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Welsh Parliament
External Affairs and Additional Legislation
Committee
Exiting the European Union: Preparedness in
Wales for the end of the transition period
Evidence from Natural Resources Wales

Welsh Government action to prepare Wales for the end of the transition period

1.1 Overview

Welsh Government's (WG) preparedness, and associated agency and stakeholder messaging and communication, is heavily contingent on UK trade negotiation outcomes and associated UK-led legislative and governance processes (such as the Internal Market Bill). This ongoing uncertainty is having knock-on impacts on sectoral preparedness and business readiness across Wales and the UK.

Our response is broken into sections against each question and covers the following key issues:

- Legislation
- Environmental governance
- Border infrastructure and resourcing
- Funding and resources
- Communications
- Concurrence of Covid-19 and other incidents
- Sectoral readiness

We note that WG are working hard to provide certainty and develop mitigation for specific sectoral risks. For example, liaising with Defra regarding a sheep contingency fund to support the sheep farming sector post EU Exit and regarding the risk to chemical supply chains for water industry, critical for drinking water supply (Covid-19 has exacerbated this risk).

WG has previously stated that there will be no change to the level of environmental protection, nor to environmental standards in Wales. UK Government (UKG) has previously given a similar commitment. However, we are likely to see changes through WG and UK legislation over time. UKG are now proposing changes to aspects of retained EU law relating to Environmental Impact Assessments. Any "regulatory divergence", for example resulting from trade deals struck with other countries, could impact on NRW's remit. Uncertainty regarding potential governance changes including the Transfer of Functions (ToF) could have significant implications for NRW's role and remit.

Covid-19 has enabled some WG and NRW 'stress testing' of No Deal scenario mitigation. However, dealing with Covid-19 impacts has also affected WG and stakeholder preparedness and impacted on sectoral resilience. The concurrent impacts of Covid-19 as a 'multiplier effect', for example if a second wave combines with a No Trade Deal outcome, could exacerbate risks to planning preparedness and associated disruption.

Rapid and effective communication between UKG and WG are key to ensuring preparedness across the UK. Clear and timely communication between WG, sectoral stakeholders including NRW and the general public is required to signpost to relevant changes to processes. It will also be essential to highlight where there is continuity to maintain compliance, for example the continuing relevance of statutory habitat environmental protections and associated stakeholder responsibilities. These issues are discussed further in section 2.

NRW is working closely with WG to prepare for EU Exit across a range of policy areas, coordinated through NRW's EU Change Programme. For example, NRW is working with the Energy, Planning and Rural Affairs (EPRA) division to develop updated EU Exit scenarios to continue to scope potential implications. Additionally, WG are continuing to liaise with NRW regarding future funding to support the longer-term implementation of continued protection for Natura 2000 sites and features post EU Exit.

Further specifics are provided in the following subsections and in sections 2-4.

1.2 Welsh Government Legislation

There is a challenging timeframe to deliver the legislative programme to ensure retained EU law is operable from 31 December 2020. WG's legislative programme is responsible for the timely delivery of the EU correcting Statutory Instruments (SIs) in Wales and liaising with UKG on UK SIs. NRW is reviewing the development of correcting SIs to assess any implications for our remit. WG is developing primary legislation for agriculture, fisheries and environmental governance and principles. NRW is engaging with WG on the development of Welsh legislation and supporting input to relevant UK legislation.

With UKG and other Devolved Administrations (DAs), WG have revised legislation for habitats and species which is ready for the end of the transition period. This ensures that UK and EU legislation relating to the terrestrial and marine environments will continue to be operable after the UK leaves the EU. This includes the [Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019](#) and the [Marine Environment \(Amendment\) \(EU\) Regulations 2018](#).

Replacement UKG EU Exit legislation for industry is largely in place for the end of transition and amending legislation is continuing. However, some sectors are having to work at pace to ensure legislation is in place for the end of the year, including the greenhouse gas sector and the proposed UK Emissions Trading Scheme (ETS).

The process of legislative change is being driven by UKG as part of the negotiation process. This is a factor in the likelihood of a smooth transition. For example, time for NRW to input comprehensively to developing WG's Draft Agriculture (Wales) Bill White Paper has been compressed. The Agriculture (Wales) Bill will provide the framework, structure and overall policy context for the delivery of WG's proposed Sustainable Farming Scheme (SFS), as well as the future regulatory context for Sustainable Land Management (SLM) and the Sustainable Management of Natural Resources (SMNR). There is a risk, however, that WG's Agriculture (Wales) Bill objectives for the SFS and associated SLM/SMNR outcomes may be adversely affected by the requirements of the UK Internal Market Bill and any agreed common frameworks (see sections 3 and 4).

There is a risk of legislative gaps and uncertainty regarding how Wales will govern and manage these gaps post transition, particularly regarding environmental legislation. Due to ongoing

negotiations, it is currently unclear what the gaps will be and the effect these may have on the environment and the ability of NRW to regulate and operate in relation to its statutory duties.

An example of a potential legislative gap relates to UKG and WG's ongoing commitment to the Bern Convention. As the UK will no longer be a member of the EU, we need to meet Bern Convention compliance as a non-EU member for protected sites to become part of the Emerald Network, not under the EU 'umbrella' as currently.

1.3 Environmental Governance and new duties

1.3.1 Environmental Principles and Governance

NRW is working closely with WG on the Environmental Principles and Governance Task and Finish (T&F) Group to prepare for a new environmental governance framework for Wales, following the end of the transition period. WG have confirmed that the new environmental oversight body will not be in place by the end of the transition period and a period of interim measures will apply. These interim measures were initially recommended to cover a period for 3-6 months to provide a proportionate stop gap mechanism until a longer-term solution can be developed. They include a mechanism for citizens to raise complaints in relation to environmental law, and an appropriate way to identify and record other issues as they are being raised.

WG are currently seeking to appoint an independent interim assessor. It is important that there is an appropriate process to investigate and escalate complaints effectively during the interim period. This would reduce the risk of significant environmental issues remaining unresolved during the interim period. In addition, it is essential that there is effective engagement between Wales's environmental governance body and the UKG's Office for Environmental Protection (OEP) and other DA bodies.

There is a risk of a reduction in accountability to uphold environmental protection and standards. There are implications for reporting (such as the Nitrates and the Water Framework Directive), namely the risk of losing the mechanism by which Wales gathers data and evidence about the environment that drives environmental improvements and policy.

Further work on the development of the legislation and permanent oversight body in Wales are required. It is essential that there is no overlap in functions between the new oversight body and existing agencies such as NRW. In particular there is a need for further clarity on provision of advice and how this fits with the role and remit of the new body, NRW's leadership role on SMNR and our statutory regulatory powers, functions and duties. There is also the potential for wider impacts of the new body's remit on other aspects of our role including reporting and monitoring, policy and guidance. It is essential that the interim and permanent approaches ensure there are no governance gaps.

1.3.2 Transfer of Functions (ToF)

The Transfer of Functions (ToF) from the EU to UK is likely to lead to additional work and accountabilities for WG and NRW. The precise scale and nature of ToF from EU to WG and potentially to NRW is uncertain. There is limited time to understand and deliver new requirements (monitoring, reporting, etc.) and associated capacity and resourcing pressures. We are engaged in ongoing discussions with WG regarding potential future changes to NRW's remit and responsibilities regarding ToF.

ToF has wide ranging impacts and requires further development including, for example, clarification of roles between WG, the Joint Nature Conservation Council (JNCC) and NRW. Some progress has been made such as proposed procedures for consideration of Imperative Reasons of Over-riding Public Interest (IROPI) as part of an environmental assessment. This is a derogation under the Habitats Directive which would allow a plan or project to be approved in limited circumstances.

1.4 Borders infrastructure and resourcing

Border facilities and new port infrastructure in Wales will be needed to deal with new requirements as a result of EU Exit including the terms of the Northern Ireland Protocol (the Protocol). These include infrastructure changes resulting from the designation of Fishguard and Holyhead as Border Control Posts (BCPs). Clear messaging is required from UKG and WG to key sectoral stakeholders to provide assurance and signposting on import/export processes (e.g. Sanitary and Phytosanitary (SPS) goods requirements), available resources, and border infrastructure development to ensure sectoral readiness.

Key issues are summarised in the sub-sections below. Further detail on sectoral impacts and preparedness relating to border readiness risks is provided in section 2.

1.4.1 Port Infrastructure

The requirements for BCPs and for import and export border checks are in development due to ongoing negotiations. WG are working within a tight timeframe to implement changes in Wales. Border infrastructure is currently not in place and resourcing and timescales are uncertain. It is likely that border checks will initially be taking place in temporary locations (that have not been confirmed) near ports. It is essential that the environment is protected from risks associated with increased temporary storage near ports and any potential complications.

The development of more permanent infrastructure for border controls will require additional capacity from Local Authorities (LAs) and regulators to provide appropriate oversight. Staggered implementation of import border controls (Jan, April and July 2021) will require vigilance in implementation and timely updating of guidance to stakeholders.

1.4.2 Uncertainty over import/export processes and support/ resources

Complex new processes for both imports and exports and lack of clarity regarding available resourcing to support these processes have the potential to cause significant sectoral and supply chain disruption in Wales. For example, there is uncertainty regarding the availability of Official Veterinarians (OVs) in Wales to process Export Health Certificates (EHCs) for exporting relevant goods to Europe (either via Wales-Ireland or through English ports to the continent). Business readiness will likely be impacted if there are a lack of resources such as OV capacity to process EHCs, or simply as a result of the complexity of new processes.

These issues and their impacts on specific sectors are discussed further in section 2.

1.5 Funding and resources

NRW is supportive of WG's position that, following Brexit, Wales should receive "not a penny less, not a power lost".

UKG is committed to replacing EU Structural Funds in the UK with a Shared Prosperity Fund. Currently UKG has not yet set out the details of how this fund will work, so as a result there are a number of unanswered questions and aspects that may be subject to change. WG have developed proposals that include leading on delivering this investment in Wales and has undertaken a consultation on their approach, which NRW has responded to. We welcome WG's proactive approach to this, however the lack of clarity from UKG is increasingly concerning as the deadline approaches. Even if UKG agrees with WG's approach there is significant and challenging detail that will need to be resolved before any scheme would be operational, particularly around the new proposed structures to deliver this regionally.

There is also still significant uncertainty around other funding streams, particularly LIFE which applicants submit bids direct to EU for, that potentially have a larger impact on the environmental and nature conservation sector. The last possible window for accessing LIFE Nature & Biodiversity funding has now closed, so from now there is significant disruption to potential multi-million-pound projects addressing environmental and climate action. These large projects require significant planning and preparation. Urgent resolution is needed to ensure that projects do not lose momentum or match funding and that the environment sector is not put at a significant disadvantage.

The Regional Investment in Wales Steering Group (RIWSG, a stakeholder group led by WG) raised concerns over the need to have a collaborative Wales approach to ensure opportunities were not missed around Research and Innovation funding at a UK level.

As a DA, WG funding is delivered through UKG's 'block grant' mechanism and there is significant funding uncertainty, particularly for the agri-environment sector. The UK Government has pledged to commit the same cash total in funds to support farmers until the end of the current Parliament, expected in 2022. The UK Government has also guaranteed that any Common Agricultural Policy (CAP) Pillar 2 projects where funding has been agreed before the end of 2020 will be funded for their full lifetime. If post CAP funding levels are not upheld post 2022 then this will impact the scale and nature of delivery of WG ambitions for the Agriculture (Wales) Bill. This would additionally have implications for NRW's remit to deliver SMNR.

1.6. Communications

There remains a high level of uncertainty and change around EU Exit and the transition period for many stakeholders. Communications with our customers, staff and the wider public is a key factor for our communications work. Clear and established links, as well as joined-up messaging where needed, will be vital to providing good communications to our stakeholders and the public.

NRW is represented on WG's Ministerial Brexit Roundtable and our Communications staff are included in WG stakeholder communications meetings. Much of the focus of existing communications with sectors at a Wales and UK level has been aimed at key sectors, such as farming, fisheries and haulage. It is essential that all individuals and businesses impacted by EU Exit have appropriate access to information that is tailored to their needs. This must recognise that large businesses are better resourced and able to respond to complex requirements and changing information. Smaller, more disaggregated sectors and businesses are likely to need clearer signposting of key information on how to prepare for EU Exit.

WG has developed comprehensive advice and guidance for sectoral stakeholders and the public on its [Preparing Wales pages](#).

1.7 Impacts of Covid-19 on WG EU Exit preparedness

Covid-19 has presented a significant challenge to WG and NRW for managing resource requirements to deliver timely EU Exit related preparation, including legislation and infrastructure. Responding to Covid-19 has also impacted on stakeholder and business capacity to prepare for EU Exit and impacted on sectoral resilience. More businesses in Wales have seen a greater fall in turnover than elsewhere in the UK ([Bevan Foundation](#) 2020).

1.7.1 Economic shock and supply chain disruption

Our collective response in Wales demonstrates that we can act quickly in the most challenging of circumstances. WG, NRW and other stakeholders' response to Covid-19 has 'stress-tested' some key aspects of WG EU Exit preparedness. This has built capacity and understanding, particularly around supply chain stresses and available mitigation (such as the disposal of surplus milk through the waste hierarchy).

There is an increased risk of economic shock and supply chain disruption if there are incidents associated with Covid-19 and any spike in cases, concurrent with EU Exit at the end of the transition period on 1st January 2021. Such a concurrence of events will be difficult to prepare for and the scale of impacts are unknown. Seasonal incidents such as flooding could create additional strain for already stretched systems.

- There could be significant resource implications for WG, NRW and all key stakeholders if staff are ill or isolating, with associated challenges regarding available human resource capacity.
- Businesses may be under prepared or not resilient enough to manage the impacts of the "multiplier effects" of concurrent Covid-19 impacts together with impacts of EU Exit and any additional seasonal events.
- Disruption to supply chains as a result of Covid-19 and EU Exit is likely to increase the risk of pollution incidents (see **section 2**). This may result in an increased frequency and number of incidents in the short-term.

1.7.2 Green Recovery

Supporting sectoral and public resilience to these risks through WG's Green Recovery programme is essential. In our response to the Climate Change, Environment and Rural Affairs Committee (CCERA)'s [consultation on the impact of the Covid-19](#) pandemic, we noted that as we move into the recovery phase, we must maintain the momentum and ensure that the recovery is genuinely green. Any economic recovery stimulus must not lock in:

- high carbon emissions or climate risk
- decline of biodiversity
- unsustainable patterns of consumption or production

The Covid-19 recovery must accelerate us on the pathway to dealing with the climate and nature emergencies, driving long term changes in behaviours at an individual, sector, business, community and organisation level. Wales' response to the Covid-19 Recovery must be driven by what we've learnt as individuals, industries, businesses, public and third sector organisations about the resilience of our operating models and ways of working. We need to collectively commit the energy to those things we've learnt we want to do more of.

In our CCERA response we set out a number of areas of opportunity central to our vision of a Green Recovery. These are: Building the skills of Wales' workforce; Reconnecting people and nature; Regulation; Green and local procurement; Environmental finance; Renewing our operating model – supporting new ways of working; Supporting place making.

Preparedness of key economic sectors in Wales

2.1 Overview: sectoral preparedness

Trade negotiation outcomes and developing UK and Welsh legislation, such as the Agriculture (Wales) Bill and Welsh fisheries bill will create significant change and have far-reaching, long term implications. Current lack of access to robust trade modelling assumptions is exacerbating sectoral unpreparedness including that of environmental Non- Governmental Organisations (eNGOs). Ongoing uncertainty may impact on many of NRW's partners involved with our day to day work. This could impact their ability to engage with our work.

The anticipation of impacts and associated preparedness is not possible for all sectors due to significant uncertainty relating to the outcome of trade negotiations. This includes the immediate to short term risks of supply chain disruption, discussed in section **2.3** below. The legislative environment also impacts on sector readiness (see **section 1**). We will continue to work with WG and all relevant stakeholders and agencies to mitigate relevant risks.

The challenge for WG and NRW is to clearly communicate impacts and responsibilities, new regulations and processes, and WG preparedness/mitigation to a range of heterogeneous and disaggregated sectors. Uncertainty and mixed messaging could prompt stakeholder inertia, deliberate or mis-guided misinterpretation, and a lack of preparedness. This could result in negative consequences for SMNR outcomes in Wales in the short, medium and long term. All environmental stakeholders and sectors must be made aware that there will be impacts under any EU Exit scenario which are likely to cause changes to current practices. For example:

- It is important to communicate to the agri-environment sector that there will be issues which are likely to catalyse land use change over the medium to long-term with complex, adverse environmental and socio-economic impacts. These impacts are presented in detail in [WG's Evidence and Scenario sub-group reports](#) which model predicted land use change. Immediate to short-term impacts to the agri-environment sector caused by the risks of supply chain disruption and economic shock are outlined in the sub-sections below.
- In Wales the public water sector (DCWW and Hafren Dyfrdwy) are aware of the risk to their operations. They have taken measures to prepare and work at a UK level with their counterparts.
- Industry in general is well prepared for the end of the transition period mainly in response to the risk of 'No Deal' that has prompted companies to implement numerous contingencies including stockpiling and protecting supply chains. For example, there is some reliance on continuous movement of radioisotopes for diagnostic and treatment purposes in specialist hospitals. Those affected have put in place suitable contingencies to protect these critical supply chains. These contingencies have inadvertently provided resilience to the current Covid-19 pandemic and the situation is under constant review as part of the NRW's inspection regime.
- A large amount of guidance is required for most industrial regimes to ensure sectoral readiness, for example the Emissions Trading Scheme (ETS). There is a need for clear and timely communications with operators and the public on EU Exit related industrial changes due to end of transition. Both WG and DAs are having to develop robust policy to support

these new ways of working. Uncertainty at this time means that there is a lack of suitable policy and guidance for stakeholders.

- To support preparedness across the waste sector, NRW continues to work alongside WG and UKG, other agencies, and Local Authorities, to engage with and advise a number of industry stakeholder groups for waste and producer responsibility regimes.

Continuing uncertainty over the 'direction of travel' itself is having sectoral impacts. The scale and pace of change over time is likely to have an adverse impact on key sectors and on maintaining implementation e.g. of revised procedures or applications for derogation licences.

As set out in section 1.7, Covid-19 is exacerbating the risks of sectoral unpreparedness and lack of sectoral resilience to stresses. This could result in an economic impact with knock-on effects on the environment and well-being. Rapid, effective, clear and timely communication is key to mitigate this.

Specific risks and issues are set out in the following sub-sections.

2.2 Lack of availability or loss of access to essential goods and services

Inability to obtain normal quantities, types or specifications of supplies including chemicals, tools, equipment and raw materials could result in an economic or operational impact on businesses, thereby leading to environmental impacts. This could lead to permit noncompliance, operations failure, inappropriate substitutes being used (off-label use) or failure to maintain the same standards. This is exacerbated where supply chains are complicated and reliant on other sectors.

Uncertainty for the legislative requirements longer term is curtailing investment and innovation, enhancing pressures on areas impacted by EU Exit including chemical supply chains.

2.3 Import and export issues including border controls

2.3.1 Border controls

Import and export processes including border check requirements have the potential to cause immediate and significant delays and disruption at GB ports, including Welsh ports. For example, new import border controls introduced from January 2021 require SPS controls for goods entering Northern Ireland from a third country or Great Britain. The introduction of new checks will be staggered in three stages from: (1) 1 January 2021, (2) April 2021, and; (3) July 2021 which may cause disruption at Welsh ports if infrastructure and business is not sufficiently prepared.

New import and export requirements for specific goods, for example SPS check requirements are highly complex. Any lack of clarity regarding available resourcing to support these processes has the potential to cause significant sectoral and supply chain disruption in Wales. Clear messaging and guidance, particularly but not exclusively for the agri-environment sector, is essential to support business readiness to limit disruption.

Disruption could cause incidents for all stages of the supply chain. Any delays to import and export processes could lead to goods becoming waste, leading to the disposal and dumping of 'just in time' perishable goods, with an increased risk of incidents associated with waste and pollution. Covid-19 has shown us that most sectors are not completely prepared for the effects of significant supply chain disruption which is a key risk associated with the end of transition. NRW has scoped these

risks from a waste perspective and mitigation measures are in place for predicted impacts.

Examples include:

- There is a risk of on farm disposal of milk; however, NRW has a clear mitigation strategy regarding the use of the “waste hierarchy” for this risk.
- Risks associated with the incorrect disposal of agricultural waste to land such as disposal of animal carcasses is controlled by the Animal and Plant Health Agency (APHA). It is only allowed under a derogation.
- UK regulators including NRW have an agreement with Border Force to provide support, guidance and data to support contingency planning relating to the correct disposal of any spoiled goods becoming waste.
- Supply chain disruption and delays at ports could increase the use of temporary storage and lorry parks with an increased risk of environmental pollution. Any resultant groundwater pollution would be very difficult and costly to remedy and could result in an increase in land contamination in the longer term.
- Uncertainty over border controls could lead to a lack of evidence-based and targeted action on Invasive Non-Native Species (INNS) in Wales and its seas. Loss of access to EU networks and alert systems will reduce our capacity to horizon scan and prepare.

2.3.2 Temporary storage facilities at or near Welsh ports

Guidance from the UK Government on how to operate a temporary storage facility in the event of delays at ports suggests that UK regulations will maintain existing requirements for storage capacity and premises registration. There is a need for further clarity on how this will be implemented in Wales. The main concern for NRW with temporary storage at ports or associated with ports, is pollution of the wider environment. Inadequate or inappropriate facilities increase this risk, such as inappropriate drainage provisions, permeable surfaces, leaks and spills of fuel. There is currently a lack of guidance or referral to existing guidance to prevent pollution of water and groundwater within the UK Government temporary storage web pages.

2.3.3 Movement of Waste

From the 1st January 2021, Great Britain (GB) and Northern Ireland (NI) will diverge in their approach to managing waste shipments. As this is a reserved matter, the exact regulatory approach is still being agreed by Defra / UKG with input from NRW and WG. Defra’s current position is that only movements between GB to NI should be notified. The current proposals are:

- Hazardous waste and specified non-hazardous wastes moving from GB to NI must be notified
- Annex VII forms must be completed for Green List Wastes moving from GB to NI
- Exports for disposal from GB to NI are prohibited

Key issues include:

- Exports of waste GB (Wales) to NI. Over the past 5 years Welsh waste exports to Northern Ireland have averaged 15k tonnes from <20 waste permitted facilities.
- Cost burden to Welsh businesses requiring Trans Frontier Shipment (TFS) notifications to NRW.
- NRW is now required to look at import data from NI to scope volumes to support Welsh sectoral readiness.
- These changes have the potential to be politically sensitive given they could be interpreted as a trade barrier between GB and NI.

TFS of waste may become an issue, particularly in light of the additional BASEL Convention amendments to the classification of plastics. The changes mean that after the 1st January 2021 non-hazardous waste plastics can only be exported as green list waste (B3011), if they are destined for recycling in an environmentally sound manner and are almost free from contamination and other types of waste. This will increase the number of notifications that NRW receives and will incur administrative costs to NRW.

2.4 economic shock: sectoral risks and impacts

The impacts of tariff and non-tariff barriers to trade and associated supply chain disruption have the potential to cause significant sectoral disruption as specific sectors are subject to economic shock. As a result of this disruption there is likely to be a greater frequency of incidents, taking a longer time to resolve, involving non-compliance, illegal, or unpermitted activity.

These risks could have a significant environmental impact with implications for NRW resources. There is likely to be increased demand on NRW permitting, licensing, regulation and enforcement functions as well as increased demand on incident response for pollution events. NRW has scoped the risk from a waste perspective and mitigation measures are in place for predicted impacts.

The agri-environment sector is particularly vulnerable to trade-related 'economic shock', especially in a No Trade Deal scenario, for example impacts to the lamb export market as a result of tariffs. These barriers to trade are complex and hard to predict, making it difficult for the sector to prepare effectively. Economic shock is likely to increase the risks of short term incidents (non-compliance, dumping) with potential pollution risks. On land and at sea there may be dumping of stock or use of inappropriate chemicals, causing direct or diffuse harm to habitats and species and ecosystems. There are long-term risks of unsustainable land use change which may lead to loss of habitats and species. There are additionally risks associated with compliance with conditions of licences and schemes and the potential reduction in uptake of opportunities in existing and future grant schemes.

Both short-term incidents and longer-term land use change risk negative impacts on biosecurity, animal health and welfare standards, environmental standards, and risks to the social fabric of rural communities including farmer health and wellbeing. Such impacts would additionally have significant implications for NRW's statutory duty to deliver SMNR. Any loss of agri-environment funding would exacerbate the economic shock to this sector.

The marine fisheries sector is preparing for the worst case scenario; i.e. no trade deal with tariff and non-tariff barriers. This will likely translate into short to medium term issues with moving live

products through ports, disruption to EU markets and reduction in economic activity (fishing) due to impacts on demand and transportation. The impacts of Covid-19 on the fishing industry is comparable to the end of implementation period without a trade deal; markets were affected and demand was reduced. WG provided a hardship scheme during Covid-19. Further intervention may be required in the event of a No Trade Deal scenario. The Seafish Industry Body has provided several useful [end-of-transition period guides](#) for the sector.

2.5 Enforcement of environmental law

One of the key gaps for the environmental sector that is left by EU Exit is the enforcement of environmental law and a mechanism for citizens to raise issues in relation to environmental law. There will be a key role in this for the new environmental oversight body, and for the interim assessor until the permanent body is in place. However there remains the need to clarify the relationship of existing organisations with the assessor and the new body, to ensure no overlap in functions as well as a common and effective triage process for strategic environmental complaints.

WG and NRW need to ensure sufficient appropriate resource is in place to assess the anticipated number of complaints previously managed on our behalf by the EU. There is also likely to be an increase in complaints following the establishment and publication of a new Welsh environmental complaints process. It is therefore essential that WG ensure that these strategic environmental complaints are addressed by the right organisation and people with the appropriate skills and knowledge. Due to the nature of our remit, NRW expects that a significant number of these complaints may require NRW resource and expertise to resolve.

Further clarity is also needed on the role of the proposed environmental oversight body in relation to the review and setting of standards and scrutiny of performance against those standards. This is an important function that should be supported by suitably resourced and impartial expert reference panels including expertise from policy, regulation and academia. If not sufficiently supported or clearly defined this could result in a significant gap in accountability, with knock on effects on the environment and across the sector.

Confirmation on the approach for the new environmental governance framework, the functions and format of the new environmental oversight body is key for effective preparation. Clarity on the detail of any forthcoming legislation to embed the approach will support NRW and the wider environmental sector in their preparedness for the post-transition phase.

EU Exit is causing uncertainty with knock-on impacts on sectoral preparedness and business readiness. For example, the take-up of contracts for ecological improvement and projects by stakeholders. It is critically important to provide clear communications to emphasise that previous EU biodiversity commitments and obligations will be enshrined in UK law both onshore and offshore so are still relevant to people to note and respond to accordingly.

Clear and unequivocal joined up communication is required from WG and NRW on the continued protection of protected sites, habitats and species in order to prevent potential misunderstanding of procedures (misguided or deliberate) leading to loss of or damage to ecosystems. This communication is vital as the current Covid-19 pandemic has already seen a rise in incidents, such as unconsented in-river dredging. This may combine with EU Exit to lead to a continued increase if pre-emptive action is not taken.

The implications for preparedness arising from the negotiation of UK international agreements

3.1 Overview

There remains significant uncertainty around the negotiation of UK international trade agreements with the EU and other nations. This is having an impact on the ability of NRW and the environmental sector to prepare for, prioritise and resource upcoming challenges and opportunities. As set out in sections 1 and 2, ongoing uncertainty is affecting preparedness in Wales for WG, agencies, and sectoral stakeholders.

UKG is currently negotiating with a number of international partners concurrently. There are complex and often interrelated issues that remain unresolved and have an impact on Wales and NRW's statutory remit. For example, the UK Fisheries Bill provides the framework for fisheries agreements to be made and is dependent on the outcome of EU trade negotiations.

The outcome of trade negotiations and legislative changes will lead to challenges and opportunities in Wales. Regardless of outcomes, additional process requirements such as border checks will have a knock-on effect on economic and environmental risk levels (see section 2). Regulatory divergence as a result of trade negotiation outcomes could result in a reduction in environmental standards. This would have a significant impact on NRW's statutory duty to deliver SMNR. NRW is continuously monitoring and assessing the risks and impacts of any updates on the negotiations to our activities and priorities.

Further detail is provided in the following sub-sections:

3.2 Risks of a reduction in environmental and other standards in Wales

There is a risk that WG objectives to maintain high environmental and animal welfare standards could be negatively affected by UKG trade negotiation outcomes. This is also affected by the requirements of an inter-UK 'level playing field' through the Internal Market Bill and any application of Common Frameworks (see section 4). This could affect standards in Wales and its territorial waters (regulatory divergence). If declining environmental standards result in poor practices on land, this can also have implications for the wider terrestrial and marine environment both through local impacts such as water pollution and marine litter, and global impacts, such as climate change.

3.3 Risks of legislative and governance impacts and gaps

There are a number of potential legislative and governance gaps including as a result of trade deals, the establishment of common frameworks, the transposition of directives, and correcting SIs. These may limit NRW's capacity to deliver statutory duties. These risks are discussed in sections **1.2**, **1.3** and **2.5** of this response.

3.3.1 International relationships and agreements

The outcome of trade negotiations will have an impact for NRW on our international work and the key countries and organisations that we will seek to build future relationships with. We are currently developing a formal international engagement strategy. There is also a need to continue to develop our approach to international agreements post EU Exit, for example, the forthcoming post 2020 Global Biodiversity Framework targets and commitments.

3.3.2 Loss of access to EU databases and networks

The UK and Wales could lose membership to numerous EU information sharing networks and agencies essential for rapid alerts, exchange of information, good practice, shared research priorities, and development of common approaches. Examples include ECHA, EUROPHYT, EURATOM, ADNS and EEA.

This would have an impact on knowledge transfer, environmental governance and maintaining good practice regarding industrial and environmental protection. Loss of access to EU databases and networks would also reduce our capacity to tackle key cross border issues such as climate change, plant and animal health and biosecurity. It would also have implications for meeting statutory requirements for reporting and sharing evidence.

These networks and agencies support members to meet international and EU obligations transposed into national law and promote consistency in environmental regulation. Loss of membership to these networks will have an impact on the capacity of all UK Environmental Regulators to maintain compliance with existing legislation and reduces our access to innovation and good practice.

3.3.3 Retention of case law

The majority of UK environmental legislation is derived from EU law that is transposed into UK law. There is uncertainty regarding the transfer of the European Court of Justice's case law to the UK following EU Exit. This may, over time, require existing legal precedents to be re-established and any change to legal precedent may have a negative impact on environmental standards

3.3.4 Transfer of Functions (ToF) and governance bodies

We have concerns regarding governance gaps and lack of clarity on ToF as a result of trade negotiation uncertainty. These issues are discussed in detail at **1.3** and **2.5**.

3.4 Risks of sectoral disruption and economic shock

Ongoing uncertainty regarding the outcome of trade negotiations and any significant change to current regulations and practice has the capacity to result in significant sectoral disruption and economic shock. See section 2 for further details on sectoral impacts.

Intra-UK intergovernmental agreements relating to the end of the transition period, including the common frameworks programme

4.1 Overview

As a member of the EU, regulatory equivalence across the UK has been driven by the application of EU regulations and standards. Due to EU Exit, there is currently uncertainty regarding the establishment and governance of a UK internal market. Common frameworks have been proposed on an inter-governmental basis (e.g. for plant and seed imports) to underpin harmonised regulatory standards across the UK. Progress and clarification on shared ambitions would provide assurance for policy makers, regulators, businesses and the public.

UKG's Internal Market Bill is still subject to change, however clarity on how aspects of the Northern Ireland Protocol and devolved competence are applied is essential for preparation for EU Exit in Wales by WG, NRW and other agencies. Due to the uncertainty around the UK Internal Market Bill and trade negotiation outcomes, there is a risk that WG objectives to maintain high environmental and animal welfare standards could be negatively affected. This may also have an impact on the competitiveness of Welsh businesses. UKG has previously stated that environmental standards will be maintained, however confirmation of specific commitments, measures and legislative targets would provide certainty. There is widespread concern amongst stakeholders including eNGOs about the continuing risk that environmental standards will drop post EU Exit. The outstanding work that remains on common frameworks should seek to close these gaps and risks and resolve any potential cross-boundary issues.

4.2 Common frameworks

A framework for environmental governance underpinned by a common objective, principles and standards would help to avoid gaps in the implementation of environmental policy across the UK. This approach would also clarify the role and remit of oversight bodies and regulated public bodies where devolved and non-devolved remits coincide.

A common environmental framework and principles at a UK level would also reduce the risk of regulatory divergence and provide a common baseline to landowners and industry, regardless of location. This would reduce the risk of a 'race to the bottom' or other crossborder issues such as transboundary environmental damage being subject to different regulatory standards. It would also help to clarify how regulators and administrations work together across the UK to manage transboundary issues, such as climate change, water quality or air pollution where a collaborative approach is essential. A common framework that followed a similar approach to the current EU framework would fully recognise and respect the different legal frameworks and devolved legislation across the UK.

Clarity on the detail and direction of approach for a number of UK common frameworks and agreements between UKG, WG and the other DAs would be welcomed. This would support our preparedness for the end of the transition period and the potential changes this may bring to the standards and measures applied by the UK Administrations. This would also help to protect WG environmental standards and principles.

4.3 Internal markets and intergovernmental agreements

There is uncertainty regarding the formal role of DAs in determining the future shape of new internal market standards (e.g. through the Office for the Internal Market). Relevant examples include:

- The UK Fisheries Bill and the Fisheries MoU should provide the framework for UK intergovernmental agreements including the Dispute Resolution Mechanism and consideration of the Concordat.
- Intergovernmental agreements are being revised and agreed such as the recent MoU for a UK Emissions Trading Scheme (ETS).
- The establishment of UK Best Available Techniques (BAT) Reference documents (BREF) systems.
- Whilst we have little direct involvement with the Common Framework for Chemicals, we are aware that it is progressing satisfactorily. We are finalising the MOU between NRW and the Environment Agency, setting out the arrangements to deliver our respective duties under UK Registration, Evaluation, Authorisation & restriction of Chemicals (REACH).

There is a risk that DA devolved competencies are not sufficiently protected, and that Wales will lose the ability to independently set environmental standards. This could be detrimental to the environment in Wales. NRW is eager to support Welsh Government through evidence-based guidance to maintain and enhance environmental standards, to protect the state of our environment and deliver SMNR. For example, it is unclear what impact the UKG Internal Market Bill will have on the regulation of future water supply from Wales to England.

The approach should provide clarification on how regulators and administrations work together across the UK to manage transboundary issues where a collaborative approach is essential. There is a risk of divergence between DAs and UKG regarding environmental principles and governance. Issues such as climate change, water quality, air quality and pollution are dependent on a collaborative approach at a national and international level. This will also support the maintenance of industrial and environmental standards across the UK and Wales.

4.4 Implications of the Northern Ireland Protocol (the Protocol)

The Protocol is part of UKG's European Union (Withdrawal Agreement) Act 2020. The Protocol ensures there will be no hard border on the island of Ireland if there is a no-deal Brexit or a deal which is narrow in its scope. Northern Ireland will continue to enforce the EU's customs rules and follow its rules on product standards (the single market on goods). The terms of the Protocol could potentially impact the functioning of the UK internal market and any associated common frameworks.

4.5 Primary Legislation: common frameworks and timescales

There are concerns that the UKG's Agriculture Bill, Environment Bill and Fisheries Bill will lead to regulatory divergence between Northern Ireland and the rest of the UK in these areas. The Northern Ireland Assembly Research and Information Service has published briefing papers on each of these bills, setting out the need for clarity on whether, and if so how, they take account of and

are compliant with the terms of the Protocol. They have also raised queries concerning the potential for such legislation to lead to divergence between Northern Ireland and the rest of the UK, given the requirements of the Protocol regarding the application of EU law in these fields. Such divergence could have significant implications for UK internal markets and common frameworks and an impact on Wales.

As highlighted in previous sections, the scale and pace of change for policy, legislation, regulations and infrastructure preparedness is very challenging for WG, NRW, other agencies and members of the public. Covid-19 creates an additional layer of complexity around day to day operations and the risks of concurrent incidents, for example if a Covid19 peak occurs during EU Exit and with a period of flooding. Covid-19 could impact on available funding, with the possibility that future budgets will be further constrained or reduced.

The policy and legislative environment in Wales and the UK will be subject to an unprecedented level of change over the next few years due to EU Exit, Covid-19 and climate change. It is essential that we are able to respond to these multiple challenges to protect the Welsh environment. As we have highlighted through our response, the timescales for the implementation of new legislation, governance, borders infrastructure, import and export processes and customs requirements are challenging for legislators, regulators and businesses. For example:

- Timescales are tight with implementing a new UK ETS.
- It is possible that the No Deal SI for waste shipments will require implementation as a short-term measure due to time constraints. NRW are currently drafting updated communications messages to the sector.

These impacts and associated timescales are particularly challenging for smaller and less aggregated sectors as highlighted in section 2.

Additional supporting information

5.1 Overview

Natural Resources Wales is the largest Welsh Government Sponsored Body, employing 1,900 staff across Wales with a budget of £180 million. Our roles and responsibilities are:

- Adviser: principal adviser to Welsh Government, and adviser to industry and the wider public and voluntary sector, and communicator about issues relating to the environment and its natural resources
- Regulator: protecting people and the environment including marine, forest and waste industries, and prosecuting those who breach the regulations that we are responsible for
- Designator: for Sites of Special Scientific Interest – areas of particular value for their wildlife or geology, Areas of Outstanding Natural Beauty (AONBs), and National Parks, as well as declaring National Nature Reserves
- Responder: to some 9,000 reported environmental incidents a year as a Category 1 emergency responder
- Statutory consultee: to some 9,000 planning applications a year
- Manager/Operator: managing seven per cent of Wales' land area including woodlands, National Nature Reserves, water and flood defences, and operating our visitor centres, recreation facilities, hatcheries and a laboratory
- Partner, Educator and Enabler: key collaborator with the public, private and voluntary sectors, providing grant aid, and helping a wide range of people use the environment as a learning resource; acting as a catalyst for others' work
- Evidence gatherer: monitoring our environment, commissioning and undertaking research, developing our knowledge, and being a public records body
- Employer: of almost 1,900 staff, as well as supporting other employment through contract work

NRW's EU Response Programme has established a cross-programme workstream to scope and develop mitigation plans for the short, medium, and long-term implications of exiting the EU, with a particular emphasis on policies and regulations. Brexit functional policy roles have been recruited to support our EU Response Programme and NRW, to respond to changes in legislation and policy at a Wales and UK level as a result of withdrawal from the EU.

Additionally, NRW's No Deal Programme, led by the Incident Management and the Operations Directorates, is preparing NRW for the potential scenario of the UK leaving the EU on 31 December 2020 without a trade deal and its implications for us in the short term (the likely resource and incident management risks).

The EU Response Programme is working closely with Incident and Operations staff to ensure we are prepared to manage the impacts of EU Exit under any scenario. We are monitoring developments, providing advice and guidance and ensuring NRW is ready for change.

Within NRW we have worked across functions and directorates to identify where risks and opportunities exist, and the work required to mitigate these risks. We are engaging with WG and all relevant agencies and stakeholders to plan for and manage the impacts of the changes that EU Exit will bring under any scenario. Further detail from our No Deal Programme is provided below.

5.2 Incident and Operations No Deal Incident Programme

NRW's No Deal Incident Programme led by the Incident Management and Operations Directorates is preparing NRW for the potential scenario of the UK leaving the EU on 31 December 2020 without a trade deal and its implications for us in the short term. This work includes the following:

- We have increased Incident Rotas by allocating over 100 additional staff members for training to undertake incident duty roles.
- We continue to review our business continuity plans in light of the review of our previous EU Exit work and a debrief of our Covid-19 response and have enhanced our ICT capacity to support this work.
- We have developed a register of 75 key incident management skills along with the locations of staff who possess them, to prepare for any increased requirement to respond to incidents.
- We are reviewing port plans and considering the impacts of multiple incidents during the Winter period.
- We have undertaken Exercise Trident, an Internal NRW business continuity preparedness and disruption exercise focused on pandemic response.
- We have introduced a linked policy and response communications plan.