration Plates and Excise Exemption\) \(Amendment\) \(EU Exit\) Regulations 2018\*](#);
- [\*The Vehicle Drivers \(Certificates of Professional Competence\) \(Amendment\) \(EU Exit\) Regulations 2018\*](#); and
- [\*The Heavy Goods Vehicles \(Charging for the Use of Certain Infrastructure on the Trans-European Road Network\) \(Amendment\) \(EU Exit\) Regulations 2018\*](#)

The sifting committees have agreed with the Government that the first three SIs do not require a debate in Parliament, though one may still occur. The HGV charging regulations were published on 31 October and have yet to be considered.

In addition, on 25 October 2018 the DfT published guidance for commercial drivers on what they may need to do to drive in the EU27 and the EEA after Brexit.<sup>248</sup>

The EU27 is also preparing for Brexit. The European Commission has issued a Notice to Stakeholders on the implications of Brexit in the field of road transport.<sup>249</sup>

In addition, as set out in section 3.2, above, the Commission has published a proposal for a Regulation in the field of type approval legislation for motor vehicles. The proposal means that the UK type-approval authority will cease to be an EU type-approval authority and will no longer be able to fulfil any of the powers and obligations of a

<sup>246</sup> [Blue Badge Scheme: Written question – 123097](#), 23 January 2018

<sup>247</sup> The process is explained on the Parliament website, see: [Statutory instruments relating to Brexit](#) [accessed 4 October 2018]

<sup>248</sup> DfT et al., [Guidance: Prepare to drive in the EU after Brexit](#), 25 October 2018

<sup>249</sup> EC, [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Road Transport](#), 19 January 2018



type-approval authority under EU legislation.<sup>250</sup> In a September 2018 report the European Scrutiny Committee stated that:

... the Government will soon present a domestic counterpart of the Commission's proposal, under which operators with EU27 approvals would be able to secure UK approvals on the basis of the documentation and testing conducted in the EU27, which would ensure the continued supply of vehicles with EU27 approvals into the UK in the event of a no deal outcome. We also understand that this arrangement would not be time-limited, meaning that new EU27-issued type approvals could be converted to UK type approvals without any additional testing on an ongoing basis; but that this arrangement would end if there were to be regulatory divergence, at which point UK-specific testing would become necessary.<sup>251</sup>

## 8.8 No deal

### Government technical notices

As stated in section 1.3, above, on 23 August 2018 DExEU began to publish 'technical notices', on how to prepare for Brexit if there is 'no deal'. On 13 and 24 September the Department for Transport published papers on road-based transport, covering haulage, driving, vehicle type approval and insurance, and operating bus and coach services abroad.

On **driving in the EU27** in the event of 'no deal', the relevant paper states that a driving licence may no longer be valid by itself when driving in the EU and that anyone moving to an EU27 country to live may not be able to exchange their licence after the UK has left the EU.<sup>252</sup> As indicated in section 8.2, above, in the event of 'no deal'. Drivers may be required to obtain an [International Driving Permit \(IDP\)](#) to drive in the EU27, which they would need to carry with a driving licence when driving outside the UK. DfT explains that there are two types of IDP:

There are 2 types of IDP required by EU countries. Each is governed by a separate United Nations convention.

One type is governed by the 1949 Geneva Convention on Road Traffic.

The other type is governed by the 1968 Vienna Convention on Road Traffic.

The version of the IDP you would require depends on which EU country you are visiting and whether it is party to the 1949 or the 1968 convention.

Each type of IDP is valid for a different period.<sup>253</sup>

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<sup>250</sup> EC, [Proposal for a Regulation ... complementing EU type-approval legislation with regard to the withdrawal of the United Kingdom from the Union](#), COM(2018) 397 final, 4 June 2018, p2

<sup>251</sup> ESC, [Thirty-seventh Report of Session 2017–19](#), HC 301-xxxvi, 11 September 2018, para 13.18

<sup>252</sup> DfT, [Driving in the EU if there's no Brexit deal](#), 13 September 2018

<sup>253</sup> Ibid.

It cautions that drivers would need both types of IDP if they are visiting EU countries covered by different conventions, for example France and Spain.<sup>254</sup>

The Government states that after Exit Day on 29 March 2019, arrangements for EU27 licence holders who are visiting or living in the UK would not change.<sup>255</sup>

On **commercial road haulage** in the event of 'no deal', the relevant paper reiterates much of what the Government has been saying for the past eight months, throughout the passage of the *Haulage Permits and Trailer Registration Act 2018* (see section 8.1, above). Briefly, in the event of 'no deal':

- EU27 countries may choose to recognise that UK-issued operator licences and associated authorisations are based on the same standards as EU Community Licences and do not require further authorisations, but cannot be guaranteed.
- If they do not, UK hauliers will be able to use ECMT permits if there is no deal. In addition, some old bilateral agreements between the UK and specific EU27 countries may come back into force. The UK would also seek to put in place new bilateral agreements with EU countries to provide haulage access. Some of these bilateral agreements would also require the possession of a permit to allow access to the EU country concerned.
- ECMT permits will be available to enable journeys to the EU, but these are limited in number. The process for managing the issue of permits is set out in the 2018 Act.<sup>256</sup>

On the **Certificate of Professional Competence (CPC) for HGV drivers** in the event of 'no deal', the paper states that the UK will maintain a CPC scheme and recognise EU27-issued CPC documentation.<sup>257</sup> However, there is no guarantee of any recognition for UK-issued CPCs in EU27 countries. The paper states that:

UK drivers will be able to operate in the EU when driving trucks covered by an ECMT permit, or any existing, reinstated or new bilateral arrangements without the need of an additional qualification. However, to drive for EU operators, drivers holding a UK-issued CPC would also need to hold a CPC issued by an EU country.<sup>258</sup>

On **bus and coach services** in the event of 'no deal', the relevant paper states that UK bus and coach operators could no longer rely on automatic recognition by the EU27 of UK-issued Community Licences.<sup>259</sup> It affirms the Government's intention to accede to the Interbus Agreement (see section 8.4, above) in its own right by Exit Day "or as

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<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

<sup>256</sup> DfT, [Commercial road haulage in the EU if there's no Brexit deal](#), 24 September 2018

<sup>257</sup> Ibid.

<sup>258</sup> Ibid.

<sup>259</sup> DfT, [Operating bus or coach services abroad if there's no Brexit deal](#), 24 September 2018

soon as possible thereafter should this prove necessary”.<sup>260</sup> This “would enable UK operators to run occasional services into the EU. It cannot be guaranteed at this stage that the agreement would be extended to cover regular services”.<sup>261</sup>

Due to the UK’s ratification of the 1949 and 1968 conventions on road traffic UK drivers would continue to be able to drive in EU27 countries after Exit Day, though they may also require an IDP.<sup>262</sup>

On **vehicle type approval** in the event of ‘no deal’, the relevant paper states that type-approvals issued in the UK would no longer be valid for sales or registrations on the EU27 market and EU27 type-approvals would no longer be automatically accepted on the UK market. This means that affected manufacturers would need to ensure that they have the correct type-approval for each market. It confirms that the UK will continue to recognise UN-ECE approvals for systems and components (see section 8.3, above).<sup>263</sup>

Finally, on **vehicle insurance** in the event of ‘no deal’, the relevant paper states that access to the Green Card-free circulation area would cease. This would mean that UK motorists would need to carry a Green Card as proof of third party motor insurance cover when driving in the EU27, EEA, Andorra, Serbia and Switzerland.<sup>264</sup> The converse would be true for EEA motorists wishing to travel to the UK with their vehicle.<sup>265</sup> It goes on:

The validity of UK Green Cards in these countries is subject to agreements that need to be reached between the UK’s Motor Insurers’ Bureau and the relevant National Insurers’ Bureaux. These agreements ensure Green Cards are recognised and facilitate the settlement of claims for traffic accident victims.<sup>266</sup>

## Impact

The road haulage industry has repeatedly cautioned as to the risks of failing to secure an adequate deal. For example, in March 2018 *The Guardian* reported the views of James Hookham, the deputy chief executive of the Freight Transport Association (FTA). He stated that the industry’s biggest concern was “the lack of any progress in agreeing new systems for avoiding customs checks”. He went on:

There is still much detail to be agreed in the two-and-a-half years between now and the end of the transition period – a tiny period of time in business terms considering the scale of the challenge. It is now critical that both sides focus closely on trading arrangements to minimise the potential for delays, which will otherwise hit supply chains and economies on all sides hard.<sup>267</sup>

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<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

<sup>263</sup> DfT, [Vehicle type approval if there’s no Brexit deal](#), 13 September 2018

<sup>264</sup> DfT, [Vehicle insurance if there’s no Brexit deal](#), 24 September 2018

<sup>265</sup> Ibid.

<sup>266</sup> Ibid.

<sup>267</sup> [“Businesses face unanswered questions a year from Brexit – sector by sector analysis”](#), *The Guardian*, 26 March 2018

The Freight Transport Association (FTA) told the Lords EU Internal Market Sub-Committee in September 2018 that “there is no such thing as a WTO fall-back option for road transport” and went on to caution:

An agreement on road transport (or land transport) is absolutely necessary and in the interest of both the UK and the EU. In a no-deal scenario, the only readily available solution is a permit system under OECD called ECMT (“European Conference of Ministers of Transport”). ECMT permits come with strict quotas that can only be raised if the 43 participating countries unanimously agree. The quotas for 2019 are already set and OECD countries do not intend to increase them for the following years. ECMT permits would cover 2% to 5% of transport needs and would only allow 1 224 UK haulage companies to operate in the EU. Similar restrictions would be faced by EU hauliers willing to operate in the UK. This would not only decimate the UK international haulage industry, it would also affect all sectors of the economy that rely on international just-in-time supply chains.<sup>268</sup>

In a June 2018 report the European Scrutiny Committee indicated that the effects for EU27 hauliers could also be ‘striking’:

... non-UK operators currently dominate the international market, with over 86% of the freight traffic moved in and out of the UK (not including Ireland) currently moved by non-UK operators (although some of these businesses are subsidiaries of UK companies that have based themselves in other EU States). Considered in purely commercial terms, many EU27 operators have a clear interest in maintaining reciprocal market access in road transport.<sup>269</sup>

As regards passenger transport, CPT told the Lords EU Internal Market Sub-Committee in September 2018 that in the event of ‘no deal’:

...coach passengers would have to transfer at the border between coaches that are authorised to operate over the roads that lead to their desired destination. This would be inconvenient for all passengers, but particularly so for older people and school groups. It would create additional congestion in ports as a result of more complex movements. We can foresee a major reduction in “Battlefields of the Somme”-type educational day visits if groups have to use two coaches for the British and French / Belgian parts of the trip, with a channel crossing in between where they have to carry their own bags.<sup>270</sup>

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<sup>268</sup> Op cit., [Written Evidence – Freight Transport Association \(TRA0017\)](#), para 9

<sup>269</sup> ESC, [Thirtieth Report of Session 2017–19](#), HC 301-xxix, 12 June 2018, para 8.16

<sup>270</sup> Op cit., [Written Evidence – Confederation of Passenger Transport \(TRA0006\)](#), para 6

## 9. Ports

The UK has the second largest ports industry in Europe collectively handling almost 500m tonnes annually and directly employing around 120,000 people. The British Ports Association (BPA) explains:

The main markets for ports are unitised trade (which can be broken down into container (Lo-Lo) and roll-on roll-off (Ro-Ro traffic), and bulk trade, most of which is comprised of oil, liquid products and dry cargo such as aggregates. The main expansion over the past 20 years has been the growth of unitised traffic, reflecting changes in the UK economy which is heavily import dependent, especially for high-value finished goods.<sup>271</sup>

At present, over 90% of UK trade is handled by ports and the EU is the UK's largest trading partner. However, the UK ports sector, being largely privately owned and competitively run, is very different to those of many other EU Member States. Consequently, it has long had concerns about public subsidy in other EU countries distorting competition, particularly between the larger international ports.<sup>272</sup>

Oxera has said that changes to the costs of trade with the EU27 are "likely to affect the volumes and patterns of freight activity at ports, while the need for new customs checks on imports and exports is likely to cause considerable congestion at UK and mainland European ports". It suggested that any negative impact could be mitigated through EEA membership or free trade agreements, although delays in negotiations could mean a significant period trading under WTO agreements.<sup>273</sup>

There have been several warnings that post-Brexit customs checks could be 'catastrophic' for UK ports and lead to a reduction in the volume of trade.<sup>274</sup>

In a February 2018 article David Dingle, chairman of [Maritime UK](#), said that the industry's biggest concerns were for Dover and Holyhead due to "new customs requirements that could cause particular challenges for roll-on roll-off ferry ports which handle tens of thousands of HGVs travelling between the UK and the EU each day". However, he said that there "is a wider problem, which stems from the lack of recognition of the importance of our ports and the areas around them in the planning system":

Even if the economic benefits of ports themselves are recognised, once you leave the port gate, you find right away that connectivity to the main markets, and to the other ports, is poor: there is not enough capacity on our rail network, too few lanes, roads and bypasses on our motorway network, and difficult

Brexit, customs and the border are not dealt with in this paper. For more information see HC Library briefing paper [CBP 7694](#) on Brexit and trade and [CBP 8126](#) on the *Taxation (Cross-border Trade) Bill*.

<sup>271</sup> Transport Committee, *Written evidence submitted by the British Ports Association (FAB0028)*, June 2018

<sup>272</sup> *Report of the exchange of views between ports CEOs and Transport Commissioner Bulc 19 January 2015 Brussels*, p7

<sup>273</sup> Oxera, *Agenda - Brexit: implications for the transport sector*, June 2016; see also a later report by Oxera, *Brexit: the implications for UK ports*, July 2017

<sup>274</sup> "Post-Brexit customs checks a 'catastrophe' for UK shipping: trade body", *Reuters*, 12 April 2017

junctions in key bottleneck areas to allow for the smooth transfer of goods [...]

We need better domestic connectivity all around the country [...] Our existing road and rail connections to our ports are long overdue for improvement, and, with the export supply chain in mind, their development should be considered as important – if not more so – as the other major transport infrastructure operations underway in the UK at the moment...<sup>275</sup>

In a March 2018 report the BPA warned that:

A potential Brexit free trade deal will be welcomed by many in the sector but this is unlikely to cover border processes. In terms of border operations the impact of leaving the Customs Union and Single Market is now fast becoming a 'no deal' scenario for ports. Indeed this means that new border controls on UK-EU trade are likely to be unavoidable and that delays at certain ports and important trade gateways are a distinct possibility.<sup>276</sup>

There could be some positive consequences for UK ports on the east coast if difficulties emerge around Dover and Folkestone due to changes to border controls at Calais.<sup>277</sup> This could see an uptick in passenger and freight traffic though London, Grimsby, the Humber, Tyneside and/or the Forth. Associated British Ports (ABP) told the Transport Select Committee in June 2018 that "many east coast ports have the space needed to accommodate additional customs checks if required and operate on routes where the risk of avoidable disruption to trade is arguably lower".<sup>278</sup>

## 9.1 Free Ports

There is no fixed definition of the idea of a Free Port (the term is often used synonymously with 'free zone') with their exact arrangements usually differing between countries in which they operate.

As a generic term, Free Ports are understood to be designated areas inside a country geographically, but outside of that country's established customs area, thus allowing components and goods to be imported, manufactured and exported without being subject to the host country's standard tariffs and export/import procedures. These concessions are offered in the expectation that companies operating in Free Ports will attract business and boost manufacturing and trade.

It is estimated that there are 3,500 Free Ports in the world, employing 66 million people.<sup>279</sup> There are not currently any Free Ports in the UK, though there is one on the Isle of Man. Seven Free Ports operated in the UK at various points between 1984 and 2012. In July 2012, the

<sup>275</sup> "Invest in rail and road links before we jump the EU ship", *City A.M.*, 16 February 2018

<sup>276</sup> BPA press notice, "New BPA Report: Likely Brexit deal looks like 'no deal' for ports", 20 March 2018

<sup>277</sup> e.g. "French politicians tell Britain 'take back your borders' after EU vote", *Daily Telegraph*, 26 June 2016

<sup>278</sup> Transport Committee, *Written evidence submitted by Associated British Ports (FAB0027)*, June 2018; see also: "Northern ports prepare for freight boost after Brexit", *Financial Times*, 5 September 2018

<sup>279</sup> CRS, *U.S. Foreign-Trade Zones: Background and Issues for Congress*, 2013, p1

Statutory Instruments (SIs) that set up the remaining five Free Ports (Liverpool, Southampton, Port of Tilbury, Port of Sheerness and Prestwick Airport) expired.<sup>280</sup>

The Treasury currently has the power to designate Free Ports by SI under [section 100A](#) of the *Customs and Excise Management Act (CEMA) 1979*, as amended.

As of November 2017, there were 83 Free Ports operating within the EU,<sup>281</sup> most of which existed before the host state became a member of the EU and retained their status after accession to the Union.<sup>282</sup> Fifty-six of these are located in states that joined the EU post-2004.

A common criticism of EU Free Ports is that they are more limited in scope than international comparisons. A 2013 Canadian study of Free Ports stated that “the development of the Union itself has placed some restrictions” on Free Ports that “have narrowed the scope of their capabilities... In order to keep a level playing field, the EU has restrictions on state aid to private enterprises and these reduce the scope for incentives”.<sup>283</sup> Similarly, the French academic Alexandre Lavissière argued in 2017 that “while continental Europe was the birthplace of free ports, the EU neither develops them directly nor encourages them”.<sup>284</sup>

This led to the argument put forth by Conservative MP Rishi Sunak that the UK should take advantage of the “new economic freedom” resulting from the UK leaving the EU to create new Free Ports in the UK, based on the American model of Foreign Trade Zones. In a 2016 report, published by the Centre for Policy Studies (CPS) think tank, Sunak argued that Single Market regulations in the Union Customs Code and EU state aid rules have ensured that EU free zones “amount to little more than storage and warehouse facilities with simpler customs formalities” and that free of these constraints, the UK could use “sovereignty over customs issues and compliance to drive economic growth, employment and investment in specific areas”.<sup>285</sup>

The Government’s Chequers proposals indicated however, that it is willing to commit to “a common rulebook on state aid” in its future terms of trade with the EU, on the basis that continued application of these rules would help ensure a level playing field for businesses.<sup>286</sup>

The CPS report estimated that Free Ports in the UK could create up to 86,000 jobs in the UK if they were as successful as US Foreign Trade

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<sup>280</sup> [HC Deb 19 October 2012, c540W](#)

<sup>281</sup> EC, [Free zones which are in operation in the customs territory of the Union, as communicated by the Member States to the Commission](#), 17 November 2017

<sup>282</sup> UK in a changing Europe, [Free Zones](#), 7 October 2018

<sup>283</sup> McMaster University, [Maximizing the Potential of the Foreign Trade Zone Concept in Canada](#), January 2013, px

<sup>284</sup> [“Brexit offers free-port opportunities – but the EU can beat Britain to them”](#), *The Conversation*, 10 January 2017

<sup>285</sup> CPS, [The Free Ports Opportunity](#), 2016, pp18-19

<sup>286</sup> Op cit., [The future relationship between the United Kingdom and the European Union](#), p30



Zones.<sup>287</sup> By contrast, James McGrory, co-executive director of the pro-EU campaign group Open Britain described the 86,000 number as “deeply suspect” and a fraction of the number of jobs “that could be lost if we leave the Customs Union and Single Market”.<sup>288</sup>

UK in a changing Europe has argued that lower levels of regulation in Free Ports could lead to “misuse of competitive advantages and attract money laundering and tax avoidance activities” as well reductions in workers’ rights and standards.<sup>289</sup> The ITC has also pointed to “the risks of the secrecy at free ports being exploited to store high value artefacts from crime or the black market, as has happened in Geneva”.<sup>290</sup>

In its March 2018 report the BPA, which represents a wide range of UK port interests, stated that many of the advantages of Free Ports “can also be achieved through other procedures, such as customs warehousing and inward processing” and that:

Designating free trade areas at ports will probably not provide a Brexit solution for gateway ports such as for those in the Ro-Ro sector. The Government has been clear that many ports with land and on-site processing might be interested. Dependent on the final Brexit agreement there could be competition issues to consider on customs and excise procedures, therefore free ports should be kept under review.<sup>291</sup>

The biggest drive for a Free Port at present is coming from the North East. In June 2017 there was a roundtable on whether Free Ports could boost trade and manufacturing in the north of England after Brexit.<sup>292</sup> In January 2018 Ben Houchen, Conservative Mayor of the Tees Valley, in concert with the local Labour MP and local businesses began to make the case for a Free Port at Teesside.<sup>293</sup> There have also been calls for Immingham, on the Humber, to become a Free Port.<sup>294</sup>

There also seems to be some enthusiasm in Wales for Free Ports, and the Welsh Government is reported to have “an open mind” on the idea.<sup>295</sup> Similarly, in Northern Ireland Tina McKenzie, policy chair of the Northern Ireland Federation of Small Businesses has called for Northern Ireland to be made an “enhanced economic zone” to enable tariff-free trade with the EU and make Northern Ireland the “Singapore of the Western Hemisphere”.<sup>296</sup>

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<sup>287</sup> Op cit., [The Free Ports Opportunity](#), p5

<sup>288</sup> [“The economic benefits of a free port scheme after Brexit are an illusion”](#), *City AM*, 14 November 2016

<sup>289</sup> Op cit., [Free Zones](#)

<sup>290</sup> Op cit., [How will leaving the EU affect UK transport? Key issues](#), para 2.3.4

<sup>291</sup> BPA, [A Brexit Dividend: Supporting Trade and Growth](#), March 2018, p7

<sup>292</sup> Womble Bond Dickinson (UK) LLP, [Could free ports boost trade and manufacturing in the north after Brexit?](#), 22 June 2017

<sup>293</sup> See, e.g. [“Ben Houchen: Brexit. We need Project Fearless – and it starts with freeports. Let’s kick off with one in Teesside.”](#), *Conservative Home*, 22 January 2018; and [“Teesside keen to capitalise on Brexit with free port push”](#), *City A.M.*, 21 January 2018

<sup>294</sup> e.g. [“MP Martin Vickers steps up efforts for free ports to boost Immingham trade after Brexit”](#), *Grimsby Telegraph*, 28 September 2018

<sup>295</sup> [“Brexit: ‘Free ports’ urged to boost Welsh economy”](#), *BBC News*, 23 February 2018

<sup>296</sup> FSB press notice, [“One small step for Brexit, one giant leap for Northern Ireland”](#), 25 September 2018

In February 2018 the Prime Minister said that the Government is “open to ideas [such as Free Ports] that could drive growth and provide benefits to the UK and its people, so we will keep all these options under consideration”.<sup>297</sup>

## 9.2 EU Port Services Regulation

The greatest concern for UK ports over the past decade or so has been the repeated attempts by the EU to legislate on port services, which they have argued would impose disproportionate and potentially harmful regulation in an area where the UK is already competitive.<sup>298</sup> The proposed ‘Port Services Regulation’ was cited several times during the referendum campaign as a reason to leave the EU.<sup>299</sup> Indeed, in a debate on Brexit and transport in November 2016 the Secretary of State for Transport, Chris Grayling, said that:

... our decision to leave the European Union will ensure that in respect of ports, for which our model does not conform with that of the rest of Europe, we will have the opportunity to tailor something that is right for this country.<sup>300</sup>

The EU Port Services Regulation (PSR), was enacted in March 2017 and will come into force on 24 March 2019.

In November 2017 there were reports that the then Maritime Minister, John Hayes, had told the industry that the PSR would be “consigned to the dustbin” after Brexit.<sup>301</sup>

Oxera Consulting told the Lords EU Internal Market Sub-Committee in October 2018 that:

Following Brexit, the UK will no longer need to comply with EU legislation on ports and port services. Most directly, the Port Services Regulation (PSR) will no longer apply to UK ports [...] The ports industry itself was strongly opposed to the regulation throughout, and is likely to lobby against a successor enshrined in UK law.<sup>302</sup>

## 9.3 Dover

According to Oxera Consulting, the Port of Dover handles up to £122 billion, or 17%, of the UK’s total trade in goods. It processes 12 million passengers, 2.6 million lorries and 2.3 million tourist vehicles each year. Dover handles more international lorries than all other UK ports combined and has the shortest sea crossing to Europe.<sup>303</sup>

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<sup>297</sup> [HC Deb 28 February 2018, c823](#); see also: [HC Deb 27 February 2018, c670](#)

<sup>298</sup> More details can be found in HC Library briefing paper [CBP 7457](#)

<sup>299</sup> e.g. “It’s not just the plot to let in 1.5 million Turks... DANIEL HANNAN outlines ten bombshells the EU’s keeping secret until after you’ve voted”, *Daily Mail*, 14 June 2016

<sup>300</sup> [HC Deb 23 November 2016, c952](#)

<sup>301</sup> “Port Services Reg “consigned to the dustbin””, *Port Strategy*, 29 November 2017

<sup>302</sup> Lords EU IMSC, [Written Evidence – Oxera Consulting \(TRA0018\)](#), 1 October 2018

<sup>303</sup> Port of Dover press notice, “[It’s All Dover For Boxed-In Container Ports](#)”, 11 October 2018

ABP explained to the Transport Select Committee in June 2018 why Dover is important and the potential problems that could arise due to Brexit:

The UK's departure from the Customs Union has created anxiety about the impact of additional customs checks at UK ports. A great deal of this anxiety has centred on the Port of Dover, which handles around 30% of the UK's trade in goods with Europe. The Port of Dover has warned of the possibility of severe delays at the port if new customs clearance arrangements and infrastructure capable of facilitating 'frictionless trade' are not in place after the UK leaves the Customs Union [...]

There will be varying perspectives on the likelihood and severity of disruption at the Port of Dover during Brexit negotiations and following the UK's exit from the Customs Union, but the potential impact of such disruption points to an urgent need to prepare for such an eventuality [...]

Prior to the UK's entry to the European Single Market in 1993, the Port of Dover's share of UK-EU trade by volume was 15 per cent [...] it is important to recognise the key factors that contributed to the Port of Dover's increase in market share, including:

- the removal of customs checks as a result of the UK's membership of the Customs Union;
- competition from the Channel Tunnel causing ferry operators to reduce their charges; and
- reduced employment costs for HGV drivers.

Taken together, these factors led to an improvement in the cost of accompanied Ro-Ro compared to unaccompanied Ro-Ro or Lo-Lo over time.<sup>304</sup>

In September 2018 the Lords EU Internal Market Sub-Committee published a report on Brexit and customs, in which it said that:

The Port of Dover, the busiest roll-on/roll-off ferry port in Europe, processes about 17% of the UK's total trade in goods. Its ability to handle this trade volume "is dependent on all vehicles passing straight through without stopping for any routine customs (or animal/plant health etc) controls". Mr Joe Owen, Associate Director, Institute for Government, pointed out that there was "dwell time ... which is time in which authorities can do the necessary checks if they need to. Dover and Eurotunnel market themselves by saying, 'We are basically a continuous motorway that will take you all the way over to France, non-stop', so where do you put that dwell time?"

Dover is limited by its geography, wedged between the cliffs and the sea. The Port was unequivocal in its assessment that it would not be able to accommodate additional checks.<sup>305</sup>

The Port of Dover itself has rejected suggestions by ABP and others (see beginning of section 9, above) that traffic could be diverted through other UK ports, relieving pressures at Dover. In October 2018 Tim Reardon, the Port of Dover's Head of EU Exit, was reported as saying:

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<sup>304</sup> Op cit., [Written evidence submitted by Associated British Ports \(FAB0027\)](#)

<sup>305</sup> Lords EU IMSC, [Brexit: the Customs Challenge](#) (20th Report of Session 2017–19), HL Paper 187, 20 September 2018, paras 69-70

Trying to divert the traffic through other ports is a non-starter. The port capacity isn't there, and a whole new fleet of ferries would be needed which simply doesn't exist... Successful future trade with Europe must be about delivering a realistic solution. That means a free-flowing Dover, whose speed, efficiency and capacity cannot be replicated without adding significant cost to the supply chain.<sup>306</sup>

The report went on to say that in order to head off disruption, Dover is 'working closely' with the Government on plans for HGV traffic to be pre-notified to UK customs so that vehicles do not need to be held at the port's facilities for inspection.<sup>307</sup>

## Operation Brock

In 2015 'Operation Stack', a procedure used by Kent Police and the Port of Dover to park HGVs on the M20 when ferry services are disrupted, was in place for over 30 days. According to ABP, the Port of Dover has estimated that the cost to the wider economy of such disruption is as much as £250 million per day.<sup>308</sup>

The DfT identified that a temporary solution was needed on the M20 near Dover to manage traffic flow as a contingency to mitigate the risk of cross-channel disruption including any that may be caused by new border arrangements following the UK's exit from the EU. It is calling this work 'Operation Brock' (formerly 'Project Brock'). The NAO explained in its July 2018 report:

The project aims to hold coast-bound lorries on the M20 while allowing non-port traffic to continue to move in both directions. Given the need to be ready by March 2019, the project is required to deliver at pace. It is sponsored by the Department and to be delivered by Highways England.<sup>309</sup>

The details were summarised by Chris Grayling in October 2018:

Operation Brock consists of three phases, a contraflow queuing system on the M20, a holding areas at Manston Airport and, if necessary, a holding area on the M26. The Department is working closely with the Kent Resilience Form, the Port of Dover, Eurotunnel and other associated bodies. The contraflow queuing system on the M20 will cost about £30 million to build and operate and would be used for all disruption events including those seen in 2015. The works required for the M26 are within the region of £5 million.<sup>310</sup>

The Roads Minister, Jesse Norman, further argued that the proposed contraflow system on the M20 represented:

... a significant improvement on previous deployments of Operation Stack, when junctions were closed and traffic diverted off the M20 on to local roads, adversely affecting local communities and businesses in Kent. It is estimated that the Brock

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<sup>306</sup> "[Brexite: Challenges Ahead for Cross-Channel Ferry Ports](#)", *The Maritime Executive*, 4 October 2018

<sup>307</sup> Ibid.

<sup>308</sup> Op cit., [Written evidence submitted by Associated British Ports \(FAB0027\)](#)

<sup>309</sup> Op cit., [Implementing the UK's Exit from the European Union: Department for Transport](#), para 2.30

<sup>310</sup> [Roads: Written question – 183831](#), 30 October 2018

contraflow will be capable of holding at least 2,000 HGVs, in addition to the 2,000-plus capacity that the additional spaces at Eurotunnel, the port of Dover and the Dover TAP provide between them. We will therefore have substantial truck-holding capacity while maintaining flow of traffic on the M20 at all times.<sup>311</sup>

The NAO stated that in March 2018 the DfT approved a preferred option for the work and formally delegated responsibility for the project's delivery, including approval of the business case, to Highways England. Highways England awarded a contract on 11 May 2018, with a view that preparatory engineering and operational plans would be developed in parallel and work would begin in early July 2018.<sup>312</sup>

In an October 2018 letter to the Chair of the Public Accounts Committee Bernadette Kelly said that the deployment of Operation Brock had "progressed... and is nearing completion". She stated that "infrastructure work... is underway on the M20 between junctions 8 & 9. The project remains on track to be complete by March 2019".<sup>313</sup> Ms Kelly later told the Committee in oral evidence that DfT is spending "around £30 million to £35 million... on the infrastructure, principally for Operation Brock".<sup>314</sup>

## 9.4 Exit preparations

As set out in section 4.3 above, the UK Government has started to publish negative SIs relating to transport, made under the Withdrawal Act; some of these have already been sifted by the relevant Committees.<sup>315</sup> There are as yet no SIs relating to ports.

The EU27 is also preparing for Brexit. The European Commission has issued a Notice to Stakeholders on the implications of Brexit in the field of maritime transport, including ports.<sup>316</sup>

## 9.5 No deal

### Government technical notices

As stated in section 1.3, above, on 23 August 2018 DExEU began to publish 'technical notices', on how to prepare for Brexit if there is 'no deal'. A number of notices have been issued with regards to importing and exporting, but these are essentially customs issues and relate to specific industries such as food and agriculture. They are not dealt with here.

<sup>311</sup> [HC Deb 25 October 2018, c531](#)

<sup>312</sup> Op cit., [Implementing the UK's Exit from the European Union: Department for Transport](#), para 2.30

<sup>313</sup> Op cit., [Letter from Bernadette Kelly to Meg Hillier MP](#)

<sup>314</sup> Op cit., [Oral evidence: Department for Transport: Implementation of Brexit](#), Q138

<sup>315</sup> The process is explained on the Parliament website, see: [Statutory instruments relating to Brexit](#) [accessed 4 October 2018]

<sup>316</sup> EC, [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Maritime Transport](#), 27 February 2018

## Impact

As stated elsewhere in this paper, the main concern for ports is the impact of changes to customs, border and immigration processes in the event of 'no deal' and the knock-on impacts for inland transport of goods.

In an October 2018 report the NAO warned:

In the event that the UK leaves the EU without a negotiated solution, or in any other circumstance where World Trade Organization rules will apply to the transit of goods between the UK and the EU, new infrastructure will be required to enable an effective compliance regime [...]

Departments are planning on the basis that there is insufficient time to build significant new infrastructure before 29 March 2019. It could take up to three years to put new infrastructure in place because ports, airports and other border crossing point operators, which are responsible for funding infrastructure to deliver the border compliance regime, will need certainty about how the border will operate so that they can access the necessary finance and comply with local and national planning processes.<sup>317</sup>

At its most fundamental, leaving the EU Customs Union and Single Market means that without some form of agreement goods travelling to and from Europe will be subject to new authorisations and other requirements as of March 2019. The BPA explained that "traders will need to undertake new border processes which could be most challenging for freight on lorries travelling through 'roll-on roll-off' ferry port gateways [which] collectively facilitate the majority of the UK's EU trade".<sup>318</sup> It further stated that there would "of course" be opportunities for IT solutions for customs procedures but these "could take time and all those in the logistics chain will need to assess how they will meet the new arrangements".<sup>319</sup>

The Road Haulage Association's Chief Executive, Richard Burnett, explained about the effects on the road network around Dover and about the potential consequences of action taken by the French authorities on the other side of the Channel:

The Dover Strait handles 10,000 lorries each day and processing them through the port is currently seamless.

The stark reality is that if customs controls are put in place, it will take an average of about 45 minutes to process one truck on both sides of the channel. If that happens then the queues of HGVs in Kent will make the jams seen in the summer of 2015 appear as little more than waiting for the traffic lights to change [...]

If [the French] put customs processes in place in March 2019 to check all lorries traveling between the UK and the EU hauliers will be faced with the prospect of coming over to the UK and having

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<sup>317</sup> NAO, [The UK border: preparedness for EU exit](#), HC 1619 2017–2019, 24 October 2018, paras 3.19–3.20

<sup>318</sup> BPA press notice, "[British Ports Association highlights consequences of a 'no deal' Brexit scenario to EU ports as well as those in the UK](#)", 23 August 2018

<sup>319</sup> Ibid.

to wait for days – even weeks, before they can return home. This will be a huge deterrent to them making the journey at all.<sup>320</sup>

In October 2018 French authorities reportedly stated that there were no plans to close the port of Calais to cross-channel traffic in the event of 'no deal' and that "while there might be delays if the event of a no-deal, it was in France's interest to minimise these".<sup>321</sup>

However, in its June 2018 evidence to the Transport Committee the FTA cautioned that based on input from its sister organisations across Europe, "we have evidence that few companies are preparing for Brexit on the continent". It went on:

This is particularly the case for road transport operators, especially small ones, who are not familiar with trade and customs procedures, or with the requirements for operators under the Union Customs Code, and who do not have the resources to prepare adequately. A large proportion of operators transporting goods between the EU and the UK (and vice versa) are EU-27 registered companies, rather than UK haulers. The risk if they are not prepared adequately is to have queues of uncompliant lorries at the borders, that would create significant disruptions in ro-ro ports. We are starting to perceive an increasing 'Brexit fatigue' on the continent, in particular, with many companies deferring preparation to a later time, when 'rules' will supposedly be clearer. Ports on both sides are taking steps to prepare for Brexit, both in terms of IT systems and physical infrastructure, but preparations have also been slowed down significantly by the lack of clarity regarding future arrangements.<sup>322</sup>

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<sup>320</sup> RHA press notice, "[Brexit and the UK haulage industry – no deal, no jobs, no food](#)", 29 July 2018

<sup>321</sup> "[Brexit: French officials dismiss UK fears of Calais 'go-slow'](#)", *BBC News*, 26 October 2018

<sup>322</sup> Op cit., [Written evidence submitted by the Freight Transport Association \(FTA\) \(FAB0023\)](#), para 17



## 10. Maritime

Access to the European single market has greatly benefitted the UK shipping industry. Over 50% of the UK's international trade is conducted with the EU27 and 40% of goods traded within the EU are moved by sea. UK shipping companies are also active in a global marketplace and have long been seeking consistency in the application of rules to ships from all Flag States to allow companies to compete on a level playing field. This consistency has been achieved over decades through the participation of Flag and Port States in international forums such as the [International Maritime Organization \(IMO\)](#), the International Labour Organization (ILO), the OECD and the UN Commission on International Trade Law (UNCITRAL). In this environment the EU's sometimes unilateral approaches to maritime policy making have been a challenge.

UK shipping post-Brexit is concerned about general policy areas such as employment law, immigration, border controls and contract law. More specifically there are transport-related issues such as freedom to trade, safety and environmental rules; the tonnage tax and maritime security.

The British International Freight Association (BIFA) said in July 2016 that container lines are likely to continue to call directly at UK ports as UK volumes are "more than large enough to justify" direct calls with mainline vessels, mainly in the South of England ports. However, their main concern was of potentially losing the benefits of free trade and customs harmonisation with the EU Single Market. It stated that a return to tariffs for UK merchandise exports and imports would be "detrimental to UK trade with the EU, and may result in a small reduction in UK-EU maritime volume".<sup>323</sup>

In January 2017 *Port Technology* summed up the potential costs and opportunities of Brexit for the UK shipping industry as follows:

... major concerns surround the negotiations for EU workers being able to freely work in the UK. Restrictions on the right of EU workers to work in the UK maritime sector would have a severely detrimental effect on the UK shipping cluster that is reliant on such labour to thrive.

Conversely, some shippers believe that Brexit offers opportunities for more favourable trade agreements to be decided on a bilateral basis between the UK and countries in Asia, Oceania and the Americas. Politicians in Australia have already said that they are happy to discuss a bilateral deal.<sup>324</sup>

In a July 2017 paper, the Institute of Maritime Law at the University of Southampton concluded that Brexit would "have a significant impact on the future of UK shipping policy".<sup>325</sup> It stated that:

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<sup>323</sup> BIFA, [What Brexit means for UK shipping](#), July 2016

<sup>324</sup> "Opinion: Will Leaving the Single Market Sink Shipping?", *Port Technology*, 17 January 2017

<sup>325</sup> Syreloglou et al. for the IML-UoS, [The UK maritime sectors beyond Brexit](#), July 2017, p28

Most other shipping regulations are based primarily on legal instruments adopted by the IMO. Current gold-plating by the EU will become optional for UK shipping. Removing the gold-plating will enable the UK to become a cheaper destination than competing EU ports. It could however have important consequences for employment conditions for UK seafarers as well as for the environmental impact of shipping in the UK [...]

Brexit will throw open issues of employment of seafarers, taxation of shipping companies, ship safety regulations and environmental protection aspects of shipping. It will be the intra-UK negotiation and relative strength of interested stakeholders which will determine the outcome.<sup>326</sup>

In September 2017 the Secretary of State for Transport, Chris Grayling, said that "Brexit Britain will be the best country in the world to do maritime business". He said that the Government would achieve this by:

- creating a plan to shape and promote the maritime industry up to 2050
- collaborating with industry partners to significantly grow the sector by seizing new trade opportunities
- calling on maritime employers to double the number of apprenticeships they offer
- launching a British shipbuilding 'renaissance' as part of the National Ship Building Strategy<sup>327</sup>

Nautilus International, the trade union, told the Transport Committee in June 2018 of its concerns that "the potential impacts of Brexit upon shipping and seafarers have not been properly assessed and that there appears to be an absence of detailed plans in place for responding to them".<sup>328</sup> However, it also said that Brexit "does offer some important opportunities for the shipping industry and for maritime employment and training".<sup>329</sup>

One key issue will be maritime security. In its June 2018 framework document, the Government states that post-Brexit it wishes to continue safety and security co-operation with the EU27 in the field of maritime transport.<sup>330</sup> In March 2018 the Government published its National Security Capability Review (NSCR), which included the following on maritime security post-Brexit:

As we leave the EU, we want to find a practical and pragmatic way to continue to cooperate with the EU on cross-border threats [...] When we leave the EU, we will put in place amended legislation on our Territorial Waters and Exclusive Economic Zone (EEZ) that ensures our security and prosperity interests are fully addressed, including for the commercial exploitation of waters around the UK through fishing, and mineral, oil and gas exploration and production. Our preparation for enforcement of

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<sup>326</sup> Ibid., pp75-6

<sup>327</sup> DfT press notice, "[Brexit Britain will have the world's best maritime industry](#)", 11 September 2017

<sup>328</sup> Transport Committee, *Written evidence submitted by Nautilus International (FAB0026)*, June 2018

<sup>329</sup> Ibid.

<sup>330</sup> Op cit., *Framework for the UK-EU partnership: Transport*, p6

the new legislation includes a UK-wide review to improve the coordination, tasking, asset sharing and governance of all marine policing, maritime security and border enforcement activity in the UK Marine Area.<sup>331</sup>

## 10.1 European Maritime Safety Agency (EMSA)

The [European Maritime Safety Agency \(EMSA\)](#) was established in 2002 following the sinking of the [MV Erika](#). It aims to ensure a high, uniform and effective level of maritime safety and security and to prevent and respond to maritime pollution. EMSA coordinates a set of programmes in response to directives and conventions agreed by the EU and the IMO. As such, not all programmes coordinated by EMSA require EU membership.<sup>332</sup>

As discussed in section 3.1, above, the July 2018 Brexit White Paper set out the UK Government's intention to engage in "close cooperation on maritime" post-Brexit, "including with" the EMSA.<sup>333</sup> It went on:

In the interests of tackling shared safety, security and environmental issues, the UK proposes to continue cooperating closely with both the EU and the EMSA, including sharing information on safety and to counter pollution. The UK is at the heart of the global maritime industry and has recognised expertise in areas such as safety and accident investigation, which are vital to ensuring the safety of ships, passengers and crew. The UK will continue to be a strong advocate for the safety and environmental performance of shipping, and an active member of the International Maritime Organization (IMO).<sup>334</sup>

In its June 2018 report the NAO set out the DfT's EMSA project, to develop alternative UK information systems, including databases, to replicate functions previously carried out by EMSA:

These are required by the Maritime and Coastguard Agency for its core activities, such as enforcement against unsafe and polluting ships, as a contingency in case no agreement is reached between the UK and the EU for the UK to continue to use existing systems.<sup>335</sup>

It stated that DfT had estimated that it would spend £8 million, as a contingency, on the EMSA replacement systems between 2018-19 and 2021-22.<sup>336</sup>

In an October 2018 letter to the Chair of the Public Accounts Committee Bernadette Kelly said that "a significant amount of work" had taken place on replicating functionality which would be lost under a 'no deal' scenario and that suppliers had begun delivering three of the

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<sup>331</sup> Cabinet Office, [National Security Capability Review](#), 28 March 2018, p27

<sup>332</sup> UK Chamber of Shipping, [Institutions and EMSA - UK Chamber Brexit Position No.5: Institutions](#) [accessed 7 November 2018]

<sup>333</sup> Op cit., [The future relationship between the United Kingdom and the European Union](#), para 128

<sup>334</sup> Ibid., para 135

<sup>335</sup> Op cit., [Implementing the UK's Exit from the European Union: Department for Transport](#), para 2.30

<sup>336</sup> Ibid., para 2.35

four systems with the fourth due to begin work in November 2018. She said that the Department was “on track to deliver each of the four systems by March 2019”.<sup>337</sup>

## 10.2 North Sea-Mediterranean corridor (TEN-T)

The original aim of the [Trans-European Transport Network \(TEN-T\)](#) was to establish a series of interconnected and interoperable European transport networks that would remove bottlenecks and fill in missing links. Although TENs were outlined in the Treaty of Rome, the original TEN-T did not include any financial or other obligation for Member States to upgrade or complete existing infrastructure; this was included in the 1992 Maastricht Treaty.

Since the early 1990s, TEN-T has developed apace though delivery has been slow and there has been continued debate about both the overall size of the budget to achieve TEN-T schemes and the mix of funding from Member States, European sources and the private sector.<sup>338</sup>

In terms of its overall structure, TEN-T comprises three parts:

- the common planning of infrastructure (in terms of geographical coverage and technical characteristics);
- regulatory measures to facilitate investment; and
- the Connecting Europe Facility as a specific funding instrument for network projects.<sup>339</sup>

The UK hosts one of the nine TEN-T Core Network ‘corridors’: the [North Sea-Mediterranean \(NSM\) corridor](#). It stretches from Belfast and the Irish ports of Cork and Dublin, as well as from Glasgow and Edinburgh, through Belgium, with a branch from Amsterdam and Rotterdam via Luxembourg to Strasbourg and Basel and via Lyon to the French southern ports of Fos/Marseilles. It covers rail, road, airports, ports and rail-road terminals, as well as the Dutch-Belgian inland waterway system and the Rhône river [see map below].<sup>340</sup>

General information on TEN-T, including motorways of the sea, and the CEF is available on the [EC website](#).

<sup>337</sup> Op cit., [Letter from Bernadette Kelly to Meg Hillier MP](#)

<sup>338</sup> Background on all of these issues, up to 2012, can be found in HC Library briefing paper [CBP 478](#)

<sup>339</sup> ESC, [Thirty-seventh Report of Session 2017–19](#), HC 301-xxxvi, 11 September 2018, para 11.6

<sup>340</sup> Ibid., para 11.4



Insofar as Brexit is concerned, in July 2018 the European Commission published a Communication stating that one of the legislative changes needed as a result of Brexit would be “to amend the Regulation on the Connecting Europe Facility to adjust the alignment of the North Sea-Mediterranean corridor and design a new maritime route to link Ireland with the continental part of the corridor”.<sup>341</sup> It further stated:

The proposal to amend the Regulation establishing the Connecting Europe Facility aims at rectifying the situation following the United Kingdom’s withdrawal, when the transport infrastructure of the latter will no longer be situated in the Union to ensure continued connectivity of the EU network.<sup>342</sup>

The Commission adopted a proposal for a regulation on 1 August, seeking feedback by 28 September. The proposal makes a change to the corridor by inserting a new direct connection between the island of Ireland and Zeebrugge, Antwerp and Rotterdam.<sup>343</sup>

Following publication of the proposal there were reports that the French Government would oppose any attempt to design a corridor that took Irish shipping via the proposed ports in The Netherlands and Belgium rather than those in Western France.<sup>344</sup> Most of the responses to the proposal were from French bodies and organisations opposing the new route.<sup>345</sup> There had been earlier reports of freight and passenger shipping companies opening new routes from Ireland to France, Belgium and Spain, avoiding the UK, though as the FT reported, “

<sup>341</sup> EC, [Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019](#), COM(2018) 556 final, 19 July 2018, p10

<sup>342</sup> *Ibid.*, p13

<sup>343</sup> EC, [Annex to the Proposal for a Regulation \[...\] amending Regulation \(EU\) 1316/2013 with regard to the withdrawal of the United Kingdom from the Union](#), COM(2018) 568 final, 1 August 2018

<sup>344</sup> [“France condemns EU plan for post-Brexit shipping lane”](#), *The Times*, 22 August 2018

<sup>345</sup> Available to view at: EC, [Feedback received on: Realignment of the North Sea – Mediterranean Core Network Corridor - BREXIT preparedness](#) [accessed 8 November 2018]

Ireland's heavy reliance on trade with Britain means links between the two will continue to be a mainstay".<sup>346</sup>

As indicated above, the TEN-T network improvements are part-funded by the Connecting Europe Facility (CEF). CEF funding is not [allocated](#) for projects in countries which are not part of the EU27 (the UK's recent allocations are [listed here](#)). Switzerland has TEN-T routes running through the country, as do Norway and Turkey, even though none of them are in the EU27. It is possible that a deal could be reached whereby UK routes, ports etc. remain part of TEN-T but no funding for their developing is forthcoming through CEF. However, we have no firm information on this as yet.

In its September 2018 evidence to the Lords EU Internal Market Sub-Committee, the DfT said that:

The UK is currently involved in 50 CEF-funded projects with a value of over €350 million, comprising 3% of the CEF total budget; against a UK contribution of 13% to the budget. On this basis, the UK will need to consider the merits of any continued involvement in the CEF programme after our exit from the EU. The new CEF Regulation precludes funding projects in non-Member States unless exceptional circumstances apply. In areas where the UK has successfully secured funding from the CEF programme (e.g. air traffic management projects), we will consider whether there is a need to provide a domestic replacement for this element of the CEF.<sup>347</sup>

### 10.3 Exit preparations

As set out in section 4.3 above, the UK Government has started to publish negative SIs relating to transport, made under the Withdrawal Act; some of these have already been sifted by the relevant Committees.<sup>348</sup>

There are four SIs relating to maritime transport, published to date:

- [\*The Merchant Shipping \(Accident Reporting and Investigation\) and the Railways \(Accident Investigation and Reporting\) \(Amendment\) \(EU Exit\) Regulations 2018\*](#);
  - [\*The Merchant Shipping \(Miscellaneous Provisions\) \(Amendments etc.\) \(EU Exit\) Regulations 2018\*](#);
  - [\*The Merchant Shipping and Fishing Vessels \(Health and Safety at Work\) \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2018\*](#);
- and
- [\*The Maritime Transport Access to Trade and Cabotage \(Revocation\) \(EU Exit\) Regulations 2018\*](#)

The sifting committees have agreed with the Government that the first two SIs do not require a debate in Parliament, though one may still

<sup>346</sup> "[Shipping groups boost Ireland-EU routes ahead of Brexit](#)", *Financial Times*, 5 April 2018

<sup>347</sup> Lords EU IMSC, [Written Evidence – Department for Transport \(TRA0012\)](#), 14 September 2018, Q15

<sup>348</sup> The process is explained on the Parliament website, see: [Statutory instruments relating to Brexit](#) [accessed 4 October 2018]

occur. The health and safety regulations are currently being sifted and the cabotage regulations were published on 30 October and have yet to be considered.

The EU27 is also preparing for Brexit. The European Commission has issued three Notices to Stakeholders on the implications of Brexit in the field of maritime transport, seafarers qualifications and maritime security.<sup>349</sup> In August 2018 it also published a legislative proposal to provide for a smooth transition for UK-sponsored organisations conducting ship inspections and surveys in the EU27 after Brexit.<sup>350</sup>

## 10.4 No deal

### Government technical notices

As stated in section 1.3, above, on 23 August 2018 DExEU began to publish 'technical notices', on how to prepare for Brexit if there is 'no deal'. On 13 September the Department for Transport published two papers on maritime transport, covering maritime security notifications and seafarer certificates of competency.

On **maritime security notifications** in the event of 'no deal', the relevant paper explains that under Article 6 of [EC Regulation 725/2004](#), shipping companies (including ferries carrying passengers and lorries) are required to submit security information prior to entering an EU port. Sometimes this is referred to as a pre-arrival notification (PAN). Article 7 allows EU countries to issue exemptions from the requirement to provide this information to companies operating scheduled services between ports located in their territory, or between ports within their territory and that of another EU country.<sup>351</sup>

The DfT states that in the event of 'no deal' Article 7 exemptions would not be permitted from EU27 countries for vessels, irrespective of registration/flag, operating scheduled services from the UK.<sup>352</sup> DfT advises shipping companies holding such an exemption to engage with EU27 countries to ensure they understand what information they would be required to provide and how it would be submitted. The UK intends to continue issuing exemptions for scheduled services from an EU27 country to a port in the UK, or between ports in the UK, after Brexit "regardless of the outcome of negotiations".<sup>353</sup>

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<sup>349</sup> Op cit., [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Maritime Transport](#), [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the field of Aviation Security and Maritime Security](#), and EC, [Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on the Minimum Level Of Training of Seafarers and the Mutual Recognition of Seafarers' Certificates](#), 19 January 2018

<sup>350</sup> EC, [Proposal for a Regulation ... amending Regulation \(EC\) No 391/2009 with regard to the withdrawal of the United Kingdom from the Union](#), COM(2018) 567 final, 1 August 2018

<sup>351</sup> DfT, [Getting an exemption from maritime security notifications if there's no Brexit deal](#), 13 September 2018

<sup>352</sup> Ibid.

<sup>353</sup> Ibid.



On **seafarer certificates of competency** in the event of 'no deal', the relevant paper explains that at present, the [International Convention on Standards of Training, Certification and Watchkeeping for Seafarers \(STCW\)](#) mandates that crew members carrying out certain duties must have a certificate of competency (COC). A COC must be renewed every five years. EU legislation has harmonised the way that EU countries apply the STCW requirements. This has led to two different procedures for recognising seafarers' qualifications.<sup>354</sup>

DfT states that in the event of 'no deal', endorsements issued before withdrawal by EU27 countries to seafarers holding UK COCs would continue to be valid until they expire. After exit, the rights and obligations placed on the UK as a signatory to the STCW convention would remain, including those for recognising certificates issued by third countries. Therefore, the UK Government's intention is to:

- continue recognising all certificates that we currently recognise, including those issued by EU and EEA countries after exit
- seek third country recognition of UK certificates by the EU under the STCW convention<sup>355</sup>

It further explains that EU27 countries that wish to continue accepting new UK COCs would need to write to the European Commission, in accordance with the procedure in [EC Directive 2008/106](#). They would then be able to recognise such certificates.

## Impact

Oxera Consulting told the Lords EU Internal Market Sub-Committee in October 2018 that:

The most obvious implication of a 'no deal' scenario from a maritime perspective is that free movement of people and goods between the UK and EU will no longer be possible. Given the importance of the EU as a trading partner, the implications could be significant [...]

Another important effect of a 'no deal' scenario would be on the ability of the UK to export maritime business services to customers in the EU. The UK is currently a leading centre for maritime support services including ship broking, insurance and P&I clubs, legal services and dispute resolution, and financial services.<sup>356</sup>

Also in October there were reports that Chris Grayling had told the Cabinet that the Government "could commission ships to get supplies through Belgian and Dutch ports if traffic between Dover and Calais clogs up".<sup>357</sup> *The Times* reported that "Senior government figures said that the plan had not been discussed at cabinet but it could have been raised as an idea in the department of transport".<sup>358</sup>

<sup>354</sup> DfT, [Recognition of seafarer certificates of competency if there's no Brexit deal](#), 13 September 2018

<sup>355</sup> Ibid.

<sup>356</sup> Op cit., [Written Evidence – Oxera Consulting \(TRA0018\)](#)

<sup>357</sup> ["Cabinet ministers warn economic chaos and emergency shipping regime loom after no-deal Brexit"](#), *Politics Home*, 24 October 2018

<sup>358</sup> ["Brexit: Charter ships could beat Dover chaos"](#), *The Times*, 24 October 2018

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