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# Brexit: Legislation in the UK



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## Introduction

In order to make preparations for the UK's departure from the EU it is necessary for domestic legislation to be adopted covering a wide range of matters. In this briefing we list the various pieces of government legislation before the parliament at Westminster and also those being considered by the Scottish Parliament and the Welsh Assembly. As long as the Northern Ireland Executive is, as now, suspended, the UK government will have to make any provisions for Northern Ireland at Westminster. Further legislation will be needed dealing with matters such as agriculture, fishing and immigration; and, above all, a statute giving effect to and implementing in domestic law the provisions of the Withdrawal Treaty.

## Current legislation at Westminster

### The European Union (Withdrawal) Bill

This is the most important piece of legislation being considered as part of preparation for Brexit. It is necessary to ensure that relevant parts of EU law continue to operate in the UK after Brexit. By incorporating all existing EU law into UK law, the Bill provides certainty and continuity for businesses, citizens and others affected. Once this bill has become law, it will be possible on Brexit day to repeal the European Communities Act 1972, the legislation that enabled the UK to function as a Member State of the EU.<sup>1</sup>

### The Sanctions & Anti-Money Laundering Bill

This bill was introduced into the House of Lords of the 19 October 2017 to establish a legal framework to enable the UK to continue to impose, update and lift sanctions on other countries, individuals, business and organisations. It contains similar powers in respect of anti-money laundering regimes. The current legislation in this field partly derives from the European Communities Act 1972, which will be repealed after Brexit.<sup>2</sup>

### The Trade Bill

The Trade Bill was introduced into the House of Commons on 7 November 2017 and has completed its Second Reading and Committee Stages. The Bill contains a number of measures to enable United Kingdom to negotiate, sign and ratify trade agreements with third countries after Brexit. This legislation is necessary because the EU Member States negotiate trade agreements with third countries collectively, represented by the European Commission. The bill also establishes a Trade Remedies Authority which will provide advice, support and assistance to Ministers in dealing with the international trade disputes in the future.<sup>3</sup>

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<sup>1</sup> Parliament, 'European Union (Withdrawal) Bill 2017-19', 2 May 2018

<sup>2</sup> Parliament, 'Sanctions and Anti-Money Laundering Bill [HL] 2017-19', 2 May 2018

<sup>3</sup> Parliament, 'Trade Bill 2017-19', 8 January 2018

### Taxation (Cross-border) Trade Bill

The Taxation (Cross-border) Trade bill was introduced into the House of Commons on 20 November 2017 and has now completed its Second Reading and Committee stages. The Bill provides the legal basis for the new customs regime that the UK will need to operate after Brexit. It also amends the law relating to Value Added Tax (VAT) to make it compatible with new customs arrangements.<sup>4</sup>

### The Data Protection Bill

The Data Protection Bill repeals and replaces the UK's existing data protection law to bring it into line with recent EU legislation (the General Data Protection Regulation which comes into force on 25 May 2018). The Government has stated that the UK will continue to use the EU framework for data protection contained in this Bill after Brexit. This is necessary to enable UK businesses and other organisations, notably the police and the security services, to continue to be able to collect and exchange data with their counterparts in the remaining EU Member States.<sup>5</sup>

### **Scottish & Welsh legislation**

Recognising that the Parliament of the United Kingdom will not ordinarily legislate with respect to devolved matters without the consent of the Scottish Parliament and the National Assembly of Wales, the UK government has been in negotiations with the Scottish and Welsh administrations to obtain their agreement to the parts of the European Union (Withdrawal) Bill that will affect the devolved powers of the Scottish Parliament and the Welsh Assembly. The Scottish and Welsh administrations have argued that the UK government is seeking to hold on to powers at Westminster after Brexit that should, under the devolution settlement, rest with the devolved administrations

In the absence of agreement between the Scottish Government and the UK Government, the deputy first minister of Scotland introduced the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill on 27 February 2018.<sup>6</sup> This bill essentially duplicates the provisions of the European Union (Withdrawal) Bill currently going through the Westminster parliament but incorporates EU law into Scots law. There are some differences between the two Bills notably that the Scottish Bill provides for the EU's Charter of Fundamental Rights to be part of Scots law as part of retained EU law. The UK government is opposed to retention of the Charter of Fundamental Rights after Brexit day. This Bill was passed on 21 March 2018.

On 27 February 2018 the Welsh Government announced that it would bring forward the Law Derived from the European Union (Wales) Bill to incorporate EU law in the devolved areas into Welsh law.<sup>7</sup> The reasons were similar to those put forward by the Scottish Executive. This Bill was also passed on 21 March 2018.

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<sup>4</sup> Parliament, 'Taxation (Cross-border Trade) Bill 2017-19', 7 January 2018

<sup>5</sup> Parliament, 'Data Protection Bill [HL] 2017-19', 3 May 2018

<sup>6</sup> Scottish Parliament, 'UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill', 25 March 2018

<sup>7</sup> National Assembly of Wales, 'Law Derived from the European Union (Wales) Bill', 16 April 2018

On 17 April 2018 the Attorney General announced that he was referring the Scottish and Welsh legislation to the Supreme Court for a ruling on whether these Bills are constitutional and properly within devolved legislative powers.<sup>8</sup> Subsequently, on 24 April 2018 the UK and Welsh Governments reached agreement on the question of devolved powers but the Scottish Government rejected this.<sup>9</sup>

### **Future legislation**

The UK Government has said that additional public bills will be needed in the future to implement the UK's agreement with the EU and to provide the legal basis for new policies to replace shared EU ones.

The currently expected legislation is:

- The Withdrawal Agreement Implementation Bill – which was promised by Ministers in November 2017 and will implement the terms of the UK's Withdrawal Treaty with the EU; this will deal with citizens' rights, the transitional period, budget contribution and other matters set out in the UK-EU Withdrawal Treaty;<sup>10</sup>
- The Immigration Bill – to provide the framework for the UK's future immigration policy; the Government has promised to publish a White Paper setting out its intentions in respect of future immigration policy;
- Agriculture Bill – to replace the Common Agricultural Policy in the UK after Brexit; few details have been made public of the likely content of post-Brexit agriculture policy; in any case, agriculture is a devolved matter which falls under the responsibility of the Scottish, Welsh and in Northern Ireland administrations as well as the UK parliament in respect of England;
- Fisheries Bill – to enable the UK to establish a new fisheries policy once it has withdrawn from the EU's Common Fisheries Policy at the end of the transition period; although Ministers have made general statements about their intentions for post-Brexit fisheries policy, only one specific element is currently clear and that is that the UK will leave the London Convention on fisheries after Brexit, a treaty that concerns pre-EU accession fishing rights between six and 12 miles from the coast; as with agriculture, fisheries is a devolved matter.

### **Conclusion**

Not all this legislation needs to be agreed before 29 March 2019 but the Withdrawal Agreement Implementation Bill does. Some of the other pieces of legislation can go through Parliament during the transition period although they are bound to impact on and to be impacted by the UK/EU negotiations for a new relationship and in any case, they will need to be in force before the end of the transition period.

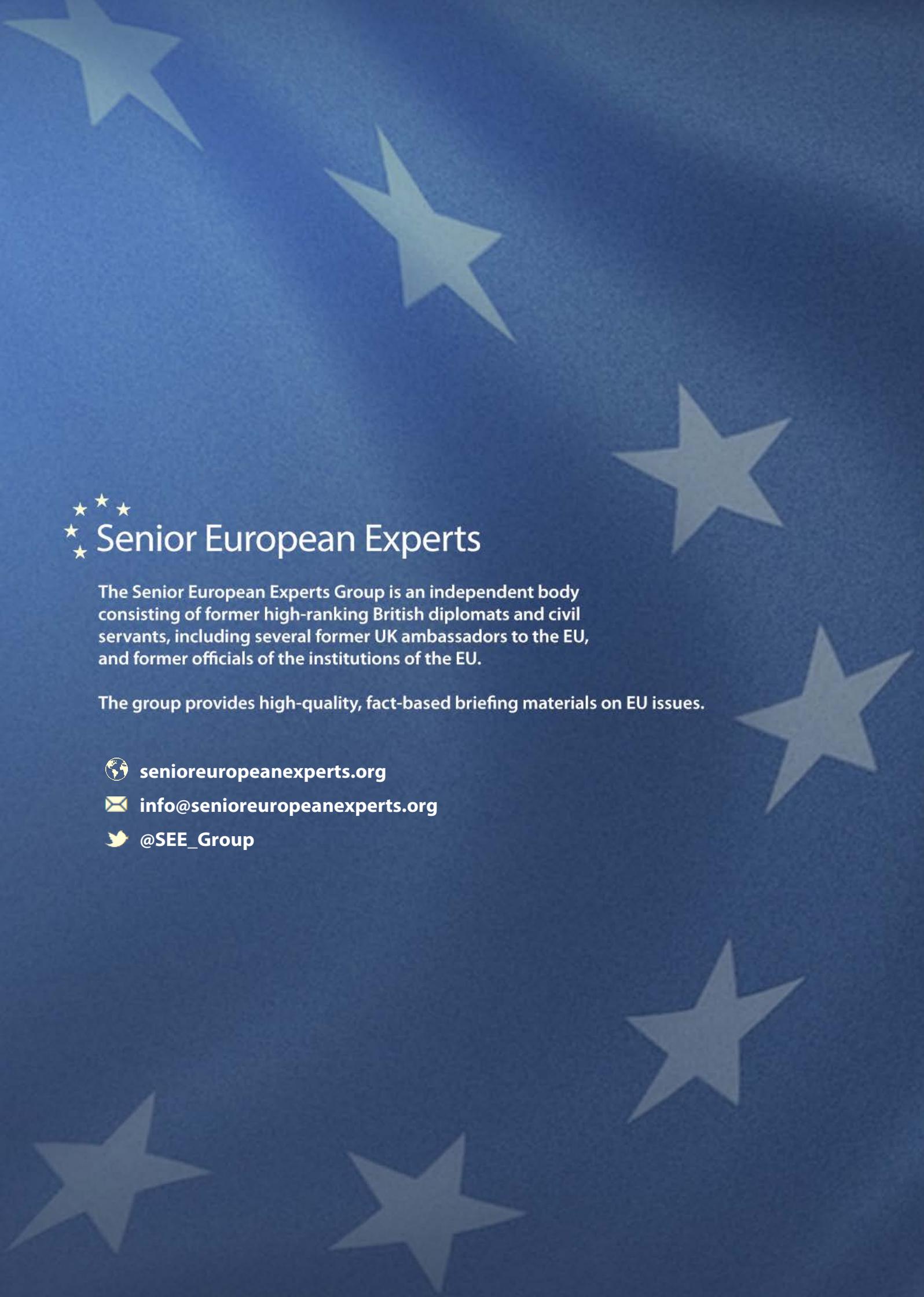
**April 2018**

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<sup>8</sup> HM Government, 'Devolved Brexit legislation referred to the Supreme Court', 17 April 2018

<sup>9</sup> 'Welsh and UK governments agree Brexit bill deal', James Williams, *BBC News*, 24 April 2018

<sup>10</sup> HM Government, 'New Bill to implement Withdrawal Agreement', 13 November 2017



## Senior European Experts

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