

Senedd Cymru
Y Pwyllgor Materion Allanol a Deddfwriaeth
Ychwanegol
Ymadael â'r Undeb Ewropeaidd:
Paratoadau Nghymru ar gyfer diwedd y
cyfnod pontio
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Ymateb gan CGGC ac Fforwm Cymdeithas Sifil
Cymru ar Brexit

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

Evidence from Wales Civil Society Forum on
Brexit

WCVA and Wales Civil Society Forum on Brexit Response to the EAAL Committee Inquiry into Preparedness in Wales for the End of the Transition Period

October 2020

Introduction

This inquiry response has been written as a part of the Wales Civil Society Forum on Brexit project (The Forum), a partnership between Wales Council for Voluntary Action (WCVA) and the Wales Governance Centre (WGC). The Forum is funded by The Legal Education Foundation to provide a coordinating role and to support the third sector in Wales with information and academic expertise on the implications of the UK's withdrawal from the European Union.

WCVA is the national membership organisation for the voluntary sector in Wales. Its vision is for a future where the third sector and volunteering thrive across Wales - improving wellbeing for all. Our purpose is to enable voluntary organisations to make a bigger difference together.

The WGC is a research unit sponsored and supported in the School of Law and Politics, Cardiff University. It undertakes innovative research into all aspects of the law, politics, government and political economy of Wales, as well the wider UK and European contexts of territorial governance.

Summary

We are pleased to have the opportunity to participate in the External Affairs and Additional Legislation Committee's inquiry into preparedness in Wales for the end of the transition period. Our response is based on discussions with key participants in the Forum and on a short qualitative survey conducted across WCVA's networks. Our comments will focus on providing an update on the challenges faced by the sector in preparing for the end of the transition period. Overall our discussions and work on this matter suggest the sector is struggling to consider the immediate impact of the end to the transition period but is considering how to adapt to new landscape in the medium and long term. There are concerns that this will be a challenging context potentially qualified by:

- a strained constitutional setup
- increased sector marginalisation because of a push for centralisation at the UK level

- strained intergovernmental relationships
- more reliance on funding distributed by the UK Government (if the UK Shared Prosperity Fund – the UKSPF - is centralised) while with recent experiences in this area suggest that this could be challenging in terms of barriers, culture and relationships
- resistance towards human rights and equality-based approaches at the UK level including to international law and to judicial review.

In summary the sector is concerned by the shifts we are seeing in the politico-legal landscape which have accompanied Brexit and which the sector may struggle to adapt to as the changes resulting from transition set in after December 2020.

- The focus for the third sector in preparing for the move to a post transition landscape continues to be in line with the priorities set out in the [Brexit Forum Findings](#) document which includes, *inter alia*¹:
 - Ensuring commitment to the non-regression and progression of rights and standards across sectors.
 - Safeguarding migrant communities, protecting social cohesion and mitigating the impact of Brexit in this area.
 - Ensuring that replacements for EU funding and its governance are shaped and informed by those it is intended for and continues to tackle poverty, social exclusion and environmental causes
 - Ensuring that devolution is respected, and that proper transparency, safeguards and scrutiny take place throughout the Brexit process.

1. Capacity in the Third Sector to consider potential preparatory measures is extremely limited. This has been compounded by Covid-19 but is also being exacerbated by ongoing uncertainty around the future relationship and internal developments like the UK Internal Market Bill.

1.1. Over the summer² and following recent negotiation rounds,³ the UK Government has made it clear that organisations must prepare for the end of transition and increasingly for a ‘no deal’ outcome. However, this is practically very challenging for the third sector given the nature of the work undertaken, the focus on long-term implications and capacity

¹ Wales Civil Society Forum on Brexit, ‘Brexit Forum Findings’, Available at: <https://static1.squarespace.com/static/5b3f67a4e17ba3bb22492189/t/5c1785fe562fa7836b3dcfa8/1545045503816/Brexit+Forum+Findings.pdf>

² Cabinet Office, ‘Major new campaign to prepare UK for end of the transition’, 13 July 2020. Available at: <https://www.gov.uk/government/news/major-new-campaign-to-prepare-uk-for-end-of-the-transition-period>

³ Cabinet Office, ‘Oral Statement to Parliament: EU Exit - Update on negotiations and the work of the Joint Committee’, 19 October 2020. Available at: <https://www.gov.uk/government/speeches/eu-exit-update-on-negotiations-and-the-work-of-the-joint-committee>

limitations which have been significantly compounded by Covid-19. We are planning to increase the amount of information on this for the sector in the run up to the end of transition, including around Welsh and UK Government contingency planning to address some of the anxieties we are seeing. However, we recognise that the possibilities for minimising the impact of the end of transition and especially if this occurs without an agreement are limited for the sector. Nevertheless, we welcome the fact that the Welsh Government has been proactive in discussing transition and post transition support with us.

- 1.2. Most responses to our survey indicated that organisations were either not ready or did not know how they could prepare for the end to the transition period. This is because of prevailing uncertainty around what changes will occur after 1 January 2021, for instance around future funding, the nature of the relationship with the EU and indeed whether the UK would exit transition without an agreement. This uncertainty makes it challenging for organisations to frame any potential impacts and therefore to mobilise any capacity to respond, either at the policy or frontline services levels. Most respondents to our survey did however indicate that further support from the Welsh Government to help the sector adapt to life after the transition period would be needed and that this would have to address both short-term need and long-term sustainability. A significant majority further indicated that Brexit has or will have a negative or significantly negative impact on their ability to access funding, generate income and deliver services.
- 1.3. This uncertainty continues to be exacerbated by several other factors such as delays to information on the UK Shared Prosperity Fund around which our survey results found considerable anxiety. The UK Internal Market Bill has also had a destabilising effect which is further compounding the ongoing uncertainty surrounding the content of the future relationship agreement and is making it even more difficult to prepare. For example, under these proposals health services, which are the subject of an exclusion, could be brought within the scope of the legislation within three months of the Bill's passing using the made affirmative procedure (and therefore prior to any legislative process). Furthermore, tensions in the negotiations caused by this Bill have also introduced concern around commitments that were previously thought resolved by the withdrawal agreement. The Forum was asked to provide information to one organisation surrounding whether the citizens' rights provisions of the Agreement were at risk if the UK breached its international commitments.
- 1.4. By way of further examples, the international volunteering sector is facing several layers of uncertainty around the ending of European Solidarity Corps funding, new visa requirements and whether the health surcharge will be applicable to volunteers under the post Brexit immigration proposals particularly in the health and social care sectors. This makes it challenging to even cost applications where EU funding is still available.
- 1.5. The voluntary sector already had some of the lowest capacity to prepare for Brexit and this has been further constrained by the Covid-19 crisis. The unique and crucial role played by the sector here has required it to redirect some attention away from Brexit towards the immediate response to the pandemic. The conjunction of this pressure, adapting to new working conditions, gaps in funding, staff furloughs and overall uncertainty has impacted on organisational capacity and staff wellbeing. This is also true for WCVA and the Forum both of which saw capacity diminished because of the pandemic. This has delayed our

provision of information and support around EU transition for the sector but we are planning to circulate information in November.

- 1.6. Some organisations highlighted that they had examined immediate risks but this has not extended to secondary effects which may now be compounded by Covid-19, with concerns highlighted around food costs with reference to vulnerable groups like asylum seekers, impact on employment levels and employment related support as well as on agriculture and rural Welsh speaking communities. It was also felt that many of these risks cannot reasonably be mitigated against without long-term financial support.

2. Implications for preparedness arising from the negotiations with the EU and other trading partners

- 2.1. We have seen some evidence that Brexit has dropped off some third sector organisations' risk registers as a result of Covid-19 but we have been working through our information channels to raise awareness of the prospect of exiting transition without an agreement. Responses from organisations have highlighted that they foresee little in the way of initial impact if an agreement is secured. Contrary to previous Brexit related critical junctures, the end of transition is being viewed more as a step in longer term planning as opposed to an immediate crisis. As such there are only minimal preparations taking place (like ensuring EU staff members are aware of the EUSS) with focus instead being placed on how to adapt to long-term implications like community support needs and how to ensure organisational resilience in a combined post Covid and post Brexit environment. Rather than prepare for the immediate end to transition there is therefore more willingness to consider those aspects of the future relationship agreement that are critical to understanding the constitutional, social and legal landscape which organisations will need to adapt to and navigate after December 2020.
- 2.2. With that said the sector remains concerned about but is largely unable to put in place active measures to prepare for, the economic challenges of Brexit and especially those of a no-deal outcome to transition. Indeed Covid-19 has catalysed in a very short time many of the concerns the sector has previously raised in the context of Brexit around a 'perfect storm' of increased need, increased demand for services and decreasing services and funding. In the short term the prospect of facing the disruption of 'no deal' in conjunction with these Covid-19 related challenges, in the middle of winter when pressures on health services are the highest is daunting. As a result of these concerns the sector called for an extension to the transition period.⁴ In the long term, the difference between 'no-deal' and securing an agreement on the future relationship is less stark than it was given how 'thin' the deal currently being negotiated is likely to be and research has found that the economic

⁴ThirdSector, 'Civil society organisations urge government to try to extend Brexit transition period', 8 June 2020. Available at: <https://www.thirdsector.co.uk/civil-society-organisations-urge-government-try-extend-brexit-transition-period/policy-and-politics/article/1685478>

impact may still exceed that of Covid-19,⁵ meaning that the sector must prepare to adapt to an increasingly challenging economic context for the foreseeable future.

- 2.3. Organisations highlighted in response to our survey that they have ongoing concerns about the continuity of medical supplies,⁶ as well as fresh food in light of recent Tesco plc. comments and have asked what preparations the Welsh and UK Governments have made to mitigate these issues. This forms part of a wider request for increased information provision around the implications of the end of transition. Several participants also highlighted that any potential preparation for the end of transition has been deprioritised in favour of Covid-19 recovery.
- 2.4. Even if a 'thin deal' is achieved by the end of 2020 this may not address many of the sector's concerns and aspirations thereby further limiting the difference between the two outcomes to issues pertaining to critical supply chain disruptions and the resulting impact this could have on communities. This is because many key aspects of the future relationship negotiations of relevance to the third sector remain unclear – including but not limited to continued participation in programmes like Erasmus+ which has been key in tackling youth unemployment, commitments under article 125 of the political declaration which calls for encouraging cross border civil society dialogue, future participation in research initiatives, reciprocal healthcare rights, level playing field provisions and of course replacements for EU funding. Adapting, feeding into, and encouraging development around many of these issues will likely be important and challenging for the sector beyond 2020 if these are absent from the agreement reached at the end of the year and especially if relations between the UK and EU turn sour in the aftermath of a 'no deal' outcome.
- 2.5. Covid-19 has also deprived the sector of valuable transitional time that would have been used to consider important aspects of the post-Brexit landscape including how civil society in Wales would engage and connect with partners in the European Union moving forward, as well as exploring opportunities that remain open as a third country and within wider European structures like the Council of Europe. There is considerable appetite in Wales and the EU for continued Welsh participation and organisations in Wales have been keen to highlight this despite capacity being drained by Covid-19, further highlighting the importance placed on this aim. However, discussions have not had the opportunity to move forward owing to the pandemic as well as a focus in the EU on preparing for a 'no deal' outcome.

⁵ Thomas Sampson, 'A no-deal Brexit may still be more costly than Covid-19', 26 August 2020. Available at: <https://blogs.lse.ac.uk/brexit/2020/08/26/a-no-deal-brexit-may-still-be-more-costly-than-covid-19/>; see also: Professor Anand Menon, 'A no deal Brexit is a big deal', 25 September 2020, Available at: <https://ukandeu.ac.uk/a-no-deal-brexit-is-a-big-deal/>

⁶ Dr Mark Flear, Professor Tamara Harvey, 'Britain's Pharmaceutical Industry and No Deal', 23 October 2020, Available at: <https://ukandeu.ac.uk/britains-pharmaceutical-industry-and-no-deal/>; The Independent, 'Brexit: Drugs industry appeals to Boris Johnson for urgent action to avoid no-deal medicine shortages', 22 October 2020, Available at: [https://www.independent.co.uk/news/uk/politics/abpi-pharmaceutical-medicines-brexit-boris-johnson-b1080311.html?utm_source=Sailthru&utm_medium=email&utm_campaign=INDNEWS%2319102020&utm_term=INDHeadlines_Masterlist_CDP](https://www.independent.co.uk/news/uk/politics/abpi-pharmaceutical-medicines-brexit-boris-johnson-b1080311.html?utm_source=Sailthru&utm_medium=email&utm_campaign=INDNEWS%2319102020&utm_term=INDHeadlines_Masterlist_CDP;);

2.6. There is a considerable lack of transparency surrounding the content and implications of post Brexit trade agreements. The UK Government is engaging with only a select few UK wide organisations as a part of their trade advisory groups and is requiring signature of non-disclosure agreements to have sight of the content of these agreements. Clearly there is a very considerable lack of input opportunities, which also makes it impossible to prepare for any potential outcomes but also undermines the sector's role in informing policy and ensuring democratic scrutiny. The establishment of the WG advisory group on trade and the involvement of Fair Trade Wales within that has gone some distance in helping to remedy this, but we recognise that communications with the UK Government around these issues is challenging even for the Welsh Government. Nevertheless, how can the sector prepare when information is so openly being withheld at the source? These issues have been compounded by considerable concern that the UK Internal Market Bill will prevent the Senedd and Welsh Government from legislating to prevent a lowering of standards potentially triggered by these trade agreements. This would also distance the sector from the centre of decision making by increasing centralisation and therefore further limit any ability to have a voice on the implications of these trading relationships for Welsh standards. There is considerable territorial differentiation between the access the sector enjoys in the Welsh context when contrasted with the challenges of engaging at the UK level and organisations have expressed apprehension about the need to adapt in the long term to increased engagement with decision making processes at the UK level as a result of this drive towards centralisation.

3. The lack of information about the UK Shared Prosperity Fund

3.1. While funding already secured under the 2014-2020 multiannual budget is guaranteed, the ongoing lack of information on how these funds will be replaced emerged as the single biggest concern amongst responses to our survey. Participants highlighted that continued uncertainty in this area is a significant barrier to planning for the end of transition and that any gap between existing funding and the SPF could compromise service delivery and organisation sustainability. Ongoing uncertainty around the principles, quantum, devolution and priorities of the SPF are particularly concerning when seen through the lens of Covid-19 given the employment support and equality focus of the funded services. One respondent noted that they are planning for considerable issues in fulfilling the needs of the young people they work with when their EU funding ends.

3.2. Recent information by Paul Scully MP and the provisions of the UK Internal Market Bill suggest an aim to centralise the distribution of the SPF – this has of course further fuelled the numerous sectoral concerns in this area. Primary amongst these is the potential loss of relationships and experience built up in Wales around the priorities and delivery of EU funding as these provide far more scope for third sector involvement in the design and delivery of schemes than in England. Recent narratives also suggest shifts towards not only an annual as opposed to multiannual approach but also towards infrastructure and internal market spending potentially to the detriment of the equality and social cohesion focus. Both may end up reducing the sectors ability to meet community needs in Wales. There are also concerns about increased barriers to accessing funding as organisations view UK Government schemes as challenging to successfully bid into owing to a perceived preference for funding UK wide organisations and differences in culture.

3.3. Some of these concerns are supported by recent UK Government Brexit related funding initiatives which have been poorly tailored to the needs of the third sector in Wales. These have been generally difficult to access and have been managed in such a way as to challenge staff wellbeing. For example, funding provided by the Home Office for organisations to support vulnerable individuals with securing their residency rights was renewed only two or three before staff contracts were due to end. Furthermore, the Brexit Readiness Fund in 2019 which was opened to third sector organisations was completely inaccessible even for organisations as large as WCVA due to poor design, timing, priorities and communication. Some civil society organisations funded by the UK Government in Wales and England have also noted that they do not feel comfortable criticising policy for fear of future funding being made inaccessible to them. This stands in stark contrast to the relationships with authorities in Wales and is generating anxiety that any centralisation of the Shared Prosperity Fund may normalise this issue and require organisations to adapt to these relationships and practices.

3.4. The Welsh Government EU Transition Fund has been invaluable in supporting preparation for Brexit but participants have suggested that consideration must be given to reasonable short term funds to cope with the immediate demands linked to transition after December 2020 as they emerge. Longer term support for projects to ensure sustainability and to respond to the new context, including changes in the rural economy, prices, changing demand to different services across groups of people and places was also highlighted as necessary. This is particularly the case considering Covid-19 which has triggered a drop in sector income on top of the uncertainty surrounding the replacement of EU funding.

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

4.1. We welcome that the Welsh Government has been engaging in extensive intergovernmental work with the other governments in the UK around the development of common frameworks. We recognise the necessity of these to manage aspects of the UK's internal market after Brexit. However, there are ongoing issues around transparency and opportunities for the sector to feed into this process.

4.2. A significant body of work in this area and in getting ready for the end of transition has recently been the sector's response to the UK Internal Market Bill. Contrary to the urgent reactive response this Bill has required - along with the common frameworks it should represent an opportunity for the sector to inform policy that has considerable potential to shape the post-Brexit constitutional landscape and how intergovernmental work takes place across the UK. However, in addition to the questions around the transparency of the frameworks, these appear to have also been undermined by the Internal Market Bill which was subject to a highly questionable consultation process that provided very limited opportunity for third sector input. This is despite it ultimately providing for highly centralising powers which may be used to implement the UKSPF, in which the sector has a considerable stake. This Bill has also triggered a wave of concern across the sector with The Forum seeing a considerable spike in questions around, *inter alia*, the implications of this legislation for the environmental, public health, equalities and human rights, housing and arts and culture sectors as well as more generally around the implications for devolution.

4.3. This Bill would also distance the third sector from the decision making process. This is because if implemented as initially published there would be a risk of forced indirect coalescing around UK standards which have not been subject to input from Welsh organisations, the Senedd or the Welsh Government. This would undermine the democratic scrutiny provided by the third sector in Wales. The Bill also sets an alarming precedent in its disapplication of international human rights commitments. In doing so it both highlights the importance of and raises questions around strengthening of human rights.