National Audit Office

Report

by the Comptroller
and Auditor General

**Department for Environment, Food & Rural Affairs**

# Progress in Implementing EU Exit

HC 1498 SESSION 2017–2019 12 SEPTEMBER 2018

# Key facts

**£320m**
Defra's approved EU Exit spending for 2018-19

**1,307**
staff recruited in 2017-18 for EU Exit work

**151**
statutory instruments needed by the Department for Environment, Food & Rural Affairs (Defra) in 2018 for EU Exit and non-EU business, more than double the average over the previous eight years

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| **55** | of 319 work streams across government that Defra is responsible for, following a review that began in April 2018. The number initially increased to 64 and is now 55 |
| **33** | of 93 statutory instruments needed for EU Exit where first draft was complete by early June 2018 |
| **6** | of 43 work stream plans that, by April 2018, had fully complied with Defra's planning standards |
| **£17.0 billion** | value of UK's exports of chemicals and chemical products to the EU in 2017 |
| **£7.6 billion** | value of UK animal and animal product exports in 2016 |
| **154** | countries that Defra will have to reach agreement with on acceptance of UK versions of export health certificates to allow export of animals and animal products |
| **730,000** | approximate number of consignments of animals, animal products and high-risk food and feed each year to be processed through the new UK import control system |

# Summary

## Introduction

**1** In March 2019, the UK is set to leave the EU. The Department for Environment, Food & Rural Affairs (Defra) is one of the government departments most affected by EU Exit.

**2** Defra's portfolio is very varied, covering the chemical and agri-food industries as well as crucial policy areas such as agriculture, fisheries and the environment. In common with other government departments, it has organised its portfolio into individual 'work streams'. With 55 work streams and 4 cross-cutting and co-ordinating activities, it has the second largest number of work streams of any department. In addition, it has to draft a large volume of legislation, contribute to the government's negotiations and work closely with the devolved administrations.

**3** Following the March 2018 Council of the European Commission, Defra changed the focus of its EU Exit planning to take account of the implementation period that was agreed at that meeting. For many of its work streams, Defra put its contingency plans for a no-deal scenario on hold, while increasing contingency where there is a risk to life, health or security. It is now organising its preparations around a range of different scenarios, including exit without a deal in March 2019, and a negotiated exit with an implementation period lasting until the end of 2020.

## Statement from the Comptroller and Auditor General

Defra faces an enormous challenge and has an unprecedented portfolio of work that it needs to deliver for EU Exit. This report is intended as an objective document of record about Defra's progress towards 'a smooth and orderly exit'. Given the scale of the task and the speed at which Defra is having to tackle it, there are inevitably gaps in the Department's approach and risks to its progress that I am obliged to point out. But I do so while recognising that these are not normal times for Defra or for the government as a whole and acknowledging that Defra has already achieved a great deal in its preparations for EU Exit.

## Scope of this report

**4** In December 2017, we published a briefing on how Defra was preparing for the UK's departure from the EU.[1] The briefing set out the scale of Defra's task, the governance structures set up to manage the task, and how Defra was working with its stakeholders, businesses and the devolved administrations. This report assesses the progress Defra has made since our previous report based on analysis we carried out between March and May 2018. As well as looking at how Defra is managing its overall portfolio, we have carried out a detailed analysis of progress on four of its work streams (Figure 7). These work streams were selected to cover the range of changes Defra must make, including establishing new regulatory functions and services, changes to its business practices and processes, developing supporting IT systems and working with third parties.

**5** In April 2018, Defra began a comprehensive review of its portfolio that has resulted in an increase in the number of work streams[2] for which it is responsible from 43 to 64. The number has since fallen to 55 as two work streams are closed and seven have been rolled into others. This report is based on the 43 original work streams in place until May 2018 because Defra's portfolio was in transition during our analysis. Our study methods are set out in more detail in Appendices One and Two.

## Recent developments

**6** Since our report in December 2017, Defra has:

- reviewed its portfolio to capture the full breadth of its EU Exit work, including its longer-term post-EU Exit activity. The portfolio includes 12 work streams covering cross-cutting areas such as devolution, legislation and estates and two coordinating work streams covering other government departments and arm's-length bodies (**Figure 1**). The work streams are listed in Appendix Three.
- reviewed the need for IT and digital developments in order to reduce demands on the Data, Digital and Technology Services division that delivers Defra's IT developments. This has resulted in the number of work streams with an IT component falling from 20 to 14 as at March 2018; in July 2018, this was further reduced to 11 as a result of the amalgamation of four of its work streams.
- met its target of recruiting 1,300 new staff to its EU Exit programme by March 2018 (1,182 staff were in post and the remainder were progressing through the pre-employment stages).
- submitted a bid for funding for 2018-19 to HM Treasury and received approval for spending of £320 million, approximately two-thirds of what was initially requested. Of this, £10 million will come from Defra's existing resources. Defra told us that it reduced its original bid during discussion with HM Treasury, and agreed that the final total was sufficient for its needs.

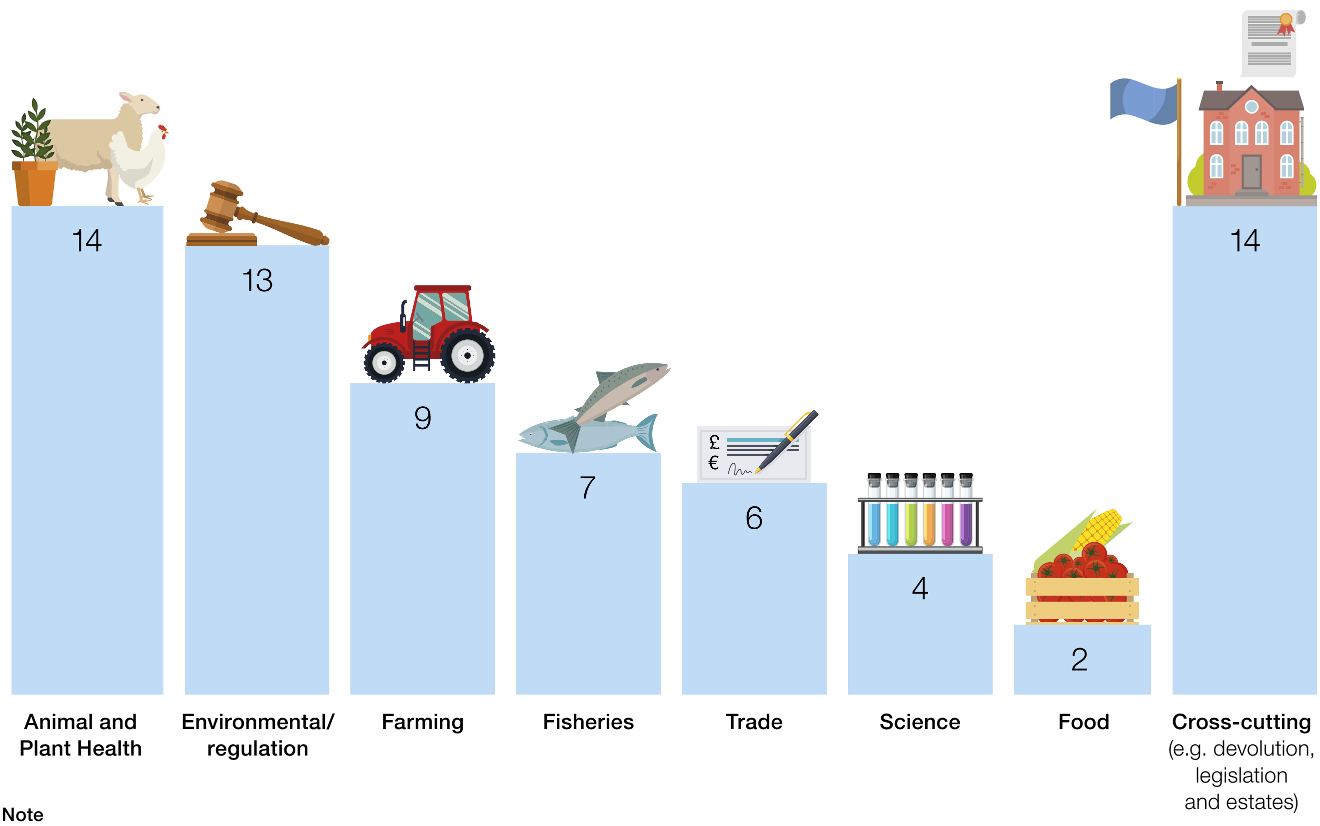
1 Comptroller and Auditor General, *Implementing the UK's exit from the European Union: The Department for Environment, Food & Rural Affairs*, Session 2017–2019, HC 647, National Audit Office, December 2017.

2 'Work stream' is the term used across government for each of the 319 distinct projects that need to be completed to prepare for EU Exit.

- introduced a new EU Exit Delivery Group bringing together the existing EU Exit Overview team, the Programme Management Office (PMO), the legislation and devolution teams and the EU and International trade team. It is headed by a new Director General.
- changed its governance structure to strengthen project management, creating two additional policy director roles to balance workloads and respond to the demands of EU Exit, and reinforcing project and programme management capabilities in the individual work streams.
- published a consultation, 'Health and harmony: the future for food, farming and the environment', in February 2018, setting out its proposals for agriculture policy in England following EU Exit, and a white paper on fisheries, 'Sustainable fisheries for future generations', in July 2018.

## Figure 1
Number of EU Exit work streams

**The Department for Environment, Food & Rural Affairs has 55 work streams across seven policy areas plus 14 cross-cutting and co-ordinating activities**




**Note**

1 The 14 cross-cutting activities are seven enabler activities: digital, commercial, finance, human resources, legal, communications and estates; five central planning activities: devolution, legislation, borders, international agreements and EU negotiations; and two coordinating activities: other government departments and arm's-length bodies.

Source: Department for Environment, Food & Rural Affairs

## Key findings

### The scale of the Defra's task

7 **Defra has achieved a great deal in difficult circumstances and to a very demanding timescale**. To prepare for EU Exit, it has drawn up detailed plans for most of its work streams, designed and started to build new IT systems and functions, managed a rapid expansion in its workforce and started to prepare the huge volume of legislation needed to ensure a functioning statute book. The constantly changing environment that Defra is working in, in particular the fluctuations in the likelihood of reaching a deal, has made it difficult for Defra to make, and stick to, a robust plan. Because of the scale of its challenge, Defra needs to make major changes to the size and structure of its organisation as it begins to provide the services and functions that will replace those currently provided by the EU (paragraphs 1.2 to 1.4).

### Overall progress in delivering its work streams

8 **Defra's plans for its individual work streams are improving, but many are of poor quality and lack maturity**. By April 2018, Defra had developed detailed plans for 35 of its 43 work streams. However, it rated only six of these as complying fully with its planning standards.[3] Defra is currently undertaking a further re-planning exercise in the light of a likely implementation period and the increase in the number of work streams to 55. It had new plans in place for 12 work streams by the end of June 2018. It is continuing to develop its plans for the remainder but does not expect to complete its work until September 2018 (paragraphs 2.3, 2.5 and Figure 4).

9 **Defra has missed a high proportion of its project milestones**. The EU Exit PMO reported to the Portfolio Board in March 2018 that, in its plans for a no-deal exit in March 2019, as many project milestones had been missed as had been met. From early February to early April 2018, 39% of milestones across the portfolio had been pushed back with an average delay of seven weeks. Defra attributes its missed milestones to its original plans being optimistic and based on planning assumptions that later proved incorrect. Until May 2018, the PMO reported on numbers of missed milestones but not on the consequences of these missed and delayed milestones, making it difficult in our view to reliably assess progress across the portfolio. From May 2018, the PMO started to collect the detailed information on missed milestones, their causes and the mitigating actions required to get back on track. The new reporting process also identifies key risks and issues at both portfolio and project levels (paragraph 2.4).

3 Defra uses planning standards that are more stringent than those used by DExEU to assess departments' plans.

10 **The risk of Defra not delivering all its EU Exit portfolio in a no-deal scenario is high and, until recently, not well understood**. The PMO reported to the Portfolio Board in April 2018 that, under a no-deal exit in March 2019, "while many of the individual work streams may be deliverable, the overall complexity and aggregate risk in the portfolio make it unstable". The number of its work streams with an overall risk rating of red or amber has remained almost constant (at around 30 out of 43) since the start of 2018. However, other indicators showed a steep increase in reported risk levels across the portfolio from March to April 2018, which Defra attributes to an improved and more consistent approach to assessing risk (paragraphs 2.7, 2.8 and Figure 5).

11 **In a no deal scenario, there is a high risk that Defra will be unable to deliver all the Statutory Instruments (SIs) it needs in time and it is identifying those that it needs to prioritise**. It is preparing three new bills for EU Exit (on agriculture, fisheries, and environmental principles and governance). It also needs 93 SIs to complete the conversion of EU law into UK law at the point of exit. This is in addition to an estimated 58 SIs needed for non-EU business, bringing the total expected for 2018 to 151. This is more than double the average of 75 SIs in the eight years to 2017. In June 2018, Defra's legislation team reported to the Programme Board that "Defra is at a high risk of being unable to deliver a full and functioning statute book by end March 2019" and in July 2018 its secondary legislation programme was rated as red. By June 2018, the team had completed a first draft of 33 of the 93 (35%) EU Exit SIs it needs but 37% were either not started or less than halfway to a completed draft. Defra is concerned about the shortage of parliamentary time available and is trying to minimise the number of non-EU Exit SIs needed, for example by considering which ones can be delayed beyond March 2019. Defra had aimed to complete all its EU Exit SIs by December 2018, but has now revised its plans to allow some to slip into the first quarter of 2019 (paragraphs 2.28, 2.29 and Figure 9).

12 **For some work streams, Defra has passed the point where it will be able to deliver what it had initially planned for a 'no-deal' exit in March 2019 but it continues to review and update its plans with the aim of having sufficient arrangements in place if no deal is agreed**. Defra has adjusted its focus towards planning for a range of different scenarios, including exit without a deal in March 2019, and a negotiated exit with an implementation period lasting until the end of 2020. However, it still needs to identify and manage the risks arising from not being fully prepared. In the work streams we examined, we found examples where Defra would not be fully ready for the 'no-deal' scenario and needed to make decisions about whether to accept the resulting risk or to plan contingency action:

- Defra is still developing its plans to strengthen its control and enforcement activities in English fishing waters. Defra's preferred option is to significantly increase the number of vessel patrol hours but HM Treasury will not agree to full funding requirements until Defra has submitted its full business case, which it is currently developing. In its outline business case, submitted in August 2018, Defra estimated that it would take eight months to procure and implement a contract to provide the control and enforcement needed, and therefore may have to scale up its patrolling capacity over time following EU Exit. As a result, in a no-deal scenario, Defra will not reach its preferred level of control and enforcement capacity by March 2019, but told us it is confident that it will be able to manage the risk of any disruption in the interim.

- Defra needs to negotiate with 154 non-EU countries to agree acceptance of UK versions of over 1,400 export health certificates. It is focusing on reaching agreement with 15 of these countries that it estimates account for approximately 90% of total exports to non-EU countries of animal products, food and live animals, but is not expecting to be able to complete negotiations with all the remaining 139 countries by March 2019. Defra has accepted the risk that firms that currently export to those countries where agreement is not reached may not be able to do so for a period after EU Exit.
- Without a significant increase in the UK's veterinary capacity, Defra will be unable to process the increased volume of export health certificates it expects if there is no deal. To achieve the required capacity, Defra needed to provide the market with sufficient notice and certainty about the scale of the increased capacity required. It had programmed this work to start in April 2018 but, by September 2018, the government had not yet authorised Defra to start engaging publicly with the veterinary market. If there are not enough vets, consignments of food could be delayed at the border or prevented from leaving the UK. If there is still a significant likelihood of no deal being reached in October 2018, Defra is planning to launch an emergency recruitment campaign to bring capacity at least part-way towards the minimum level required. Defra told us it is confident that it will be able to fill any remaining gaps, for example through the use of non-veterinararians to check records and processes that do not require veterinary judgment (paragraphs 2.20, 2.21 and 2.23 to 2.26).

## Managing the portfolio

13 **Defra does not have a clear vision either for the new services and functions it has to introduce or for the organisation as a whole post-EU Exit, and it therefore has limited understanding of future costs**. The Defra group as a whole is already changing significantly and will have to change further as it prepares to deliver new services and functions. Although not knowing the terms of the UK's exit makes this more difficult, Defra needs to consider how EU Exit affects its organisational strategy and future vision. It has not yet adapted its target operating model for the group as a whole post-EU Exit or developed detailed target operating models for each of the major new services and functions, such as managing food imports and exports and a new chemical regulatory function, that it will take on. Given the time imperative, Defra has until recently focused on putting in place the IT systems it needs for March 2019 if there is no deal, but consideration of what the full services will look like and how they will be managed is also urgent. The costs of some of the work streams we examined are not yet fully developed. Defra is developing detailed estimates of resourcing and IT costs for implementing the UK's chemical regulatory regime and control and enforcement activities in English fishing waters in a no-deal scenario. However, the full operational costs have not yet been firmly established and full business cases have yet to be submitted to HM Treasury (paragraphs 1.15, 1.16, 2.10, 2.23 and Figure 8).

14 **Because it has not fully defined its future service requirements, Defra has not yet ensured that the new IT systems it is developing can meet future operational capability, as specified in its outline business cases**. In its outline business cases for the chemical regulation and import control systems, Defra set out its preferred option of achieving a minimum operating capacity ready for March 2019, with systems that would enable enhanced functionality to be developed in the longer term. Defra has been focusing on ensuring that a functioning system is in place for a potential exit without a deal in March 2019. However, the approach it is taking means there is a risk that these solutions may not be able to deliver the enhanced capability needed once it has specified the full business requirements, and that the basic design and build may need significant rework as a result (paragraphs 2.12, 2.13 and 2.16).

15 **In April 2018, Defra began an exercise to review at a portfolio level its contingency plans for a no-deal exit in March 2019**. For each work stream, it assessed the impact of not delivering the minimum capability by March 2019. Some work streams, such as environmental governance, were excluded from the exercise because Defra had not been planning to have new arrangements in place by March 2019. In other cases, it was already too late, for example to establish new border inspection posts for food imports. For the rest, Defra mapped the impact (in terms of cost, national security and government reputation) against the benefits it would gain, for example from freeing up scarce capability or avoiding public concern. It then used this to decide for each work stream whether to pause no-deal preparations, reduce them or carry on in full. We regard this as a sensible approach that should help Defra to release some capacity and thus improve its chances of delivering the highest priorities. In order to make fully informed decisions about its priorities, it now needs to assess the aggregate impact on sectors that are affected by multiple work streams (paragraphs 1.12 to 1.14).

16 **There is a risk of disruption to the UK's chemical manufacturing industry that Defra cannot address on its own**. The UK exported chemicals and chemical products to the value of £28.3 billion in 2017, of which £17.0 billion (60%) was to other EU member states. The UK's position, as set out in the July 2018 white paper on the future relationship between the UK and the EU, is to seek continued participation in the European Chemicals Agency and to ensure that UK businesses can continue to register chemical substances directly, rather than working through an EU-based representative. However, this is dependent on a negotiated settlement. Without this, UK chemical manufacturers would no longer be able to export their products to EU member states because registrations of products with the EU would cease to be recognised by the EU. To recover market access, they would need to re-register their products on the EU's system via an affiliate or representative located in an EU member state. This is a lengthy process that cannot be started until the UK has left the EU (paragraphs 2.10 and 2.11).

**17** **Defra has not been able to make progress in supporting business in their preparations.** While Defra has been able to engage informally and on a one-to-one basis with key business groups and trade associations on preparations for a no-deal scenario, government restrictions communicated through DExEU have prevented more open consultations with a wider pool of stakeholders or the issue of material about the implications of readiness on UK government websites. Defra has repeatedly escalated its concerns to DExEU over restrictions on stakeholder communications but some restrictions remain in place. Defra's webpage on how to comply with EU regulations on using, making, selling or importing chemicals contains no reference at all to EU Exit or any potential changes following EU Exit. In July 2018, Defra was permitted to publish a statement on the implications of an implementation period on the chemicals industry. Prior to this, stakeholders had to look to the European Commission or the EU agencies for public reference material. Similarly, there is no guidance on Defra's website for businesses exporting food products to the EU. Some of these may have to apply for an export health certificate for the first time and change trading routes so that their products enter the EU through a border inspection post. In August 2018 the government published 25 technical notices setting out what UK citizens and businesses would need to do in a no deal scenario, but none of these related specifically to chemicals, export health certificates or fisheries. The government announced that more technical notices would follow in September (paragraphs 1.24 and 1.25).

## Conclusion

**18** Defra has done well in very difficult circumstances. Despite facing many challenges that are outside its control, it has rapidly expanded its workforce, quickly filling some of its skills gaps and moving ahead with building the IT systems it needs in case no deal is reached with the EU.

**19** What really matters now though is that Defra accelerates its medium-term planning for the Withdrawal Agreement while finalising its contingency plans. It also needs to make sure that the centre of government is fully aware of the key elements that Defra is unlikely to deliver for a no-deal scenario and of impacts on key industry sectors, such as the chemical industry, which could be seriously damaged if a negotiated settlement is not reached.