

<b>Title:</b> Taxation (Cross-border Trade) Bill <b>IA No:</b> <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> HM Treasury <b>Other departments or agencies:</b> HM Revenue and Customs	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 20/11/2017
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
Unknown	Unknown	Unknown	N/A	N/A

**What is the problem under consideration? Why is government intervention necessary?**

In the Future Partnership Paper, the government set out two ambitious approaches which most closely meet its objectives for the UK's future outside of the EU Customs Union. The Future Partnership Paper also explained that, regardless of the outcome of these negotiations, the UK will need to legislate for a new customs regime to be in place by March 2019 that can give effect to whatever arrangements are agreed with its European partners, including an interim period. The UK will also need to legislate for a new customs regime if there is no negotiated settlement. In addition, whatever the outcome of the negotiations, the UK will need to make changes to the cross-border rules for the VAT and excise regimes, following the UK's exit from the EU.

The authority to charge customs duty is currently contained in the European Communities Act 1972 (as amended), which will be repealed by the European Union (Withdrawal) Bill (EUWB). The EUWB will convert the body of existing EU law into domestic law and preserves the laws made in the UK to implement EU obligations. The powers in the EUWB to deal with deficiencies arising from withdrawal and to implement the withdrawal agreement cannot be used to impose or increase taxation, which includes customs duties. Therefore, the UK will need new primary legislation to create a standalone customs regime. It will also need to amend the VAT and excise regimes so that they can function effectively after the UK has left the EU.

**What are the policy objectives and the intended effects?**

The UK will need new primary legislation to create a standalone customs regime, and to amend the VAT and excise regimes so that they can function as required after the UK has left the EU. This new legislation will include flexibility to allow the UK to give effect to elements of these regimes through secondary legislation.

In assessing options for the UK's future outside of the EU Customs Union, the government will be guided by what delivers the greatest economic advantage to the UK. It will also be guided by three strategic objectives: ensuring that UK-EU trade is as frictionless as possible; avoiding a hard border between Ireland and Northern Ireland; and establishing an independent international trade policy.

The Taxation (Cross-border Trade) Bill will need to allow the customs, VAT and excise regimes to be amended to accommodate changes that are necessary or appropriate in consequence of the UK's withdrawal from the EU with or without an agreement. This includes if the negotiations result in close association with the EU Customs Union for a time-limited interim period. The Bill does not presuppose any particular outcome from the negotiations with the EU.

The government is committed to ensuring that Parliament has due scrutiny of the secondary legislative programme and that businesses have as much notice as possible of the contents of secondary legislation to prepare for EU exit. The government will publish further details, including impact assessments where appropriate, when decisions have been taken on how the regimes will operate in practice.





# Summary: Analysis & Evidence

# Policy Option 1

Description: Powers to create a standalone UK customs regime and amend the VAT and Excise regimes

## FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Unknown

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	Optional		
High	Optional	Optional	Optional	
Best Estimate	Unknown	Unknown	Unknown	

### Description and scale of key monetised costs by 'main affected groups'

This Bill will allow the government to create a standalone customs regime and ensure VAT and excise legislation functions can be amended as required. It does not presuppose any particular outcome of the negotiations. The impact of aspects of this legislation on businesses will depend on precisely how changes to the customs, VAT and excise regimes are implemented in secondary legislation made pursuant to powers in the Bill, which will be shaped by the negotiations and the timeframes of the implementation of the new regimes. Costs are therefore not quantifiable at this stage.

### Other key non-monetised costs by 'main affected groups'

as above

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	Low	Optional		
High	Optional	Optional	Optional	
Best Estimate	Unknown	Unknown	Unknown	

### Description and scale of key monetised benefits by 'main affected groups'

The aim of this Bill is to allow government to create a standalone UK customs, regime and make amendments to existing VAT and excise regimes. There is no aim to bring monetised benefits through this Bill though some may arise as a consequence of amendments implemented through secondary legislation.

### Other key non-monetised benefits by 'main affected groups'

The main benefit of this Bill is to enable the government to create a standalone customs regime, and to amend the VAT and excise regimes so that they can function as required after the UK has left the EU.

### Key assumptions/sensitivities/risks

Discount rate (%)

N/A

The impact of the new customs regime and amended VAT and excise regimes is dependent on the precise detail of which changes are brought forward and when (this may mostly be through secondary legislation). However, the Bill removes the risk that the UK could leave the EU without provision to implement a standalone customs regime and the powers to ensure the VAT and excise regimes function as required, which would present significant risk.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: Unknown	Benefits: Unknown	Net: Unknown	

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# Background

## Approach for assessing impacts

1. The UK's future customs, VAT and excise tax regime will in part be determined by the outcomes of the negotiations with the European Union (EU). The Taxation (Cross-border Trade) Bill does not presuppose the outcomes of the negotiations and as is usual practice for indirect taxes, secondary legislation will be used to set out much of the rules on administration, collection and enforcement. The government is committed to ensuring that Parliament has due scrutiny of the secondary legislative programme and that businesses have as much notice as possible of the contents of secondary legislation to prepare for EU exit. The government will publish further details, including impact assessments where appropriate, when decisions have been taken on how the regimes will operate in practice.
2. There are connections between the content of the Taxation (Cross-border Trade) Bill and the Trade bill. The Taxation (Cross-border Trade) Bill will make provisions relevant to a new UK tariff, including the power to set customs duty, set quotas and preferences, and set out additional tariff-related provisions and how they will be administered. This will include, for example, the tariff applicable to developing countries (unilateral preferences) and in connection with UK trade remedies and disputes post-EU exit. This will allow the UK to impose trade remedy measures including anti-dumping duties, anti-subsidy duties and safeguard measures, where deemed appropriate following an investigation. The Trade Bill provides key measures that are required to build a future trade policy for the UK once we leave the EU.
3. There are additional border activities undertaken as part of official controls which, while vital to the UK's trade, safety and security, are not directly related to the collection of customs duty. These include the regulation of cross-border movements of large sums of cash, tackling counterfeit goods, detecting firearms, explosives and narcotics, disclosure of information to other government departments for non-tax purposes and certain non-tax import and export controls, such as animal, public and plant health checks. The government will set out proposals in relation to these other areas in due course, working with devolved administrations as appropriate. These issues are not covered in the Taxation (Cross-border Trade) Bill and therefore not included in this impact assessment (although this legislation will contribute to the wider safety and security agenda, for example through providing powers for continued customs co-operation).
4. The Taxation (Cross-border Trade) Bill will provide a framework for UK's future Customs regime which should accommodate most outcomes of the negotiations with the EU as well as a contingency scenario. It will also ensure that the VAT and excise regimes function as required. The impacts of the new regime on businesses, consumers and the economy will be determined by the outcome of the negotiations with the EU and the detailed design of the new regimes to be set out in secondary legislation as and when appropriate.
5. Parliament has voted as part of the debates on the notification of Article 50 to commence the withdrawal negotiations with the EU, not to disclose material that would put our negotiation position at risk. In assessing the impacts of the Taxation (Cross-border Trade) Bill the

government is therefore taking a proportionate and pragmatic approach, providing more detail on impacts where the outcome is less dependent on the negotiations with the EU.

6. The Taxation (Cross-border Trade) Bill confers certain powers on the Secretary of State for International Trade. This is the case for decisions around setting reduced tariffs to developing countries via unilateral preferences and to set-up and run the UK's future trade remedies policy which includes the power to impose duties under certain circumstances where imports cause injury to domestic industry. The Government has confirmed<sup>1</sup> that it will seek to continue offering unilateral preferences to developing countries and will require a trade remedies regime.
7. The impacts of the Taxation (Cross-border Trade) Bill are therefore assessed through three Impact Assessments:
  - Firstly, this Impact Assessment covering the UK's future customs, VAT and excise regime (excluding the unilateral preferences and trade remedies elements).
  - Secondly a standalone Impact Assessment covering the UK's unilateral preference regimes
  - And finally, a standalone Impact Assessment covering the UK's future trade remedies regime

#### **The Taxation (Cross-border Trade) Bill**

8. The Taxation (Cross-border Trade) Bill is required to create a standalone customs regime, and to amend the VAT and excise regimes so that they can function effectively after the UK has left the European Union. It will include flexibility to allow the UK to give effect to elements of these regimes including those determined through negotiations with the EU through secondary legislation.
9. In assessing the options for the UK's future outside the EU Customs Union (and therefore, how the government uses the powers in the Taxation (Cross-border Trade) Bill), the government will be guided by what delivers the greatest economic advantage to the UK, and by three strategic objectives:
  - Ensuring UK-EU trade is as frictionless as possible;
  - Avoiding a hard border between Ireland and Northern Ireland; and
  - Establishing an independent international trade policy.

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<sup>1</sup> <https://www.gov.uk/government/news/government-pledges-to-help-improve-access-to-uk-markets-for-worlds-poorest-countries-post-brexit>



10. The government will continue to be a proud champion of global free trade and a strong supporter of a rule-based global trading system. At least 273,000 businesses traded internationally in 2015<sup>2</sup>, when our trade with the world was equivalent to over half our national income – we imported and exported £717bn of goods. That is why the UK will seek new customs, VAT and excise arrangements that facilitate the freest and most frictionless trade possible.
11. The Taxation (Cross-border Trade) Bill will also make provision for consequential amendments to be made to Customs and Excise Management Act 1979 (CEMA), which will continue to form an important part of the customs regime and will work alongside and in conjunction with the Taxation (Cross-border Trade) Bill.
12. However, the bill does not presuppose any particular outcome from the negotiations with the EU. In response to stakeholder representations and in order to provide continuity for business, the customs legislation will mostly be based on the Union Customs Code. It is our intention that the administration of the VAT and excise regimes following EU exit will largely replicate the current arrangements as far as is desirable and practicable. The Bill includes powers that allow for divergence from EU law where it is necessary to do so, or where there is a clear benefit to business to diverge from it and such divergence is consistent with whatever bilateral arrangements the government agrees with the EU.

#### **The current Customs, VAT and Excise regime**

13. The rules for the EU Customs Union are governed by EU law (the Union Customs Code or UCC and its delegated and implementing acts) and customs policy is an exclusive competence of the EU. Membership of the EU Customs Union means that goods moving between the UK and other Member States are not subject to customs duty, quotas or routine customs processes (including provision of customs declarations). Goods entering the EU from third countries are subject to the EU's Common External Tariff and its quotas and customs processes. The EU negotiates trade agreements, including tariffs, on behalf of all Member States.
14. At present, customs duty may be chargeable when goods are imported into the UK from a non-EU country. Import VAT and excise duty may also be due. This depends upon a number of factors, such as the nature, value and origin of the goods. EU regulations set out the customs procedures which apply when goods arrive into the UK from a non-EU country. In the financial year 2015-16, the UK collected around £3bn in customs duty. As a member of the EU, the UK remits around 80% of customs duties to the European Commission. The UK also collected £26bn in import VAT and £7bn in excise duties which are wholly retained by the exchequer.

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<sup>2</sup> Data on the number of businesses trading in 2016 is not yet available. The value of trade in 2016 was £775bn.

15. The UK has operational discretion as to how those customs rules are enforced, within a risk management framework audited by the EU. The UK operates an efficient customs regime for trade with non-EU countries with the objective of facilitating trade, maximising revenues by reducing error, avoidance and evasion, and maintaining security. The UK starts in a strong position. It maintained 5th place globally in the World Bank customs logistics performance index in 2016.
16. Goods moved by businesses between EU Member States are not subject to routine customs controls. Many business sectors in the UK operate complex supply chains which can involve components crossing borders between EU Member States multiple times during the production process. Time-dependent supply chains (such as fresh foods, medical goods, e-commerce, or just-in-time manufacturing employed by, for example, the automotive industry) have benefitted from the absence of routine customs controls in intra-EU trade, because they are particularly sensitive to administrative burdens and delays caused by customs procedures.
17. There is a high degree of harmonisation of VAT rules across the EU, including for cross-border trade in goods and services. These VAT rules are normally set by EU Directives which, unlike EU customs law, are not directly applicable, and which have been implemented in the UK by domestic law, for example the VAT Act 1994. VAT is payable on the goods that businesses bring into the UK, though the accounting treatment differs depending on whether the goods come from an EU Member State or a non-EU country. The harmonised rules also enable some simplifications for goods and services moved between EU Member States, and are supported by IT systems (such as the VAT Mini One Stop Shop and the EU VAT refund system), administrative cooperation and data exchange.
18. Rules for movements of excise goods (alcoholic products, tobacco products and oils) are also normally set by EU Directives and implemented by domestic law in the UK, for example by the EU Alcohol Structures Directive, as implemented in the Alcoholic Liquors Duty Act 1979. Businesses can move excise goods in duty suspension and can reclaim any domestic excise duty paid on goods that are not consumed in that Member State.
19. Currently, EU rules mean that individual travellers arriving in the UK from the rest of the EU do not have to pay any VAT, customs or excise duties on goods they bring into the UK for their personal use. These travellers can use the blue channels when passing through customs. Individual travellers coming from outside of the EU can bring in a certain amount of goods for their own use up to the personal allowances limit without paying customs duty, VAT or excise duty. They make their declaration by going through the green channel. Those with goods over their personal allowance have to declare this on arrival in the UK by using the red channel or red-phone point and pay the VAT and excise duties due.



20. The tax treatment of goods sent to UK customers in the form of small parcels differs depending on whether the parcel is sent from the rest of the EU or outside of the EU. It also depends on who sends the parcel and who receives it. Currently, the sender of a parcel in another Member State is responsible for paying VAT and excise duties due on the parcel. No customs duty is payable on parcels sent from within the EU, and where the VAT is paid depends on the distance selling rules. UK excise duty, however, has to be paid on all excisable goods sent to the UK by parcel.
21. Approximately 273,000 VAT-registered UK businesses traded internationally in 2015. Of these around 141,000 interacted with the customs system through their trade with third countries. 132,000 businesses traded only with other EU Member States, meaning they paid no customs duties and were not subject to customs controls.

**Table 1: UK VAT registered businesses by trade flow (2015)<sup>3</sup>**

<b>Trade Pattern</b>	<b>No. of Businesses<sup>4</sup></b>
With EU Member states only	132,000
With Non-EU countries only	68,000
With Both EU & Non-EU	73,000
Total Non-EU	141,000
<b>Total</b>	<b>273,000</b>

### **Why new domestic legislation is needed**

22. The authority to charge customs duty is currently contained in the European Communities Act 1972 (as amended), which will be repealed by the European Union (Withdrawal) Bill (EUWB). While the EUWB will bring EU law into UK law, powers in the EUWB cannot be used to impose tax, including customs and excise duties or VAT. Therefore, the UK will need new primary legislation to create a standalone customs regime, and to amend the VAT and excise regimes so that they can function effectively after the UK has left the EU.
23. There is existing domestic legislation governing certain aspects of the current customs regime – this is primarily contained in CEMA. The Taxation (Cross-border Trade) Bill will make provision for consequential amendments to be made to CEMA, which will continue to form an important part of the customs regime and will work alongside and in conjunction with the Taxation (Cross-border Trade) Bill.
24. To allow business and government to prepare for the UK leaving the EU, the Taxation (Cross-border Trade) Bill, and the secondary legislation made under it, must be in place with sufficient notice to support the implementation of a new, standalone customs regime and ensure that the excise and VAT regimes function effectively on the day the UK leaves the EU.

<sup>3</sup>Source: UK VAT registered businesses by trade flow in 2015 – HMRC's Trade Stats Unit

<sup>4</sup> Rounded to the nearest 1000 businesses



## Description of options considered

### Option 0 – Do nothing: no legislation

25. The powers in the European Union (Withdrawal) Bill (EUWB) to deal with deficiencies arising from withdrawal and to implement the withdrawal agreement cannot be used to impose or increase taxation, which includes customs duties excise and VAT. If the UK fails to set up domestic legislation, the customs system of the UK after exit would be based on the frozen Union Customs Code and its delegated and implementing acts brought into domestic law through the (EUWB). For VAT and excise, although there is existing UK legislation, changes may be needed to ensure it remains fully effective. In particular, cross-border movements of goods and services between the UK and the EU are currently transactions within the Single Market. Changes would be needed to reflect any change in the nature of such transactions, and any associated processes or procedures, after withdrawal.
26. Furthermore, without domestic legislation the UK would be constrained in giving legal effect to and implementing any customs-related negotiated outcomes with the EU and in pursuing an independent trade policy including trade defence. These constraints would have significant adverse impacts on the UK growth and investment.

### Option 1 – Legislate to establish a standalone Customs regime and amend the VAT and Excise regimes (preferred option)

27. Legislating for a standalone customs regime and taking powers to ensure that the VAT and excise regimes function effectively will allow the government to ensure that there is a functioning system in place after EU exit. The Taxation (Cross-border Trade) Bill does not presuppose any particular outcome of negotiations with the EU. In response to engagement with stakeholders, the Bill will be mostly based on the Union Customs Code but includes powers that allow for divergence from EU law where it is necessary to do so, or where there is a clear benefit to business to diverge from it and such divergence is consistent with whatever bilateral arrangements the government agrees with the EU.
28. The Government White Paper published on 09/10/17 as well as the explanatory notes accompanying the Taxation (Cross-border Trade) Bill contain further details on the provisions included in the bill in order to provide for a standalone customs regime, the transition to a new customs regime and changes to the current VAT and excise regimes to ensure they work as required.
29. For the new standalone customs provisions of the Taxation (Cross-border Trade) Bill, the government will be following the usual practice for indirect taxes of establishing a framework in primary legislation, with more detailed provision in secondary. This is necessary to give the UK the flexibility to adapt the regime in response to future developments, for example, international agreements, or changes in trader behaviour and compliance.
30. The Bill will contain appropriate delegated powers, and in some cases, amend existing powers, to allow the government to be able to deliver certain aspects of a negotiated outcome. These powers will be proportionate to achieving the UK's objectives, set out above, for its future customs, VAT and excise regimes. Without appropriate delegated



powers, it may not be possible to give effect to the outcome of the negotiations within parliamentary timescales, which could damage the UK's negotiating position.

## Impact of options considered

### Baseline

31. As described earlier in this IA, the current Customs regime is based on the Union Customs Code (UCC) and its delegated and implementing acts EU law provides the framework for VAT and excise rules across the EU. These rules are normally set by Directives, which are not directly applicable in the UK, and are implemented in the UK through domestic legislation. This status quo forms the baseline against which options below are assessed.
32. The government has been clear that leaving the EU also necessarily includes leaving the EU customs union as an EU member state. Therefore, the baseline represents a status quo which is not an option for the future.

### Option 0 – Do nothing: no legislation

33. Under this scenario, the UK would be left without fully functioning Customs, VAT and excise regimes. Relying on the frozen aqius would leave the government unable to respond swiftly to changes in the international trade environment. This would impact on our ability to implement a new trade relationship with the EU and our trading relationship with third countries with knock-on negative effects for UK businesses that trade and the economy as a whole.
34. It is not possible to quantify the impacts of the UK not having fully functioning customs, VAT and excise regimes because of difficulty in predicting the behavioural reaction of businesses and individuals to such a scenario.

### Option 1 – Legislate to establish a standalone Customs regime and amend the VAT and Excise regimes (preferred option)

35. Under this scenario, the UK would have domestic legislation in place to ensure functioning Customs, VAT and excise regimes which can be adapted in response to the outcomes of the negotiations with the EU. The Taxation (Cross-border Trade) Bill provides the framework for a functioning regime but impacts on business, individuals and the economy will be determined by the details of this new regime which are dependent on the outcome of the negotiations with the EU and will be enacted secondary legislation. Therefore, detailed impacts are currently unknown.
36. In its future customs arrangements – a future partnership paper, published in August 2017, the government sets out two broad approaches for the future UK-EU customs relationship: a highly-streamlined customs arrangement and a new customs partnership as well as the intention to negotiate a time-limited transition period and a contingency scenario for the event that no deal is reached with the EU. The Taxation (Cross-border Trade) Bill will allow the government to implement the highly-streamlined customs arrangement but further legislation could be required for the new customs partnership which is an innovative and



untested arrangement for which the Taxation (Cross-border Trade) Bill has not been specifically drafted. The future partnership paper notes that the highly-streamlined customs partnership will result in an increase in administration relative to the baseline which the government will seek to mitigate through negotiated and unilateral facilitations.

37. The Government White Paper published on 09/10/17 noted that in a contingency scenario traders that currently trade only with the EU will be subject to customs declarations and customs checks for the first time. Traders would need to be registered, which will provide them with an Economic Operators' Registration and Identification System (EORI) number. Imported goods would be liable to customs duty and import VAT. Certain goods may require import or export licenses, and traders exporting to the EU would have to submit an export declaration. These changes would constitute a burden to the businesses affected and the Government is actively considering ways in which to mitigate these impacts using the powers contained in the Taxation (Cross-border Trade) Bill.
38. In a contingency scenario UK exports to the EU would face the EU's Common External Tariff. Similarly EU exports to the UK would be treated as all other trade with third countries and would also have to pay customs duties. Assessed against the baseline this would mean a cost to businesses trading with the EU and to UK consumers who will face higher prices for goods imported from the EU. The size of this cost to importers of goods from the EU and subsequently consumers will depend on the level of customs duty the UK chooses to impose. The level of this duty will be decided by the government, and set out in secondary legislation before the UK leaves the EU.
39. For VAT and excise the legislation provides for a range of options, some directly through the Taxation (Cross-border Trade) Bill and others by the way of powers in secondary legislation. The exact timing and nature of the necessary changes to the VAT and excise regimes is not yet known and therefore impacts cannot currently be estimated. It is our intention that the administration of the VAT and excise regimes following EU exit will remain largely as it currently is, in so far as this is desirable and practicable. The Bill makes provisions whereby the UK could diverge from EU law where it is necessary to do so or where there is clear benefit to business from diverging from it and such divergence is consistent with whatever bilateral arrangements the government agrees with the EU.
40. The Bill does, however, make provision for possible changes to the tax regime for parcels in the contingency scenario. It would not be appropriate to extend the current rules for low value parcels from non-EU countries to include parcels sent from the EU. Due to the EU's geographical proximity to the UK, allowing parcels valued £15 or less to be sent from the EU without VAT being payable would potentially undermine the UK high street in the same way as low value parcels sent from the Channel Islands did before the rules were changed in 2012. Applying the current rules for parcels sent from non-EU countries to all parcels would also increase the volume of parcels on which Royal Mail and fast parcel operators have to collect tax, and more UK consumers would have to pay tax when their goods are delivered. The full impact of any changes will depend on the outcome of negotiations as set out in secondary legislation and are currently unknown.

## **Rationale and evidence that justify the level of analysis used in the IA**



41. This is an impact assessment for primary legislation that grants the UK government power to introduce a standalone Customs regime, ensure that VAT and excise legislation operates effectively and introduce powers to enable changes to domestic legislation, if necessary, when the outcome of negotiations with the EU on what this regime will look like becomes clearer. The primary legislation does not specify what these changes will be, as the technical changes which are required will be determined by these negotiations.
42. In response to stakeholder representations and to provide businesses with continuity, this legislation will mostly be based on the Union Customs Code and it is our intention that the administration of the VAT and excise regimes following EU exit will largely replicate the current arrangements as far as is desirable and practicable. The bill includes powers that allow for divergence from EU law where it is necessary to do so, or where there is a clear benefit to business to diverge from it and such divergence is consistent with whatever bilateral arrangements the government agrees with the EU.
43. Leaving the EU without this legislation would present significant risks to both businesses and government, but the costs and benefits are not quantifiable at this stage as they depend on the outcome of negotiations.

