UK INDEPENDENCE PARTY

Brexit Must Mean Exit!

Taking Control

The UKIP Plan for Leaving the European Union

'With inky blots and rotten parchment bonds:
That England, that was wont to conquer others,
Hath made a shameful conquest of itself.'

John of Gaunt, Richard II by William Shakespeare

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1. Introduction

The purpose of this document is not to restate the arguments for Britain's exit from the European Union, that case was made and won on 23rd June 2016.

The purpose of this document is to describe how HM Government and Parliament could and should fully implement the Referendum decision and leave the European Union as quickly and completely as possible: thereby restoring Britain's status as a sovereign, independent, self-governing nation.

The format of this document is to describe what HM Government needs to do in order to achieve a speedy and complete withdrawal from the European Union. It also describes the most important areas of policy now controlled by the EU, and summarises the relevant background to each one. Some areas, such as trade and immigration, have been covered here in more detail than others because of their importance or complexity.

The original intention was for this document to propose policies in each relevant section. At that time, the next general election seemed to be far off in 2020, but we were overtaken by events and a snap general election was called for 8th June 2017.

UKIP now faces a new leadership election and therefore detailed policy ideas are omitted; and while UKIP policies are not given in detail here, in some areas policy options for HM Government are proposed.

The European Union has spent the last forty-four years invading every nook and cranny of our national life like some kind of legislative Japanese knot-weed. This document is therefore non-exhaustive and cannot cover every eventuality, impediment and objection that will be raised by those seeking to impede or reverse Britain's exit from the EU in the myriad areas of legislation now under the control of the European Union. If we had to negotiate our way out of every single piece of EU legislation before we can leave, then we would never leave at all.

The United Kingdom joined the European Economic Community on 1st January 1973 by means of the European Communities Act (1972). **It is the European Communities Act alone which makes the UK a member of (what subsequently became known as) the European Union, under UK law. We are not members of the EU because of any EU treaty or piece of EU legislation. Parliament took us in and Parliament can take us out.**

It is tempting to retell the tale of the lies and deceit that took Britain in to the EEC in 1973; to tell of the unconstitutional and unlawful basis of our membership since 1973; to tell how the British electorate were deceived and lied to by every Prime Minister since we joined, and how they were denied a decision in referenda on all the subsequent and seismic transfers of power to the EU under treaties such as for example the **Treaty on European Union (1992)**,

and **The Lisbon Treaty (2007)**; however, in the interests of brevity this temptation has been resisted.

What is addressed here is the legal and political basis for British withdrawal from the EU using the sovereignty of Parliament, and under our own law, and how we can disentangle ourselves from the web of EU law which currently has supremacy over UK domestic law.

The UKIP Exit Plan sets out how HM Government can seize the initiative and take control of the leaving process: and that means repealing the European Communities Act (1972) as the first step in the leaving process, not the final step.

Repealing the Act puts HM Government and Parliament in control of the leaving process and not the European Union. The British people should ask themselves why HM Government is not implementing the UKIP Exit Plan now, and if not, why not?

2. Six Key Tests for Brexit to Mean Exit!

The UK Independence Party does not want to leave the European Union by means of negotiating our way out under Article 50. Instead we want HM Government and Parliament to take control of the process by first repealing the European Communities Act (1972) and advising the EU of our terms of exit.

However, as HM Government and Parliament has chosen the Article 50 route, UKIP therefore lays our six key tests that will demonstrate if, at the end of the process, we have, or have not, actually left the EU in reality or only in name.

UKIP's Six key tests to prove Brexit means Exit

1. The Legal Test
Parliament must resume its supremacy of law-making with no impediments, qualifications or restrictions on its future actions agreed in any leaving deal. Britain must wholly remove itself from the jurisdiction of the European Court of Justice. No undertaking shall be given in the leaving agreement that constrains the UK to being an ongoing member of the European Court of Human Rights.

2. The Migration Test:
Britain must resume full control of its immigration and asylum policies and border controls. There must be no impediments, qualifications or restrictions agreed to in any leaving deal. We must not be bound by any freedom of movement obligation. The departure terms must facilitate the Government finally making good on its broken promise to cut net annual net migration to the tens of thousands.

3. The Maritime Test
Joining the EEC involved a betrayal of our coastal communities at the behest of a previous Tory prime minister. They must not be betrayed again. Leaving the EU must involve restoring to the UK full maritime sovereignty. The UK must resume complete control of its maritime exclusive economic zone - stretching 200 miles off the coast or to the half-way point between the UK and neighbouring countries. We must ensure that no constraint other than its own physical capacity or the needs of stock preservation or replenishment – as decided upon by the UK Parliament - applies to our fleet. This will give our fishing industry a long overdue chance to recover.

4. The Trade Test
The UK must retake its seat on the World Trade Organisation and resume its sovereign right to sign trade agreements with other countries. The UK must have full legal rights to set its own tariff and non-tariff barriers consistent with WTO rules. This means leaving the EU single market and customs union. Continued tariff-free trade, with no strings attached, may be offered to the EU, but if the EU declines the offer then WTO terms are the acceptable fall-

back position. Post departure, both sides will have the ability to further liberalise trade on the basis of mutual gain.

5. The Money Test
There must be no final settlement payment to the EU, and no ongoing payments to the EU budget after we have left. We must also reclaim our share of financial assets from entities such as the European Investment Bank, in which it is estimated that some £9bn of UK money is vested.

6. The Time Test
Brexit must be done and dusted before the end of 2019.

If all six of these basic tests are not met then the decision of the Referendum will not have been honoured and Britain will not really have left the European Union.

3. UKIP Policy Summary: How Britain could and should leave the European Union

While HM Government should have taken these actions immediately after the Referendum, and failed to do so, nevertheless it will never be too late in the leaving process to adopt them. Indeed, as the leaving process grinds on, and as it becomes more and more apparent that the EU will do everything it can to prevent our exit on unencumbered terms, such a course may well become inevitable.

If the European Parliament and/or the European Council reject the Withdrawal Agreement then Mrs May will face the stark choice of unilateral withdrawal or prolonging the negotiations indefinitely.

It would be better to adopt the course of action detailed below sooner rather than later.

I. HM Government should immediately put before Parliament a Bill for the **Repeal of the European Communities Act (1972)**. This should come as a first step in the leaving process not the final step. See **Appendix I** for the text of a Draft Bill. The repeal of the European Communities Act would immediately restore the supremacy of law-making to Parliament, and restore its freedom of action.

II. HM Government should immediately put before Parliament a Bill for the Repeal of the **European Elections Act (2002)** so that UK MEPs cannot stand for election in 2019. This would clearly demonstrate that there is no going back on Brexit.

III. Amend the **Interpretations Act (1978)** at the same time as the Repeal Bill is enacted to set out whether, and to what extent, past decisions of the Court of Justice of the European Union and the European Court of Human Rights are to be taken into account by UK judges in interpreting EU-derived law (future decision of the same courts are not to apply in the UK – see Chapters 30 and 31):

IV. The Repeal Bill leaves all EU law temporarily in place - but crucially, frees HM Government to set its own priorities and timescales for the repeal or amendment of those laws previously transposed into UK law or applicable in the UK under EU treaties.

V. Upon the passing of the Repeal Act into law, HM Government should take immediate action to repeal EU-derived legislation most damaging to the UK's interests, e.g. in the realm of **Immigration, Trade, Farming, Fishing and Security and Defence,** and **Police and Criminal Justice,** and where necessary replace it with new legislation which is in the national interest.

4. The Referendum decision

The Referendum only came about because of twenty-three years of UKIP building its electoral threat and campaigning for UK withdrawal from the EU. David Cameron promised the Referendum only because he feared that UKIP electoral threat in the General Election of May 2015. And having won a majority of twelve seats in that election (perhaps to his own surprise) Mr Cameron was faced with carrying out his promise.

In the Referendum Campaign HM Government spent £9.3 million sending a booklet to every voter entitled ***"Why the Government believes that voting to remain in the European Union is in the best decision for the UK."*** The booklet could not have been clearer: it stated the Government's position of asking the electorate to vote to remain in the EU, but whichever their decision, Remain or Leave, it would be honoured. The booklet stated: "***This is your decision. The Government will implement what you decide."***

There were no ifs, buts, qualifications, or conditions. The voters' decision was not subject to, or dependent on, any subsequent 'negotiations' or 'deals' with the EU. It was a clear instruction to the Government and Houses of Parliament to take Britain out of the EU.

Brexit meant *EXIT!*

The Remain side waged a campaign of fear, lies and misrepresentation. They had on their side the Government, the Labour, Liberal-Democrat, Green and Scottish National parties. They were backed up with dire warnings from the World Trade Organisation, the International Monetary Fund, and even President Barak Obama, who made a special trip to London to threaten us in our own country that we had better vote to remain if we knew what was good for us. It is ridiculous to maintain, as some Remainers subsequently have, that the British public did not know what they were voting for.

In spite of all this, and much more, the Leave campaign won. The result was as follows:

- **Leave: 17,410,742 votes, or 51.9%**
- **Remain 16,141,241 votes, or 48.1%**

There was a clear majority of **1,269,501** votes. The legitimacy of the Referendum decision has been called in to question by the Remainers, because only 52% voted to leave, in what has been described as 'the tyranny of the majority'. However, the same people (at least those from the main political parties) have not complained about the 'tyranny of the minority' when less than 50% (and usually very much less) of the voters choose a government in a general election - and which then implements their policies with near dictatorial powers.

Had the Remainers won the Referendum by 52% of the vote they would have expected the Leavers to accept the result without further argument. The main political parties would not complain if their party had achieved 52% of the vote in a general election and they had won power as a result. It is worth putting into context the result of the Referendum if it was mirrored in a general election.

Looked at on a constituency basis, it has been calculated that the Referendum would have delivered an equivalent general election result of **421** to **229**. Or **64.8%** of the seats.

The Referendum result has more democratic legitimacy than a general election result.

In short:

I. The Leave campaign won the Referendum by a clear majority of the vote.

II. The terms of the Referendum made it clear that the decision to leave the EU was not to be subject to any subsequent qualification or conditions, or dependent on any negotiated 'deal'.

III. The Government is obligated to carry out the decision of the electorate according to its own promise, and the unequivocal terms set out in the booklet sent to every household.

IV. By enacting the Referendum Bill as an Act of Parliament, Parliament gave their tacit consent that the result would be respected and enacted – without conditions or qualifications

V. Leaving the European Union means the UK restoring to itself the status of an independent, self-governing, sovereign nation – such as any other nation state of the world that is not a member state of the EU.

The duty of HM Government and Parliament is now to implement the decision of the Referendum quickly and completely.

5. Article 50 – escape route or trap?

Although often referred to as **Article 50** of the Lisbon Treaty, it is in fact Article 50 of the **Treaty of the European Union** (TEU). The mechanisms for enacting Article 50 are laid out in more detail in Article 218 of the treaty (see **Appendix III**). The resulting Withdrawal Agreement will be voted on in the European Parliament by a simple majority, and then in the European Council (Heads of Member States Governments) under the Qualified Majority Voting System, which is laid out in Article 238 of the TEU (see **Appendix IV**).

It is received wisdom among the political, media and establishment classes that Britain can only leave the EU by means of Article 50: but this is not so. The full text of Article 50 can be read in **Appendix II**.

Prior to Article 50 there was no means of a Member State leaving the EU under its own rules, the treaties being *"irrevocable"*. This in itself represented a danger to the EU since any Member State, that decided to leave could merely resile the Treaty and walk away. Article 50 was created to put in place a mechanism that would impede, delay and hopefully, from the EU's point of view, eventually prevent a Member State leaving. It was certainly written in the belief that it would never actually need to be invoked.

Article 50's opening paragraph states that: *"any Member State may withdraw from the Union in accordance with its own constitutional requirements."* But then lays down a procedure for enabling that to happen in accordance with EU rules not the Member State's. Having notified the European Council (Heads of Member States' Governments) that it intends to leave the Member State has to enter into negotiations for its *"future relationship"* with the Union. These negotiations may last up to two years.

As stated in paragraph 4 of Article 50, Britain will be excluded from the discussions of the European Council (Heads of Government), and Council of the European Union (Ministers representing Member States' Governments) and cannot participate in the decisions concerning it. At the end of the two-year period, and on its conclusion, the Withdrawal Agreement reached is voted on by the European Parliament and European Council, as explained above.

If the Withdrawal Agreement is rejected by either party, we are back to square one; however, the negotiations can then be extended indefinitely by mutual agreement between the withdrawing state and the other twenty-seven Member States.

Only when the withdrawal Agreement has been approved do we leave the European Union - with whatever costs and obligations that may entail. By that time, we will have had at least two years (if not more) of negotiations. For at least a full three years from the date of Referendum we will still have had to pay billion in contributions to the EU budget, obey EU law (plus all the new laws coming through the legislative pipeline), and have continued open-border immigration to EU citizens.

During the three years on from the Referendum date until we leave, all EU citizens will have the continued right to come to Britain under the open borders policy. We can expect hundreds of thousands if not millions more people to come in order to establish themselves to all the rights and benefits available before it is too late.

If no agreement is reached after two years, and there is no unanimous agreement to extend the negotiations, then, *"the Treaties no longer apply",* which presumably means the Member State has left. And all those things that were supposedly vital to agree before we leave have not been agreed.

A question that has been raised by Remainers concerns the 'irreversibility' or not of Article 50. **The European Institute of University College London** has issued a 'Constitutional Reading' paper on Article 50 which says, *"Although Article 50 is seen as irreversible, the EU would have a duty to act upon any bona fide decision to remain in the EU."* This leaves the door open for the Remainers in Parliament to wage trench warfare in order to try and reverse the Referendum decision.

And yet another factor to take into account is the potential interference of the **Court of Justice of the European Union** in Luxembourg**.** In an interview with the Financial Times, **Koen Lenaerts**, the CJEU's most senior judge said that Article 50, *"can be interpreted by our court like any other provision of Union law."* We could see the CJEU deciding what the terms of the final Withdrawal Agreement can or cannot be.

The Financial Times article goes on to quote **Steve Peers**, Professor of EU Law at Essex University as saying, *"It is probably only a matter of time before some aspect of the Brexit issue gets decided by the EU courts; and there's no small irony in that prospect".* For example, the Remainers could take a 'preliminary question' to the CJEU concerning some aspect of Brexit, for example the freedom of movement of EU citizens after withdrawal. Remainers could contend, for example, that rights conferred on all EU citizens during Britain's membership prior to the actual withdrawal date are 'vested rights' that must be remain for their lifetimes. Such litigation could bog-down the leaving process for years on end.

The CJEU already has the right to interpret the EU treaties, and it will certainly take the view that the final Withdrawal Agreement falls within its jurisdiction. Any dispute could take months or years to be decided.

All this can be avoided by Parliament repealing the European Communities Act and removing the UK from the jurisdiction of the European Court of Justice.

Consider things from the EU's point of view.

- It does not want Britain to leave.

- It has no incentive to offer us a "good deal" or beneficial terms for exit. Mr Juncker, President of the Commission has clearly stated that to be so.

- There is no negotiating pressure on it to reach any 'good deal' with us since we are applying to leave the EU under its rules and on terms agreed with it. It can play with the British negotiators like a cat with a mouse.

- The longer the EU can delay the leaving process the more it has hope that its collaborators in the UK might find a way of reversing the decision of the Referendum.

- If the worst comes to the worst it can hope to conclude a Withdrawal Agreement with the UK on the lines of the Norwegian or Swiss models whereby, we continue to pay financial contributions to the EU, continue to obey many of its laws, and continue to have open-borders for EU citizens.

It is easy to see why the EU wants Britain to use Article 50 for its leaving process, the mystery is why any British Prime Minister or politician who actually really does want to leave the EU would think this is the way to go about it.

Article 50 was created as a trap to impede, delay and prevent a Member State leaving the EU and not as a mechanism to enable it to happen – or at least, only enable it to leave on the EU's terms.

6. The Supreme Court Judgment of 24th January 2017

When Theresa May was appointed Prime Minister by Her Majesty the Queen on 13th July 2017 she was empowered by the British electorate in the Referendum decision of 23rd June to trigger Article 50 of the Lisbon Treaty.

Article 50 clearly states that, "*A Member State that wishes to withdraw shall notify the European Council of its intention."* A simple letter, or an email, would have sufficed. Instead Mrs May chose to do nothing: and by her inaction she allowed the Remainers to regroup and counter attack. This some of them did by taking a case of *Miller* to the High Court. The plaintiff asked the High Court to decide if HM Government had the right to trigger Article 50 under the Royal Prerogative, or if a vote of the Houses of Parliament was required?

The High Court's decision on 3rd November 2016 was that HM Government required a vote of the Houses of Parliament. This flew in the face of all precedent, in that every previous treaty entered into by a British Government had been done so by means of the Royal Prerogative.

The High Court ruled that HM Government could not now use the same time-honoured practice to withdraw from a Treaty. This was notwithstanding the fact that the European Communities Act (1972) would have to be repealed by a vote in Parliament at some point in order to formally end our membership of the European Union under our own law (albeit membership being Constitutionally unlawful in the first place).

The Government appealed the decision to the Supreme Court, and its decision was announced on 24th January 2017.

Lord Neuberger, the President of the Supreme Court handed down the judgment decided by **8 votes to 3**. Originally, he had made it clear that he did not want a majority decision but a unanimous one - in effect bullying his fellow judges. Despite this unprecedented tactic, three judges refused to toe the line and gave a minority opinion.

Lady Hale (Lord Neuberger's likely successor) had already demonstrated her prejudice by discussing publicly a suggestion for, not just a short Statute on Article 50, but one repealing and replacing the whole of the European Communities Act (1972).

In December 2016, Gerard Batten MEP sought permission to intervene in the case to argue the obvious point, apparently missed by both parties, that the Referendum itself was sufficient as legal authorisation to withdraw from the EU. However, Lord Neuberger and Lady Hale decided to refuse permission, thus protecting their fellow judges from hearing this heresy. Mr Batten then respectfully pointed out that both His Lordship and Her Ladyship were publicly associated with pro-EU views, and could not be considered impartial judges, and consequently, requested their decision to be reconsidered by different judges. However, they refused.

Lord Neuberger's oral statement of the decision can be summarised broadly as follows:

1. Section 2 of the European Communities Act 1972 provides that **EU law becomes part of UK law** until Parliament decides otherwise, meaning a source of UK law will be cut off if we leave the EU. The Government has power to withdraw from treaties, but not to change UK laws without a statute. The Government must therefore have statutory authority to trigger notice under Article 50.

2. But the UK Government does not have to refer to devolved assemblies because **matters of EU law are for the UK Parliament** and not a matter for the Scottish Parliament or the Regional Assemblies of Wales and Northern Ireland.

So, when it suits The Supreme Court, EU law is regarded as entirely Domestic (see 1 above) despite its source in international agreements; but when that does not suit them it is regarded as entirely International (see 2 above), and consequently without any impact on the substance of the devolution agreements.

Furthermore, the Supreme Court has instructed Parliament that it requires an Act of Parliament, rather than a simple vote, to enable the triggering of Article 50. This is significant for two reasons:

1. The Judiciary, in the form of the Supreme Court has strayed into the territory of Parliament by instructing it on how to exercise its sovereignty. This risks unravelling the separation of powers laid down and protected in the Bill of Rights (1689).

2. It has opened up the opportunity for the House of Commons and the House of Lords to propose amendments to the Article 50 Bill which both Houses subsequently did, as a means of impeding, delaying and qualifying it (albeit that they were voted down). This decision can and will be taken as the Supreme Court interfering in politics.[1]

It would have been sufficient for the Supreme Court to decide that Parliament should vote on the triggering of Article 50 by a means of its own devising. This would have been the easiest option since otherwise judicial involvement would have been a wholly pointless but very expensive exercise – not least because Mrs May had already promised Parliament a vote following the decision of the High Court.

One further point to make is that the Supreme Court has revealed decades of judicial bias in favour of the EEC/EU. Previously judges ruled they had no power to prevent Governments from signing up to EU treaties using the Royal Prerogative. Now the Supreme Court has ruled it does have jurisdiction in the opposite direction when HM Government wishes to give notice to withdraw from a treaty using the same Royal Prerogative.

Again, this ruling was made notwithstanding the fact that all laws enacted as a consequence of the Treaties would have to be repealed or amended by the Repeal of the European Communities Act, or by the individual repeal or amendment of those Acts of Parliament that transposed EU law into UK law, by a vote in Parliament in any case.

[1] On the 26th January 2017 HM Government presented to Parliament a very short draft Bill to trigger Article 50.

The Supreme Court did not make the judgement of Solomon it could have done, to uphold the ruling of the High Court, but to have left the means of voting to the sovereignty of
Parliament. Instead it has chosen to meddle in politics and specify that it must be done by an Act of Parliament. This cannot but be seen by those on the Leave side of the argument as partisan, and was welcomed by the Remainers.

This whole mess only illustrates that HM Government could have cut through this Gordian Knot of a problem by means of putting a Bill before Parliament for the Repeal of the European Communities Act. This would force the hand of the Remainers in Parliament to honour their commitment to accept the decision of the people in the Referendum. Even more so would this be appropriate following the outcome of the

7. Theresa May's Brexit Strategy

7.1 Mrs May's speech of 17th January 2017

After more than six months of keeping us in the dark Theresa May finally delivered a speech on 17th January in which she laid out her strategy for making 'Brexit mean Brexit'. She laid out twelve priorities for her negotiations with the European Union.

In her speech, Mrs May sought to hit the hot-buttons of the UK's Leave Voters by enunciating many aspects of the UKIP position held over the last twenty-four years. She emphasised that Britain was historically an internationalist country with a heritage, ties and alliances around the world. She alluded to the principle of Parliamentary Sovereignty, and how (putting it mildly), the *"supranational institutions"* of the EU *"sit very uneasily in relation to our political history and way of life".* She went on to say that Britain must: 'control its own laws, end the jurisdiction of the European Court of Justice, control immigration, and leave the Single Market'.

All well and good, and music to the ears of large a majority of UK voters. But Mrs May is a very professional politician, and while we must listen to what she says, what she actually does is far more important. For this we need to look at what she said in her speech regarding how she intend to lead us out of our Babylonian captivity.

Mrs May cannot begin the negotiation with the EU until Article 50 is triggered, which subsequently happened on 29th March 2017. Then she will begin two years of tortuous negotiations. The final 'deal' or Withdrawal Agreement is promised to be agreed with the EU by mid-2019.

The European Parliament's Committee on Constitutional Affairs states that, "*the negotiations on withdrawal will be concluded by October 2018, allowing for the consent procedure to be finalised in good time for the 2019 European elections. The period of effective negotiations will be shorter than the specified time-limit of two years."*

If negotiations begin in May 2017, concluding them by October 2018 would give HM Government just eighteen short months. Since Mrs May's speech, HM Government has published two White Papers: ***The United Kingdom's exit from and new partnership with the EU*** (February 2017), and ***Legislating for the United Kingdom's withdrawal from the European Union*** (March 2017). We now have more information than the aspirations of her speech.

7.2 The Governments White Paper: *The United Kingdom's exit from and new partnership with the European Union*

This White Paper is predominantly filled with aspirational waffle of no consequence. It does talk about the repeal of the European Communities Act (1972) but this is to come at the end

of the withdrawal process not the beginning. The second White Paper is of far more importance.

7.3 The Government's White Paper: *Legislating for the United Kingdom's withdrawal from the European Union.*

This White Paper explains that the 'Great Repeal Bill' will repeal the European Communities Act 1972 - but incorporate the entire body of EU law into UK law.

The government's overall strategy is made clear: while we may **formally** withdraw from the European Union, **nothing will change in practice**. All 'EU law' will remain in place, although it will now be called **'EU-derived law'**.

The people voted in the Referendum to 'take back control' – that means our Government exercising that control to change things in the interests of the British people. The White Paper contains the theoretical possibility that Parliament may or may not decide to change things, but gives no concrete proposals for what should be changed. As far as can be seen absolutely nothing will change.

This is not an exaggeration: every bit of the White Paper is aimed at preserving the UK's membership in the EU in all but name. Most astonishingly:

- The government will legislate for the **'free movement of people'** to continue after 'Brexit'. Para 1.22 of *Legislating for the United Kingdom's withdrawal from the European Union* states in passing: *"we will introduce an immigration bill so nothing will change for any EU citizen, whether already resident in the UK or moving from the EU, without Parliament's approval."* There are no specific plans laid out for how the Government intends to control immigration from the EU after we leave.

  For a full three years after the Referendum of 23rd June we will have had continued uncontrolled and unlimited immigration from the EU. Even after that there are no concrete proposals made for attempting to control it.

- While the UK may formally withdraw from the jurisdiction of the **Court of Justice of the European Union (CJEU)**, the 'Great Repeal Bill' will expressly provide that CJEU case-law (as it exists on the date of 'Brexit') will remain binding on UK courts, and be given the same status as the case-law of the UK's own Supreme Court (Paras 2.12-2.17).

- **Supremacy of EU law** (now re-branded "EU-derived law") will be largely preserved. Para 2.20 reads: "*If, after exit, a conflict arises between two pre-exit laws, one of which is an EU-derived law and the other not, then the EU-derived law will continue to take precedence over the other pre-exit law. Any other approach would change the law and create uncertainty as to its meaning. This approach will give coherence to the statute book, while putting Parliament back in control. Once the UK has left the EU, Parliament (and, where appropriate, the devolved legislatures) will be able to change these laws wherever it is considered desirable.*"

- The section about the **Charter of Fundamental Rights** (paras 2.21 to 2.25) is confusing, not to say disingenuous. In some refined metaphysical sense, "*the Charter*

will not be converted into UK law by the Great Repeal Bill" (para 2.23), subject to many complicated legal caveats; however, "*the removal of the Charter from UK law will not affect the substantive rights that individuals already benefit from in the UK.*" (para 2.25).

It is explained that the Charter largely duplicates the European Convention of Human Rights (ECHR), which has nothing to do with the EU and from which we do not intend to withdraw. The repeal of the Human Rights Act 1998, which incorporates the ECHR into UK law and which has been promised in the Tory Manifesto irrespective of the Referendum, is not even mentioned, and apparently is no longer intended.

- There is clearly no intention of any systematic or comprehensive review of "EU-derived law" followed by repeals and/or replacement where appropriate. The government wants to assume temporary "Henry VIII powers" to amend "EU-derived law" by statutory instrument, but that would be limited to minor amendments (e.g. if the UK law includes an out-of-date reference to "EU obligations", it will be updated), no substantive changes are proposed (Chapter 3 of the White Paper).

In conclusion, on the basis of the Government's second White Paper when the final Withdrawal Agreement is reached at the end of 2018 or the beginning of 2019, it will be a blue-print for leaving the EU in name but not in reality.

8. The legal and constitutional case for unilateral, unconditional withdrawal from the EU

8.1 UK domestic law

The Royal Prerogative is an ancient power of the Monarchy to make war on, or conclude treaties with, foreign powers, long since devolved to be exercised by the Prime Minister acting on the Monarch's behalf. Britain did not become a member of the European Economic Community in accordance with our own law until the **European Communities Act** (1972) was passed by Parliament that year. We officially joined the EEC on 1st January 1973 when the Act became law.

Various treaties concluded by the Crown with foreign powers are often referred to as 'international law', but this is just a convenient metaphor. While treaties may be akin to law, in strict legal terms they are not law. The only laws that apply in the UK are the **Common Law** made by precedent in courts over the centuries, and Acts of Parliament, known as **Statute Law**, made by the Houses of Parliament.

In common with the majority of developed democracies the UK is a 'dualist jurisdiction'. This means that its international treaties are, as such, a completely separate matter from our own law. International treaties do not become part of our own law unless expressly incorporated into it by means of an Act of Parliament.

Like the rest of our foreign policy, international treaties are made by the Executive (Prime Minister and Cabinet), while the law can only be made or changed by the Legislature (Houses of Parliament). Neither of these branches are allowed to usurp the powers of the other. This principled is aptly expressed in a House of Lords Judgement of 1990 (Rayner v Department of Trade and Industry. 2 AC 418):

"The Government may negotiate, conclude, construe, observe, breach, repudiate or terminate a treaty. Parliament may alter the laws of the United Kingdom. The courts must enforce those laws; judges have no power to grant specific performance of a treaty or to award damages against a sovereign state for breach of a treaty or to invent laws or misconstrue legislation in order to enforce a treaty.

"A treaty is a contract between governments of two or more sovereign states. International law regulates the relations between sovereign states and determines the validity, the interpretation and the enforcement of treaties. ***A treaty to which Her Majesty's Government is a party does not alter the laws of the United Kingdom by means of legislation*** (Emphasis added)**.** *Except to the extent that a treaty becomes incorporated into the laws of the United Kingdom by statute, the courts of the United Kingdom* ***have no power to enforce treaty rights and obligations at the behest of a sovereign government or at the behest of a private individual."*** (Emphasis added)

In relation to the signing of the Treaty of Rome by Mr Heath in 1972: when its legality was challenged in the courts, Lord Justice Phillimore stated: *"...it is to be ratified by the end of this year and enter into force on 1st January 1973. Whether it is ratified or not depends, as far as this country is concerned, upon the present Bill before Parliament;* ***it is that Bill which will or will not alter the law of this country; and unless and until that Bill becomes law this court is not concerned with the provisions of the Treaty of Brussels."*** (Emphasis added)

This makes things crystal clear. The only thing that makes the EU treaties part of our law is the European Communities Act (1972) alone. It is the statue which 'incorporates all the rights, powers, liabilities, obligations and restrictions' arising out of EU law into UK law.

It follows that whatever the EU treaty may or may not say about withdrawal, Parliament can repeal the European Communities Act (1972) and by doing so we leave the European Union, according to our own law and, according to Article 50's wording, our own "constitutional requirements".

EU law is only recognised as part of UK law by force of the provisions of the European Communities Act. It is what constitutional lawyers call 'subordinate' or 'secondary' legislation. All EU treaties and EU law hang on the single peg of the European Communities Act. Repeal it and all the thousands upon thousands of EU laws fall with it.

This point is nicely summed up by Mr Justice Laws in the so-called Metric Martyrs case when he ruled: *"There is nothing in the 1972 Act which allows the Court of Justice* (European Court of Justice) *or any other institutions of the EU, to touch or qualify the conditions of Parliament's legislative supremacy in the United Kingdom. Not because the legislature chose not to allow it; because by our law it could not allow it.* ***That being so, the legislatives and judicial institutions of the EU cannot intrude upon those conditions. The British Parliament has not the authority to authorise any such thing. Being sovereign, it cannot abandon its sovereignty."*** (Emphasis added)

Nothing can be clearer: Parliament is sovereign; it cannot legally abandon its sovereignty; to leave the European Union Parliament merely has to repeal the European Communities Act (1972).

8.2 International law and the Vienna Convention on Treaties

The right of self-determination is one of the first principles of international law; for example: the **Atlantic Charter**, the **UN Charter**, and the **International Covenant on Civil and Political Rights**, to name just three. In international law, there are no end of precedents of unilateral declarations of independence; from the United States of America, to the former Soviet Socialist Republics leaving in the wake of the collapsing USSR. While all such declarations would have technically breeched imperial law similar to Article 50, not only are they compatible with international law, they form the very basis of international law as we know it. International law is based on the interaction of sovereign states. The EU treaties are

between the member states, not between the EU and its member states. Many states in existence today derive their legal personality from unilateral declarations of independence.

Under the **Vienna Convention on the Law of Treaties** no provision of an international treaty overrides a fundamental constitutional principle of national law. Under the Convention all treaty partners are presumed to be aware of each other's constitutional principles. Parliamentary sovereignty in the UK is one such principle, and it cannot give way to any treaty provision. Constitutionally it was Parliament that limited its rights by passing the European Communities Act and delegated them to the EEC (later the EU), but it retained the right to take back those rights at any time – indeed as we read in the ruling by Lord Justice Laws above, Parliament cannot abandon its sovereignty, which belongs to the people.

8.3 Britain's membership of the EU is unlawful and therefore null and void

There is yet another argument for rejecting Article 50 and leaving the EU by means of repealing the European Communities Act (1972) and that is that our membership of the EEC/EU was always unconstitutional and unlawful in the first place and therefore null and void.

These arguments may be summarised as follows:

I. A fundamental principle of the English Constitution is that, *"no Parliament can bind its successors"*. And yet the European Communities Act purports to do that by requiring future Parliaments to legislate in accordance with EU law, as prescribed by EU Directives.

II. It created another legislature to rival the Queen in Parliament and enables legislation other than Acts of Parliament to prevail over the Common Law. Such attempts in the past were found to be unconstitutional. For example, in the *Case of Proclamations (1610)* when the Court found it unlawful for the Crown to legislate by means of Proclamations, by-passing Parliament. EU Regulations come into force automatically, and are therefore Proclamations - and proclamations by a foreign power at that.

III. UK membership of the EU purports to 'transfer' sovereignty to the EU, or 'share' it with the EU, which is in breach of the English Constitution, whereby sovereignty is vested in the Queen in Parliament (see Calvin's Case (1608) 7 Coke Reports 2a).

IV. The Treaty on European Union (1992) purports to make HM the Queen a 'citizen of the European Union, and ***"be subject to the duties imposed thereby".*** Similarly, all British citizens were made EU citizens without their consent. **This was treason since it purported to subjugate the Monarch to a foreign power. It is also illegal under the Common Law.**

V. By signing the EU Treaties, the Ministers responsible committed High Treason and breached their Privy Council oath of allegiance to: *"assist and defend all*

jurisdictions, Pre-eminences, and Authorities, granted to Her Majesty, and annexed to the Crown…against Foreign Princes, Persons, Prelates, States or Potentates." **Their acts were criminal, and therefore null and void in law.**

These facts will no doubt come as a surprise to many people since for the last fifty years or more the British educational system, has taught our children almost nothing meaningful or fundamental about their own history, and in particular our constitutional and legal history, and indeed they have been repeatedly told that there is no such thing as an English Constitution.

However, it is also a principle of English law that an illegal act is still illegal no matter how many times it has occurred or for how long.

Therefore, it is perfectly legal under international and UK law for Parliament to leave the European Union by repealing the European Communities Act (1972).

9. The political case for unilateral and unconditional withdrawal from the EU

This may by summarised as follows.

I. The UK has a perfect right under our own law, and international law, to unilaterally withdraw from its membership of the European Union by its own means and its own time-scale.

II. The UK has no legal or moral obligation to use Article 50 as its leaving mechanism. The primary concern of HM Government should be to implement the decision of the Referendum as quickly as possible, and by means that are in the British national interest, and not in the interests of the European Union.

III. Protracted and tortuous negotiations with a reluctant EU would be counter-productive. They would be unsatisfactory for the UK to say the least, and ultimately probably unsatisfactory for the EU.

IV. The EU has no incentive to negotiate a 'good deal;' for the UK. Quite understandably from the EU's point of view it does not want the UK to leave. It would have to fill a massive financial hole, of about **12%** of the EU Budget (gross less the UK rebate) or **8%** (less public sector receipts – i.e. money spent in the UK by the EU). [2]

V. Article 50 makes provision for negotiations to extend for years beyond the stated two-year period, and the longer the EU can keep Britain on the hook the greater the likelihood there is from its point of view for a new Government and a new Parliament to seek to reverse the Referendum decision, or at least to arrive at some kind of Associated Membership Agreement which to all intents and purposes will be just like membership.

VI. Whatever 'deal' might emerge from negotiations it has to be agreed by the European Parliament and then the European Council. Either body might reject it, putting us back to square one, like a game of political snakes and ladders. Britain could then leave unilaterally without a 'deal' under Article 50 - in which case why not do that in the first place and save two years of uncertainty and grief?

VII. By repealing the European Communities Act, HM Government would put itself in control of negotiations and not the EU. HM Government would then be in a position of strength, and not weakness, as it is now.

VIII. The act of Britain leaving would completely alter the EU perspective on what negotiations were required to regularise our relations. The EU would have a powerful incentive to reach accommodations with the UK in order to safeguard its own

[2] House of Lords 15th Report of Session 2016-17, Brexit and the EU budget. 4th March 2017.

economic interests. Once Britain has left the EU by means of repealing the European Communities Act, the EU is far more likely to accept reality and agree to an offer of continued tariff-free trade with the UK since it would be in its own interests (see Chapter 15). Failing that the UK can revert to trade on World Trade Organisation terms.

If it is serious about implementing the decision of the Referendum then HM Government should stop acting as a weak supplicant. Rather, it should recognise the inherent strength of its own position, and act from that position of strength: it should tell the EU how we are leaving, not ask them how it might be done.

10. Repeal of the European Communities Act (1972)

The case for rejecting Article 50 and repealing the European Communities Act has already been made above, but what would it mean in practice?

The forms of EU law currently in place in the UK take three main forms: **Directives**, which have been transposed into Acts of Parliament; **Regulations**, which automatically apply; and specific provisions of the **Treaties**.

At the time of the Referendum, June 2016, **172,178** pieces of EU legislation were in place, according to the EU's own website.[3] This is not explained but presumably means every jot and tittle of legislation in all the various forms. According the House of Commons Library there are currently a total of **18,948** EU legislative acts in force that are 'directly applicable to the UK'.[4] HM Government's website also shows that from the date of the Referendum, 23rd June, up to December 2016 another **95** pieces of EU legislation came into force in the UK. Nothing is being done to stem the tide of EU legislation even though we have decided to leave.

Like so much else that the EU has been responsible for its laws were meant to be "irrevocable"; like a Gordian Knot they were never meant to be untied or disentangled. If the European Communities Act were simply repealed, thousands of EU laws enacted and in place over forty-four years would cease to apply overnight and chaos would ensue. **This is not what UKIP proposes.** The realities of the situation have to be faced up to and a plan put in place to deal with them.

Appendix I is the draft text for a **European Union Repeal Bill**, as written by **Sir William Cash MP**, which shows how we can disengage and disentangle ourselves from EU legislation.
UKIP proposes just such a Bill.

These following actions should have been taken immediately after the Referendum decision, or any time after by Mrs May. It is still not too late, and indeed it may well have to be taken if the withdrawal negotiations grind to a halt, or if the Withdrawal Agreement is rejected by the European Parliament or the Council.

The UKIP Exit Policy:

I. In order to implement the decision of the Referendum, HM Government should immediately put before Parliament a **European Communities Act (1972) Repeal Bill.** Repealing the ECA would immediately return supremacy of law-making to our

[3] EUR-Lex, the official database of the EU
[4] House of Commons Library. Briefing Paper, Number 7863, 12th January 2017. Legislating for Brexit: directly

own Parliament at Westminster and give HM Government, and Parliament freedom of action in disentangling the UK from EU legislation. **Article 50 becomes irrelevant.**

II. All EU Directives that have been transposed into Acts of Parliament would remain in place. All EU Regulations would remain in place. All current decisions of the European Court of Justice would remain in force. All law enshrined in the Treaties would remain in place. **But only on a temporary basis** (to be determined by and under the control of Parliament).

III. HM Government should then begin to take immediate emergency unilateral legislative action to repeal or amend such laws - in such policy areas as: Immigration and Border Controls, Trade, Energy, Fishing and Farming, Justice and Home Affairs; Police and Criminal Justice, and in whatever area it was deemed necessary to take immediate action to protect the British national interest.

IV. The supremacy of UK courts would be restored and the UK would remove itself from the jurisdiction of the European Court of Justice. Future decisions of the CJEU will not apply in the UK, and existing decisions of the CJEU could be challenged in UK courts by HM Government or interested parties. The Interpretations Act (1978) should be amended so that UK law, derived from whatever source, is interpreted in UK courts only on accordance with UK statute or Common Law.

V. All remaining Acts of Parliament, Regulations, and Treaty obligations in place could be repealed or amended in accordance with HM Government's priorities and time-scales. Some legislation of a technical nature Parliament might decide to keep, and some areas of legislation may indeed be the subject of negotiation and agreement with the European Union. But HM Government and Parliament would have control of the process and the final say, and not the EU.

VI. Parliament would also need to repeal the **European Union Act** (2011) which requires the UK to hold a referendum whenever EU treaties are amended to transfer further powers from the UK to the EU, and to repeal the **European Parliament Act** (2002) which sets out the basis on which UK MEPs are elected to the European Parliament.

The commentators who say it would take years to negotiate our exit are quite right – but only if this were done on a law by law basis, which is just what they would like in order to bog down and halt the process.

If Mrs May intends to incorporate the body of all EU law into UK law at the end of the withdrawal negotiations, then we may ask, what was the point of the Referendum and leaving the EU? This would be leaving the EU in name but not in substance.

However, by repealing the 1972 Act and restoring the supremacy of Parliament, HM Government would free itself to take unilateral action where needed, but give itself time to negotiate the finer points of less important legislation over a longer period.

11. The European Parliament: the UK MEPs and what should happen to them.

There are currently 751 Members of the European Parliament representing the 28 Member States. Of these there are 73 British MEPs.

For the purposes of the European Parliamentary elections the UK is divided into twelve regions: nine in England, and Scotland, Wales and Northern Ireland.

The number of MEPs per region is as follows:

- England = 60
- Wales = 4
- Scotland = 6
- Northern Ireland = 3

In the European Parliamentary elections of 2014, the UK political parties MEPs were elected as follows:

- UK Independence Party = 24
- Labour Party = 20
- Conservative Party = 19
- Green Party = 3
- Scottish National Party = 2
- Lib-Dem = 1
- Sinn Fein = 1
- Democratic Unionist Party = 1
- Ulster Unionist Party = 1
- Plaid Cymru = 1

Few people in the UK understand the powers (or lack of them) exercised by MEPs. To summarise these powers:

- MEPs vote to accept or reject the European Commission at the beginning of each five-year Parliamentary term. However, they must accept or reject it in total, they do not have the power to vote for or against individual commissioners, and they cannot propose or reject individual candidates for the commission.

- MEPs vote to accept or reject the EU Budget for its seven-year term, and periodically throughout its term there are opportunities to vote on its constituent parts.

- MEPs vote on individual Directives and Regulations, either by a simple majority or a qualified majority, depending on the nature of the legislation. MEPs can propose amendments to legislation in Committee, which are subsequently voted on in the Parliament, but the Council has the power to reject completely such amended legislation where it does not accept the outcome.

- MEPs do not have the power to initiate Directives or Regulations. They can only write non-legislative 'Own Initiative Reports' and pass Resolutions, but these are merely hot-air of no legislative force and little or no consequence.

- National governments and parliaments are obliged to transpose Directives into national law (e.g. Acts of Parliament in the UK), and Regulations automatically apply. EU takes precedence over national law, and where a national law conflicts with EU law it must be amended or repealed.

- Under Article 50, the European Parliament will vote on the Withdrawal Agreement that will enable the UK to leave the EU. This will be by a simple majority vote. If HM Government persist with the Article 50 strategy then all the 73 UK MEPs will still be in place to vote on the Withdrawal Agreement, which is likely to be during or after the autumn of 2018.

The last point could prove very pertinent. If a majority of MEPs vote to reject the Withdrawal Agreement, HM Government would then be in the position of instigating unilateral withdrawal, as its right under Article 50, or asking the other 27 other Member States to extend the negotiating period by another one, two or more years. The latter is hardly likely to be politically acceptable in the UK.

It would be an interesting paradox if genuine UK MEP Leavers were unable to vote for the final Withdrawal Agreement because it did not deliver a fully unencumbered exit from the EU.

All UK MEPs are entitled to remain in their posts until the end of the current term (mid-2019) or until Britain leaves whichever is the sooner. However, the **European Elections Act** must be repealed well before the next European elections in 2019 so that Britain no longer takes part.

If the Withdrawal Agreement is rejected, and if the Prime Minister did ask for the negotiating period to be extended by another year or two, we would see a situation where there would be no UK MEPs to vote on it the second time around in the next European Parliament. This would hardly be democratic.

If the Withdrawal Agreement is rejected, and if just one Member State vetoes the extension of negotiations, then under Article 50 'the treaties would no longer apply' and Britain would be ejected from the EU. To save ourselves a good deal of trouble and uncertainty, Mrs May

should adopt the UKIP strategy of immediately repealing the European Communities Act (1972) and opt for unilateral withdrawal.

UKIP EU Exit Policy

I. Upon the repeal of the **European Communities Act** (1972) HM Government should withdraw all UK MEPs from the European Parliament.

II. Repeal the **European Elections Act (**2002), which lays out the basis on which UK MEPs are elected to the European Parliament. This would send a clear message that there is no going back on the Referendum decision.

III. It would then be the prerogative of the HM Government and Parliament to decide the terms of redundancy and pension entitlements of all UK MEP and their staff, or to negotiate such final settlement terms with the European Parliamentary authorities and the EU Member States.

Since UKIP MEPs have a vested interest in any terms of pay and pension settlements, this document takes no position. The author is happy to leave this to HM Government to deal with.

12. The UK's EU Budget Contributions

12.1 The UK contributions 2014-2020

More controversy arose regarding this subject than any other in the Referendum campaign - with perhaps the exception of international trade, which we shall come to later.

The controversy was not helped by the officially designated **Vote Leave**, using an incorrect figure in the Referendum campaign for the UK's weekly gross contributions, the much disputed £350 million per week, which gave unnecessary ammunition to the Remain campaign. £350 million was accurate enough as a gross figure, but it did not deduct the rebate which remains in the Treasury and is not physically paid to the EU.

The real net figure at that time (the 2015 gross figure less the UK rebate) for 'how much we pay the EU' was almost **£285 million** per week[5]. That is bad enough without needing any exaggeration. This figure includes the 'public sector receipts', which is the money spent by the EU in the UK, but which is physically paid to the EU first. This is of course our own money spent by the EU in ways it sees fit.

The European Union's budget period runs for a seven-year term. The current term began in 2014 and ends in 2020. Knowing exactly how much we have paid or will pay is a complicated matter. Any figure published by the Treasury at any given time is only an estimated snapshot.

The contributions from Member States are made according to complicated formulae regarding direct payments (based on Gross National Income (72%), a percentage of VAT payments (14%), and customs duties on 'own resources' (14%). This is further complicated by the fact that published figures can be amended in retrospect by HM Treasury, which also publishes its figures according to the UK financial year (April to March) while the EU uses calendar years.

All the figures used in this section are those officially published by HM Government.[6] Treasury figures for the money paid or to be paid in the current EU budget term are:[7]

[5] Calculated for 2015: Gross £19.8 billion, minus rebate of £5 billion = £14.8 billion divided by 52 = £284.6m million per week.

[6] House of Commons Library, Briefing Paper Number CBP 7886, 16th March 2017. By Matthew Keep.

[7] Figures shown in thousands of millions. Forecasts for 2017 to 2021. Forecasts rounded to the nearest £100 million

Gross Contribution	**Net Contribution** (after rebate and public sector receipts – our money spent by the EU in the UK)
Figures shown in thousands of millions	
2014 £19,119	£9,957
2015 £19,806	£10,898
2016 £19,996	£8,616
2017 £17,600	£7,800
2018 £19,200	£10,200
2019 £19,500	£9,900
2020 £19,600	£9,700
Totals **£134,821**	**£67,071**

Our estimated total contributions to the EU budget for the current term (2014 to 2020), if paid in full, would in the region of:

- **£134.8 Billion** gross
- **£67 Billion** net.

If the UK were to remain in the EU our outstanding budget contribution for the remainder of the budget term, from 2017 to 2020 would be:

- **£75.9 Billion** gross
- **£37.6 Billion** net

It does not take much imagination to think how much better the outstanding monies could be spent in the UK on healthcare, education, transport, defence etc.

However, the UK will continue to make budget payments to the EU until we actually leave, which is likely to be in mid-2019. Although Mrs May said in her speech of 17th January 2017 that, *"the days of Britain making vast contributions to the European Union every year will end".* But she has not ruled out making some contributions.

The loss to the EU will only be in terms of the UK's net contributions (less the rebate and public sector receipts) which are in the region of **£9.6 billion** net per annum.

At the time of writing this we are half way through 2017, the half year net contribution for 2017 would be £3.9 billion. Adjusting the figures accordingly (to take in account a half-year contribution for 2017), if we left right now (July 2017), the outstanding amount, to the end of the budget term in 2020, would be about **£33.7 billion**. This amount will decrease with every month we remain in the EU.

There are 27 other EU member states, most of whom have never been net contributors to the budget. Shared between each one, that amounts to about **£1.248 billion**, or roughly **£356.5**

million per annum. Surely a small price to pay for membership of the organisation they value so much?

The EU predictably wants a 'divorce settlement' payment. Its chief Brexit negotiator, Commissioner Michele Barnier initially put the bill at **€60 billion,** which subsequently increased to **€100 billion**.

The EU contends that it has future spending commitments of **€250 billion**[8] to the end of 2020. The UK's supposed share of that is **€38.1 billion,** or **15%**. The EU refers to these sums as 'reste à liquider' (RAL), French for 'yet to be paid'.

The EU's assets are estimated to total **€154 billion.** [9]The most the UK could hope to claim is about 15% or **€23 billion.** To save time, effort and trouble HM Government could offer to trade-off one against the other and just walk away, since neither party is likely to pay-up anyway.

12.2 Is the UK liable for any further payments?

The European Parliament's Committee on Constitutional Affairs issued a report in January 2017,[10] in which it says, *"The budgetary consequences will thus need to be addressed and the pertinent measures taken; the rearrangements of the financing will depend much on whether or not the UK continues to contribute to the budget, and, if so, to what degree"*. It goes on, *"Given the timeline, it has been suggested that the simplest solution would be for the UK to continue to participate in the MFF* (Multiannual Financial Framework), *which ends in 2020, and to meet its current commitments accordingly"*.

The wording in this passage, when talking about 'whether or not' the UK continues to contribute, concedes that it is under no legal obligation to do so. The 'suggestion' that the simplest solution is for the UK to continue paying, comes from a report written by a Liberal Democrat Ex-MEP, Andrew Duff (who lost his seat in 2014) and is one of the most pro-EU enthusiasts one could hope to find.[11]

The legal position is somewhat different. A House of Lords report issue in March 2017[12] concluded that, *"Although there are competing interpretations, we conclude that if agreement is not reached, all EU law – including provisions concerning ongoing financial contributions and machinery for adjudication – will cease to apply,* ***and the UK would be subject to no enforceable obligation to make any financial contribution at all"*** (emphasis added). While the Report says, this might damage our prospects of reaching friendly

[8] House of Lords, European Union Committee, 15th Report of Session 2016-17. Brexit and the EU Budget. 4th March 2017

[9] Ibid

[10] Brexit and the European Union: General Institutional and Legal Considerations. European Parliament, Committee on Constitutional Affairs. PE571.404 – January 2017

[11] After Brexit by Andrew Duff

[12] House of Lords, European Union Committee. 15th Report of Session 2016-17, Brexit and the EU budget. 4th March 2017.

agreements, it also says, *"Nonetheless, the ultimate possibility of the UK walking away from the negotiations without incurring financial commitments provides an important context".*

The Report sums it up nicely when it says, ***"On the basis of legal opinions we have considered we conclude that, as a matter of EU law, Article 50 TEU allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget and related financial instruments, unless a withdrawal agreement is concluded which resolves the issue"*** (Emphasis added)**.**

Furthermore, the Report says that while EU Member States might try to take the UK to court for the payment of what they see as outstanding liabilities under principles of international law, it says that, ***"it is questionable whether an international court of tribunal could have jurisdiction".***

The EU's budget is not set in stone: it can increase, and has done so in the past. When the Member States agreed this current seven-year period, the EU knew that the UK could have a referendum and that it was possible for a Member State to leave by using Article 50. It follows that the budget figures are provisional and that the figures would have to change if a Member State were to leave during the course of the seven years.

Article 21 of the EU Regulation on revision of the budget (MFF) states that: *"If there is an accession or accessions to the Union between 2014 and 2020, the MFF shall be revised to take account of the expenditure requirements resulting therefrom."* [13] **It follows that, if the MFF can be changed when a country joins, the same can be argued for when a country leaves.**

Jonathan Arnott UKIP MEP, who sits on the European Parliament's Committee on Budgets and Budgetary Control, has made the following points:

1. **Article 50** of the Lisbon Treaty is clear that the Treaties "shall cease to apply" to a nation leaving the European Union. If the Treaties do not continue to apply, then the European Union cannot reasonably claim that a Regulation made under those Treaties continues to apply. Therefore, the European Union cannot rely upon the Multiannual Financial Framework, which is by definition subservient to the Treaties.

   The MFF regulation has a provision within it for amendment of the MFF in the case of either accession of a new member, which is not the case here, or unforeseen circumstances.

2. There is no specific mention of a member leaving, but a) this must be an unforeseen circumstance because the MFF regulation doesn't contemplate it - and b) if the regulation can be amended upon accession, it logically follows that it can also be amended upon withdrawal.

[13] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1311&from=EN

3. In relation to the calculation of European Union assets and liabilities in general, that when a new member state accedes to the European Union there is no question of assets and liabilities. The European Union does not make a payment to that member state because of the liabilities that they are supposedly taking on being greater than the assets that they are supposedly gaining. If this is not a calculation that is made when a member joins, this calculation should not be made when a member leaves either.

When Britain leaves the EU, the EU will have to do what any business, organisation or individual is forced to do when their incomes fall – reduce its expenditure to match its income.

UKIP Exit Policy

I. On Repealing the European Communities Act and leaving the European Union, HM Government is under no legal or moral obligation to continue payments into the EU budget MFF (Multiannual Financial Framework) or related financial instruments.

II. HM Government should discontinue all further payments to the EU budget.

III. HM Government could offer the friendly advice to the EU that any shortfall in its budget after the UK leaves could be made up by its remaining Member States – most of whom have hitherto never been net contributors to the EU budget.

13. The UK's other EU financial liabilities

13.1 UK/EU staff pension liabilities and redundancy costs

The European Commission employs about **32,546** staff members.[14] In the European Parliament, around **6,000** people work in the general secretariat and the political groups. In the Council of the European Union, around **3,500** people work in the general secretariat. Of the Commission staff, **1,046** or **3.2%** are UK nationals.

The current total capitalised EU pension liability is recorded as **€63.8 billion.**[15] The proportion of those currently in receipt of an EU pension who are British nationals is put at **8%.** The House of Lords report mentioned above estimates that the UK liability would be anything between **€2.5 billion** to **€9.6 billion.** But an accurate assessment would involve a complex actuarial calculation.

UK nationals working in EU institutions have done so in good faith, and their redundancy and or pension payments form the only moral responsibility that HM Government should acknowledge. EU staff regulations state that only EU member state nationals may serve as EU officials; however, the regulations also contain provisions allowing for exceptions. It is unlikely that the EU will want to make wholesale redundancies of British nationals, since many are no doubt working in areas where their skills will continue to be required after the UK leaves.

It has also been mooted that there could also be an issue with British civil nationals working in the **Court of Justice of the European Union**, the **External Action Service** the **Committee of the Regions**, and the **Economic and Social Committee** etc. But surely it would be 'xenophobic' for these institutions to want to sack British nationals just because their country had left the EU? And, we might add, an arrestable offence under the European Arrest Warrant.

On this basis, HM Government can negotiate a fair provision for a share of any redundancy or pension provisions that have to be made, but only as proportionate to the number of UK nationals employed, which is bound to decrease over time after our withdrawal.

13.2 EU Financial Mechanism liabilities

As a member of the European Union, and because of the various treaties successive governments have signed, the UK made itself a party to the financial mechanisms of the EU.

[14] http://ec.europa.eu/civil_service/about/figures/index_en.htm
[15] House of Lords European Union Committee, Brexit and the EU Budget. 15th Report of Session 2016-17.

The UK entered into 'sovereign risk' obligations. This means that we are liable for a share of any costs or debts incurred by these institutions and mechanisms under "irrevocable and unconditional obligations to pay". If and when the EU requires payments the UK Government has to pay – using tax papers money now, or in the future because payments on Government gilts require higher taxes to meet them.[16]

The UK's potential exposure to these liabilities is with:

- **The European Union** - The UK being a Member State, it has a joint obligation with other member states to cover any budget deficit, or guarantees the EU may make to the European Investment Bank.

- **The European Investment Bank (EIB)** - The UK is a shareholder in the EIB. A separate section is included below on the EIB as 13.3 below.

- **The European Financial Stabilisation Mechanism (EFSM)**. This was the first Eurozone bailout mechanism, agreed in 2010, and involving all member states. It has a ceiling of €60 billion, with €46.8 billion loaned to Ireland and Portugal, and with €13.2 billion available. There were two further Eurozone bailouts mechanisms in which the UK did not take part.

- **The European Fund for Strategic Investments.** Loans are made through the EU and the EIB.

- **The European Central Bank.** The ECB was established under the Treaty on European Union in 1992. All member states are obliged to become shareholders whether they are members of the Eurozone or not. The **Bank of England** has subscribed **€1.48 billion**, of which €56 million has been called and €1.42 billion is callable.

  The UK's maximum possible loss under its current contractual commitments is **€1.48 billion.** The UK has no vote in the Bank's meetings which decide on uncalled capital being called. Under Protocol 4 of the TFEU the member state's subscribed capital is in accordance with its percentage share of EU population and percentage share of EU GDP over the preceding five years. The UK is one of the few EU countries whose population is steadily increasing, and whose GDP is increasing. The UK has no vote in meetings which decide on uncalled capital being called, or on the subscribed capital being increased. [17]

[16] The UK's liabilities to the financial mechanisms of the European Union. By Bob Lyddon, Lyddon Consulting Services Ltd. Published by the Bruges Group 2016.
[17] The UK's liabilities to the financial mechanisms of the European Union. By Bob Lyddon, Lyddon Consulting Services Ltd. Published by the Bruges Group 2016.

- **The European Single Currency.** Although Britain did not join the euro under the terms of the Lisbon Treaty, we are liable to help support its economies (such as Italy) if (or more likely when) the eurozone collapse.

13.3 The European Investment Bank

The EIB was established in 1958 and currently lends about **€85 billion** a year - the profits of which are not distributed but rolled back into the bank. Over time this has made the EIB a significant global player, twice as large as the World Bank. The UK has roughly a **16%** share in the EIB, and may be called upon to subscribe up to **€40 billion** in capital. The bank has leveraged its existing capital, creating contingent liabilities for the UK in the order of **€500 billion.**

The EIB is "*heavily invested*" in Greece, lending it about **€**20 billion (10% of Greece's €200 billion GDP). When the President of the EIB, Mr Hoyer, addressed the European Parliament's ECON Committee (Economic and Monetary Affairs) on 22nd March 2017, he suggested that the bank's funds could also be used to alleviate a future Euro crisis. Such a politically-motivated lending policy, together with the existing contingent liabilities, are no doubt good reasons why the UK should to leave the EIB as soon as possible (and seek to recover the UK's share of its equity - which is reported to be worth about **£10 billion**).[18]

Mr Hoyer confirmed that the bank will miss UK involvement in its balance sheet - so it appears the bank has accepted that the UK will no longer be a shareholder, which is a useful concession as the Treaty Protocol establishing the bank's Statute (the equivalent of its articles of association) doesn't include provisions for the distribution of assets and the UK's shares are non-transferable. It is also worth bearing in mind that altering the bank's Statute requires unanimity in the Council of Ministers - and is therefore more challenging than the Qualified Majority Vote required for the Brexit deal itself.

However, Mr Hoyer was very keen for politicians in Brussels to realise that issues surrounding Brexit are "*market sensitive as the bank operates in the capital markets* (in which it issues bonds to finance its lending)" - from this we can conclude that the bank will emphasise to the Council and Commission that an open dispute between shareholders would undermine its credibility in the markets and reduce its ability to lend into the EU economy.

Mr Hoyer was at pains to powerfully underline that "*the EIB portfolio in the UK is excellent*" and that he expects to lose UK assets from the portfolio because the bank doesn't have sovereign immunity for its investments outside of the EU. Although one should note that the bank has been active outside the EU since its beginning, using 10% of its loan book for that purpose. When UKIP asked him if the bank might transfer its UK loan portfolio "in specie" to a UK Sovereign Fund, as part of the settlement of the UK's withdrawal, he avoided answering.

Addressing life after Brexit, Mr Hoyer emphasised that "*it will be miserable, like we all will be, including the UK*". He went on to explain that "*there is a special team in the bank for*

[18] House of Lords, European Union Committee, 15th Report on Session 2016-2017, Brexit and the EU Budget 4th March 2017

Brexit" and that the process will be "*extremely painful and demanding*." We should remind ourselves that My Hoyer, like most bankers, is not prone to emotive language and that, in the 90 minutes he was before the Committee, he only displayed it for the subject of Brexit.

In short, while the UK is a shareholder in the EIB it is liable for its share of the contingent liabilities of **€500 billion.** We should leave as quickly as possible, and seek to recover our **£10 billion** share of its equity.

Regarding the financial guarantees given by the UK in respect of EU-related projects, e.g. bonds issued by the EIB, the UK would not want to retrospectively alter contracts with private institutions or individuals. We do not propose unilaterally retrospectively rejecting contractual obligations. HM Government could possibly offer EU member states a relatively modest sum of money in return for indemnifying us for any potential losses incurred. Furthermore, the funds belonging to the UK invested in the EIB might be used in part for this purpose. This could be the subject of genuine negotiations with the EIB and relevant member states.

13.4 Conclusion

As the crisis in the Eurozone develops the UK's exposure could increase dramatically. The UK is at risk of financial liabilities because of various EU funds, and shareholding in the ECB and the EIB. These bodies engage in financial dealings with Member States acting as guarantors for borrowed sums. The main recipients of funds are the so-called **PIGS**: Portugal, Italy, Ireland, Greece and Spain. All are EU member states hovering on the brink of financial and economic ruin because of their membership of the European Single Currency.

The potential extent of Britain's liabilities, while still an EU member, has been estimated as high as **£1.1 trillion**.[19] This figure was quoted by Jim Mellon, Britain's largest investor, and includes responsibility for the entire EU budget, loans and guarantees.

The next crisis in the euro-zone is a matter of when, not if. The Single Currency was always a political project, not a financial or economic one. It was intended to be one of the foundations of a pan-European political state, a 'United States of Europe'. Its eventual failure is inevitable.

UKIP EU Exit Policy

On repealing the European Communities Act, and leaving the EU, the HM Government should:

I. Negotiate with the EU regarding the redundancy or continued employment, and pension entitlements of UK nationals working in EU institutions.

[19] The Daily Express, £1.1 trillion bill looms over Britain as EU faces crisis. 28th December 2016

II. Immediately end the UK's involvement with the European Central Bank, and require the return of our subscription and callable funds.

III. Under its rules, we would no longer be eligible to be shareholders in the European Investment Bank. On the ending of our association with the Bank we should require the return of our **€3.5 billion** capital.

IV. Immediately end our commitments to the European Financial Stabilisation Mechanism (EFSM), and the European Fund for Strategic Investments.

V. As discussed above, the UK's contractual liabilities with third parties can be a matter of negotiation.

14. TIFF: Trade, Immigration, Farming, Fisheries

It has been explained above how our membership of the EU, under our own law and constitution, is entirely of a consequence of the European Communities Act (1972); and how the repeal of the European Communities Act would restore supremacy of law-making to our Parliament at Westminster.

It has also been explained that even with the repeal of the Act, all EU Directives and Regulations would remain in place because they have long been transposed into UK law, directly or indirectly.

A draft Act of Parliament for the Repeal of the European Communities Act is shown **Appendix I**. Such an Act of Parliament would set out how the many thousands of EU laws incorporated into UK law can be temporarily incorporated into UK law and then be repealed or amended according to the priorities and timescales of HM Government and Parliament.

Restoring the supremacy of law-making to our own Parliament would enable us to take immediate action where that is required without the need to 'negotiate' with the European Union, or being subject to the jurisdiction of the Court of Justice of the European Union.

There are four key areas of policy that that affect our vital national interests which require immediate and emergency action to restore HM Government control, the **TIFFs**:

- **Trade**
- **Immigration**
- **Farming**
- **Fisheries**

If there is going to be a 'tiff' with the European Union, then let's get it over and done with quickly. Let the EU be in no doubt that HM Government intends to restore national sovereignty and freedom of action and where better to begin that than in these policy areas.

When these are out of the way HM Government can set about 'negotiating' the myriad of other areas of legislation where we need mutual agreement with the EU about continued co-operation. Next on the list for immediate repeal or amendment are those measures appertaining to **Police and Criminal Justice** and **Security and Defence**.

15. International Trade, the Single Market, the Customs Union and the European Economic Area (EEA)

15.1 International Trade

More disinformation was peddled about international trade by the Remain side in the Referendum than on any other subject. This disinformation continues to be propagated by die-hard Remainers, and some sections of the media. They constantly talk of continued 'access to the Single Market' as though this is somehow dependent on our membership of the European Union; and they give the impression that international trade is only possible if there is some kind of 'trade deal' in existence. Both of these insinuations are of course untrue.

Every one of the **164** member countries of the World Trade Organisation (WTO) have 'access' to the Single Market, they merely have to pay the **Common External Tariffs** to export to EU member states (these are now generally low, on average about 4.3%[20]; and only about 2.3% on non-agricultural products); and for their goods to conform to health and safety standards, set by the EU and deposited with the WTO. 'Trade deals' are not necessary for nations to trade internationally with each other. It would also be more accurate to refer to the EU's **'Internal Market'**, rather than the Single Market.

The EU is not a free-trade area: it is a **Customs Union**. Its purpose was to abolish tariffs for trade within its borders yet keep tariffs where possible to non-members. This has become less and less tenable because of WTO efforts over the last forty years to reduce trading barriers and tariffs internationally.

Now is not the place to repeat all the arguments about international trade aired during the Referendum campaign. UKIP MEP **Lord William Dartmouth MEP** produced an excellent book entitled, ***The Truth About Trade Outside of the EU,*** which expertly explained the facts on the UK's and the EU's international trade. Lord Dartmouth's comprehensive book explains some key points about international trade:

- We do not need to be in the EU to access the Single Market.
- We do not have to be a member of the EU in order to export to the EU.
- The UK would not be isolated outside of the EU.
- A country can negotiate trade agreements without being part of a large trading bloc.
- A UK-EU trade agreement **does not** mean will have to accept the free movement of people.

It should be borne in mind that while 100% of UK business must comply with EU law only about **30%** of our economy is engaged in international trade, and of that international trade about **43%** is done with the Single Market.[21] A very rough estimate puts our trade with the EU at no more than **12.9%** of GDP.

[20] Business for Britain. 22nd January 2016
[21] House of Commons Library, Briefing Paper Number 06091, 19th January 2016

In short, the main arguments about international trade that need to be understood are:

- Britain's trade policy has been controlled by the EU since 1973. We have had no freedom of action for negotiating trade agreements with third-party countries since that date. As an important consequence, few if any British civil servants have any direct knowledge of trade matters. These skills need to be acquired as quickly as possible.

- All the countries of the world have 'access', to the EU's Single Market. Countries such as the **USA, China, Russia, Japan India**, and **South Korea**, to name just six, do vast amounts of trade with Member States without it being necessary for them to join the EU.

- EU Member States have 'tariff-free' trade with each other, but countries outside the EU have to pay the Common External Tariffs. However, these tariffs are now generally low on average on most goods, having been negotiated down by the World Trade Organisation.

  It is calculated that if the Common External Tariffs were imposed on British goods exported to the EU this would amount to about **4%** of their value. However, the current UK net contribution to the EU Budget amounts to an equivalent of **7.7%** of their value.[22] This hardly looks like a good deal.

  On leaving we would therefore be about **3.7%** better off, or approximately **£5.8 billion** per annum at current rates – to which should be added the around **£2.9 billion** of customs duties the UK collects on non-EU goods from the rest of the world and which are currently sent to the EU directly,

- The largest tariffs on non-EU goods are motor cars (**9.9%**), and agricultural produce averaging **15%**. If these were applied to the UK this would adversely affect German car manufacturers and French wine growers. In such an event, the producers of these products are likely to prevail directly on their governments, and the EU, to reach an accommodation with Britain on continued tariff-free trade.

- UK business adversely affected by the Common External Tariffs could be compensated by money from a **Trade Related Technical Assistance** (TRTA) fund. which is in accordance with WTO rules, and can be spent, for example, in supporting research and development projects. Outside the EU the costs of doing business could also be reduced, for example, by repealing the Climate Change Act (2008), which was a direct result of EU directives and which has markedly increased energy prices.

- When the UK leaves the European Union, it cannot impose discriminatory tariffs on UK imports as a 'punishment' for leaving. Under World Trade Organisation Rules the same tariff must apply to a given product type to all countries seeking to sell into

[22] Britain's Referendum Decision and its Effects. Professor Stephen Bush. Published by Technomica 2016

its markets (the most-favoured nation (MFN) principle) unless there is a registered Trade Agreement between a group of countries to adopt a different tariff among themselves.

- Currently the UK's export of goods, are in general, covered by **Mutual Recognition Agreements,** and **BSI** (British Standard Institute) standards. The BSI is an influential member of bodies such as the **European Committee for Standardisation** (CEN), the **European Committee for Electrotechnical Standardisation** (CENELEC), and the **European Telecommunications Standards Institute** (ETSI), to name just three.

  Internationally, the BSI is also a member of the **International Organisation for Standardisation** (ISO, and the **International Electrotechnical Commission** (ICE). These bodies plan and set new international standardisations, and Britain is an important member. The EU would have to respect and observe internationally agreed standards to which the UK conforms, meaning there would be no disruption to trade.

A great deal has been, and still is being, talked about 'trade deals' by both sides in the Brexit argument: but we should be careful what we wish for. Trade deals are **not** necessary for counties to trade with each other. Trade deals can be helpful, others less so.

The **TTIP** (Transatlantic Trade and Investment Partnership) deal between the USA and the EU has recently been killed-off, at least for the time being. TTIP was highly undesirable and created wide-spread opposition: one of the key reason for that was the **ISDS** (Investor State Dispute Settlement) mechanism that enables international corporations to sue governments in private arbitration tribunals. Canada has such a deal with the USA and such legal actions have resulted in the Canadian government paying over **£100 million** to US corporations.[23]

In short, the ISDS mechanism ties the hands of sovereign governments. We should be wary of such trade deals where they are driven by international corporations in their own interests and not those of the populations of nation states.

15.2 The Single Market

The Single Market, or the Internal Market as it is termed in the EU treaties, may be defined as, 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provision of the treaties'. [24]

Being a member of the Single Market means that member states do not pay cross-border tariffs on goods and services, but do have to apply them, where applicable, to imports from non-member countries. The abolition of tariffs is obviously beneficial to member states but membership has two main disadvantages for the UK:

[23] Stop TTIP. Love.E.EU. Booklet published May 2016. Page 4
[24] Article 26(3) of the Treaty on the Functioning of the European Union (TFEU).

- We have no ability to independently negotiate and sign trade agreements with third-party countries.
- We have to apply tariffs on goods from third-party countries where it may not be in our interests to do so: for example, where the UK had no significant industry to protect, such as, the production of footwear and textiles. As a result, UK customers have to pay higher prices for these goods than is normal on the world market.

The last point illustrates something important about the Single Market. It was not just meant to abolish tariffs between its member states, but it also has a protectionist role to maintain tariffs where some member states have industries they want to shield from outside competition. This is particularly obvious in the case of the **Common Agricultural Policy** which particularly protects French farmers from the world market. It is estimated that the CAP increases food prices to British consumers by about **20%** (according to OECD estimates). [25] This protectionism is usually pursued in the interests of the big nations such as Germany and France, and at the expense of the others.

The EU has **Regional Trade Agreements** that cover 58 non-EU countries. As with everything to do with the EU, this is a complex web of five different types of agreement, including **Free Trade Agreements,** with different conditions applying in individual cases.

However, there is no need for the UK to be a member of the Single Market in order to have a Free Trade Agreement with tariff-free access.

The **European Parliament's Research Department** confirmed to the author in a written reply[26] to a question on Free Trade Area agreements, that: *"…each FTA is specific depending on the partner. An FTA may include provisions on, inter alia,* ***tariff concessions*** … (emphasis added). It goes on, *"****Tariffs may remain****, particularly for agricultural products".* But the use of the word 'may' clearly indicates that tariffs may or **may not** be included in a FTA agreement. The reply goes on to say, ***"Free movement workers, as defined in Art. 45 TFEU is never included in FTAs".***

This reply clearly indicates that it is possible for a Free Trade Area agreement to be agreed between the EU and the UK that excludes tariffs, and the free movement of workers.

A number of European and non-European states have tariff-free access to the Single Market by means of **Free Trade Area** agreements. One reports states that all European countries outside of the EU have tariff-free access to the Single Market under FTAs, except Russia and Belarus.[27] Such FTAs do not require the signatories to adopt uniform external tariffs with third-party countries, nor to give up their right to sign independent trade agreements.

[25] How to leave the EU: What's best for Britain, best for the EU? Published by New Direction, the Foundation for European Reform. Page 44.
[26] European Parliamentary Research Department Service. Reply to Request number: 30645, 22-05-2017 from Gerard Batten MEP.
[27] How to leave the EU: What's best for Britain, best for the EU? Published by New Direction, the Foundation for European Reform. Pages 22-23

Such FTAs apply only to goods which originate within the members of the FTA. So, the problem of third-country exporters avoiding the payment of higher tariffs by routing their goods through one member of the FTA with lower external tariffs does not apply. It is standard procedure for the customs authorities of the FTA member states to check that goods do originate from other FTA members according to the 'rules of origin' procedures.

15.3 The Customs Union

A customs union is where the member countries abolish tariffs, and other restrictive regulations, on trade between themselves but levy tariffs and external customs duties on imports from third party countries. This is known as the 'common external tariff' (CET). This is necessary so that members of the customs union can know that one or more members are not sourcing components from outside the free-trade area at tariffs lower than those applied by the other members, thereby gaining a commercial advantage.

The CET is applied by product type, and the figures agreed by the customs union members are registered with the World Trade Organisation. The so-called Common Market set up by the Treaty of Rome was a customs union. The original intention may have been to protect member states from outside competition, but the EU is a member of the WTO and it has been steadily negotiating down tariffs internationally for the last forty years or more. As a result the tariffs on non-EU goods is now an average of about 4.3%; moreover, international tariffs are likely to be reduced further at the next session of the WTO Doha tariff reduction programme, in which the EU is a participant.

In their June 2017 general election manifestos both the Conservative and Labour parties made it plain that the UK will be withdrawing from the EU Customs Union as well as the Single Market. Concerning the Customs Union, there are basically two issues regarding Britain's post-Brexit relationship with the EU, and a possible tariff-free trade agreement, that need to resolved.

Firstly, there is the question of the customs duties on goods imported from third party countries, and potentially sold onwards into the EU. This can be solved by a 'rules of origin' agreement (for goods where tariffs still apply internationally) as the EEC did with Switzerland in the 1970s. Rules of Origin require each trading partner to adhere to a mutually agreed maximum non-partner content to allow the partners' goods to circulate tariff-free in each other's markets. If its works for Switzerland it can work for the UK.

Secondly, there is the need to ensure the continued absence of border checks. Since EU member states sell the UK more goods than we sell them, the EU has every incentive to continue with the existing arrangements. And see item 15.7 below for the four bullet points dealing with customs issues that explain the international agreements dealing with the facilitation of trade, and to which the EU is a signatory.

There is no benefit to Britain remaining in the Customs Union any more than there is in remaining in the Single Market. A worst case scenario would involve trading on WTO terms,

which is obviously no impediment to countries like the USA, Russia, China, Japan and India exporting vast quantities of goods into the EU.

15.4 The European Economic Area

The UK is also a member of the EEA by virtue of its membership of the EU (Article 128 of the EEA Agreement, 1st January 1994). When we leave the EU, we leave the EEA – we must not continue membership. The EEA agreement with three non-EU, **EFTA** (European Free Trade Area) members, Norway, Lichtenstein and Iceland provides for their acceptance of the full body of EU law, the 'Acquis Communautaire', and requires them to observe the EU's four fundamental freedoms: free movement of people, goods, services and capital.

The unfettered free movement of people is unacceptable to a majority of the British people. Membership of the EEA also runs contrary to the decision of the Referendum in that it would prevent the UK entering into bi-lateral trade agreements with non-EU countries, and it would subject us to a constantly increasing amount of EU law.

Article 127 of the European Economic Area Agreement says that a contracting party may withdraw provided it gives at least 12 months' notice. Once again, if Mrs May were serious about leaving under Article 50 of the Lisbon Treaty she would have given notice on becoming Prime Minister in July 2016. If she intends to give notice, then when? Is that 12 months after HM Government signs the withdrawal agreement with the EU? Does that mean yet another year of unfettered immigration thereafter? This is clearly intolerable to a majority of the British people.

As stated in item 6.2 above, the **Vienna Convention on Treaties** states that no provision of an international treaty overrides a fundamental constitutional principle of national law. Parliamentary sovereignty is a principle of UK law. Article 62 of the Convention says that withdrawal from a treaty is allowed if there is a 'fundamental change of circumstances not foreseen by contracting parties'. This is obviously the case post-Referendum. **Therefore, on leaving the EU, the UK must also unilaterally withdraw from the EEA without giving 12 months' notice.**

15.5 Existing EU Trade Agreements with non-EU countries.

As stated above in 15.2, the EU has a number of Free Trade Area agreements in place with non-EU countries that allow tariff-free access to the Single Market.

The EU also has a number of bi-lateral trade agreements with non-EU countries that also apply to the UK. Most of these are with small economies, but they include some big ones such as Canada, South Korea and Mexico. Normally when a federation of countries breaks up, the component states can and do inherit the trade treaties in their own right: for example, when Czechoslovakia because the Czech Republic and Slovakia.

The existing EU trade treaties could be 'rolled over' to the UK so that we can continue to trade with these countries on the existing terms.[28] The countries concerned are hardly likely to refuse this since it is to their benefit to continue. Following that, and outside the EU, we will be free to renegotiate the terms of these agreements for mutual benefit. A third of the existing agreements do not include services, and the UK can explore the possibilities of extending the agreements to do so.

The EU's trade agreements with non-EU countries do not in general require the freedom of movement of workers. The exception to the rule is the four EFTA states: Switzerland, Norway, Iceland and Lichtenstein; but that is by consequence of the EEA agreement which three of their member states belong to, but in the case of Switzerland by means of bilateral agreements between it and the EU. If Britain were to join EFTA it would not entail accepting the free movement of people.

15.6 The way forward: An offer the EU cannot refuse: continued Free Trade Area agreement for tariff-free trade

The European Parliament's **Committee on Constitutional Affairs** has published a report on ***Brexit and the European Union: General Institutional and Legal Considerations*** (January 2017). Regarding the negotiation process itself the report says this:

- The European Council will adopt the guidelines for the negotiations, setting the principles and overall positions. The European Council has nominated the Commission as the "Union negotiator", and former Commissioner **Michel Barnier** has been nominated as the Chief Negotiator.

- The representatives of the European Parliament will be kept "closely and regularly informed" throughout the negotiations. The Parliament's Conference of Presidents (Heads of Political Groups) has appointed **Guy Verhofstadt MEP** as the Parliament's Co-ordinator.

- It is understood that the negotiations will be concluded by October 2018, provided there are no unforeseen delays, and that **"there are no other surprises in the form of a possible involvement of the CJEU** (Court of Justice of the European Union)**".**

- The final decision on the withdrawal agreement will be voted on by the Council of the European Union by means of a so-called 'super-qualified' majority (72% of the members of the Council, comprising at least 65% of the population of these states). Consent of the European Parliament is by a simple majority - including UK MEPs). Negotiations can be extended, but only by a unanimous vote of the Council.

These negotiations are likely to be tense and difficult to say the least, given that the representatives of the EU have said that the 'four fundamental freedoms', most relevantly

[28] *An Amicable Divorce*, by Peter Lilley MP, *Brexit Seminar - All Souls College, 9th September 2017*, published in *Eurofacts,* 16th December 2016

freedom of movement, are non-negotiable. **The EU has four sticking points, the UK has only one, the free of movement of people.** The continued free of movement of goods, services and capital is acceptable, and even desirable, to the UK. **The question is, will the EU accept a deal with three out of the four things they want, achieved?**

Item 15.2 explains above that there are already Regional Trade Area agreements with non-EU countries that do not incorporate the free movement of people. Therefore, why should it be sticking point with the UK?

The secret of success in any negotiation is to understand your own strengths, and for your opposite number to understand that that you are prepared, if necessary, to walk away from the table with no deal. **It would be ridiculous for HM Government to participate in at least two years of protracted negotiations when the terms of the only acceptable deal are already known to both parties.**

There are basically two options for HM Government: to offer a Free Trade agreement with continued tariff-free trade, but without freedom of movement of people; or if that is rejected by the EU, then to revert to trading on WTO terms.

HM Government should make an offer the EU cannot refuse – or which it would be very foolish to refuse. It should offer continued tariff-free trade to the EU – just without the freedom of movement of people. This offer can be made in ten minutes, and agreed in an afternoon.

If the European Parliament or the European Council rejected such an offer then the European Union would have to explain to their industries and businesses why they did so, and why they were therefore responsible for the imposition of the Common External Tariffs on their goods sold to the UK. It is more likely that the German car-makers and French champagne and wine producers would have prevailed upon the German Chancellor and French President to prevent this happening.

15.7 WTO Rules

What happens if the EU refused Britain's offer of continued tariff-free trade? **Article 24** of the **World Trade Organisation's General Agreement on Tariffs and Trade** offers an alternative way forward. If the British offer of a Free Trade agreement was rejected or protracted, Article 24 (b) allows for an "interim agreement leading to the formation of a free-trade area" provided that the duties and regulations in each of the constituent territories are not "higher or more restrictive" existing prior to the interim agreement.

A "reasonable length of time" is allowed before the contracting parties have to impose the same tariffs they do on everyone else. A reasonable length of time has been interpreted by the WTO as 'not more than ten years'. Therefore, even if the EU initially rejected the offer of a continued tariff-free trade agreement it would be in the interests of the UK and the EU to

negotiate a new free-trade agreement with up to ten years to do so, during which time the existing arrangements would remain in place.

It is difficult to see why the EU would want to either reject the offer of an agreement for tariff-free trade, or continue with the existing arrangements while a new free-trade agreement is negotiated, given that **Article 8 of the Lisbon Treaty** states: ***"The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation".***

The biggest trading partners of the EU: the USA, China, India, Russia etc., do so on WTO terms. When Britain leaves the EU, if we fell back on WTO rules this would not be the disaster it is painted as by Remainers. Here are some reasons why:

- The UK and EU are both signatories of **World Customs Organisation** (WCO), which exists to simplify and resolve customs issues.
- The UK's rules and regulations are synchronised with the EU's regulations and standards after decades of membership; therefore, **Rules of Equivalence** will apply.
- The WTO's **Technical Barriers to Trade Agreement** (TBT) prohibits the EU from banning UK goods that meet international standards.
- The most recent WTO agreement **The Trade Facilitation Agreement** further increases trade cooperation. It is an agreement that, *"will expedite the movement, release and clearance of goods, including goods in transit, and which sets out measures for effective cooperation between Customs and other authorities, as well as provisions for technical assistance and capacity building in this area".* The FFA Agreement has been signed by 110 WTO member states.

If the UK trades with the EU using WTO terms the average tariffs are low – about 4.3%. This will affect EU businesses more than UK businesses since they sell us far more than we sell them – particularly those of Germany, France, Belgium and the Netherlands. These nations are far more likely to want to continue with tariff-free trade.

The current EU trade deficit with the EU of **-£88.7 billion** per annum.[29] The imposition of the Common External Tariffs would produce a considerable extra tax income for HM Government. This money would be paid by UK consumers on EU goods, however, the money could be used to make UK business more competitive by such means as:

- Reducing corporation tax
- Reducing energy prices (e.g. reducing VAT on electricity and gas)
- Improving the transport infrastructure.

Over time, UK consumers would also find cheaper suppliers on the world market.

[29] How to leave the EU:What's best for Britain, best for the EU? Published by New Direction, the Foundation for European Reform. Page 21

Under WTO terms the UK would have to register its tariff schedules with the WTO. There are broadly two options:

1. **Adopt a copy/paste of existing EU tariff schedules**. UK trade outside of the EU would continue as before. The adjustment of the pound exchange rate makes us more competitive and import tariffs go to the UK government and not the EU. The UK's WTO commitments currently form part of the EU's schedules. When we leave the EU, the government can submit new draft schedules to the WTO that replicate as far as possible our current obligations.

2. **Adjust the WTO tariff schedule**. This would give some flexibility and potential benefits, for example:
    - To abolish tariffs on commodities such as, for example, sugar cane, coffee, bananas, rice, rubber, to encourage fair trade and economic growth with developing countries and lower prices to our consumers.
    - Keep import tariffs on Bordeaux, but abolish it on grape varieties more commonly found in the New World, thereby encouraging trade with countries such as the USA, Australia and New Zealand, and lowering prices to our consumers.

The argument has been raised that the EU might try to punish Britain by refusing to certify UK goods that satisfy EU product rules under the Mutual Recognition Agreements. However, it does supply certification to other countries such as the USA, China and Japan, and not to do so to Britain would amount to an absolute denial of market access. Outside of the EU the UK could reach an agreement on mutual recognition of standards as other nations have done. A refusal by the EU would be discriminatory under WTO rules, and Britain could take the EU to court over what would plainly be an outrageous and unjustifiable discrimination. This is an extremely unlikely thing to happen and no doubt cooler heads in Germany and France would prevent it.

When the European Communities Act (1972) is repealed, HM Government will have the following options open to it:

I. HM Government could offer a Free Trade agreement for continued mutual tariff-free trade to the EU – on the basis of the freedom of movement of goods, services and capital, but **not** the continued free movement of people. Given the value of trade from the EU to the UK this would be an offer they would be foolish not to accept.

II. An FTA does not oblige the signatories to adopt uniform external tariffs in trade with third-party countries, nor give up their right to sign trade agreements with third-party countries.

III. Leave the European Economic Area (see item 15.3 above for details). Britain would be free to apply to join EFTA (European Free Trade Area) if she wishes. Re-joining EFTA would not entail accepting the free movement of people.

IV. The UK could observe Rules of Origin that would ensure imports from non-EU countries to the UK are not traded on to an EU member state with zero tariffs. An existing model for such a regime already exist between the Switzerland and the EU.

V. If the EU rejects the offer of continued tariff-free trade (see I and II) and imposes the Common External Tariffs on UK goods then the UK should reciprocate. The UK would then revert to trade on WTO terms.

VI. On Repealing the European Communities Act (1972) and formally leaving the EU the UK can recover possession of its independent seat on the World Trade Organisation, relinquished in 1973. Although UKIP rejects the Article 50 route, Mrs May having chosen it she should begin preparations for that immediately given that Article 50 has been triggered.

VII. The EU currently has a number of existing trade agreements with non-EU countries, including important ones with Korea and Canada. HM Government should offer these countries the continuation of these agreements on the same terms (where desirable), with the proviso that they can be renegotiated for mutual benefit in the future.

VIII. Outside of the EU the UK will regain the power to renegotiate and maintain its own trade agreements with non-EU countries, to act in its own interests and not those different self-interests of the other 27 member states, always recognising that in the post-Uruguay world it is the reduction of non-tariff barriers which are increasingly the main advantage of successful trade agreements.

16. Financial Services and the City

London's financial centre is one of the biggest in the world, matched only by New York. The UK financial services industry employs about 2.5 million people, accounts for about 22% of UK GDP, and provides about £66 billion per annum in in tax.[30] The City is the largest exporter of wholesale financial services in the world, and over the last thirty years it has become increasingly international, with US and global banks dominant.

The City of London was a world financial centre for centuries before the UK joined the European Union. International banks and financial businesses have set up shop in London for a number of reasons, including: our expertise in the financial services and banking industry; because English is an international business language; our system of contract law and trust in the impartiality of our courts and legal system; and the fact that we are midway between New York and Hong Kong and Tokyo in the world's time-zones.

Increasingly over the years the EU has sought to regulate and control the banking and financial services industries in the same way it has sought to regulate and control every other aspect of life and business within its member states' territories. For example, it has set up bodies such as:

- The European Banking Authority
- The European Insurance and Occupational Pensions Authority
- European Seismic Risk Council
- European Securities and Markets Authority (ESMA)
- The European System of Financial Supervisors
- Community Programme for Financial Reporting Auditing

These new bodies enforce the law of the European Union and have the power to close financial institution, backed up by various EU Directives controlling the banking and financial services industries.

The UK financial services industry enjoyed enormous growth for forty years since the 1960s, but that has now declined. Economist, Professor Tim Congdon puts that down, at least partly, to EU interference.[31] In order to remain a prosperous nation the UK has to protect its financial services industry, and encourage growth. To do that the UK government, post-Brexit, has to protect itself from the EU, while also preserving un-hindered access to the Single Market.

City institutions based in the UK have gained access by means of the 'Passporting' system that facilitates the provision of cross-border services to the EU. International financial

[30] The potential cost to the City of the loss of Passporting has been deliberately exaggerated by diehard Remainers. By Lord Flight. (http://brexitcentral.com/author/lord/flight/)

[31] Protecting the City of London After Brexit. By Robert Oulds, the Bruges Group. http://www.brugesgroup.com/pretecting-the-city-of-London?tmpl=comment&posting 30th November 2016

institutions set up regulated businesses in the UK and then use the right to passport into the EU.

The EU rule that grants UK financial businesses passporting access derives from **Article 46(1)** of the **Markets in Financial Instruments** (MiFIR) Directive. It grants non-EEA (European Economic Area) based companies the right to provide investment services in the Single Market without the need to establish a subsidiary business in the EEA (European Economic Area), and without the provider being under the control of the EU member state regulator.

However, the EU regulatory system is moving to the system of 'equivalence' for third countries, that is whereby the standards and rules they operate under are equivalent to those of the EU. This is vital if the EU wishes to retain access to global capital markets. The EU cannot afford to lose access to the City's expertise since it raises **85%** of pan-European capital financing.[32] The EU needs the City more than it needs the EU.

The UK will be 'equivalent' the day after it leaves the European Union. The House of Lords reported that the UK has implemented **41** out of **42** financial services regulations. The one exception being the **Alternative Investment Fund Managers Directive** (AIFMD).

This level of compliance is not surprising given that many of these regulations originated not from the EU but from global bodies, such as: The **World Trade Organisation** (WTO), the Organisation for Economic Cooperation and Development (OECD), the **International Monetary Fund** (IMF), and the **Bank of International Settlements**, and the **Financial Stability Board**.[33]

The Governor of the Bank of England is the Chairman of Financial Stability Board and guides the development of its regulations. In this role, the Governor has international influence in developing the global rules on financial services.

The WTO, through its **General Agreement on Trade in Services** is seeking to create international agreements that will dramatically open-up access to service industries. The UK is fully engaged in these negotiations for a streamlined 'Single Window' through which businesses can trade their services across national borders.

The Passporting system provides access to the Single Market and some experts advocate its continuation post-Brexit. However, others question its huge cost to the UK. It requires the UK to implement ill-focused and process driven regulation. EU member states account for about 20% of the City's business and it is questioned if this percentage justifies the blanket application of EU regulation across the other 80% of the City's business.[34]

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[32] The potential cost to the City of the lass of Passporting has been deliberately exaggerated by diehard Remainers. By Lord Flight. (http://brexitcentral.com/author/lord/flight/)

[33] Protecting the City of London After Brexit. By Robert Oulds, the Bruges Group.http://www.brugesgroup.com/pretecting-the-city-of-London?tmpl=comment&posting 30th November

[34] How UK financial services can continue to thrive after Brexit. By Barnabas Reynolds (http://brexitcentral.com/author/barnabus-reynolds/)

The challenge before HM Government is how to protect our existing financial services industry, and create the circumstances for future growth in a global market post-Brexit.

Barnabas Reynolds[35] has made proposals for two models that might be adopted: An **Enhanced Equivalence Model**, and a **Financial Centre Model**.[36] These are summarised as follows.

The **Enhanced Equivalence Model** would allow the UK access to the Single Market on existing terms under the EU's pre-existing "equivalence" regimes. Third countries (including the UK) would have access based on a determination that their domestic rules are equivalent to the EU's. The UK would not be required to implement EU legislation, only to maintain its own equivalent domestic rules. The USA, Singapore, Mexico and others have achieved equivalence on the basis of such legislation. The UK could, if necessary, redraft its domestic laws to comply with international standards, and to ensure that these laws are deemed equivalent to EU legislation.

An agreement with the EU could also include notice periods for the determination and removal of equivalence, and the creation of a dispute mechanism. If the EU rejects such an offer then the UK could opt for a Financial Centre Model.

A **Financial Centre Model** would allow the UK to detach itself from the existing EU regimes and give it the freedom to legislate in accordance with global standards. This would free the UK financial industry from the ever-increasing scope of EU legislation and the opportunity to create a market-friendly regulatory framework.

This approach would be most likely to bring increased business and growth to the UK's financial institutions. It would eliminate the inherent uncertainty caused by the ever-increasing scope of EU legislation.

HM Government should recognise that it is in a position of strength not weakness in its position regarding Brexit and the City. Once again, it should not try to negotiate with a body that has no incentive whatsoever to negotiate with it, but make firm and friendly proposals for what is going to happen, very quickly, one way or another.

Lord Flight[37] has summed this up when he says, *"My vision for the City is as a "super Singapore" or a "super Hong Kong", remaining the financial capital of Europe but with the freedom to develop its own business with other parts of the world".*[38]

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[35] Head of Global Financial Institutions for Shearman & Sterling LLP

[36] How UK services can continue to thrive after Brexit. (http://brexitcentral.com/2016/11/29/)

[37] Howard Emerson Lord Flight. former Deputy Chair, and former Shadow Chief Secretary to the Treasury, Conservative Party.

[38] The potential cost to the City of the lass of Passporting has been deliberately exaggerated by diehard Remainers. By Lord Flight. (http://brexitcentral.com/author/lord/flight/)

Following the Repeal of the European Communities Act (1972) the options[39] before HM Government include:

I. Offering the European Union, the continuation of existing passporting rights under an Enhanced Equivalence Model.

II. If that offer is rejected, in adopting a Financial Centre Model.

[39] A detailed explanation of these two alternatives can be read in **How to Leave the EU: What's Best for Britain, Best for the EU?** Section 3 The UK, Global Finance Services and the EU – Next Steps for Common Brexit Benefits, by Barnabas Reynolds. Published by New Direction, the Foundation for European Reform. **www.europeanreform.org**

17. Immigration, Border Controls and EU citizens 'vested rights'

17.1 Loss of control

Immigration was probably the single hottest topic during the Referendum campaign. Our Government's loss of control over immigration from EU member states brought home to most people, more than any other issue, that our government and parliament had lost democratic control.

When a Government has surrendered control over its own borders and over who can and cannot enter its domain then it can no longer seriously claim to have control over very much at all. And indeed, the more people came to understand the EU the more they understood how little control over anything of importance our so-called democratic government has.

Dismantling national borders is one of the ways that the European Union set about creating a centralised political state. Some of the other ways being: the creation of a de facto government in the form of the European Commission; a European Central Bank, and a European Central Currency; a Court of Justice; a Parliament; a flag and an anthem, to name just a few attributes of a state.

A centralised political state cannot have internal borders: therefore, the borders of the member states had to be dismantled. This was achieved by the **EU Directive 2004/38/EC Free Movement Rights of EU Citizens,** and various other Regulations.[40] Not only could EU citizens move anywhere within the Union they, and their families, were entitled to exactly the same entitlements as citizens of the state they move to.

When the EU was predominantly made up of countries with developed economies and similar standards of living mass migration was not a problem; however, when a large number of poor Eastern European countries joined the EU in 2004 the whole situation changed. The Labour Government in 2004 predicted that about 13,000 people would arrive per annum from Eastern Europe. In fact, hundreds of thousands arrived in that first year, and millions continue to arrive thereafter. Untold millions of people from poor underdeveloped countries migrated west to nations which held out the prospect of job, housing and social benefits undreamt of in their home countries.

This was no mistake by the Labour Government. It was a deliberate policy to collude with the EU in creating a borderless state, and for its own political purposes. The Labour

[40] Regulation 1612/68 on the freedom of movement within the Community confers equal rights and equal treatment, and specific social rights, such as tax and housing benefits, access to housing and education, entitlement for family members.

Government of 1997 to 2010 set out to engineer the creation of a 'multicultural and diverse' society. This was revealed in 2009 when **Andrew Neather**, who had worked for Home Secretary Jack Straw, and who had been a speech writer for Tony Blair claimed that there was 'a driving political purpose' behind Labour's decision to allow in hundreds of thousands of migrants.

Mr Neather said, *"I remember coming away from some discussions with the clear sense that the policy was intended…to rub the Right's nose in diversity and render their arguments out of date".*[41] Gordon Brown expressed the view of the Labour elite when he described a life-long Labour supporter, a Mrs Duffy, as a *"bigoted woman"* because she dared to question the wisdom of uncontrolled immigration.

Labour had two main objectives in promoting mass uncontrolled immigration: to undermine national identity and national loyalties in pursuit of its ideological commitment to the European Union and creating a multicultural society, and relying on the fact that new migrants are generally more likely to vote Labour. Successive Conservative, Labour and Conservative/Lib-Dem British governments have shown themselves as equally unwilling to control mass migration from outside the EU as from within it.

Various myths are propagated to justify mass migration. The main ones are: Britain has always been a nation of mass immigration; that mass immigration is necessary for the economy; and that we need continual waves of migrants to support an ageing population.

The first myth is easily dispensed with. England has been invaded by the Romans, the Anglo-Saxons, the Vikings, and finally by the Normans in 1066. These were invasions not migrations; and in fact, the Roman and Norman invaders were a relatively small as a percentage of the existing population but imposed their rule by means of violent and brutal repression.

Britain had nothing that could be described as 'mass immigration' from between 1066 to 1945. Those people who did come from the seventeenth century to the 20th century, the Huguenots, the Irish and the Jews, were always relatively small in number as a percentage of the existing population, and they were integrated and absorbed into society.

Only since the 1950s, and particularly since 1997, have we seen immigration in such vast numbers that transformed the nature of our society. In some case the migrants have no desire to integrate in our society in the way past migrants did. This has created unknowable problems for future generations.

17.2 Immigration and the economy

In April 2017, the **Office for National Statistics** showed that in 2016, **11.2%** of the UK workers were foreign nationals.

[41] The Daily Express, 27the January 2010

The highest number worked in wholesale and retail trade, hotels and restaurants. This sector employs 761,000 migrants of which 508,000 (66.75%) were from the EU.

A further 669,000 migrants worked in jobs such as selling or cleaning, including 510,000 EU nationals (76.23%).

Eight per cent of workers in manufacturing came from eight of the countries which joined the EU in 2004: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

Some 701,000 foreign nationals work in public administration, education and health care, more than 25% of them are from the EU.

Meanwhile **112,483** British job vacancies are advertised on the EU job vacancy portal 'Eures', or 7.8% of the total of 1,441,776 of the total vacancies advertised.

Many European countries, especially those of Eastern Europe, have average wages which are a fraction of those of the UK, and they have no public housing or social benefits systems that remotely compare with those of Britain. This creates a tremendous economic pull-factor for migrant workers to the UK.

In 2010 of Britain's **28.2 million** workers, **1.1 million** came from the EU.

In 2016, there were **30.3 million** workers, of which **3.4 million** were foreign nationals, with **2.2 million** coming from the EU and **1.2 million** coming from the rest of the world.

Those in favour of continued mass immigration would argue that these figures demonstrate that the economy needs foreign workers. But is that borne out by the economic facts?

The US economist **Professor George Borjas** wrote, *"there is no gain from immigration if the native wage is not reduced by immigration".* In other words, if some workers are not harmed by immigration (by lower wages) many of the benefits typically attributed to immigration – higher profits for business, lower prices to consumers – cease to exist. [42]

A Dutch government study in 2003 stated, *"The gross domestic product will increase, but this increase will accrue largely to the immigrants in the form of wages. The overall net gain in income of residents is likely to be small and may even be negative."*[43] All subsequent research by the, e.g. by the OECD (Organisation of Economic Cooperation and Development) has reached the same conclusion.[44]

[42] Warning, Immigration Can Seriously Damage Your Wealth. By Anthony Scholefield.
[43] Migration Watch UK. Briefing Paper 1.5
[44] OECD, Migration Outlook 2013.

The House of Lords Select Committee on Economic Affairs said in its report of 2008, *"Although possible in theory, we found no systematic empirical evidence to suggest that net immigration creates significant dynamic benefits for the resident population in the UK."*[45]

Immigration adds to the overall size of economy (Gross Domestic Product), because it adds to the size of the population. But the real measure of prosperity is not GPD but the per capita (per head) share of GDP. Since the recession, UK GDP is now **8%** above is pre-recession peak, but GDP per capita is barely **1%** higher. [46] There has been essentially no growth in living standards, in marked contrast to previous periods of much lower immigration. This was something well understood from personal experience by many who voted to leave in the Referendum.

17.3 Migrants' contribution to the economy

The advocates of continued mass immigration like to tell us that migrants make a net contribution to the economy. Migrants who work (as most do) pay taxes, but an OECD report found that on average immigrant households pay less in taxes and received more in benefits than native born households.[47]

In addition to being eligible for benefits, e.g. housing, tax-credits, child allowance, and unemployment benefits, migrants use the public services and infrastructure they have never had to contribute to: the NHS, the education system, roads, public transport etc. The more mass immigration there is the more the imbalance grows in those using these services compared to those how have historically helped to pay for them.

We can see from the ONS figures in 17.2 above that the majority of migrants are in low-skilled, low-paid jobs, and therefore pay less in tax and take more in benefits than higher skilled and higher paid workers would. Statistics published by HMRC showed that West European migrants pay nearly twice as much income tax as the average UK taxpayer, whereas Eastern European pay only half as much tax.[48]

EU funded research by EUROFOUND published in 2015 showed that Eastern Europeans were more likely than any other group (including those born in the UK) to claim working-age benefits, in particular tax-credits and child benefit.[49]

Meanwhile, mass migration has driven down wages for those native workers already at the lower end of the economic scale, jobs in the building trade being a prime example.

[45] House of Lords, 1st Report (2007-2008), published 1st April 2008.
[46] ONS Economic Review 2016
[47] Migration Watch UK. The true economic impact of large-scale immigration.
[48] HMRC. Further Statistics on EEA Nationals, 2016
[49] EUROFOUND. Social dimension of intra-EU mobility: Impact on public services 2015. See Figure 18.

17.4 The cost of immigration

Academic research on the overall fiscal cost of immigration to the UK has consistently found that immigration has a net fiscal cost. Findings only differ on the size and components of the costs.

In 2014, the **Centre for Research and Analysis of Migration** (CReAM) at University College London, produced a report on the overall cost of immigration between 1995 to 2011.

They found that immigrants to the UK had resulted in an overall fiscal cost of between **£114 billion** and **£159 billion** over this period.[50]

This cost was the result of lower migrant employment rates overall, lower wages for some particular groups, and the cost of providing public services and benefits.

Migration Watch UK used similar methodology to that used by CReAM to calculate the fiscal cost of all migrants for the year 2014-2015. They arrived at a figure of **£17 billion.**

All these factors relating to these costs remain the same and therefore we can expect continued mass migration to result in a similar scale of costs in the future.

17.5 Migrants and an ageing population

The arguments set out above are often countered by those who say that we need constant waves of new, younger, working migrants to pay for the needs of an ageing population, to provide for their care and pensions. This argument is nonsensical.

Most developed, and indeed developing, countries have ageing populations. This is a result of improving living standards, better nutrition and health care.

There are indeed problems to be faced because of people living longer for a variety of reasons, but continued mass immigration does not provide a solution. Migrants themselves grow old and will live longer in our society. The problem merely becomes compounded.

The **United Nations World Economic and Social Report for 2004** put it so, *"Immigration* (to Europe) *would have to expand at virtually impossible rates to offset declining support ratios."* In simple terms, the more migrants we bring in to look after an ageing and increasing population, the more migrants we will need in the future to look after the former migrants as they grow old - ad infinitum.

17.6 How many migrants can the UK take?

Immigration of itself is neither good nor bad. It depends on the numbers, the purpose, and the appropriateness of the migration. The USA in the nineteenth century had mass

[50] Migration Watch UK. The true economic impact of large-scale immigration.

immigration because it was an enormous and underpopulated country with vast areas of land and natural resources to be exploited. Britain in the 21st century is an overpopulated and post-industrial country where most of our labour-intensive industries have disappeared. We simply do not need mass immigration, especially of low-skilled and low-paid workers.

Britain is one of the most densely populated countries in the world. More densely populated than China, India and Japan. England is even more densely populated. Most people in the UK live in England, and most migrants come to London and the South. England's population growth is mostly due to immigration and is simply unsustainable. Anyone in England who uses the roads, public transport, health service, or education system would have to admit, if they are honest, that our infrastructure is buckling under the strain of an ever-increasing population.

Britain needs an end to the age of mass immigration. Leaving the European Union gives us a golden opportunity to devise a new immigration system that should be strictly limited and controlled. We need an immigration policy that benefits our nation as a whole, not one designed in the name of a political ideology (EU open-borders and multiculturalism), or one designed for the benefit of the migrant alone. We also need an immigration system that is fair and impartial, not one that has no barriers to EU citizens, but creates unfair barriers to non-EU citizens.

17.7 How can we control immigration?

Britain is fortunate in that it is an island. Anyone entering our country must do so via an airport or a seaport. There is no reason why we cannot control immigration if there is the will to do it. Approximately **140 million** people enter the UK every year (72 million through Heathrow Airport alone).[51] Needless to say many are British citizens returning from trips, or visitors who do not stay. But how can we know who is who, and control immigration?

Professor Stephen Bush's book, ***Britain's Referendum Decision and its Effects*** (2016) describes the various means of controlling immigration, and these cannot be fully detailed here.

In brief, they include:

Passport checks
Passport and visa numbers and dates of expiry of work permits can be recorded on entry and exit from the UK. This can be easily done as machine readable and biometric passports are standard in the EU and ABCANZ.[52] The Border Agency would be in a position to know who is entitled to entry, and who has overstayed their permission to be here and to require them to leave. HM Government should without delay introduce a system whereby certain countries can have visa free access as a present, while other visitors require a visa applied for before they leave, or a work permit for a limited time-period.

[51] Britain's Referendum Decision and its Effects. Professor Stephen Bush. Published by Technomica 2016.
[52] America, Britain, Canada, Australia and New Zealand

The Republic of Ireland 'Common Travel Zone'
The Republic of Ireland currently checks the UK entry certificates at their borders for non-EU nationals, and if they agreed to check operate a similar system for EU travellers (excluding Irish citizens) then the Common Travel Zone could continue. Travellers from Ireland to the UK have to land at a UK seaport or airport, and their passports can be checked there also.

Visas and Work Permits
Those EU nationals already working and residing legally in the UK (as from an agreed date) would be able to apply for British residency (Indefinite Leave to Remain), and without the need for a work permit, provided the other 27 EU states agree the same for UK citizens living there.

Those with less than five years' residency would have to apply for a work-permit with employer sponsorship (this could be extended to those who own their own business or are self-employed, with suitable proofs provided).

HM Government should design an immigration policy that decides which EU member states citizens should be allowed visa free access to travel to the UK, and which member states citizens would require a visa.

A basic principle is that EU nationals, not already in work in the UK but applying to work here in the future, must not be in a more advantageous position than citizens of the ACANZ (Australia, Canada and New Zealand) countries with non-UK ancestry. People with UK ancestry, known as **patrials** (as defined on www.ukba.homeoffice.gov.uk) are allowed to reside and work in the UK for up to five years, with their families, if they can show they can support themselves without resort to public funds.

There is already a **Visa Waver Scheme** between countries which accept reciprocally the entry of other countries nations without a visa. These are the UK, Canada, Australia, New Zealand, Norway, France, Germany, Italy, Belgium, Netherlands, Japan, and twenty-two others.

Entry for Study Purposes
According to the **Higher Education Statistics Agency** (HESA), in 2012-2013 there were 70,000 [53]EU and 110,000 non-EU overseas students on undergraduate courses at UK universities. That is just over **16%** of the total of 1.15 million full-time students.

In addition, there were 36,000 EU and 140,000 non-EU post-graduate students, making around 63% of the total.

At present EU students pay the UK home rate for student fees – which is in any case lent to them by HM Treasury. The repayment arrangements are so lax that it is doubtful whether

[53] UK Council for International Student Affairs. 20th December 2013.

half will ever be repaid – and in 2016 the Treasury was in the process of trying to sell its student loan book.[54]

This is a good deal for the students, and a good deal for the universities, but not a good deal for the taxpayer who funds it. How many EU students will continue to come when they have to pay the overseas student rate remains to be seen. The universities will have to make up their numbers by recruiting more non-EU students willing and able to pay their way.

The abuse of the student visa system was widespread and as the then Home Secretary, Mrs May did take measures to tackle it, reducing the number of bogus students. The number of overseas students can be distinguished from the total immigration figures, and the universities must be required to assist the Border Agency to ensure that students who have finished their courses leave the country.

Immigration controls between Britain and France

One of the scare tactics used by David Cameron during the Referendum campaign was to say that if we voted to leave this might result in the *"French pulling out of the Le Touquet Agreement",* and the, *"migrant camps in Calais moving to Britain".* The Anglo-French Le Touquet Agreement has been in place since 1993 and allows Britain and France to establish immigration controls in each other's territory.

There are Anglo-French immigration controls in Dover, and in Calais; for the Channel Tunnel controls are in place in railway stations: London St Pancras, Ebbsfleet, and Paris Nord, Lille and Brussels. The Agreement also includes Belgium and has worked very well for over twenty years.

The Le Touquet Agreement is a bilateral agreement between Britain and France, and of course Belgium, and has nothing whatsoever to do with the EU. It is in the interest of all three nations to continue with it – especially given the continued threat of Islamic terrorism.

17.8 UK citizens living in the EU

Much has been made by the UK political classes of the urgency to protect the rights of EU citizens in the UK without much thought or emphasis given it seems to protecting the rights of UK citizens living in EU member states. One thing that Mrs May has said, quite correctly, is that she will seek a reciprocal arrangement that protects both sets of people. This may be easier said than done since HM Government can agree the arrangements for the EU citizens living here while 27 other EU member states have to not only agree but implement the safeguards for our citizens.

United Nations figures published in 2015 stated that **1.2 million** British citizens live in EU countries while about **3.3 million** EU citizens live in the UK. A full breakdown of the county by country figures are given in **Appendix V.**

[54] Britain's Referendum Decision and its Effects. Stephen Bush. Published by Technomica. 2016. Page 86.

According to the UN about **400,000** of the British citizens in the EU are retired and about **800,000** are workers and their dependents. Most British people working in the EU are either engaged in skilled or productive work or living on their pensions. Unlike the UK most EU member states do not have comparable health or social benefits systems.

One difficulty in negotiating the rights of citizens is that the EU will not able to enforce an agreement in its member states. The UK can make an agreement but it is relying on 27 other individual states to abide by it. It may be necessary for HM Government to reach separate agreements with each member state.

17.9 Migrants and 'Vested Rights'

Under the EU treaties the UK owes countless legal obligations not merely to the other 27 member states but also to 500 million 'EU citizens'. We need not only a 'divorce', amicable or otherwise, from the EU but also from every one of its citizens.

A judgement from the **European Court of Justice in** 1963 put it so: *"The Community constitutes a new legal order…the subjects of which comprise not only Member States but also their nationals. Independent of the legislation of Member States, community law not only imposes obligations on individuals but also is intended to confer upon them rights which become part of their* ***legal heritage*** (emphasis added)*".*[55]

The European Commission in negotiating the Withdrawal Agreement would have a legal obligation to protect the 'vested rights' of all EU citizens, and it could be in breach of EU law if it did not. This could well be the issue that Remainers use to take the Withdrawal Agreement to the Court of Justice of the European Union in order to overturn the whole thing. They might not just delay it but derail it. Alternatively, if HM Government accepts the principle of vested rights it will be a betrayal of the Referendum decision.

In short, what vested rights could mean, is that every right that EU citizens had up until the moment that Britain formally leaves are remain in place and are protected for the rest of their lives. That would include the last baby born up until the moment the Prime Minister signs the Withdrawal Agreement.

To give just one example of what vested rights could mean, every EU citizen born up until the moment the Withdrawal Agreement is signed could claim the right of freedom of movement to the UK, and the right to the same entitlements as British citizens in the UK. Given that the oldest EU citizen recently died aged 117,[56] it could take well over a century for us to effectively leave the European Union.

HM Government must reject the concept of vested rights and legislate accordingly.

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[55] Case C-26/62m van Gend & Loos, 1963. E.C.R.1

[56] Emma Morano born 29t November 1899, died 15th April 2017 in Verbania, Lake Maggiore. Daily Express 16th April 2017.

Any sensible immigration policy would include the following:

I. Taking back control of our immigration policy and borders controls.

II. End the unrestricted free movement of people from the European Union

III. Introduce a new visa system for skilled and key workers.

IV. Restrict free access to the NHS and the benefits system to migrants who have paid taxes for at least five years.

V. No amnesty for illegal immigrants.

VI. Migrants who are convicted of serious criminal offences will be deported.

18. Farming: The Common Agricultural Policy

The Common Agricultural Policy **(CAP)** has controlled British agriculture since early 1973, and from the farmers' perspective, the early years up to 1984 were in retrospect a golden age. Guaranteed "Intervention" prices for most farm commodities increased each year irrespective of consumer demand, and the quality standards required for 'Intervention Stores' were easily achieved. Intervention Stores were large grain stores rented by the Commission to store grain that they had intervened into the market to buy. These regular price increases were enhanced by big increases in productivity thanks to emerging technologies.

The knowledge that a farmer could always fall back on selling to an EU Intervention store forced the buyers of farm commodities to match the Intervention price. These buyers were prevented from purchasing from beyond the EEC by punitive import tariffs. As surpluses built up in the stores they were dumped on the world market with the help of Export Refunds (subsidies).

All of this was available to farmers with very little regulatory imposition from Brussels and inevitably it was too good to last. By 1984 the system could no longer cope. Milk quotas were imposed as a reaction to the "milk lakes and butter mountains" that were accumulating rapidly as a result of the production incentives. Whilst there was ready acceptance of the principle of milk quotas, the way the bureaucrats administered this policy astonished everybody. Utter turmoil ensued at great cost to individual producers, which took years to resolve. A few months later, the weather delivered Europe a massive harvest resulting in colossal surpluses and "grain mountains" in intervention storage, and a lot of bad publicity for the industry.

The UK's own Agriculture Ministers were powerless to oppose the CAP 'solutions' to these problems, but they were obliged to enact them. Access to Intervention became more difficult, export restitutions gradually reduced, and the **GATT** (General agreement on Tariffs and Trade), the precursor to the **World Trade Organisation** (WTO), forced down EU import tariffs resulting in lower prices to farmers. This was of course better news for consumers who had hitherto footed the bill for artificially high food prices, irrespective of their own incomes.

As well as milk quotas to limit milk output, the concept of "set-aside" was introduced in order to reduce grain output. In order to qualify for the annual payment, farmers had to leave a certain percentage of their farm uncropped. Farm livestock were supported by "headage" payments, which appeared easy in theory, but in practice had to confront the reality that animals are born and die every day, and are bought and sold every day.

In order to manage this new level of control over farm businesses, in 1992 agricultural support changed dramatically in the way it was administered. This was known by the acronym **IACS (Integrated and Administrative Control System).** Consumers were no longer to foot the bill through high food prices. Instead, taxpayers subsidised farmers through

a system of direct grants. These grants were designed to be at a level to compensate farmers for the loss in production incentives.

In principle, this was a more equitable system and the poorest in society benefited, because whilst all taxpayers are consumers, not all consumers are taxpayers. However, the Member States struggled with the complexities of dealing with every farmer, every animal and every land parcel individually. Administration costs were high, errors were made and delays were experienced. Initially different rates of grant were paid on different crops. Official maps of fields were often out of date, so it was difficult for farmers to justify their claims. Farmers' errors on the forms were technically "fraud", whilst mistakes on the forms made by officials were difficult to challenge.

Just as all this had started to bed down, in 2005 the rules were changed again under further pressure from the WTO and increasing awareness of the environmental impact of the farm payments system. Any occupier of agricultural land could claim a payment known as the **Single Farm Payment** or **SFP**. Crops did not need to be grown, but all the land must be kept in **GAEC** (Good Agricultural and Environmental Condition) and be subject to cross compliance rules, reflecting the underlying conditions being attached to land ownership by the EU. Defining this term was a paradise for bureaucrats and has made the forms so complex that most farmers now pay a consultant to fill them in.

In parallel to the process of CAP reform, it must be remembered that the signing of the **Single European Act** by Margaret Thatcher in 1982 gave Brussels the right to intervene in UK Environmental policy. After a few years, regulations started to descend on farmers, enforced through the cross-compliance system, and there has been no let-up since. Some very bad decisions were taken that HM Government was forced to enact. For example:

1. farmers were banned from burying animals during the Foot & Mouth disease outbreak in 2001. They were obliged to burn them instead. This was contrary to British veterinary advice at the time, resulting in a worsening of an already bad situation and terrible images in the press devastating rural communities.

2. The EU's food safety scheme, HACCP (Hazard Analysis and Critical Control Point), a systematic approach to food safety to include biological and chemical risks, was open to fraud because it requires traceability to be "one up, one down" only, with no whole supply chain accountability. This allowed the "Horsegate" episode where horsemeat was labelled and sold as beef in British supermarkets.

3. Single Market rules forced many British pig farmers out of business. These producers were obliged to adhere to much higher British animal welfare laws, making their meat more expensive to produce. Other EU producers were under no such obligation at the time and were easily able to undercut the British product in the British market. Welfare rules in theory have been harmonised since but remain poorly enforced in certain Member States, so the problem persists.

4. The EU is relentlessly banning essential pesticides used in agriculture. This is not happening elsewhere in the world: and yet under WTO rules agreed by the EU, produce grown with the benefit of these pesticides can be imported into the EU.

The most recent round of CAP reform in 2013 introduced the most bureaucratic and controlling system yet, with farm payments now being partly conditional on an additional layer of 'greening' requirements, including setting land aside for "environmental focus areas" and ensuring that each farm unit, regardless of size and management structure, grows at least three different crops per year. The greening element of the direct payment grant is intended to compensate farmers for these artificial inefficiencies. In practice, however, compliance with the system has become almost impossible, resulting in delayed payments and a high level of dissatisfaction amongst Member States and farmers. The current agriculture commissioner has made "simplification" of the CAP his political priority as a result[57], but can achieve little without the prohibitive complexity of amending the basic Regulations themselves.

In addition to the complexity of the CAP, UK farmers currently also have to contend with excessively complex and contradictory environmental policies from the EU. Over the years, NGOs, often financed by grants from the EU, have been extraordinarily successful at pursuing a "green" agenda in the Commission. Whilst some of their objectives are desirable it has filtered through to create a mindset in **DEFRA** (Department for Environment, Food and Rural Affairs) where food production and safety of property must always take second place to environmental ambitions. For example, the Water Framework Directive requires river basins to be returned to "Good" status, which is deemed by environmental NGOs to mean "natural" status. As a result, regular dredging of rivers was considered "bad practice" resulting in appalling flooding problems a few years later.

An EU of 28 countries, with plans for expansion, covers a huge range of cultural behaviours, economic prosperity, climatic conditions and technical abilities to the extent that it is simply impossible to have a "one size fits all" approach to agriculture. There is no "common" in the Common Agricultural Policy. The often conflicting priorities of consistent, safe food production and environmental protection create continuing confusion over policy making and implementation, resulting in a complete and unmanageable mess.

To sum the situation up, British taxpayers are putting **£6 billion** per year into the CAP, whilst British agriculture receives **£3 billion** per year back. The administration of what does come back is expensive, made worse by the fact that our Government is regularly fined by the EU for not doing it properly. Much of the money is paid to very wealthy individuals and large corporations who could, and should, use their economies of scale to their advantage. An unwelcome side effect is that, combined with generous inheritance tax exemptions, older farmers view the payment as a pension for doing very little with their farms and thus depriving young entrants of access to land.

Repealing the 1972 European Communities Act will immediately allow the repeal of former EU legislation that hinders agriculture. It also creates the opportunity to change other EU legislation where the essence is sound enough, but where changes are needed to make it appropriate to British conditions. Note though that some EU legislation is a consequence of International Agreements or is in the process of being harmonised at global level, such as the chemicals approval process. Repealing the particular Directive would therefore only be a cosmetic exercise, or the UK would otherwise be wise to participate in global harmonisation procedures.

[57] https://ec.europa.eu/agriculture/simplification_en

Britain grows about 62% of the food it consumes (down from 72% in 1990).[58] The £3 billion per year received in grants amounts to about 30% on average of farm incomes. The biggest payments tend to be going to the best grain producing farms, the occupiers of which are already benefiting from the economies of scale. The farming industry produces about £10 billion per year of agricultural output and employs about 240,000 full and part-time workers. There is a huge opportunity to design a food and farming policy fit for Britain following Brexit.

On Repealing the European Communities Act (1972) HM Government would be free to:

I. Leave the Common Agricultural Policy and restore freedom of action in farming policy in order to benefit British farmers and address their particular needs.

II. Adapt the EU's Single Farm Payment (which is acceptable to the WTO) to British conditions, and targeted at those who take the risks in agriculture and tapered to allow for economies of scale. However, this will take time and the subsidies currently paid to British farmers should be guaranteed for a period of time until an alternative system can be put in place. Such a scheme must reward work and effort that improves the environment.

[58] Britain's Referendum Decision and its Effects, by Professor Stephen Bush. Published 2016 by Technomica.

19. Fisheries & UK Territorial Waters

19.1 The Common Fisheries Policy

The EU's Common Fisheries Policy was quickly cobbled together in 1970 by the six original member states of the European Economic Community before the start of the negotiations with four new accession countries: **Denmark, Ireland, Norway** and the **UK**.

The CFP was founded on the principle of 'equal access to EEC (EU) waters; and this was done for a good reason. The existing EEC member states realised that the seas around the new entrant countries contained over **90%** of western Europe's fish stocks, with **80%** of those in the UK's territorial waters. The CFP was deliberately created as a means of grabbing the new entrants' marine resources by imposing the non-negotiable legal principle of 'equal access'.

Such was Prime Minister Edward Heath's determination to take Britain in to the EEC, at any cost, that he accepted the CFP. Since 1973 the UK's territorial waters have been plundered by the industrialised fishing fleets of France, Spain and Portugal, to name just three. HM Government cannot even quantify the exact economic cost of the CFP because, as the **UK Marine and Fishing Authority** stated to the author in 2007*: "we cannot identify UK waters, they are now identified as part of EC waters."* Nevertheless, the cost amounts to billions of pounds per annum in lost catches; and our once proud fishing industry has been reduced to a shadow of its former self, with massive job and tax revenue losses in fishing and its ancillary industries.

The CFP has rightly been described as an 'obscenity' because of its fishing quotas and the 'discard' policy that requires fisherman to throw back dead fish caught, but outside their quota. Eurostat data estimates that a staggering **1.7 million tons**, or **23%**, of all fish caught are thrown back dead in to the sea. This is environmental and economic madness.

On the repeal of the European Communities Act (1972) the UK can repudiate the CFP, take back control of its territorial waters, and recreate its fishing industry. This will create jobs for fisherman, in ancillary industries, and benefit the consumer and HM Treasury in tax revenue.

Repeal of the 1964 London Convention on Fishing

In 1966, the UK ratified its agreement to enter into the little-known **Fisheries Convention.** This Convention was between the Governments of **Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the UK and Northern Ireland**.

The London Convention 1964 is an agreement between twelve European nations and the UK, which recognises the historic fishing rights of vessels from the contracting parties to fish in the band of waters between 6 and 12 nautical miles from the UK coast.

When the EU's Common Fisheries Policy, which currently dictates, who can fish what and where, ceases to apply, the UK can automatically establish control of a 200-mile **Exclusive Economic Zone** (EEZ) and reclaim all fishing resources within; under international law. This action will exclude all EU vessels from fishing within 200 miles of the UK coast, or at a median line in between two coasts if closer.

However, the existence of the pre-EU, 1964 Convention could offer a 'back door' to continued EU fishing in British waters; as this non-time limited legislation will once again become relevant in international law on our withdrawal from the EU. Vessels of the signatory nations wishing to continue fishing within the 6 to 12-mile band around the UK could do so simply by claiming 'historic rights' using this legislation as their justification.

However, article 15 of the Convention allows for withdrawal from the terms following a 2-year notice period. But time is of the essence if the UK fishing industry is not to face a period of 'overlap'. While we have had vague promises from the Government to "look" at triggering article 15, no concrete action has been taken.

The simple fact is, the Government's willingness to revoke the 1964 London Convention on Fishing could be indicative of their intentions for the fishing industry in the post-Brexit era. But to date, we have had nothing more than a vague outline of intentions.

The following extracts from the London Convention on Fishing demonstrate the dangers inherent in it to Britain's interests should we continue in it after leaving the EU and the Common Fisheries Policy.

- *"This Convention grants the contracting parties access to fish in UK waters:*

- *"ARTICLE 3 Within the belt between six and twelve miles measured from the baseline of the territorial sea. (This was before 200-mile limits were recognised in the 1970s.)*

- *"ARTICLE 15 The present Convention shall be' of unlimited duration. However, at any time after the expiration of a period of twenty years from the initial entry into force, any Contracting Party may denounce the Convention by giving two years' notice in writing."*

The repeal of the European Communities Act (1972) would allow HM Government to do two essential things:

I. Remove the UK from the EU's Common Fisheries Policy, and repudiate it in its entirety.

II. Immediately restore the UK's 6-12 mile territorial waters boundary and establish a 200-mile **Maritime Exclusive Economic Zone**, including for marine, seabed, and mineral resources therein, in accordance with international law. Under international law the UK has rights to 70% of Continental Shelf, according to the 200 mile/median line division between countries bordering it.

20. Police and Criminal Justice Measures

The European Union has for many years been creating its own system of criminal law, intended to supersede those of its member states; and which the EU has ironically termed, 'an Area of Freedom, Security and Justice'. The UK of course enjoyed an area of freedom, security and justice for centuries, whereas many EU member states have only relatively recently emerged from communist and fascist dictatorships.

The English legal system, which evolved over more than a thousand years, is fundamentally different from continental systems; but this fact was lost on successive British governments, and which had also apparently forgotten that the British already lived in an area of freedom, security and justice - known as the British Isles.

The EU has set about creating its own system of criminal law by means of various legal institutions and legal instruments. The process began in **Tampere** in Finland in 199**9** when the European Council met and agreed the principle of 'mutual recognition', a fiction whereby all member states legal systems are held to be of equal standing as every other member state. The process on integration continued with The Hague **Programme** of 2004, and the **Stockholm Programme** of 2009.

Under the Lisbon Treaty (2007) HM Government was required to either permanently opt-in or opt-out of 135 pre-Lisbon measures. This could be done on a piece by piece basis, and the decision was required by the end of 2014. The Conservative and Lib-Dem Coalition Government, with Theresa May as Home Secretary, chose to opt-in to 35 measures.

The bare numbers are however misleading in that several pieces of legislation, may regulate the same legal instrument or institution, and indeed duplicate each other. For example, the celebrated 'repatriation of 100 measures in 2014 was a favourable spin given to a trivial job of cleansing obsolete or duplicative legislation from the statute book; whereas, the 35 measures permanently opted into were are all significant, and EU powers were preserved and increased.

Appendix VI contains a list of the main legal instruments, information databases, legal institutions and organisations, and how when Britain leaves the EU they can be replaced with pre-existing international conventions, mutual co-operation measures, and Interpol databases.

How will the withdrawal from the EU's 'common area of freedom, security and justice' affect law enforcement in the UK? Three general points need to be made:

Firstly: any system of law enforcement has to balance the efficiency of policing against safeguarding the liberty of the individual. Few law enforcement professionals will refuse to have more information or more powers; however, if their natural tendency is followed uncritically, liberty of the subject is gravely undermined. Even a succinct list of EU's law enforcement laws, described neutrally, makes it clear that the EU is moving towards a centralised legal system outside of national control. A closer analysis and specific cases

support that conclusion that the UK's exit from the EU gives us an opportunity to restore the balance.

Secondly: the justification of such a comprehensive EU-wide system of law enforcement is that the EU-wide free movement of people means, among other things, free movement of criminals and perfect conditions for cross-border crime. That will cease to apply to the UK after our exit, which will render this degree of integration of law enforcement systems unnecessary.

Thirdly: the EU-wide system of law enforcement was not created in a vacuum. There are adequate pre-existing non-EU mechanisms of international cooperation for fighting crime, which have worked satisfactorily prior to the EU's innovations, and still work in our relations with countries outside the EU. Whatever is worthwhile in the EU system largely duplicates **Interpo**l, the **Council of Europe Conventions** on extradition and mutual legal assistance, and/or direct bilateral cooperation between law enforcement agencies. See **Appendix VI** for further details.

Recently, there has been a number of worrying indications that Mrs. May's approach is very different to what is suggested above. Rather than dismantling the EU interference in criminal legislation, the government apparently aims to negotiate a continued participation in the EU's Police and Criminal Justice measures. In particular:

- The Brexit Secretary has identified "maintaining the strong security co-operation we have with the EU" as one of the government's four "overarching strategic objectives" in Article 50 negotiations with the EU.[59]

- Despite the Referendum, decision the government reversed its original decision not to opt into the new Europol Regulation.

- On 29th December 2016, it was reported that the government intends to "demand a leading role in Europol after Brexit".[60]

- Each of the 'opt ins' now in force results from an express decision of the Conservative and Lib-Dem Coalition government. As Home Secretary, Mrs. May was directly responsible for each of the 'opt ins', and is personally committed herself to the view that each of them was in the national interest.

- A letter of 6th December 2016 from the Home Office confirmed to the author that the Government was to enact in law the **European Investigation Order** on 22nd May 2017. The EIO will require British police forces to investigate British citizens on their own soil by order of foreign authorities.

We have no reason to trust Mrs May on Brexit: She was a Remainer in the Referendum campaign, and as Home Secretary from 2010 to 2016 she was an apologist for, and an

[59] HC Deb, 12 October 2016, col 328
[60] http://www.telegraph.co.uk/news/2016/12/29/exclusive-britain-will-demand-leading-role-europol-brexit/

enthusiastic enforcer of, EU Police and Criminal Justice legislation – her position on the **European Investigation Order** merely confirms that.

It is therefore likely that in its Article 50 negotiations with the EU, the present government will aim to remain within the EU's 'area of freedom, security and justice'. Moreover, it is possible that they will justify concessions in other areas as a price paid for future participation in EU's PCJ measures.

The repeal of the European Communities Act will give HM Government and Parliament the power to repeal and amend the Acts of Parliament that have transposed EU legislation on Police and Criminal Justice into Acts of Parliament. This should include:

I. HM Government should put a Bill or Bills before Parliament to repeal the 2004 Extradition Act (i.e. European Arrest Warrant), the European Confiscation Order, the European Supervision Order, the European Investigation Order, and all the other EU laws on police and criminal justice issues and replace them with the pre-existing Council of Europe Conventions (See Appendix VI, 3. Organisations).

II. HM Government should withdraw from Europol, and its various databases, and revert to the use of Interpol's pre-existing databases.

III. HM Government should withdraw from the EU agencies, Sirene and Eurojust.

A detailed description of the EU Police and Criminal Justice laws in place, and pre-existing international co-operation agreements that can replace them is given in **Appendix VI.**

21. The National Health Service

Although 'health' is not yet one of the EU's so-called 'competencies, and does not yet fall under their dominion, nonetheless our membership of the EU affects our National Health Service.

There are a number of areas that require comment and action. The solutions are presented at the end of this section.

- European Health Insurance Cards (EHIC)
- EU Bureaucracy
- NHS Staff Shortages
- Immigration Pressures
- 'Health Tourism'
- EU Language and Competency Rules
- EU Research Funding
- Other Considerations

21. 1. European Health Insurance Cards (EHIC)[61]

European Health Insurance Cards (EHIC) provide the bearer with access to state-provided urgent healthcare during a temporary stay in another European Economic Area (EEA) country or Switzerland, on the same basis as it would be available to a resident of that country.

The EHIC only covers emergency treatment; it does not cover going abroad to seek medical services. Having an EHIC means healthcare is likely to be considerably cheaper that it might be otherwise, as without an EHIC an EU citizen would not be treated as a resident of the country they are visiting, and might be charged considerably more for treatment.

For EEA nationals coming to the UK, care is provided free of charge. Countries can claim back health costs from other European countries if their citizens use medical services abroad.

Five million EHICs are handed out in the UK every year, but there are no records of how many are being given to foreign nationals, as opposed to British citizens. Over 27 million Britons have an EHIC, facilitating immediate access to healthcare when abroad, and over 1.2 million UK citizens living in the EU, including our pensioners who chose to retire to Europe, are entitled to healthcare abroad.

UKIP is in receipt of conclusive evidence that it is still possible to fraudulently obtain an EHIC to which you are not entitled, even from the official EHIC website.[62] This means non-EEA nationals can abuse them to obtain free NHS services they would otherwise have to pay for.

[61] http://www.nhs.uk/NHSEngland/Healthcareabroad/EHIC/Pages/about-the-ehic.aspx
[62] www.ehic.org.uk

The NHS does not reclaim money back from other countries with sufficient rigour, or else they are ignoring our claims. For instance, in the year 2015/6, the UK paid out more than **£674m** under the EHIC scheme to pay for the cost of treated British citizens abroad, but claimed back less that **£49m** even though there are significantly more EU citizens in the UK than UK citizens in the EU.[63]

Many EU countries do not have public health services comparable to the NHS. Therefore, we are providing a free service for those EU citizens where a reciprocal service for UK citizens simply do not exist. In many EU countries, their citizens have to pay into health insurance schemes to be entitled to treatment. Some countries, such Greece, have chaotic and disintegrating public health services.

21.2 EU Bureaucracy

The EU puts many additional pressures on the NHS, without necessarily raising standards. For instance, EU regulators sign off surgical tools and instruments of not as high a quality as the UK requirement. **The Royal College of Surgeons** says it would prefer to see proper standards on medical devices imported from other countries.[64]

There are also several EU directives the NHS may benefit from being freed from, post-Brexit. For example:

The EU Working Time Directive. This directive limits working and training time to 48 hours per week, and that in turn restricts the NHS's ability to deliver training. Surgeons in particular are not able to gain the same experience a registrar previously had when appointed to consultant positions, which threatens standards and patient care. **The Royal College of Surgeons** estimates that compliance with the working time directive costs each doctor approximately 3,000 hours of training time in the eight to 15 years it takes to qualify as a consultant surgeon.[65]

The European Court of Justice has taken a very hard-line approach to enforcement of the WTD. However, junior doctors can now opt-out of it voluntarily.

The EU Procurement Directive. This directive was introduced to ensure all EU businesses had an equal opportunity to bid for public sector contracts across the Union. In practice, it slows down the procurement process; adds additional advertising costs for the procurer; and, because certain standards have to be met, excludes smaller providers from the ability to bid. Over 40 per cent of NHS Trust leaders surveyed for the Guardian in 2016 felt that leaving the EU would have some positive impact or even a very positive impact. *'"EU procurement rules are unnecessarily labyrinthine"* summed up the general mood'.

Cutting the cost of procurement could be a lifesaver for the NHS: for every 1% reduction – a reasonably conservative target – in hospital trusts' annual procurement expenditure of £22bn could, for instance, pay for more than 4,000 extra junior doctors.[66]

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[63] http://news.sky.com/story/nhs-scandal-as-uk-pays-millions-to-eu-10189381

[64] http://www.telegraph.co.uk/news/2016/07/17/brexit-will-make-the-nhs-safer-top-surgeon-says/

[65] Ibid

[66] https://www.theguardian.com/public-leaders-network/2016/oct/18/chaotic-nhs-procurement-save-220-million-pounds

The EU Clinical Trials Directive
This directive renders academic led studies carried out in Britain illegal if not performed to EU standards. The number of clinical trials undertaken in the UK reduced by a third when it was introduced. The UK had been a world leader in such studies, but no more.

21. 3 NHS Staff shortages

Around **9.8%** of doctors and **7.4%** of nurses working within the NHS are from the EU, and around **167,000** EU nationals work in health and social care in England.[67]

Given that we are currently short of at least **108,000 GPs**, 24,000 nurses and **3,500 midwives**,[68] we need EU nationals already working in the health sector to continue to do so. We should also continue to welcome the expertise of EU nationals as part of a controlled immigration policy.

21.4 Immigration Pressures

The cost of immigration to the NHS is notoriously difficult to quantify. Different studies draw different conclusions, depending on prior assumptions. The NHS does not appear to keep its own statistics – the public sector generally does not log country of origin on the frontline.[69]

However, even if migrants to the UK are contributing to the economy, and therefore the NHS, as taxpayers, they are using an expensive public service to which they have not previously contributed. Their potential cost to the NHS is immediate and significant, while the need for additional doctors etc., to cope with the growing population can only be met over time.

Currently, some **165,000** EU migrants arrive in the UK every year. This inevitably adds to the pressure on the NHS. In total, an estimated nine million migrants from across the world have arrived in the UK since 1997, although net migration is around half that figure.

21.5 Health Tourism

'Health tourism' is the shorthand phrase used to describe those who seek medical care in the UK without having suffered the inconvenience of contributing to it financially through taxation. Although it implies foreign nationals coming to Britain with the express intention of seeking free healthcare – and indeed there are many that do this – there are also those visitors to the country with no travel insurance who fall ill or suffer injury.

[67] NHS Staff from overseas: House of Commons Library Briefing Paper No. 7783. 10th April 2017
[68] According to their respective Royal Colleges.
[69] https://fullfact.org/europe/eu-immigration-and-pressure-nhs/

In other cases, the NHS finds itself shouldering the cost for people legally resident in the UK who do not have health insurance and do not qualify for free care; and those who are here illegally or who have overstayed their visa.

'Health tourism' costs the UK an estimated **£2 billion** every year. The real figure may be much higher. Some dismiss it as a 'non-issue', saying this sum is only a small percentage of the NHS England budget of some **£116 billion**. However, even if we assume only half of the estimated figure recoverable, that is **£1 billion** that could be saved. That represents a great may hip, knee, and cataract operations, or would be enough to build and equip two new hospitals, or employ around 4,000 nurses.

21.6 EU Language and Competency Rules

Under current EU legislation, all doctors and dentists who come to the UK from other member states must pass an English language test. This test, however, is based on everyday scenarios, and not on the medical environment. In addition, national regulators are not allowed to insist that applicants from other EU countries prove their technical vocabulary in a clinical setting. This potentially puts patients doubly at risk.

Under EU rules, the UK is also signed to reciprocal recognition of medical qualifications, even though standards in the rest of the EU might not be as high as those in the UK.

21.7 EU Research Funding and Innovation

UK organisations are the largest beneficiary of EU health research funds, having brought well over **€300m** into the country since 2014.[70] **However, there is of course no such thing as EU money.** The UK is the second biggest net contributor to the EU budget and we are merely getting our own tax payers money back.

EU collaborative research opportunities also help the NHS speed up the translation of medical discoveries into healthcare provision. We suggest it is important that post-Brexit, the government commits to ensuring this important pot of funding is maintained and matched from central government funds.

21.8 Further Considerations

There are two EU medical bodies that are currently based in London, and with which the UK will need to consider its relationship post-Brexit. These are: **The European Medicines Agency**, which is responsible for the scientific evaluation, supervision and safety monitoring of medicines developed by pharmaceutical companies for use in the EU by both animals and people; and **The European Centre for Disease Control and Prevention**.

Upon leaving the EU, we could be forced to withdraw from both organisations (and they would perhaps move from London). Then, the safety of medicines would be determined by the UK's own, **Medicines & Healthcare Products Regulatory Agency**. Exclusion from the

[70] NHS Confederation

European Centre for Disease Control and Prevention may perhaps sound dramatic, but it is difficult to conceive a situation where it would not be in the EU's best interests to share information and coordinate responses to cross-border health threats such as Ebola and swine flu outbreaks, and vice versa.

This is precisely the kind of area where they can be genuine co-operation between nation states without the need for supranational EU control.

22. Energy

The EU has long been committed to **"the fight against global warming".** In this context, it has created a series of measures, most of which increase energy costs for industry and for households. The result has been to force millions of UK households into fuel poverty, and to drive energy-intensive industries off-shore. Industries which have borne the brunt of these policies have included steel, aluminium, chemicals and fertilisers, petroleum refining, cement, glass and ceramics.

Plant closures are only part of the problem: we should also bear in mind potential new investment, which is driven offshore by these measures. We are in fact exporting industries and jobs, while worsening our balance of payments as we import materials previously made in Europe. And the real irony is that the production often goes to jurisdictions with lower environmental standards, so the result is an ***increase*** in global emissions.

Measures have included aggressive targets for renewable energy, and for emissions. These are overlapping and conflicting provisions. In particular, nuclear energy contributes to emissions targets but not to renewable targets, so policy, which ideally should be technology-neutral, is biased in favour of wind and solar and against nuclear. All these technologies have attracted subsidies. They have also created the need for additional levels of subsidy, since intermittent renewables require back-up. The back-up, typically gas, has to be run intermittently to complement intermittent renewables. But there is no economic or investment case to build gas-fired plants to run intermittently, so they require "capacity payments": a whole new level of subsidy.

Then we have the **Large Combustion Plant Directive**, which has resulted in the closure of perfectly good coal plants across the UK, threatening both price and availability of electricity. But perhaps the greatest folly is the **Emissions Trading Scheme**. It has been sold as a "market mechanism" designed to allocate emissions permits where they will be most efficient and to incentivise investment in low-carbon and energy-saving technologies. It has largely failed over ten years and more. The price of a ton of CO_2 emitted has generally been below €10, which the level generally accepted as necessary to send signals to the market would be €30 plus. The Commission and parliament come back to the issue every few years with a sticking-plaster solution – which never delivers. Moreover a "market mechanism" which requires constant regulatory intervention is not really a market mechanism at all: it is a very complicated tax.

The additional problem is **"carbon leakage"** – an EU euphemism for driving energy-intensive businesses offshore. The plan is to establish a level of "free allocation" of carbon permits to industries at risk – but to reduce the total allocation each year in order to drive down emissions. But the level is not sufficient to start with. And some industries are based on chemical processes that emit CO_2 as part of their fundamental chemistry which no amount of efficiency savings can eliminate. The policy amounts to a slow suffocation of heavy

industry. **Indeed, former Industry Commissioner Antonio Tajani has said "EU Energy Policy is creating an industrial massacre in Europe". UKIP agrees.**

Regulatory uncertainty: We have created such a complex cat's-cradle (or dog's breakfast) of regulation, taxation and subsidy, subject to constant change at the whim of politicians and bureaucrats, that it has become almost impossible for the market to make rational investment decisions on multi-billion pound projects with time scales in decades. This is why incentives designed to promote gas-fired power stations have had the perverse effect of promoting diesel generators instead, and why the government had to accept an eye-watering guaranteed price to EDF for Hinckley C.

Not just an EU problem

It would be nice to promise that this energy policy chaos could be unwound immediately after Brexit. But if the problem with Brussels is bad enough, Westminster has made it worse. The **Climate Change Act** (2008), one of the most expensive pieces of peace-time legislation, was passed almost unanimously in Westminster, by MPs who had little or no idea of the consequences of their actions. It even includes statutory emissions targets for 2050 – something no other country in the world has. So, after the Brexit battle, we have another battle here at home to deliver a rational UK energy policy.

23. Transport

The Lisbon Treaty gave the European Union power over transport policy in Britain.

The idea that one size fits all is not ideal for the UK as what is right for Spain or France might not be the best solution for the UK. As the population density in the UK is one of the highest in Europe, what works in Latvia will not necessarily work in London.

Since the UK joined the EU, our road network has fallen into disrepair, transport provision has fallen behind demand and delays as a result of congestion are a serious threat to our economy.

This cannot all be blamed on our membership of the EU but the background policies of prioritising transport spending on alternatives to roads and the idea that demand management and 'behavioural change' is preferable to provision is driven by the EU.

Driving licenses and the test process is now regulated by the EU with the **Professional Drivers Certificate of Professional Competence** (DCPC) causing particular concern. This Directive requires HGV drivers to undertake 37 hours of class-room based training once every five years. Industry insiders describe it as 'teaching them how to suck eggs'. This training means losing a week's work, and at a fee of £800 to £1,000 per driver. Many long term professional drivers, many of whom are self-employed, left the industry following its introduction which has now led to a shortage of drivers.

Rail dominates the future ambition of transport within the European Union. **The Fourth Railway Package** seeks to harmonise railway infrastructure across the continent and the EU has ambitious spending plans to make this happen.

The **TEN-T Regulation (EU) 1316/2013**, transport project with its Core Network is designed to provide 'EU-wide transport corridors' and **High Speed Rail** is part of this ambition. Our obsession with HS2 is not driven by common sense and not by a business case. **It is driven by European Union policy and paid for with British taxpayers' money.**

The Single European Skies (SES) is a package of regulations aimed to improve Air Traffic Management (ATM) performance by modernising and harmonising ATM systems through the definition, development, validation and deployment of technological and operational ATM solutions. These solutions constitute what is known as the SESAR concept of operations. This package, under the guise of harmonisation, means that the UK has lost sovereign control over her own airspace.

This system is presided over by the EU body, the **European Aviation Safety Agency.** EASA has 32 European member states, the four non-EU members being: Norway, Iceland,

Lichtenstein and Ireland. EU **Regulation 1592/2002** governs how it works and this regulation is one of those that could remain in place under the terms of the Draft Repeal Bill.

Motorcycles provide freedom and transport for many across the UK but with the type approval legislation **Directive 2007/46/EC** making it difficult to customise your bike or even change anything from the original manufacturer's specified parts. This lead to the maintenance of motorcycles becoming increasingly more expensive and it is increasingly becoming an expensive mode of transport.

Under EU **Regulation EU 2015/758** all cars are required to be fitted with a GPS tracking device which can relay your location in the event of an accident. This is considered a valuable safety feature but many are concerned with the privacy aspects of this legislation. It should be for the owner and driver of the vehicle to decide if this is something they want.

The EU is pushing for a 'pay-as-you-go' road pricing system across all EU countries and tolling has already started for trucks in some EU countries **(Directive 2011/76/EU amending Directive 1999/62/EC**) on the charging of heavy goods vehicles for the use of certain infrastructures)

The UK has an HGV levy for trucks, which is a payment for using the UK's roads. This was intended to apply to foreign trucks as a fee for using our roads, and the cost is deducted from UK HGV truck's annual road tax payment. However, the EU regards this a discriminatory and is taking the UK to court arguing that it should be replaced with a distance-based charging scheme, and so harmonising the road pricing charging system across member states.

The European Parliament has voted in favour of a **revised EU Ports Services Regulation (PSR)** - COM/2013/0296 final - 2013/0157/COD despite voting against EU ports legislation twice in the past, the European Parliament adopted in plenary the revised PSR on March 8, with 451 MEPs voting in favour and 243 against.

The decision sparked controversy as big players in the UK port industry argued that privately-financed ports would be undermined by the PSR.

The UK Major Ports Group (UKMPG) and the British Ports Association (BPA) claimed in a statement that the PSR could lead to more unfair competition and force private ports to put their services out to tender, adding that they may lose freedom over port charges and commercial confidentiality may be threatened.

24. Defence, Security, and Foreign Affairs

The idea of creating a European Army (European Defence Community) predates the creation of the European Economic Community itself in 1957. In 1950 Jean Monet proposed that the original Schuman Plan for European Coal and Steel Community should include plans for a European Army. This force was to be run by a European Minister of Defence, and a Council of Ministers, with a common budget and arms procurement policy.[71] The project, named the Pleven Plan, initially won some approval; but eventually in August 1954 it was defeated in the French Parliament by a vote of 319 to 264.

Undeterred, the EEC/EU has always intended to create its own armed forces, and continued to prepare to do so. The next big step forward was initiated in the **Treaty on European Union** (1992), the so-called Maastricht Treaty, which called for a 'common foreign and security policy, leading to a 'common defence'. Since most European countries already belonged to NATO, this new concept of a 'common defence' can only mean one thing: the EU's own armed forces.

The Common Foreign and Security Policy was established as an EU 'competence' under the **Amsterdam Treaty** (1997), when it was migrated from being a separate 'pillar' of intra-EU collaboration to being an EU competence under qualified majority voting rules - Britain surrendered it foreign policy decision making to the EU.

Openly creating a 'European Army' as such would be unpopular with large sections of European voters, and so the project has been progressed by stealth. The EU's method has been to amalgamate the individual member states' military resources by means of: common command and control structures (under the guise of co-operation and humanitarian operations), common equipment procurement policies, and common communications systems (e.g. the Galileo satellite system).

The situation is somewhat complicated for the EU by the fact that Britain and France still have independent nuclear deterrents, which neither country wants to give up or amalgamate. Five countries have nuclear weapons, and the intercontinental missile systems capable of delivering them: USA, Russia, China, Britain and France.[72] For historical reasons, this status entitles them to the five permanent seats in the fifteen seat UN Security Council; and each of the big five has a veto on any measure proposed by what is, the executive arm of the UN; needless to say, no state wishes to relinquish that power.

Notwithstanding that, the UK's armed forces have been deliberately underfunded and reduced in numbers and capabilities so that they will be unable to effectively function independently. As the Centre for Historical Analysis and Conflict Research (the British Army's in-house think tank) put in January 2017: *'The British Army's only remaining*

[71] The Great Deception by Christopher Booker and Dr Richard North. Published by Continuum 2003.
[72] Four other countries are acknowledged to have nuclear weapons but limited means of delivering them: India, Pakistan, North Korea and Israel.

fighting unit could be wiped out in an afternoon in a conflict with an enemy such as Russia'.

Eventually this deliberate debilitation was intended to be used as the reason for fully amalgamating Britain's armed forces into an EU 'common defence identity' – or a European Army.

The EU has opened its internal borders, and invited in millions of migrants and refugees from the Middle East and beyond. These vast number of people have inevitably included untold thousands of Jihadists ready, willing and able to wage 'holy war' on western civilisation. The EU then tells us that it needs more powers in order to deal with these self-inflicted threats.

The principle means of defence against terrorism is intelligence and advance warning of their intentions. The UK has some of the best intelligence services in the world and we collaborate in intelligence matters with the so-called 'five eyes' or **ABCANZ** countries, consisting of **America, Britain, Canada, Australia and New Zealand**.

These are tried and tested allies with whom we share a common language, a common history, and who have stood by us in two world wars. The 'five-eyes' countries capabilities enable them to monitor any and every electronic communication in the world. While these countries will pass on warnings to other nations they always observe the golden rule of intelligence, which is to protect their sources.

Meanwhile our former enemies and their collaborators in two World Wars call perennially in the European Parliament for a 'common European defence identity' to meet the current threats of the modern world. Member States have helped to create some of these threats themselves, by means of the EU's Schengen open borders policy, by means of decades of mass immigration from the Islamic world, and more recently, by bringing in millions of refuges from the Middle East, and they seek to counter these threats by accruing yet more power to the EU.

The Parliament also periodically calls for the creation of a 'common intelligence service', and the 'pooling of intelligence'. While the Parliament is indeed a temple of hot-air, nevertheless it is often used as stalking horse by the Commission for its future intentions.

If Britain ever allowed itself to become part of a common EU intelligence agency, or pooled its intelligence, it would be the destruction of one of our last remaining protections in a hostile world.

However, the broad principles of what needs to be done can be stated as:

I. Withdraw from the European Common Foreign and Security Policy.

II. Reaffirm our status as an independent nation state whose armed forces owe loyalty only to our Monarch, and which are only deployed by Her Ministers when it is the national interest to do so, or to meet defence treaty obligations such as NATO.

III. Disentangle our armed forces from the EU's Common Command and Control Structures, common procurement policies, and the common communications systems – unless genuine co-operation in these areas is under our independent control and is expressly in our national and operational interests.

IV. Reaffirm our commitment to NATO as the principle defender of Europe against external threats.

V. Call on all NATO member states to meet their funding obligation of a minimum of 2% of their GPD.

VI. British armed forces should only co-operate in selected operations with EU forces as and when it is in the British national interest to do so.

25. Foreign and Humanitarian Aid, and the EU's Disaster Relief Payments

The UK's Foreign Aid commitment is currently 0.7% of GNI (Gross National Income), or about **£12 billion per annum**. This figure was enshrined in an Act of Parliament in 2015 by David Cameron's Conservative and Lib-Dem coalition government. The 0.7% target was first proposed by the United Nations in 1970, and the UK was the first G7 country to adopt it.

Prime Minister Theresa May began the General Election campaign in April 2017 by announcing that the Government would keep this arbitrary target despite its widespread unpopularity.

The UK's is by far the largest percentage of GNI in foreign aid given by any of the G7 counties, or even of the 28 countries of the OECD (Organisation for Economic Cooperation and Development).

HM Government runs an annual budget deficit of £69 billion (2015-2016), and we have an accumulated national debt of about £1.6 trillion. HM Government is borrowing money with one hand in order to hand it over to foreign countries with the other. These countries include India and China, which fund their own space and atomic weapons programmes, and which have far many more millionaires and billionaires than the UK.

One might take the view that well-off British politicians use borrowed money, that less well-off tax-payers of future generations will have to repay, in order to 'virtue signal' to certain sections of the voting public. The figure of 0.7% was adopted by David Cameron when he hoped to win Liberal-Democrat votes, whose vote subsequently collapsed anyway.

The foreign aid programme planned and administered by the Department of International Development (DfID). **What most people do not realise is that only about one third of the UK's foreign aid budget is spent directly by DfID, one-third is handed over to EU agencies, and one-third is handed over to United Nations agencies.**

Volumes could be written about the waste, fraud and corruption that eats up a very large proportion of the UK's foreign aid budget - but this is not the place to do it. Suffice to say that we could spend our own money better in our own way. The British people are always among the most generous when it comes to personally donating to the world's periodic disaster zones, and UKIP supports HM Government in helping those around the world who need it in disaster zones, and in specific projects to combat disease and help health improvement schemes.

Few people also realise that the UK does not benefit from the EU's disaster relief schemes, such as when parts of our country suffered serious flood damage, because to do so would mean refunding the money from the British rebate back to the EU budget, and we would therefore be no better off.

26. Scotland

Scotland voted to remain in the EU Referendum of 23rd June.

- Turnout: **67.2%.**
- Remain: **62%**
- Leave: **38%**.

This contrasts with the 2015 Scottish Referendum on independence from the UK when turnout was **84.59%,** and those voting 'No' to Scottish independence voted **55.30%**, while 'Yes' voted **44.70%.**

While Scotland certainly voted to remain in the EU, the turnout compared to the independence from the UK referendum vote in 2015, **67.2**% to **84.59%** was down by over 20%; this shows that the matter was clearly not considered of the same degree of importance to a large number of Scottish voters.

Nevertheless, all things considered, it was clearly stated by Government, and understood before and during the EU Referendum, that the four constituent parts of the United Kingdom would be bound by the overall vote - which was course was **51.9%** for Leave to **48.1%** for Remain.

Nevertheless, if Scotland, under the government of the Scottish National Party, wishes to hold another referendum on independence from the UK in the wake of the EU referendum, then that is a matter for them, and will not be discussed here.

However, it must be said that the Scottish National Party's policy of wanting to leave the UK and yet remain in the EU is entirely illogical to say the least. If Scotland left the UK and remained in the EU it would regain no powers whatsoever; but it would lose financial subsidies from England, and have to pay its own contributions to the EU Budget. Outside the EU, Scotland could regain powers currently exercised by the EU.

What is discussed here is are the benefits to Scotland when the UK leaves the European Union.

Brexit Galore - Good for Scottish fisheries and whisky!

Whisky

Two key areas of Scotland's economy are whisky production and the fishing industry. Scotland's whisky industry provides about 4,000 job, and about £4 billion pounds a year.

The **Scotch Whisky Association's** (SWA) analysis highlights markets with long-term potential for whisky exports. Open and ambitious free trade agreements with the UK will deliver significant benefits through the elimination of tariffs and trade barriers.

The SWA said an *'open and ambitious approach to global trade can boost its exports'*. Julie Hesketh-Laird, SWA acting chief executive, said the *'historic decision to leave the EU presents opportunities'*. [73]

Since 1973, the UK's trade policy has been decided by the European Union - not the UK government -still less a Scottish government. Outside the EU the UK would be free to make independent trade deals worldwide, which would benefit Scotland.

Industry leaders[74] said they are backing Britain to win favourable bilateral trade deals with key export markets like India, where exports have been stalled for more than a decade due to EU bungling.

Outside of the EU, the SWA says it will not face a tariff on exports to the EU because of WTO rules and the UK will continue to benefit from zero tariffs in other major markets (USA, Canada and Mexico).[75]

Scotch whisky exports were worth nearly £4 billion in customs value, making Scotch the biggest net contributor to the UK's trade balance in goods and the country's largest food and drink export. The industry sees little value in the UK being part of the EU Customs Union should it wish to strike new trade deals.[76]

The Scottish National Party's policy of wanting to leave the United Kingdom, and for an 'independent Scotland' to then join the European Union, makes about as much sense as advocating freedom inside a maximum-security prison. The European Union would never want Scotland as a member in its own right anyway.

The UK is a net contributor to the EU budget, whereas Scotland would expect be a beneficiary and a further drain on their resources. In the very unlikely event that Scotland ever did join the EU in its own right it would also be required to join the European Single Currency[77]. To know what that would look like one only has to look at Greece.

Fisheries

Scotland's fishing industry will benefit massively from an immediate Brexit when the UK regains control of our territorial waters (see section 17 Fisheries). The Scottish fishing industry has been devastated by our membership of the EU, but outside it can be rebuilt.

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[73] http://www.express.co.uk/news/uk/747750/brexit-scotland-scotch-whisky-industry-boost-eu-trade-deals

[74] quote: Julie Hesketh-Laird, SWA acting chief executive

[75] http://www.express.co.uk/news/uk/747750/brexit-scotland-scotch-whisky-industry-boost-eu-trade-deals

[76] http://www.scotch-whisky.org.uk/news-publications/news/uk-trade-deals-could-provide-scotch-brexit-boost/#.WH-bTE0VB9B

[77] The Lisbon Treaty clearly says that the euro is the currency of the Union, and Scotland is extremely unlikely to negotiate an opt-out. And indeed, if it wanted to join the EU in its own right why would it want one?

A revitalised fishing industry will create a multi-million-pound fishing and fish processing industry in Scotland, which will create jobs in a new fishing fleet and in fish processing jobs, which currently benefit the industrialised fishing fleets and ancillary industries of other EU member states, but not Scotland.

The return of powers

The UK's exit from the EU Scotland's will mean the return of powers to Scotland, in terms of farming and fishing than were ever envisaged by Scotland leaving the UK - had Scotland voted to leave in the Referendum of 2015. Powers currently exercised by Brussels will be repatriated to the UK and can be devolved to Holyrood.

Scotland will immediately be able to reverse dangerous and economically harmful wind turbines inflicted on Scotland by the EU's renewables policy (see Section 19 Energy). Wind turbines damage the pristine Scottish wilderness and damages tourism one of Scotland's largest industries, As Donald Trump said,[78] [79] People do not come hundreds of miles to look at ugly propellers. The decisions as to whether we have these turbines or not will be in the hands of the Scottish Parliament.

Furthermore, regarding Energy Policy, closing Longannet power station because it did not meet EU regulations was a disaster for jobs, the price of electricity and Scottish power security, Longannet is able to power most of Scotland when the wind doesn't blow.

The UK's exit from the EU opens up the possibility of negotiating a beneficial trade agreement with the United States, as indicated by President Trump. This could also benefit Scotland's unique and highly profitable tweed trade.

Such an agreement with the USA would do more for Scottish jobs than the SNP's Europhilic policy.

[78] http://www.ibtimes.co.uk/donald-trump-wind-farm-decision-presidential-hopeful-loses-appeal-block-menie-golf-course-1533602

[79] http://www.ibtimes.co.uk/donald-trump-accused-blackmailing-scotland-700m-investment-withdrawal-threat-1536595

27. Wales

In the Referendum, Wales voted to Leave by a clear and decisive majority.

- Turnout: **71.7%**
- Leave: **52.5%** (854,572)
- Remain: **47.5%** (772,347)

For years Wales was told that its future depended on remaining in the European Union. Its schools teach a version of history that shows the EU as the saviour of European democracy and the only defence against continental war. Welsh media, dominated by the BBC and S4C, staffed by Labour and Plaid supporters and sympathisers, tell the Welsh people daily they should be grateful to be members of such an exclusive and successful club.

However, despite what many thought was impossible, the Welsh public chose, in unprecedented numbers, to liberate themselves from the shackles of the EU. By opting for the right to self-determination, Wales now faces a future beyond the constraints of the European project, a future filled with optimism and opportunity.

We have been browbeaten by European flags plastered over buildings, and plaques reminding everyone how important the EU is to Wales. But people know the truth.

52.5% Of Welsh people voted to leave, and an even higher percentage in traditional Labour heartlands. Wales now has the opportunity to work with our allies throughout the world, building stronger ties and trade links, which our maritime nation has always achieved with great success.

In 2015 Wales exported **£2 billi**on in goods and services to North America (22% of all its exports) highlighting the ample opportunities for Wales to prosper in a post-Brexit era. Welsh businesses have quality products to sell, and Welsh consumers have the appetite to purchase goods from across the globe. We want lucrative trade deals to be signed by the UK and the world's largest economies, that benefit Wales.

Perhaps more than most, Wales desperately needs to be liberated from the restrictions of European Law and regulation. Wales wants powers repatriated to Wales, not just to Westminster. They want agricultural policies tailored for Wales, not for French or Greek farmers or the barley barons of Eastern England. Wales has a huge and fruitful coastline and will benefit from a UK fisheries policy not a one size fits all approach from Brussels. They want agriculture and fishery strategies established in Cardiff Bay, not in Brussels.

Brexit signalled that the people of Wales have had enough of their politicians simply putting out the begging bowl. They want jobs – real jobs. They want an economy structured to enable entrepreneurship and enterprise to flourish. They want to be free of red tape and free to innovate. And most of all Wales just wants to be free from the shackles of the EU.

Wales has been totally abandoned by mainstream politics. To live in Wales, for those not lucky enough to have a job working for the Welsh Government quangos etc., life can be tough. Many of its communities offer no stable decent work and, outside Cardiff, the idea of a metropolitan utopia which offers highly paid professional careers is an alien concept to most.

Although the Conservatives have been a minority in Wales for over 100 years, they are part of the problem not the solution. Take education, for example. Welsh Conservatives oppose the reintroduction of grammar schools, towards which Theresa May is tiptoeing in England. They also collude with Labour and Plaid to enforce Welsh-medium education in defiance of parents' wishes.

Wales wants to stand on its own two feet. It is a proud nation with a rich culture and deep history. But the Welsh people need to break the stranglehold of the historically dominant Labour Party. Until the Labour Party no longer expects Welsh voters obediently to follow its instructions, we will not move forward. In voting for Brexit, the people of Wales have sent a clear message that they are no longer prepared to be taken for granted. Only when the stranglehold of Labour and Plaid, and their collusion with an institutionalised Conservative Group in the Assembly, is broken will Wales start to prosper again as a major part of an independent United Kingdom, but leaving the EU is an excellent start.

28. Northern Ireland

In the Referendum, Northern Ireland voted to Remain by a clear and decisive majority.

- Turnout: **73%**
- Leave: **44.2%** (349,442)
- Remain: **55.8%** (440,707)

The overall result to leave in the United Kingdom was naturally a disappointment to Northern Ireland's Remainers. Northern Ireland has a particular history and circumstances that can account for their decision.

Northern Ireland is one part of the United Kingdom that is a net recipient of funds from the EU. That is to say the amount of monies expended there under EU programmes were greater than the sum of tax contributions from Northern Ireland residents that were paid to Brussels as part of the UK's budget contribution.

UKIP would urge HM Government to look to maintain that spending profile when dispersing the savings resulting from no longer making either a gross or net contribution to the EU. We would wish to ensure that Northern Ireland did not lose out financially compared to the status quo ante when making public spending decisions about how to spend our Brexit dividend.

The issue most frequently raised in respect of Brexit and Northern Ireland concerns the border with the Irish Republic - an ongoing EU member state.

Northern Ireland has the United Kingdom's only land border with the EU and that border is a 'soft' one without permanent checkpoints. In addition, the United Kingdom and the Republic of Ireland (RoI) have a common travel area agreement that precedes the EU membership of either nation. This allows freedom of movement between the two nations without reference to EU freedom of movement obligations.

HM Government has committed to maintaining this free movement between the UK and RoI for citizens of both countries in recognition of our shared inhabiting of the British Isles and other close and historic ties. It has also committed to not imposing a 'hard' border to check at points of entry the flow of people and goods.

This has led to questions about how the Government could stop other EU nationals from crossing into the UK unchecked from the RoI. Once in Northern Ireland such migrants, it is argued, would be free to travel to other parts of the UK, further undermining attempts to impose migration controls in respect of EU citizens in general.

There are several components to a potential solution to this issue. The first would see enhanced monitoring of cross border flows to see if there was prima facie evidence that the route was indeed being used to facilitate irregular migration. The second would be a requirement for all carriers between Northern Ireland and the GB mainland - both by sea and air - to undertake enhanced passenger booking checks in order to establish which passengers at the point of booking a ticket did not have a permanent Northern Ireland address.

Finally, carriers between Northern Ireland and the British mainland already insist on some form of photo ID. The standard for this could be raised to passport or photo driving licence level.

Which non-British citizens can and cannot freely enter into the UK from Northern Ireland and the RoI will be depend on what arrangements are put in place by HM Government and Parliament post-Brexit.

The purpose of this would not be to place any hurdle in the way of UK citizens from Northern Ireland travelling to other nations within our United Kingdom - nor indeed to impose hurdles on Republic of Ireland citizens doing so - but simply to facilitate the identification of non-UK and non-RoI nationals and check their purpose of travel and duration of visit.

By deploying such checks the people of Northern Ireland can be protected from the pressures and other downsides that inevitably go along with becoming host to an irregular migration route while the ‘soft’ border with the Republic that is valued by all can be maintained.

29. Gibraltar

- Turnout: **83.64%**
- Leave: **95.91%** (19,322)
- Remain: **4.09%** (823)

The results of the EU Referendum contrast with those of the 2002 referendum when Gibraltarians were asked to vote on the question of 'shared sovereignty with Spain': **98.48%** said No, and only **1.03%** said Yes.

Gibraltar has been a British possession since 1704. Its possession has been key for Britain's international defences for over three centuries because it enables unimpeded access to the Mediterranean. This was vital for Britain's defences during the Napoleonic wars, when Lord Nelson was able to destroy the French fleet at the Battle of the Nile in 1798, and do so again at Trafalgar in 1805.

Possession of Gibraltar was equally important for the defence of the British Isles in the First and Second World Wars, again for the same reason – unimpeded access to the Mediterranean for the Royal Navy and our armed forces. We could not have defeated Germany in North Africa without it, and that was as Churchill said, "the end of the beginning" of the Second World War, and of Nazism.

It is a sad reflection of the decline in history teaching in our schools that most schoolchildren will be totally ignorant of those facts, and of the times in our history that Britain has stood on the brink of being conquered by hostile forces only to be saved by its martial spirit, the sacrifices of our armed forces, and the possession of key strategic possessions such as Gibraltar.

We cannot know what security threats may come in the future, and possession of Gibraltar is an advantage that we must keep. The Gibraltarians also wish, by a huge majority, to remain under the protection of the United Kingdom.
Spain has already asserted a threatening stance by saying that 'no agreement on the EU's future relationship with the UK would apply to Gibraltar without the consent of Spain'. Gibraltar's First Minister, Fabian Picardo said this was "unacceptable".

We can expect the Spanish to exert pressure on Gibraltar and the Gibraltarians on their own behalf and that of the EU to make life as difficult as possible during the envisaged protracted Brexit negotiations.

All the more reason to arrive achieve a speedy exit.

30. The Court of Justice of the European Union

The EU's court of justice is properly called the **Court of Justice of the European Union** (CJEU), but is commonly referred to as the **European Court of Justice** or the **ECJ.**

What the CJEU does.
The CJEU was established in 1952, and is located in Luxembourg. The CJEU's website explains that its role is to ensure that EU law is interpreted and applied in the same way in every EU member state, and to settle disputes between member states and the EU.

The CJEU has three main functions: to **interpret EU law**, to **enforce EU law**, and to **annul EU legal acts** if they are found to violate EU treaties.

Cases may be brought against member states by individuals, organisations, companies, or member states. If a member state is found to be in breach of an EU law the CJEU will require it to comply with the law, or if a second case is brought, it may impose a fine on a national government.

The CJEU is a political court

The CJEU arrives at its decisions with regard to enforcing 'the spirit' and substance of EU law as part of the overall project of creating political and economic integration. It is not unusual for CJEU to tailor its 'interpretation' of the law to purely political objectives on EU integration.

To give just a couple of examples:

- In the case of *Melloni* (2013) C-399/11, the CJEU ruled that a Spanish court cannot be "allowed" to reject a European Arrest Warrant which violates the right to a fair trial enshrined in Spanish Constitution. Such a refusal, CJEU held, would be "*casting doubt on the uniformity of the standard of protection of fundamental rights*" across the EU, and "*undermine the principles of mutual trust and recognition*"; therefore, it was contrary to 'EU law'.

- In the case of *Zambrano* (2011) C-34/09, a failed asylum-seeker was working illegally in Belgium while waiting for the outcome of his appeal (ultimately unsuccessful). He also had two children in that period, who became Belgian citizens and therefore also EU citizens. The CJEU held that his children could only effectively enjoy their rights as EU citizens if their parents could live and work in Belgium. Therefore, the EU law overrode all Belgian laws which made him ineligible to settle in Belgium, or prohibited his employment while he was a failed asylum-seeker. Contrary to Belgian law, his employment was deemed lawful under EU law; and he was therefore also entitled to unemployment benefit.

It is typical for CJEU to give its 'legal reasons' in terms of political claptrap, such as these (quoting from *Criminal Proceedings against Pupino* (2005) Case C-105/03, paras 41-42):

"Article 1 of the Treaty on European Union provide that that treaty marks a new stage in the process of creating an ever-closer union among the peoples of Europe and that the task of the Union, which is founded on the European Communities, supplemented by the policies and forms of cooperation established by that treaty, shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

"It would be difficult for the Union to carry out its task effectively if the principle of loyal cooperation, requiring in particular that Member States take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial cooperation."

In truth, the CJEU is not a court of law. It is a political institution promoting a purely political agenda, only slightly camouflaged by legalistic language. Its so-called case-law is mostly about political slogans overriding the legal rules. Its dominion over the national legal systems gravely undermines the rule of law – our law that which was developed over centuries.

It was the CJEU which developed all the EU's federalist constitutional principles in its 'case-law' - long before they were openly proclaimed to the public:

- In *Costa v ENEL* (1964), CJEU defined the European Communities as a '**new legal order**' to which the member-stated had permanently ceded **sovereignty**;

- The vexed principle of '**supremacy of European law**' was not in the original Treaty of Rome. It was simply made up by CJEU in a series of cases, culminating in *Internationale Handelsgesellschaft mbH v Einfuhr* (1970) Case 11-70, where the CJEU held that any provision of EU law had precedence over all national law, including even the most fundamental constitutional rights or principles.

- In *Partie Ecologiste 'Les Verts' v. Parliament* (1986), long before politicians began to discuss a '**European Constitution**', the CJEU defined the EEC Treaty as the '**basic constitutional charter**' of the Community.

As long as all this 'jurisprudence' remains binding on UK courts, there is no point pretending that we enjoy the benefits of our own Constitution with its principles of sovereignty, democracy, and rule of law – our law.

The Government's plan for 'Brexit'

The **Department for Exiting the European Union's** paper, '**Legislating for the United Kingdom's withdrawal from the European Union'** states, "The Government has been clear

that in leaving the EU we will bring an end to the jurisdiction of the CJEU in the UK".[80] However, paragraph 2.14 also says that "so long as EU-derived law remains on the UK statute book, it is essential that there is a common understanding of what the law means." It goes on to say that any question as to the meaning of the EU-derived law will be determined by UK courts, but by reference to the CJEU case law as it exists on the day we leave the EU.

The document says in point 2.17 that the Supreme Court should take a "sparing approach" to departing from CJEU case law. Therefore, the existing case law of the CJEU will be largely preserved. Paragraph 2.20 explains, "*If, after exit, a conflict arises between two pre-exit laws, one of which is an EU-derived law, and the other, not, then the EU-derived law will continue to take precedence over the other pre-exit law".*

This is posed as being necessary in order to 'avoid uncertainty'. The point is conceded in the same paragraph that "the UK Parliament (and where appropriate, the devolved legislatures) will be able to change these laws wherever it is considered desirable." However, that does not quite look like what is promised in paragraph 2.19 where it says, **the Great Repeal Bill will end the general supremacy of EU law".**

Chapter 3 of the document explains that the Great Repeal Bill will give the government 'Henry VIII powers' to amend EU-derived law by statutory instrument. However, that is limited to 'minor amendments' (e.g. if the UK law includes an out-of-date reference to "EU obligations", it will be updated, not substantive changes. **The document does not envisage any significant legislative programme to review, amend or repeal the many thousands of EU-derived laws, even after we leave the EU.**

There is obviously a gargantuan rat's-nest of EU legislation in force in the UK. It cannot be swept away over night, but, pending its amendment, repeal or continuation in UK law, the UK courts and the Supreme Court must have the power to interpret it in the interests of the UK and not a foreign political power, the EU, in accordance with the case law of its court, the CJEU.

It is simply not true that preserving the CJEU case-law as binding on UK courts, even after 'Brexit', would help to avoid legal uncertainty. The experience shows that the opposite is true. Far from ensuring legal certainty, the binding CJEU case-law repeatedly caused legal uncertainty and confusion in our courts. The examples are countless and include such cases as *Factortame Ltd v Secretary of State for Transport*, *Metric Martyrs (Thoburn v Sunderland City Council)* and *Assange v Swedish Prosecution Authority*.

People tend to imagine that CJEU case-law is simply a collection of precedents resolving technical disputes which arise under EU's free trade arrangements. In reality, a large proportion of that 'case-law' declares grand constitutional principles such as supremacy of EU law, permanent limitation of national sovereignty, inalienable rights of EU citizens which must be guaranteed in every member-state, etc. So long as we are bound by all of this, any withdrawal from the EU would be purely formal and spurious.

[80] Legislating for the United Kingdom's withdrawal from the European Union. Chapter 2, point 2.12

One can easily see how UK courts, when they have to interpret EU or EU-derived law, may be assisted **by taking into account** what CJEU had to say about it. In fact, this is the kind of thing they do all the time. Numerous cases with international dimension are heard in the High Court literally every day, and often require our judges to interpret and apply foreign law (for example, if there is a breach of contract made under foreign law). However, that is a very different thing from being **bound** by CJEU decisions. UK courts should be free to interpret the law in their own way, and contradict CJEU if there are good reasons to do so.

On the Repeal of the European Communities Act (1972), and its replacement with the Repeal Bill, HM Government and Parliament must genuinely remove the UK from the jurisdiction of the Court of Justice of the European Union by doing the following:

I. The Repeal Bill would clearly state that all existing EU-derived law remains in place, as Acts of Parliament, or by other means, until amended or repealed (See Appendix I).

II. Regarding EU Regulations (which automatically apply and are not transposed by means of Acts of Parliament), all existing Regulations would be adopted as UK law, and a 'Henry VIII power' included to make minor changes as required in order reflect the new legal order and practical impact of our exit from the EU.

III. The Repeal Bill must clearly state that plaintiffs have no recourse to the CJEU but must pursue any case in the UK courts (including those pending at the CJEU or relating to facts prior to Brexit), with the ultimate decision in the hands of the Supreme Court.

IV. Any jurisdiction of the CJEU over EU-derived law in the UK would be immediately removed.

V. The interpretation and application of EU-derived law would be a matter solely for UK courts. The courts should, of course, be able to take CJEU judgements into account on the same basis as other foreign judgements; but shall not be bound by them.

VI. The Interpretations Act (1978) would be amended accordingly to incorporate the points above.

31. The European Court of Human Rights

The **European Court of Human Rights** (ECHR) is not an institution of the European Union, it is an institution of the **Council of Europe**. The Council of Europe was founded in 1949 and currently consists of 47 European countries. It is obviously not necessary to be a member of the European Union to be a member of the Council of Europe, but it is necessary to be a member of the Council of Europe in order to be a member of European Union.

The purpose of the ECHR is to implement the European Convention on Human Rights (1950). The Convention was based on some of the old English common law rights and freedoms (such as the prohibition of torture, freedom from arbitrary imprisonment, right to a fair trial, freedom of expression, freedom of conscience, etc.), but now interpreted by ECHR judges in their own way. The Convention was introduced after World War II

The Convention was incorporated into UK law by **Human Rights Act 1998**. Its abuses are now notorious. For example, many foreign criminals and terrorists could evade deportation from the UK on the grounds that it would undermine their right to a family life. Another example is the infamous ECHR ruling that the UK was in breach of the Convention by denying the right to vote to prisoners.

The Tories have been promising to repeal the Human Rights Act since the general election of 2010. The commitment was reiterated in the Tories' 2015 general election manifesto. However, nothing has happened; and the government's latest white paper on Brexit tacitly suggests that will never happen. *Legislating for the United Kingdom's withdrawal from the European Union* reads in paragraphs 2.21 to 2.25:

"*The EU codifies fundamental rights in the Charter of Fundamental Rights, which has the same legal status as the EU treaties.*

"The Charter is only one element of the UK's human rights architecture. Many of the rights protected in the Charter are also found in other international instruments, notably the European Convention on Human Rights (ECHR), but also UN and other international treaties too. The ECHR is an instrument of the Council of Europe, not of the EU. The UK's withdrawal from the EU will not change the UK's participation in the ECHR and there are no plans to withdraw from the ECHR.

"The Government's intention is that the removal of the Charter from UK law will not affect the substantive rights that individuals already benefit from in the UK. Many of these underlying rights exist elsewhere in the body of EU law which we will be converting into UK

law. Others already exist in UK law, or in international agreements to which the UK is a party. As EU law is converted into UK law by the Great Repeal Bill, it will continue to be interpreted by UK courts in a way that is consistent with those underlying rights."

The promised repeal of the Human Rights Act 1998 would mean a radical reform of "the UK's human rights architecture", which is clearly no longer intended. Instead, it is used as an excuse to evade the commitment to remove the Charter of Fundamental Rights from the UK law.

The view of the author is that:

I. The Human Rights Act 1998 should be repealed immediately.

II. Any new human rights legislation should be based on the English common law and constitutional statutes, such as the Magna Carta and the Bill of Rights, not on incorporation of any international agreements.

III. Any agreements negotiated with the European Union or other foreign parties should not give any undertaking that constrains the UK to being an ongoing member of the ECHR. This is purely a matter for HM Government and Parliament to decide as and when it sees fit.

Appendix I

EUROPEAN UNION (UK WITHDRAWAL FROM MEMBERSHIP) BILL: SIR WILLIAM CASH [draft v1]

European Union (UK Withdrawal from Membership) Bill A

BILL

TO

Make provision to effect the withdrawal of the United Kingdom from membership of the European Union; to repeal the European Communities Act 1972; and to make provision for the Secretary of State to repeal or amend any enactment which has been a consequence of the European Communities Act 1972.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Withdrawal from membership of the European Union

The United Kingdom shall cease its membership of the European Union.

2. Repeal of the European Communities Act

(1) The European Communities Act 1972 is repealed.

(2) Secondary legislation made under that Act shall continue in force unless and until subsequently amended or repealed, and any such amendment or repeal may be made by statutory instrument [subject to annulment in pursuance of a resolution of either House of Parliament.] [or "Henry VIII" procedure]

(3) Any European Union legislation which, in accordance with the Treaties, is directly applicable at the date upon which this Act comes into force shall continue in force as a measure under the authority of the sovereign Parliament of the United Kingdom unless and until subsequently amended or repealed, and any such amendment or repeal may be made by order made by statutory instrument.

(4) [No order may be made under subsection (3) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.] [or "Henry VIII" procedure]

(5) Any statutory instruments made under this section or section 3 may deal with matters which are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

3. Consequential provisions

EUROPEAN UNION (UK WITHDRAWAL FROM MEMBERSHIP) BILL: SIR WILLIAM CASH [draft v1]

(1) The Secretary of State may by order made by statutory instrument amend or repeal any Act or measure which becomes ineffective, is rendered obsolete or is otherwise adversely affected by virtue of the repeal in section 2.

(2) The Secretary of State may be order made by statutory instrument repeal or amend any Act or measure in consequence of any change to EU law adopted after [the 23rd June 2016] [the coming into force of this Act] or any judgment of the Court of Justice delivered after [that date] [the coming into force of this Act].

(3) [No order may be made under subsection (1) or (2) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.] [or "Henry VIII" procedure]

4. Treaties

The Secretary of State must immediately after this Act comes into force and notwithstanding the Vienna Convention on the Law of Treaties, put in place measures to commence the withdrawal from or denunciation of the Treaties defined as such under section 1 of the European Communities Act 1972.

5. Extent, commencement and short title

(1) This Act extends to England and Wales, Scotland and Northern Ireland.

(2) Sections 1 and 5 come into force on the day after the day on which this Act receives Royal Assent.

(3) Sections 2 to 4 come into force on such day as the Secretary of State may appoint by order made by statutory instrument.

(4) This Act may be cited as the European Union (UK Withdrawal from Membership) Act 2016.

Appendix II

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to re-join, its request shall be subject to the procedure referred to in Article 49.

Appendix III

Article 218

(ex Article 300 TEC)

1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.

3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

(i) association agreements;

(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(iii) agreements establishing a specific institutional framework by organising cooperation procedures;

(iv) agreements with important budgetary implications for the Union;

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.

(b) after consulting the European Parliament in other cases, The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorisation.

8. The Council shall act by a qualified majority throughout the procedure.

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.

9. The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

Appendix IV

Article 238

1. Where it is required to act by a simple majority, the Council shall act by a majority of its component members.

2. By way of derogation from Article 16(4) of the Treaty on European Union, as from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72% of the members of the Council, representing Member States comprising at least 65% of the population of the Union.

3. As from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, in cases where, under the Treaties, not all the members of the Council participate in voting, a qualified majority shall be defined as follows:

(a) A qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained;

(b) By way of derogation from point (a), when the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72% of the members of the Council representing Member States comprising at least 65% of the population of these States.

4. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

Appendix V

Migration: UK Citizens living in EU countries, and EU Citizens living in the UK.
Source: United Nations figures for 2015

Country	UK Citizens Living in the EU *(Highest to lowest)*	EU Citizens Living in the UK	Country	UK Citizens Living in the EU	EU Citizens Living in the UK *(Highest to lowest)*
Spain	309,000	129,000	Poland	35,000	883,000
Ireland	255,000	411,000	Ireland	255,000	411,000
France	185,000	176,000	Germany	103,000	297,000
Germany	103,000	297,000	Romania	3,000	229,000
Italy	65,000	204,000	Italy	65,000	204,000
Holland	50,000	79,000	France	185,000	176,000
Cyprus	41,000	31,000	Lithuania	3,000	147,000
Poland	35,000	883,000	Portugal	18,000	132,000
Belgium	27,000	32,000	Spain	309,000	129,000
Sweden	25,000	35,000	Latvia	1,000	96,000
Denmark	19,000	24,000	Hungary	7,000	87,000
Greece	18,000	72,000	Holland	50,000	79,000
Portugal	18,000	132,000	Bulgaria	5,000	77,000
Malta	12,000	20,000	Greece	18,000	72,000
Austria	11,000	26,000	Slovakia	5,000	63,000
Luxembourg	7,000	1,000	Czech Republic	5,000	42,000
Finland	7,000	7,000	Sweden	25,000	35,000
Hungary	7,000	87,000	Belgium	27,000	32,000
Bulgaria	5,000	77,000	Cyprus	41,000	31,000
Slovakia	5,000	63,000	Austria	11,000	26,000
Czech Republic	5,000	42,000	Denmark	19,000	24,000
Romania	3,000	229,000	Malta	12,000	20,000
Lithuania	3,000	147,000	Estonia	500	18,000
Latvia	1,000	96,000	Finland	7,000	7,000
Slovenia	500	1,000	Croatia	500	6,000
Estonia	500	18,000	Luxembourg	7,000	1,000
Croatia	500	6,000	Slovenia	500	1,000
Total	**1,217,500**	**3,325,000**	**Total**	**1,217,500**	**3,325,000**

Appendix VI

Police and Criminal Justice Legislation: how it affects the UK, and what can be done to replace it.

The three main areas (exiting or forthcoming) in the area of Police and Criminal Justice legislation are: **mutual recognition instruments, databases,** and **organisations**.

1) Mutual recognition instruments

These have replaced the international treaties on extradition and mutual legal assistance (MLA). The EU principles of **'mutual trust'** and **'mutual recognition'** require that a judicial or prosecutorial decision taken in any EU member-state should be enforced automatically in any other EU member-state. At present, the following instruments are either in force, or due to come into force shortly (i.e. the EIO):

a) ***European Arrest Warrant (EAW)*** has replaced extradition with a system of an automatic 'judicial surrender', on the basis that since the EU is a political state all its constituent parts (Member States) are considered of equal status.

b) ***European Supervision Order (ESO)*** is the EU-wide version of bail. It can impose conditions such as a curfew, electronic tagging, living at a certain address, and regular reporting to the police, etc. on those awaiting a trial in a different EU member-state.

c) ***European Confiscation Order*** permits courts of EU member-states to freeze or confiscate suspects' or convicts' assets anywhere in the EU. This includes doing so on the instructions of those EU states that are generally acknowledged to be institutionally corrupt, e.g. Bulgaria and Romania.

d) ***European Investigation Order (EIO)*** is due to be transposed into UK law by 22nd May 2017. It will extend the principle of mutual recognition to any 'investigative measures', enabling foreign authorities to order (rather than simply request) such things as interrogation of witnesses, covert surveillance, interception of communications, monitoring of bank accounts, etc. (the list in the EU Directive is open-ended).

2. Databases:

a) ***Europol Information System,*** which pools police intelligence information from across the EU.

b) Second generation ***Schengen Information System (SIS II)*** is a database of individuals and objects of interest to EU law enforcement authorities. A hit on SIS-II operates as a European Arrest Warrant which must be executed without any further formality.

c) ***European Criminal Records Information System (ECRIS)*** is an EU-wide database of criminal convictions.

d) ***Passenger Name Record Directive*** obliges all travel companies to provide all data on every booking to border authorities, which is then pooled in a single EU-wide database.

e) ***Prüm Database*** pools police data on fingerprints, DNA samples, and vehicle registration numbers. The UK government has joined the Prüm project in 2015 (having previously taken the credit for 'opting out' of it in 2014), and is now "confident that exchange will start to take place in 2017".[81]

3. Organisations:

Eurojust brings together small teams of magistrates, prosecutors and senior police officers from each member-state. It operates through 28 National Desks, which are available to answer enquiries from foreign colleagues in relation to serious crime affecting two or more EU member states, e.g. to advise on issuing European Arrest Warrants or requests for mutual legal assistance. In the EU, Eurojust is seen as a stepping stone to the office of the **EU Public Prosecutor.** Although the UK has an opt-out from the Prosecutors powers this is a fiction. The Prosecutor will be able to circumvent the opt-out by using the EU's other organisations and legal instruments to do its bidding.

Europol is the EU's criminal intelligence agency. It is a secretive organisation, whose officers enjoy immunity from criminal prosecution or civil suit for anything they do in the course of their duties. This is concept foreign to English law, where everyone can be held accountable in law, and a privilege not even enjoyed by the NKVD, and its successor the KGB, in the old Soviet Union.

The available information indicates that its work mainly focuses on running the Europol Information System (see above). The new Europol Regulation comes into force in May 2017. The government has initially decided not to 'opt in', but has now changed its mind.[82]

SIRENE (Supplementary Information Request at the National Entry) is the organisation running SIS-II database (see above).

Now let us consider, in turn, the three broad categories identified above: 'mutual recognition', instruments, databases and organisations, and how they can be replaced.

4) Instruments: from 'mutual recognition' back to international conventions:

[81] Letter from Brandon Lewis MP, Minister of State for Policing and Fire Services, to Lord Boswell of Aynho, Chairman of the House of Lords European Union Select Committee, 19 October 2016: http://www.parliament.uk/documents/lords-committees/eu-home-affairs-subcommittee/Implementationof-Prum-19-Oct.pdf

[82] Letter from Brandon Lewis MP, Minister of State for Policing and the Fire Service to Lord Boswell of Aynho, Chairman of the European Union Select Committee, House of Lords, 14 November 2016: http://www.parliament.uk/documents/lords-committees/eu-home-affairs-subcommittee/Europol-Opt-in%20-14-nov-letter.pdf

The following table summarises the 'fall back' mechanisms which will remain available to UK's law enforcement authorities in the event of an unconditional withdrawal from the EU:

EU measure	**'Fall back' non-EU measure**
European Arrest Warrant	Council of Europe Convention on Extradition (1957)
European Investigation Order	Council of Europe Convention on Mutual Assistance in Criminal Matters (1959)
European Confiscation Order	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990)
European Supervision Order	Bail conditions imposed by national courts prior to extradition
Prisoners Transfer Directive	Council of Europe Convention on the transfer of sentenced persons (1983)

Thus, in the event of withdrawal from the **European Arrest Warrant (EAW)**, we will 'fall back' on the more traditional extradition system under the **Council of Europe Convention on Extradition 1957**. Unlike the EAW, the Convention includes several important safeguards against possible abuses of the system:

i. The so-called principle of 'dual criminality' prohibits the extradition of people for an 'offence' which is not criminal under UK law. The principle was abolished in the EAW system in relation to a list of 32 offences, some of them defined very vaguely and unsatisfactorily, e.g. "racism and xenophobia", "computer-related crime", "corruption" or "swindling".

   Such vague accusations are completely at odds with English law, under which a specific offence must have been committed, or suspected to having been committed, before someone can be arrested, let alone charged. Even so, 'the dual criminality' principle remains fully enshrined in Article 2 of the Council of Europe Convention.

ii. Article 13 of the Convention permits the recipient of an extradition request to seek 'supplementary information' before making a decision to extradite. How much information is required shall be determined by national law. This opens the door to restoring the requirement of *prima facie* case against the accused being submitted to British court along with the extradition request. Put another way, if the British court finds there is no case to answer, extradition may be refused.[83]

iii. While EAWs are executed automatically by our courts (whose role is reduced to little more than checking that the form is filled correctly), extradition requests are made via diplomatic channels, and cannot be executed without a formal approval by the Home Secretary.

[83] Unlike Andorra, Denmark, Iceland, Israel, Malta and Norway, the UK failed to make a reservation retaining the *prima facie* case requirement in our law at the time of joining the Convention. However, if the requirement is now re-introduced in our national law, it will be consistent with Article 13 of the Convention.

iv. Unlike the EAW system, the Council of Europe Convention permits the state to refuse to extradite its own citizens if its national law prohibits that (which that of Russia, for example, does).

In practical terms, while issuing an EAW means no more than filling a simple form, making a proper extradition request under the Convention means submitting a file of evidence. That creates no real difficulty for our own extradition requests, since it is a requirement of British prosecutors only to request extradition when they can charge a suspect and are 'trial-ready'. That practice is obviously right and proper, and should also be required of foreign extradition requests which come to the UK.

In terms of national legislation, the return to the old system of extradition shall be easy. Parliament should simply repeal the New Labour's Extradition Act 2003, and revert back to Extradition Act 1989. A simple amendment should be made to restore the *prima facie* case requirement to extradition requests from Council of Europe member-states.

Likewise, instead of joining the **European Investigation Order**, we should continue to rely on the **1959 Council of Europe Convention on Mutual Assistance in Criminal Matters**, as we do now.

Indeed, with one exception, each of the other 'mutual recognition' instruments cover the same ground as a corresponding Council of Europe convention.

There is admittedly no analogy to the **European Supervision Order (ESO)** in the Council of Europe system of conventions; however, ESOs are only necessary as a supplement to the EAW system. If a suspect is extradited under an EAW long before the prosecutors are trial-ready, an ESO allows the suspect to be sent back to the UK subject to certain bail conditions instead of keeping them in pre-trial detention in a foreign prison (in some EU countries, pre-trial detention may be extended for up to six years).

If the *prima facie* case requirement is re-introduced, suspects can be arrested in the UK, released on bail by British court if appropriate; but only extradited to stand trial, if there is sufficient prima facie evidence to justify it and if all other safeguards are met, or to serve a sentence. There shall be no lengthy period between the extradition and the trial when the suspect must be either detained or bailed.

5) Databases

From the police point of view, of course it is desirable to have access to as many databases as possible. It would no doubt help the police to have the fullest possible information on all police records, identity documents, passenger data, DNA, fingerprints, vehicle registration numbers, and criminal intelligence which exist in the world.

However, access to those databases comes at a price. Firstly, our police authorities have to share sensitive information they have gathered on British citizens and others with foreign police authorities, some of which are not trustworthy. Nobody would be particularly surprised if some corrupt East European police officers sometimes sell access to those databases to criminal gangs. Secondly, as the EU continues to concentrate power centrally, it will require more and more information to be gathered on citizens, for purposes that we cannot yet tell.

It should be for the UK Parliament to strike the right balance between police efficiency and the liberty of the citizens. If that power is once again ceded to the EU, what is the point of our withdrawal?

When the UK leaves the EU, our law enforcement authorities will continue to have 24/7 access to a number of **Interpol databases** which are largely analogous to the EU ones. These will include:

I. **Interpol Criminal Information System**, which contains international alerts for fugitives, suspected criminals, persons linked to or of interest in an ongoing criminal investigation, persons and entities subject to UN Security Council Sanctions, potential threats, missing persons and dead bodies; including personal data and police records of persons subject to such alerts.

II. **Automatic fingerprint identification system (AFIS)**.

III. A database of **DNA profiles** from offenders, crime scenes, missing persons and unidentified bodies.

IV. A database of **Stolen and Lost Travel Documents (SLTD)**;

V. A database of **Stolen Administrative Documents (SAD)**;

VI. **Edison (Electronic Documentation and Information System on Investigation Networks)**, which provides examples of genuine travel documents, in order to help identify fakes. It contains images, descriptions and security features of genuine travel and identity documents issued by countries and international organizations.

VII. The **Digital Interpol Alert Library – Document (Dial-Doc)**, which allows countries to share at global level alerts produced nationally on newly detected forms of document counterfeiting;

VIII. Respective databases of **stolen motor vehicles, vessels,** and **works of art**,

IX. **The International Child Sexual Exploitation image database**, which uses sophisticated image comparison software to make connections between victims, abusers and places.

X. Interpol **Illicit Arms Records and Tracing Management System (iARMS)**, which facilitates information exchange and cooperation between law enforcement agencies on firearm-related crime, and allows them to trace a firearm from the point of manufacture or of legal importation into a country, through the lines of supply to the last known point of possession.

XI. **Project Geiger database**, used to collate and analyse information on illicit trafficking and other unauthorized activities involving radiological and nuclear materials.

XII. **The maritime piracy database,** which stores intelligence related to cases of piracy and armed robbery at sea.

If the law enforcement professionals feel it is necessary to expand that system to share other types of data, the right framework for doing that is **Interpol**, not EU organisations. On the one hand, a global database is obviously more informative than a European database; on the other hand, in the global context it is less likely that the risks of sharing our sensitive data with more corrupt foreign authorities will be overlooked.

Furthermore, in practical terms, it is possible to have access to EU databases without formally negotiating it with the EU or giving it the access to our own databases. All we need is just one liaison officer in the relevant police authority in just one EU member-state which already has access. At present, our partners in the '**Five Eyes'** intelligence-sharing alliance between the **UK, USA, Canada, Australia** and **New Zealand** sometimes use the UK as a 'proxy' to access EU databases.[84] All we need to do is find another proxy to do the same for us, not necessarily on a formal basis.

6) Organisations

As regards **Europol and SIRENE**, the benefits of UK membership consist in access to their respective databases (on which more below) and the networking between senior law enforcement officers which helps data-sharing and coordination of their cross-border operations. In that sense, those organisations duplicate **Interpol**. The law enforcement agencies can cooperate via Interpol or bilaterally, within the limits imposed on them by national law, without the need for supra-national legislation. Indeed, arguably such cooperation would benefit more from flexibility than from legal regulation.

The utility of **Eurojust** consists in availability of prompt legal advice about the law and practice of law enforcement in 28 different countries. This is probably valuable, but that is a service which is available privately on the market. The government can instead employ a team of experienced foreign criminal lawyers, or even outsource that service to an international law firm.

[84] According to the evidence given by the National Crime Agency to the House of Lords EU Select Committee. See its 7th report of Session 2016-2017, *Brexit: future UK-EU security and police cooperation,* HL Paper 77, P.p. 10-11.

It is a different matter that in the future, the EU intends to use Eurojust for pooling not simply the *expertise*, but the *powers* of magistrates, prosecutors and police officers who are its members; and a stepping stone towards a European Public Prosecutor. That project is a threat to liberty and the UK should stay away from it.

It is possible for non-EU countries to negotiate a form of associate membership in the EU's PCJ organisations, and many have done so. However, it would be unnecessary and dangerous for the UK to follow that example.

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