



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 maritime.

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 about the Government's priorities.

To date it is probably fair to say that the most attention has been given to the impact of Brexit on air travel, particularly the low-cost market between the UK and the EU27 and how UK-licensed airlines, which operate across the EU, will be affected by the UK's possible exit from the European Common Aviation Area. The Department for Transport has indicated that this is a priority for them, along with international freight transport. A [*Haulage Permits and Trailer Registration Bill*](#) is currently before Parliament to make provision about the international transport of goods by road in the event of a 'no deal' Brexit.

Once the current arrangements have been transposed into UK law via the [*European Union \(Withdrawal\) Bill*](#), the Government will then be able to review what it wants to keep and what requires change. The Bill creates a new category of domestic law for the UK: retained EU law. Retained EU law will consist of all the converted EU law and preserved EU-related domestic law which was in force on the day before the UK left the EU. The Bill provides the legislative mechanisms to create the post-Brexit constitution and statute book rather than the substantive answers to questions as to what these will look like.

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. Background

1.1 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.¹

The development of the EU's Common Transport Policy (CTP) has resulted in the focusing of action in a number of 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.²

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,

¹ 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

² Ibid., pp9-10

and about the difficulties in finding the right level of legislative 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 reach a more mature stage.

1.2 Where are we 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.

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](#).

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.³ The Secretary of State for Exiting the EU, David Davis, had said in December 2017 that he wanted a “Canada, plus, plus, plus” agreement with the EU.⁴ The EU–Canada Comprehensive Economic and Trade Agreement (CETA) is more ambitious than other Free Trade Agreements (FTAs) but was not considered ambitious enough by the Government. However, presenting the draft guidelines, European Council President Donald Tusk said “it should come as no surprise that the only remaining possible option is a free trade agreement ... covering all sectors and with zero tariffs on goods”.⁵

The European Council (EU27) set out new guidelines on 23 March 2018, setting out the model the EU envisages for future EU–UK relations.⁶ 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 2018.⁷

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 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”.⁸

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”.⁹

³ [European Council \(Art.50\) \(23 March 2018\) - Draft guidelines](#), 7 March 2018

⁴ [Andrew Marr Show: transcript](#), 10 December 2017

⁵ [Statement by President Donald Tusk on the draft guidelines on the framework for the future relationship with the UK](#), 7 March 2018

⁶ [European Council \(Art. 50\) \(23 March 2018\) - Guidelines](#), 23 March 2018

⁷ [European Parliament resolution on the framework of the future EU–UK relationship](#), 2018/2573(RSP), 14 March 2018

⁸ [“The EU’s plans for ties with Brexit Britain – annotated”](#), *Financial Times*, 7 March 2018

⁹ [HC Deb 26 March 2018, c524](#)

The Council will publish more detailed negotiating directives, which the Commission must follow in its negotiations with the UK. The European Council will assess progress in ongoing issues and the framework for future relations at the June 2018 summit.

In Parliament

The [*European Union \(Withdrawal\) Bill*](#) (the EUW Bill) was introduced to the House of Commons on 13 July 2017. The EUW Bill 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. The Bill has passed through the House of Commons and is currently awaiting Report stage in the House of Lords.¹⁰

Since the UK Government began negotiations over the withdrawal agreement under Article 50, questions have been raised about how Parliament will approve and implement the final agreement.

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".¹¹ In December 2017 the 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.¹²

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 a "Withdrawal Agreement and Implementation Bill" (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.

You can read more about the relationship between approving and implementing the withdrawal agreement and the role that Parliament will play once the negotiations are concluded in HC Library blog post "[Parliament and the withdrawal agreement: the 'meaningful vote'](#)", 9 February 2018.

¹⁰ A series of HC and HL Library papers on the Bill can be found on the [Bill page](#) (scroll to bottom)

¹¹ DExEU, [Legislating for the United Kingdom's withdrawal from the European Union](#), Cm 9446, 30 March 2017, para 1.19

¹² [Procedures for the Approval and Implementation of EU Exit Agreements: Written statement - HCWS342](#), 13 December 2017

1.3 The Government's priorities

The UK Government's transport priorities have not been set out in any single policy paper or place. However, we do know from various comments by the Secretary of State for Transport and others that the key priorities are air transport rights to fly, continuing membership of the European Aviation Safety Agency (EASA) and road haulage permits.¹³

As set out in section 5, below, the Government has brought forwards a [*Haulage Permits and Trailer Registration Bill*](#) to make provision about the international transport of goods by road in the event of a 'no deal' Brexit.

As mentioned in section 1.2, above, the European Council adopted new negotiating guidelines on 23 March 2018. On transport, they state:

... 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.¹⁴

While this would appear to look ahead to a future in which the UK and the EU could reach air and land transport agreements, the statement remains at a high level and there is no detail on those issues where there may be friction or disagreement.

In the March 2018 Spring Statement it was announced that the Treasury had allocated funding to departments to help them prepare for Brexit. The 2018-19 allocation for the Department for Transport is £75.8 million.¹⁵ The Secretary of State for Transport, Chris Grayling, has said that this will 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".¹⁶

¹³ 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

¹⁴ Op cit., [European Council \(Art. 50\) \(23 March 2018\) - Guidelines](#), Article 11(i)

¹⁵ The fifth highest, after the Home Office, Defra, HMRC and BEIS, see: [Spring Statement: Written statement - HCWS540](#), 13 March 2018

¹⁶ [Department for Transport: Public Expenditure: Written question – 133182](#), 27 March 2018

1.4 Switzerland & elsewhere

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.

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 **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.¹⁷

It should be noted that Switzerland does not have the same access as ECAA carriers as they do not have cabotage rights. This is because they

Information on Switzerland and Norway's relationships with the EU can be found in two HC Library papers: [*Switzerland's relationship with the EU*](#) (CBP 6090), 20 October 2011 [*Norway's relationship with the EU*](#) (CBP 6522), 14 January 2013

¹⁷ [*Agreement between the European Community and the Swiss Confederation on Air Transport*](#), 30 April 2002

have yet to implement reciprocal rights for EU carriers within Switzerland.

Similarly, 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.¹⁸

¹⁸ [Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road](#), 30 April 2002

2. Multi-modal issues

2.1 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.¹⁹

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.²⁰

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 House of Lords European Union 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 [SN6775](#).

¹⁹ BIS, [State Aid Guidance](#), 10 July 2015

²⁰ 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”.²¹

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.²²

2.2 Public procurement

According to Linklaters, businesses with any EU presence would continue to need to comply with EU competition law.²³ 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.²⁴

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](#).

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:

... 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.²⁵

²¹ HL European Union Committee, *Brexit: competition and State aid* (12th Report of Session 2017–19), HL Paper 67, 2 February 2018, para 181

²² “[Beyond Brexit: Will Brexit end CalMac's routes being tendered?](#)”, *Herald Scotland*, 13 November 2016

²³ Linklaters, *EU Referendum – risk assessment overview*, 8 March 2016

²⁴ More information on this can be found in HC Library briefing paper [SN3146](#)

²⁵ [HC Deb 23 November 2016, cc955-6](#)

2.3 Passenger rights & compensation

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 European 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 on different modes.

Once the current arrangements have been put into UK law via the *European Union (Withdrawal) Bill*, the Government will then be able to review what it wants to keep and what requires change. How far change is possible may also 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 which 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 amongst 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.²⁶ Other airlines, such as easyJet, had more positive views.²⁷

However, on 7 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 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.²⁸

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

²⁶ Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p43

²⁷ Ibid., p42

²⁸ DfT, [Beyond the horizon – the future of UK aviation: next steps towards an aviation strategy](#), 7 April 2018, para 2.15 [emphasis added]

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

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 this 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”.²⁹

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

²⁹ [PBC Deb 16 March 2017, c107](#)

3. 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.

3.1 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).³⁰ 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 (France-Germany) and wholly within countries (domestic Italy).

Respondents to the Government's Balance of Competences Review generally were of the view that liberalisation had broken down restrictive trade and operating barriers that had previously existed, and was credited with encouraging growth in the sector with deregulation facilitating new business models, such as the low-cost carriers. These new business models have increased competition in the industry, driving down prices and forcing efficiency savings.³¹ Sophie Dekkers, UK Country Director at easyJet, told the House of Lords European Union Committee 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 noted that "average fares are now

³⁰ 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]

³¹ Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p24

down by 40% in real terms” since 1996, and “numbers of routes have increased by 180%”.³²

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.³³ As Andrew Haines, 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”.³⁴ 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.³⁵ Some airlines have already started preparing for Brexit by obtaining EU operating licences.³⁶ Conversely, some EU-registered airlines are also applying for a UK operating licence.³⁷

What does the industry want?

Airlines clearly 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 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 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

³² HL, European Union Committee, [Brexit: trade in non-financial services](#) (18th Report of Session 2016–17), HL Paper 135, 22 March 2017, para 212

³³ On 8 June the European Commission published new ‘interpretative guidelines’ on ownership and control of EU airlines, see: [C\(2017\) 3711 final](#), 8 June 2017

³⁴ [The future of open skies post-Brexit](#), GAD Speech by Andrew Haines, Chief Executive of the CAA, 1 December 2016

³⁵ 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

³⁶ See, e.g., easyJet press notice, “[easyJet Europe now operational after award of Austrian AOC and licence](#)”, 20 July 2017

³⁷ 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

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.³⁸

Airlines support the ECAA option.³⁹ 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 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.⁴⁰

Will a deal be done?

The Government has remained consistently optimistic that a deal can be done. As set out in section 1.3, above, the latest European Council negotiating guidelines are aiming for "continued connectivity between the UK and the EU ... through an air transport agreement".⁴¹

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".⁴²

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

... 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

³⁸ 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

³⁹ 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

⁴⁰ 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

⁴¹ Op cit., [European Council \(Art. 50\) \(23 March 2018\) - Guidelines](#), Article 11(i)

⁴² DExEU et al. press notice, "[Joint statement between the UK Government and Airlines UK](#)", 14 November 2016

economically on the contribution made by British airlines flying to regional airports. It is in all our interests that that continues.⁴³

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.⁴⁴

As time has passed, the industry has also become increasingly confident that a deal will 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 2019.⁴⁵

Also, in November 2017 witnesses representing the aviation sector before the House of Lords European Union Committee “expressed confidence that a deal would be reached to cover the sector”.⁴⁶

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.⁴⁷

What would ‘no deal’ mean?

In its December 2017 report on a ‘no deal’ Brexit, the House of Lords European Union Committee stated that “The consequences of failure to reach a deal [on aviation] would be grave”.⁴⁸ It had previously reported in March 2017 that:

There is no adequate ‘fall-back’ position for aviation services in the event that no agreement is reached with the EU. Air services are excluded from the WTO, and the pre-existing bilateral air services agreements between the UK and individual EU Member States may not be valid, given the EU’s extended competence in this area. It follows that, in order to avoid significant damage to the UK aviation sector, either a UK-EU bilateral air services agreement must be agreed before the UK leaves the EU in 2019,

⁴³ [HC Deb 23 November 2016, cc952-3](#)

⁴⁴ Transport Committee, [Oral evidence: Policy priorities for the Department for Transport](#), HC 430, 16 October 2017, Qq118 & 126

⁴⁵ Transport Committee, [Oral evidence: Aviation and Brexit](#), HC 531, 30 October 2017, Q2; Sophie Dekkers, UK director for easyJet agreed with this assessment

⁴⁶ HL European Union Committee, [Brexit: deal or no deal](#) (7th Report of Session 2017–19), HL Paper 46, 7 December 2017, Box 5, p15

⁴⁷ See, e.g. [“Fears flights between Britain and the EU could be halted after Brexit”](#), *The Independent*, 5 July 2017

⁴⁸ Op cit., [Brexit: deal or no deal](#), Box 5, p15

or a transitional arrangement must be adopted, to allow continuing UK participation in the Single Market for aviation pending conclusion of a comprehensive agreement.⁴⁹

The UK in a Changing Europe stated in a July 2017 paper that:

So would planes actually stop flying between the UK and the EU27? In principle, absent measures to mitigate the impact of no deal, that is possible – if only because their lawyers would not let them. But, even assuming that some stop-gap arrangement were to be put in place, it seems likely that there would be very serious impacts, with many airlines reducing their schedules to the UK, both immediately and in the medium term.⁵⁰

Timing is also important. The International Air Transport Association (IATA) has urged “an early resolution for aviation in the Brexit discussion”:

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...⁵¹

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.⁵²

3.2 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.⁵³

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 cultural ties even further with countries such as the US and Canada”.⁵⁴

⁴⁹ Op cit., [Brexit: trade in non-financial services](#), para 238

⁵⁰ The UK in a Changing Europe, [Cost of no deal](#), 20 July 2017, p16

⁵¹ IATA press notice, [“UK Aviation Priorities: Clarity on Brexit and Expanding Heathrow”](#), 8 November 2017

⁵² [“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

⁵³ Op cit., [How will leaving the EU affect UK transport? Key issues](#), para 4.4.1

⁵⁴ Op cit., [“Joint statement between the UK Government and Airlines UK”](#)

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”.⁵⁵

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’.⁵⁶ 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”.⁵⁷

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).⁵⁸ 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.⁵⁹

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 origin”.⁶⁰ This was later refuted,⁶¹ and was followed by reports that a

⁵⁵ [HC Deb 23 November 2016, c952](#)

⁵⁶ More details are given in HC Library briefing paper [SN455](#)

⁵⁷ Transport Committee, [Departmental priorities and annual report and accounts](#), HC 745, 17 October 2016, Qq74-5

⁵⁸ [HC Deb 23 November 2016, c952](#)

⁵⁹ Op cit., [Oral evidence: Policy priorities for the Department for Transport](#), Q124

⁶⁰ “[US offers UK inferior open skies deal after Brexit](#)”, *Financial Times*, 5 March 2018

⁶¹ “[Walsh sees clear skies after Brexit](#)”, *The Times*, 7 March 2018

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," Mr Calio, who has been close to the negotiations, said. "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".⁶²

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".⁶³

3.3 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'. In controlled airspace, there is a system of structured routes and aircraft which are managed by air traffic control (ATC) services. By contrast, a large volume of airspace in the UK is uncontrolled and 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.

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 is planning to meet the SES requirements through its Future Airspace Strategy, published in June 2011, with a programme to modernise

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

⁶² "[Deal to prevent post-Brexit grounding of US flights possible by end of month](#)", *The Telegraph*, 15 March 2018

⁶³ Op cit., [Brexit and aviation Part 1: Open Pandora's box and anything can happen. But status quo is likely](#)

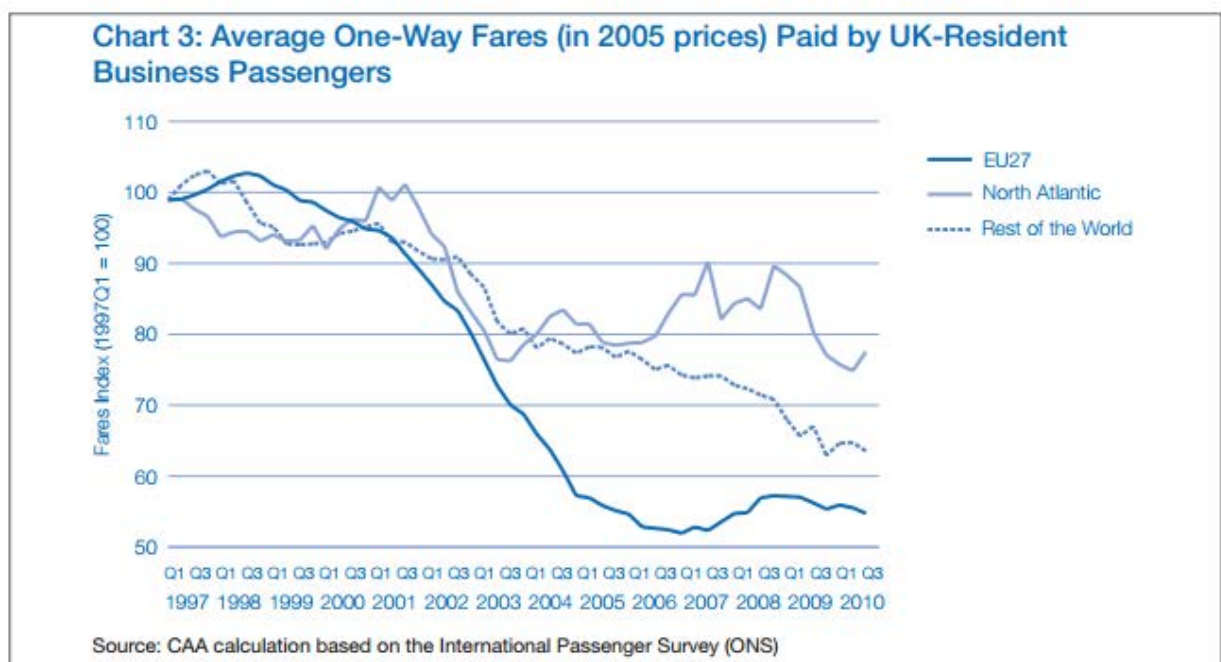
airspace across the UK out to 2030. In February 2017 the Department of Transport published a consultation on UK airspace policy reform. In October the Government announced it would proceed with most of the main proposals in the paper.

There is general support for proceeding with this work on SES and airspace modernisation more generally at a European level.⁶⁴ 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”.⁶⁵ 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”.⁶⁶

3.4 Air fares

Liberalisation has helped bring down fares to the EU at a much greater rate than to other parts of the world:⁶⁷



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

⁶⁴ Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p33

⁶⁵ Op cit., [Departmental priorities and annual report and accounts](#), Q76

⁶⁶ 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

⁶⁷ Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p25

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 in fare increases”. Consultancy Oxera has estimated that such restrictions on market access could lead to UK passenger fares rising by 15% to 30%.⁶⁸ 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”.⁶⁹

3.5 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.⁷⁰

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 EASA after Brexit.⁷¹ 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.⁷²

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.”⁷³ In its March 2018 paper on Brexit, MLex Market Insight interprets this as follows:

⁶⁸ 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

⁶⁹ [“The boss of one of Europe’s biggest budget airlines says Brexit would not end cheap fares”](#), *ITV News*, 31 March 2016

⁷⁰ EASA, [About EASA](#) [accessed 12 April 2018]

⁷¹ See, e.g. [“UK wants to remain in EU aviation safety agency”](#), *Financial Times*, 1 December 2017

⁷² [PM speech on our future economic partnership with the European Union](#), 2 March 2018

⁷³ Op cit., [European Council \(Art. 50\) \(23 March 2018\) - Guidelines](#), Article 11(i)

... 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.⁷⁴

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 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 massive 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 UK can "continue to play a very active role in ICAO – indeed strengthening but it is not a substitute for European engagement".⁷⁵

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.⁷⁶

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".⁷⁷

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

⁷⁴ MLex Market Insights, [Rival Visions of a Brexit Deal](#), March 2018, p8

⁷⁵ Op cit., [The future of open skies post-Brexit](#)

⁷⁶ RAS, [Civil Aviation Regulation: What Future After Brexit?](#), 28 September 2017, pp5-6

⁷⁷ Ibid., p6

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.⁷⁸

3.6 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.⁷⁹

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.⁸⁰ The sector's most recent concerns have been about the EU's plans to regulate small drones.⁸¹

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.

⁷⁸ BEIS Committee, [The impact of Brexit on the aerospace sector](#) (Sixth Report of Session 2017–19), HC 380, 19 March 2018, para 47

⁷⁹ Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p55

⁸⁰ Ibid., p55

⁸¹ For more information see HC Library briefing paper [CBP 7734](#)

4. Rail

It is probably 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 state-run railways (see section 4.3, 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. 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".⁸²

⁸² RDG, [About us](#) [accessed 12 April 2018]

RDG priorities for Brexit

The Rail Delivery Group has been working with the government and stakeholders to understand the implications Brexit may have for the rail industry. RDG and the wider rail industry have identified seven key principles in light of Brexit:

1. Legislative or regulatory changes as a result of Brexit should not compromise safety;
2. It is crucial to retain legal certainty: any changes to the legal framework should be clearly and publicly set out following consultation with stakeholders;
3. The industry needs to retain the ability to access a skilled workforce, in particular in areas where there are currently skills shortages;
4. Freight and passenger operators who currently run international services need to retain the ability to access non-UK infrastructure without undue delay, cost or operational boundaries;
5. Operators need to retain access to the EU market to offer passenger and freight services overseas, and sell expertise and consultancy;
6. Operators would be concerned if all technical standards had to be applied, regardless of operational necessity or business case, and where the industry had no influence over how they were designed. The industry could support disapplication in certain cases, but would rather seek a mode to influence standards. Keeping common standards in place for the limited number of lines/systems used for international traffic would avoid problems; and
7. The industry would benefit from retaining access to the findings of EU research and innovation programmes and an exchange of best practices with European partners.⁸³

4.1 Rail interoperability/technical standards

The main legislation as it relates to railways is contained in the four 'rail packages' that have been passed.⁸⁴ The individual pieces of legislation which make up these packages are far-reaching and, for example, legislated for the [European Railway Agency](#) – 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.

Information on the EU's four railway packages can be found in HC Library briefing paper [SN184](#).

[EU Regulation 2016/796](#) allows countries which are not members of the EU to participate in ERA. The Swiss Confederation requested such participation in 2013. The UK Government is "carefully considering the implications" of the terms of Swiss participation within ERA, in light of a future EU-UK relationship.⁸⁵

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'.⁸⁶

⁸³ For more information, visit the [RDG website](#) [accessed 12 April 2018]

⁸⁴ The main legislation is summarised on the [ORR's website](#)

⁸⁵ European Scrutiny Committee, *Ninth Report of Session 2017–19*, HC 301-ix, 16 January 2018, section 4

⁸⁶ Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p28

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”.⁸⁷

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 which, in their view, could lead to an approach where ‘virtuous barriers’ were put in place, typically relating to safety, and which could be used as grounds to deny access to a network. Other respondents stated that the EU should go further and align standards with those used internationally, for example in the US or Japan.⁸⁸

More recently, in its July 2017 paper the ITC stated:

The industry recognises that (1) the UK could simply adopt EU standards but would not wish to be excluded from involvement in future development, or that (2) new standards could be developed at a national level. The UK currently has a process for managing national standards alongside EU standards so this could continue. However, in a global industry such as rail there are many benefits in international or supra-national standards development that would be lost if the UK ceases to participate. According to one respondent, the interoperability regulations provide a useful framework when planning projects, providing the opportunity to source products from the widest possible range of suppliers internationally. For example rolling stock manufacturers currently manufacture to EU standards and requirements, at whole product (train) as well as subsystem (regenerative braking) level. If UK standards were different there would be a loss of economies of scale and cost would be increased, or some manufacturers may choose not to compete to supply the UK market. On the other hand not all the interoperability standards are well-adapted to the UK (such as the infrastructure loading gauge) and greater scope for derogations would be welcomed by some respondents.⁸⁹

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”.⁹⁰

4.2 The Channel Tunnel & Eurostar

The **Channel Tunnel** is governed by an [Intergovernmental Commission](#) that was established under the [Treaty of Canterbury](#). The Channel Tunnel Group (Eurotunnel) is responsible for the operation of the tunnel until 2086, under a [concession agreement](#). These are matters of international law and would be unaffected by Brexit.

⁸⁷ Ibid., p40

⁸⁸ Ibid., pp40-41

⁸⁹ Op cit., [How will leaving the EU affect UK transport? Key issues](#), para 4.5.5

⁹⁰ “[Don’t forget rail’ in Brexit talks, urge UK industry leaders](#)”, *Euractiv*, 23 February 2018

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.⁹¹

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 2015.⁹²

In November 2016 EIL set out its concerns about Brexit in written evidence to a House of Lords Select Committee. It raised four 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).⁹³ 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".⁹⁴ 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

⁹¹ This is governed by the Le Touquet Treaty; for more information see section 8 of HC Library briefing paper [CBP 7632](#)

⁹² HMT press notice, "[UK Government reaches agreement on the sale of its entire interest in Eurostar for £757.1m](#)", 24 March 2015

⁹³ Lords EU Internal Market Sub-Committee, [Eurostar International Ltd-Written evidence](#) (TAS0074), November 2016

⁹⁴ Ibid.

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?⁹⁵

More recently, in its July 2017 paper the ITC stated:

It is generally expected by respondents to the ITC consultation that the EU packages of legislation, which set the framework for the organisation and operation of the EU's railway system (eg. fundamental matters such as the separation of infrastructure management from train operations) and already form part of UK law, will continue undisturbed while they continue to reflect UK government policy. Our only international rail link, HS1, and operator, Eurostar, are expected to continue to be bound by the packages even if UK law were to change. The European timetabling arrangements will need to continue to apply to Eurostar and other international services on HS1 with a consequent effect on the UK domestic system timetable.⁹⁶

4.3 Publicly run rail

As set out above, the main legislation as it relates to railways is contained in the four 'rail packages' that have been passed.⁹⁷ 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: the 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.⁹⁸

That said, the 'market pillar' of the fourth rail 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).

⁹⁵ Ibid.

⁹⁶ Op cit., [How will leaving the EU affect UK transport? Key issues](#), para 4.5.1

⁹⁷ The main legislation is summarised on the [ORR's website](#)

⁹⁸ 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

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.

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”.⁹⁹

The continued relevance of these provisions in the UK depends entirely on whether the UK negotiates some sort of EU exit agreement that includes an exemption from the market pillar (like e.g. Switzerland). This in turn would then mean that a future government that was so inclined could renationalise the railways under a unified structure (i.e. merge track and trains) along the lines which existed before privatisation in the early 1990s. It would also allow privately-run companies to run ‘vertically aligned’ rail services across the country, again if a future government were so inclined.

Separately, a UK Government that no longer applied EU procurement rules could award rail services, train contracts etc. to British-based companies. At the moment large parts of the GB rail network are run by foreign-owned (and in several cases foreign government-owned) rail companies, with UK-based companies seeing little reciprocal benefit in other EU countries.¹⁰⁰ This is also discussed in section 2.2, above.

4.4 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 2032. 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:

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

⁹⁹ European Council press notice, “[Better rail services: Council adopts 4th railway package market pillar](#)”, 17 October 2016

¹⁰⁰ National Express has had some success in Germany, see: NX press notice, “[National Express begins operating its first German rail services](#)”, 14 December 2015

- **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 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 should have significant impact on HS2. However, some have suggested that, given the financial uncertainty caused by Brexit a big expensive project like HS2 may no longer be a priority and could be scaled back by, for example, using slower and cheaper trains and dropping some sections of the proposed line.¹⁰¹ The Government has however reiterated several times its commitment to the project,¹⁰² and in April 2017 the Prime Minister, Theresa May, reiterated the Government's 'absolute commitment' to HS2.¹⁰³

The Government had also hoped to secure some EU funding for the project. In 2015 it secured €39.2 million for ground investigation works for Phase 1, to be delivered between 2015 and 2019.¹⁰⁴ The funding comes from the Connecting Europe Facility (the funding instrument for EU transport infrastructure policy, basically supporting the [Trans-European Transport Network \(TEN-T\)](#)).

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.¹⁰⁵

More generally, HS2, is included in the European Commission's TEN-T programme. To be clear this does not mean that the EU is forcing the UK to build it, rather that the UK had indicated that it should be included in TEN-T *because* it intends to build it. TEN-T is essentially a programme of major schemes aimed at improving intra-European connectivity.

¹⁰¹ "Brexit means uncertain future for infrastructure projects", *Financial Times*, 26 June 2016

¹⁰² e.g. "Heathrow runway ruling may come in weeks, says Grayling", *The Times*, 18 July 2016

¹⁰³ "[May promises to deliver HS2 to Yorkshire](#)", *Yorkshire Post*, 29 April 2017

¹⁰⁴ [HC WPO 31957](#), 24 March 2016

¹⁰⁵ DfT, [HS2: Outline Business Case - Section 4: Financial Case](#), March 2014, para 78

4.5 Rail fares

Regulated rail fares could rise as a result of Brexit if it leads to an uptick in inflation.¹⁰⁶ 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 2018 were based on the RPI for July 2017). The train companies announce the increases for the coming year every November/December. The inflation link dates back to 1996.

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.

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

¹⁰⁶ See, e.g. "[Rail fares will rise more than £100 a year after Brexit, Remain campaigners say](#)", *The Independent*, 21 June 2016

5. Road transport

5.1 Road haulage

There are potentially a lot of uncertainties for UK haulage companies as a result of Brexit, particularly in terms of employment, drivers' hours rules, access to markets and border controls.¹⁰⁷

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".¹⁰⁸

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).

The Agreement on the European Economic Area (EEA) basically extends the EU internal market to Norway, Iceland and Liechtenstein. As regards road transport, this entails that these three countries apply the EU road transport rules just like EU Member States. The EU has a separate agreement with Switzerland.¹⁰⁹ The UK might find itself in a similar situation to one of these countries after Brexit.

In a debate on Brexit and transport in November 2016 the Secretary of State for Transport, Chris Grayling, said that road haulage was one of his Department's two top priorities. He pointed to the fact that about 85% of the lorries operating between the UK and the continent belong to EU-owned businesses and stated that:

We need sensible arrangements for the future to allow goods to flow freely from and to the United Kingdom. We need to give UK hauliers a fair chance to win business and to be successful. We shall focus on that during the negotiations, ensuring that we achieve the right outcome for the international hauliers that serve this country and for UK hauliers as well.¹¹⁰

More recently, in its July 2017 paper the ITC stated:

The impact on road freight must also be considered, since such traffic transports more than 85% of what we eat, drink, wear or build. Under existing EU agreements simplified processes mean that it is as straightforward to ship goods to Manchester from Milan as from Margate. This will change after leaving the EU and a significant risk exists for supply chains that deal with exports and imports by road if new customs controls are imposed at border points. The Road Haulage Association (RHA) has recently called for

¹⁰⁷ 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](#)

¹⁰⁸ Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p30

¹⁰⁹ EC, [Roads: non-EU countries](#) [accessed 29 June 2016]

¹¹⁰ [HC Deb 23 November 2016, cc953-4](#)

a comprehensive Land Transport Agreement between the UK and EU that would allow unfettered road haulage for licensed operators across the UK and EU to continue.⁴ Such an agreement would also help to maintain vehicle standards and avoid lengthy checking processes. Without seamless customs across ports and borders it is feared that massive queues of lorries could build up at UK ports, causing time sensitive goods to deteriorate alongside potential knock on effects on production.¹¹¹

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 is "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.¹¹²

Brexit, customs and the border are not dealt with in this paper. For more information see HC Library briefing paper [CBP 7694](#).

The Government has introduced a road haulage bill into Parliament in order to ensure that UK haulage can continue to operate in the EU27 in the event of a 'no deal' Brexit. It is not clear as yet what this might look like and the Government is taking wide-ranging powers to enable it to create a suitable permit scheme should such be required.

Haulage Permits and Trailer Registration Bill [HL] 2017-19

This Bill was introduced in the House of Lords in February 2018. It is due to complete its Lords stages on 24 April. It will then be brought to the Commons. As described by the House of Lords Library in their briefing paper on the Bill:

- The Government aims to negotiate a deal with the EU to maintain current levels of access to the European road freight market, which might result in a new permit scheme. **Part 1 of the Bill would enable the Secretary of State to make secondary legislation introducing a new international haulage permit scheme if necessary.**
- The Government is also considering ratifying the 1968 Vienna Convention on Road Traffic to ensure that after Brexit the UK has a mutual legal basis for road traffic with EU countries that are not party to the 1949 Geneva Convention. One consequence of ratification would be that unregistered trailers could be turned away at the border of other countries that are party to the 1968 Convention (which includes the majority of EU member states). **Part 2 of the Bill would therefore give the Secretary of State powers to make secondary legislation introducing a trailer registration scheme.**

The Bill does not address other aspects of Brexit that may have an impact on the road haulage industry, such as future customs arrangements.¹¹³

¹¹¹ Op cit., [How will leaving the EU affect UK transport? Key issues](#), para 2.3.7

¹¹² "Businesses face unanswered questions a year from Brexit – sector by sector analysis", *The Guardian*, 26 March 2018

¹¹³ HL Library, [Haulage Permits and Trailer Registration Bill \[HL\]: Briefing for Lords Stages](#), LLN 2018-0025, 20 February 2018; a Commons Library briefing paper on this Bill will be produced in time for Second Reading in the Commons

5.2 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.

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 Certificate of Professional Competence (CPC) for HGV and bus drivers was heavily criticised by the industry for its inconsistent application and enforcement. For example:

- the British Vehicle Rental and Leasing Association (BVRLA) told the Balance of Competencies review that this was “a good example where the right balance for businesses was not struck”.¹¹⁴
- 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.¹¹⁵
- the FTA said that the medical rules for vocational drivers below the age of 45 were over-prescriptive.¹¹⁶

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. If it did not it could

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](#)

¹¹⁴ Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p45

¹¹⁵ Ibid., p56

¹¹⁶ Ibid., p52

be the case that 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.¹¹⁷

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 2009.¹¹⁸

5.3 Vehicle standards

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.

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”.¹¹⁹ Further, harmonisation of vehicle design and construction standards helps with economies of scale, thus keeping costs down.

In terms of vehicle standards, 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”.¹²⁰ 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.¹²¹

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

¹¹⁷ 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]

¹¹⁸ For more information see HC Library briefing paper [CBP 1328](#)

¹¹⁹ Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p38

¹²⁰ Ibid., p38

¹²¹ Ibid., p38

documents; the internal market replaced them all with one piece of paper.¹²²

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, seems unlikely and has not been suggested.¹²³

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. He said:

Many vehicle standards are actually shaped in United Nations bodies, and the EU absorbs them into EU law. That process would therefore be absorbed into our domestic law as part of the great repeal Bill process.¹²⁴

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.¹²⁵

¹²² Ibid., p38

¹²³ e.g. this is not suggested in the Transport Select Committee's recent report: [Volkswagen emissions scandal and vehicle type approval](#) (third report of session 2016–17), HC 69, 15 July 2016

¹²⁴ [HC Deb 23 November 2016, c997](#)

¹²⁵ ESC, [Fourth Report of Session 2017–19](#), HC 301-iv, 12 December 2017, para 7.7

5.4 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.¹²⁶ 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.¹²⁷

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 [AA'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.

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.¹²⁸

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

¹²⁶ [Recommendation 98/376/EC](#), as amended by [Recommendation 2008/205/EC](#)

¹²⁷ DfT, [The Blue Badge Scheme Local Authority Guidance \(England\)](#), February 2012, section 8.3

¹²⁸ [Blue Badge Scheme: Written question – 123097](#), 23 January 2018

6. Maritime

6.1 Ports

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.¹²⁹

Oxera has said that changes to the costs of trade with the EU 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 suggests 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.¹³⁰ 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.¹³¹

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 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...¹³²

In a March 2018 report the British Ports Association (BPA) warned that:

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*.

¹²⁹ [Report of the exchange of views between ports CEOs and Transport Commissioner Bulc 19 January 2015 Brussels](#), p7

¹³⁰ 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

¹³¹ ["Post-Brexit customs checks a 'catastrophe' for UK shipping: trade body"](#), *Reuters*, 12 April 2017

¹³² ["Invest in rail and road links before we jump the EU ship"](#), *City A.M.*, 16 February 2018

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.¹³³

There could be some positive consequence for UK ports on the east coast if difficulties emerge around Dover and Folkestone due to changes to border controls at Calais.¹³⁴ This could see an uptick in passenger and freight traffic though London, Grimsby, Tyneside or the Forth, though at present it is far too early to say.

Free Ports

In November 2016 the Centre for Policy Studies published a new paper arguing that EU law "has long held back the potential of British ports" and that so-called 'free ports' (i.e. areas that, although inside the geographic boundary of a country, are considered outside the country for customs purposes) could create more 86,000 jobs for the British economy if they were as successful as those in the United States.¹³⁵ A January 2017 article by Alexandre Lavissière argued that the EU should seize the opportunity to create Free Ports of its own.¹³⁶

A counter argument to the idea of UK Free Ports was set out by James McGrory, the co-executive director of Open Britain, in response to the CPS report. He said:

While this is not a bad idea in principle, there is a huge amount wrong with it in reality. It would badly damage our economy by cutting Britain off from our biggest and most important trading partner – Europe. Free ports are incompatible with being part of the European Customs Union, as the CPS themselves admit [...] Free zones are also hard to square with membership of the European Single Market.¹³⁷

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".¹³⁸

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:

¹³³ BPA press notice, "[New BPA Report: Likely Brexit deal looks like 'no deal' for ports](#)", 20 March 2018

¹³⁴ e.g. "[French politicians tell Britain 'take back your borders' after EU vote](#)", *Daily Telegraph*, 26 June 2016

¹³⁵ CPS, [The Free Ports Opportunity](#), 14 November 2016; a further optimistic assessment of the future for UK ports post-Brexit came from the chief executive of the British Ports Association, Richard Ballantyne, see: "[Blog: Grabbing the Brexit opportunity](#)", *Maritime UK*, 4 April 2017

¹³⁶ "[Brexit offers free-port opportunities – but the EU can beat Britain to them](#)", *The Conversation*, 10 January 2017

¹³⁷ "[The economic benefits of a free port scheme after Brexit are an illusion](#)", *City A.M.*, 14 November 2016

¹³⁸ Op cit., [How will leaving the EU affect UK transport? Key issues](#), para 2.3.4

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.¹³⁹

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.¹⁴⁰ 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.¹⁴¹

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.¹⁴²

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”.¹⁴³

EU Port Services Regulation

The greatest concern for UK ports over the past decade or so has been the repeated attempt 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.¹⁴⁴ The proposed ‘Port Services Regulation’ was cited several times during the referendum campaign as a reason to leave the EU.¹⁴⁵ 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.¹⁴⁶

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

¹³⁹ BPA, *A Brexit Dividend: Supporting Trade and Growth*, March 2018, p7

¹⁴⁰ Womble Bond Dickinson (UK) LLP, *Could free ports boost trade and manufacturing in the north after Brexit?*, 22 June 2017

¹⁴¹ 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

¹⁴² “Brexit: ‘Free ports’ urged to boost Welsh economy”, *BBC News*, 23 February 2018

¹⁴³ [HC Deb 28 February 2018, c823](#); see also: [HC Deb 27 February 2018, c670](#)

¹⁴⁴ More details can be found in HC Library briefing paper [CBP 7457](#)

¹⁴⁵ 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

¹⁴⁶ [HC Deb 23 November 2016, c952](#)

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.¹⁴⁷

6.2 Shipping

Access to the European single market has greatly benefitted the UK shipping industry. Over 50% of the UK’s international trade is conducted with other EU Member States 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 IMO, the ILO, the OECD and UNCITRAL. In this environment the EU’s sometimes unilateral approaches to maritime policy making have been a challenge.

UK shipping post-Brexit is likely to be concerned about general policy areas such as employment law, immigration, border controls and contract law. More specifically on transport issues, it is likely to be concerned about the following:

- **Freedom to trade:** OECD rules could preclude any change insofar as ships being able to call at an EU or a UK port and load and unload cargo or passengers regardless of its flag and regardless of the nationality of its owner. UK-flag ships could, however, lose their right to operate in the domestic trades of those EU Member States who maintain flag-based cabotage restrictions.
- **Safety and the environment:** Vessels and companies operating in EU waters would mostly still have to comply with EU (and IMO) regulations since the EU would continue to apply their rules to vessels irrespective of their flag or ownership.
- **Tonnage Tax:** Corporate tax is a national responsibility, outside the scope of EU law. So the UK tonnage tax regime and those aspects of corporation tax that are specific to ships (chiefly, roll-over relief and capital allowances) are unaffected. All the EU does is set a broad framework in which those taxes must fit (i.e. State Aid guidelines – see section 2, above).
- **Security:** The EU’s counter-piracy Operation Atalanta EU NAVFOR is UK-based and -led with an existing mandate until December 2016, albeit with an intention to renew it for a further two years. The renewal under a UK lead will now be more difficult to achieve.

The British International Freight Association (BIFA) has said 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 is of potentially losing the benefits of free trade and

¹⁴⁷ “[Port Services Reg "consigned to the dustbin"](#)”, *Port Strategy*, 29 November 2017

customs harmonisation with the EU single market. It states that a return to tariffs for UK merchandise exports and imports, if this is the outcome would be “detrimental to UK trade with the EU, and may result in a small reduction in UK-EU maritime volume”.¹⁴⁸

In evidence to the Transport Select Committee in October 2016 the then Permanent Secretary at the Department for Transport, Philip Rutnam, said that while it was clear that the UK shipping environment would “change in the future with Brexit, ... at the moment it is interesting that countries like Denmark or some of the southern European countries have managed to grow their fleet in the shipping register more markedly than the UK. There are things to be learned from a number of places around the world”.¹⁴⁹

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.¹⁵⁰

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 Strategy¹⁵¹

¹⁴⁸ BIFA, [What Brexit means for UK shipping](#), July 2016

¹⁴⁹ Transport Committee, [Departmental priorities and annual report and accounts](#), HC 745, 17 October 2016, Q87

¹⁵⁰ “[Opinion: Will Leaving the Single Market Sink Shipping?](#)”, *Port Technology*, 17 January 2017

¹⁵¹ DfT press notice, “[Brexit Britain will have the world's best maritime industry](#)”, 11 September 2017

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