

White Paper Sets Out UK Government's Brexit Strategy

By Tim Wright and Samuel J. Pearse

The UK Government has published a White Paper setting out its Principles and Objectives for exiting the EU.

- The European Union Bill—authorising Article 50 notice—passed its first hurdle on February 1, 2017.
- MPs in the House of Commons voted by 498 to 114 in favour of the Bill.
- The Bill now moves to the Committee phase: hundreds of amendments have been tabled by MPs, some of which will be debated in Parliament between Monday and Wednesday next week.
- MPs will then vote again on the amended draft law before it is sent to the House of Lords.

Against this backdrop, the government has published a [White Paper](#)—an official policy document—setting out the Government's principles and objectives for Brexit. The accompanying [press release](#) put out by the Department for Exiting the European Union (DExEU) refers to the White Paper (full title—'The United Kingdom's Exit from, and New Partnership with, the European Union') as the Government's "plan for 'a new, positive and constructive' partnership in the mutual interest of the UK and the EU." Introducing the White Paper to MPs in Parliament, Brexit Secretary David Davis said:

"The White Paper confirms the Prime Minister's vision of an independent, truly global UK and an ambitious future relationship with the EU...It is in the UK's interest for the EU to succeed politically and economically. And so we approach the negotiation to come in a spirit of goodwill and working to an outcome in our mutual benefit."

Lancaster House Speech Revisited

The White Paper expands on the 12 principles laid out by Prime Minister Theresa May in a [recent speech](#) at Lancaster House in London. But at only 77 pages, with a foreword from Theresa May, the document is light on specifics in a number of areas, consistent with the Prime Minister's assertion that details which would undermine the Government's negotiation position should not be made public.

Leverage Play

Pointing out that the UK exported some £230 billion worth of goods and services to the EU while importing £290 billion's worth in 2015, the White Paper argues that it is in the interests of both the UK and the EU27 to build a new strategic partnership.

12-Point Plan

1	Providing certainty & clarity
2	Taking control of our own Laws
3	Strengthening the Union
4	Protecting historic ties with Ireland and maintaining the Common Travel Area
5	Controlling immigration
6	Securing rights for EU Nationals in the UK and vice versa
7	Protecting workers' rights
8	Ensuring free trade with European markets
9	Securing new trade agreements with other countries
10	Ensuring the UK remains the best place for science and innovation
11	Cooperating in the fight against crime and terrorism
12	Delivering a smooth, orderly exit from the EU

“The Government has set out its stall for an ambitious and comprehensive free trade agreement, and a new customs agreement, without giving away too much in terms of what it expects to have to trade in return.” —Sam Pearse, Pillsbury

Transition Period

Recognising the enormous task, and the time required, to deliver systems and frameworks that will enable UK and EU businesses to continue to trade with and operate in each other's markets once the UK departs from the EU, the White Paper emphasises the importance of “a smooth, mutually beneficial exit” rather than a “cliff-edge”. Therefore, we can expect to see a phased implementation of the new arrangements across a wide range of topics including:

- immigration controls
- customs systems
- co-operation on criminal and civil justice matters, and
- regulatory and legal frameworks.

Dispute Resolution

Along with controls on immigration, the reassertion of parliamentary sovereignty and the reestablishment of the primacy of the UK's laws and courts have long been seen as red lines for Mrs. May's negotiations and clear drivers toward a “harder” model for Brexit. The Court of Justice of the European Union (CJEU) has supranational jurisdiction across the EU member states including the UK through the principles of primacy and direct effect of EU law.

The White Paper makes it clear that, for the UK, with Brexit, this will end, and that the UK will seek a new method of dispute resolution for trade and other international disputes with the EU. The document sets out—in Appendix A—summaries of various international dispute mechanisms, although critiques might argue that this is little more than window dressing in an attempt to pad out the document. After all, the paper states that the solution should “*not be constrained by precedent*” and that the UK will be seeking a bespoke solution.

Contingency Plan

As is now widely known, once the UK submits notification under Article 50 the Treaties of the EU will cease to apply to the UK on the earlier of the withdrawal agreement becoming effective or the two-year anniversary of notification (unless the EU27 unanimously agree to extend the process). The White Paper states that whilst the Government is confident a deal can be reached, “*no deal for the UK is better than a bad deal for the UK*.” If that should happen, and the Prime Minister cannot deliver the sweeping free trade agreement promised, the paper says that the Government will ensure the UK’s “economic and other functions can continue” and will introduce emergency laws to mitigate the impact of not reaching a deal. Precisely what those laws might be, and how they might help, remains to be seen.

Great Repeal Bill

The White Paper also confirms the Government’s plans to publish a separate White Paper on the Great Repeal Bill which it says will be designed so as to ensure certainty and stability by transposing EU law into UK law, wherever practical and appropriate, as well as introducing new legislation in areas likely to be affected by the exit negotiations, in particular customs and immigration.

“We can also look forward to learning more about the Government’s plans for the Great Repeal Bill—surely an ironic title if ever there was one—which, in a bid to restore legal supremacy in the UK from that of the ECJ, will see large amounts of EU law transposed lock, stock and barrel into UK law”—Tim Wright, Pillsbury

If you have any questions about the content of this Alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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