

## Brexit update

Pwyllgor Materion Allanol a Deddfwriaeth Ycwhanegol | 11 Gorffennaf 2016  
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### Research Briefing:

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#### 1. Introduction

This paper provides Members with an update on the latest relevant developments for the Assembly following the vote to leave the EU on 23 June.

Members should also refer to the [Research Paper](#) on the implications of the leave vote to Wales, published on 24 June.

#### 2. Developments in Wales

##### 2.1 Welsh Government

The First Minister published a statement on 24 June on the referendum outcome, which identified six priorities for Wales:

- Protecting jobs;
- Full part to be played by the Welsh Government in discussions about the timing and terms of the UK withdrawal;
- UK Government should negotiate access to the Single Market;
- Continued participation in major programmes like CAP and Structural Funds up until end of 2020;
- Overwhelming case for major revision of Barnett Formula to take into account needs arising from withdrawal from EU;
- Constitutional shift resulting from Brexit means ‘the relationship between Devolved Administrations and the UK Government must now be placed onto an entirely different footing’.

The First Minister has also made a number of oral statements during plenary since then. On [28 June](#), speaking about EU funding, in response to the Leader of the Opposition Leanne Wood AM, he said:

I wrote to the Prime Minister yesterday. I asked him to guarantee every penny that we would lose, to make sure that came to Wales. If that pledge is honoured, then we can proceed with the metro and

other projects. If that promise is not honoured, then there are substantial financial gaps in many projects that would benefit the people of Wales. [13.47]

The First Minister speaking about the Welsh Government's Brussels Office stated:

...we will be establishing a specialist team in our Brussels office whose job it will be to talk and negotiate directly with the European Commission. It doesn't have to be instead of working with the UK Government, but we need to make sure that Wales has a voice, and a strong voice.

Cabinet Secretary for the Environment and Rural Affairs Lesley Griffiths AM issued a [statement on 6 July](#) of the implications of Brexit to Wales. The statement referred to a meeting with NFU Cymru on 4 July and noted the intention to undertake a series of similar meetings with stakeholders across a range of sectors to discuss concerns and ideas on Brexit.

Mark Drakeford AM, Cabinet Secretary for Finance and Local Government, met with his counterparts in the Scottish Government and Northern Ireland Executive, in Cardiff on 11 July to discuss the implications of the EU referendum to their portfolios. The Welsh Government issued a [press release](#) following the meeting stating the Ministers had agreed to work together on 'important financial issues of common interest' including seeking firm commitments from the UK Government on continued EU related funding streams.

## 2.2 NFU Cymru

NFU Cymru has launched a [consultation](#) of its members to ascertain views on the views on a policy and regulatory landscape post-Brexit. The NFU Cymru Council agreed 10 principles of what it considers a future domestic farming policy should look like, under the slogan "Working towards a productive, profitable and progressive post Brexit Welsh agricultural industry". The consultation seeks the views of the farming sector on these principles.

## 2.3 WLGA

The WLGA published a statement following the EU referendum result which focused on the potential impact of Brexit on local service delivery and funding. Councillor Bob Wellington, leader of the WLGA said:

Councils have strong links with Europe not least when it comes to the use of structural funds, workforce rights and legislation across key areas like food safety and air pollution. While we are signalling an end to our membership of the EU it is vital that promises made during the Referendum by the Leave campaign to protect regeneration funding in Wales are honoured. For City Regions, City Deals, the Metro and other big investment projects a new and dynamic UK regional policy will now be required.

The WLGA wholeheartedly supports the call of the First Minister for a revision of the Barnett formula and a new financial settlement for Wales. We also fundamentally oppose any emergency budget that sets out further cuts and renewed austerity with councils once again bearing the strain.

## 2.4 Fisheries

The National Federation of Fishermen's Organisations (a UK-wide organisation) [issued a statement](#) on 24 June outlining the key questions that the UK Government and Devolved Administrations will need to address. These include: what new bilateral or trilateral agreements will be put in place to managed shared stocks with EU Member States; how will access for foreign vessels to UK waters be regulated; what market access arrangements will exist for fisheries products; what new arrangements will be put in place within the UK; and how will the transition to any new arrangements be managed.

## 3. EU level developments

The European Council met on 27 June and Prime Minister David Cameron gave an update to EU leaders on the outcome of the EU Referendum. He did not, of course, give notification under Article 50 of the UK's intention to leave, having already announced that this would be a decision for the next Prime Minister and UK Government.

On 28 June the Heads of State and Government of the other EU 27 Member States (EU27) held an informal meeting to discuss Brexit. This was a sign of things to come: once the UK does formally notify its intention to leave, from which point the EU27 will meet as a bloc without the UK participation when discussing Brexit-related matters.

One of the strong messages coming out of this meeting was that there will not be 'informal negotiations' with the UK prior to Article 50 being triggered by the UK Government.

German Chancellor Angela Merkel took a conciliatory tone on 24 June saying there was [no need for the EU to be nasty towards the UK](#) as well as warning against hasty or kneejerk reactions to the Brexit vote. However, she has since also stated that there cannot be 'cherry picking' for the UK and that [negotiations with the UK will not be easy](#). She has also [called](#) for the UK to clarify quickly how it wants to shape its future relations with the EU. French President Hollande called for a speedy exit for the UK from the EU and [stated Brexit could not be cancelled or delayed](#).

The question as to who will lead the negotiations between the EU27 and the UK has also been in the news, with EU news web-site [Politico.eu](#) talking of a power struggle between the Council and the Commission as to who would fill this role. Juncker has been taking a prominent role in the weeks since the referendum, making a number of statements on the Brexit process and negotiations, calling on the UK to 'get on' with the process of withdrawal, calling for UKIP MEPs to resign from their roles, and saying the approach to negotiations with the UK will not be undertaken in a 'hostile mood'.

Juncker also sent European Commission staff an e-mail on 27 June, seen as a message of reassurance to the 1300+ British nationals working in the Commission about their immediate future in the Commission.

A number of media reports have suggested Juncker's position is under pressure – time will tell if there is substance to this and if we will see any changes at the top of the Commission and Parliament.

Similarly the future of European Parliament President Martin Schulz has been in the news. Schulz is due to stand down as President in January 2017, under a deal agreed between the EPP (centre right) and S&D (centre left) groups in the European Parliament. However, Schulz is understood to be seeking to extend his office until the end of the current Parliament (2019), a move that will be resisted by the EPP group.

The European Parliament debated Brexit at its mini-plenary in Brussels on 28 June, and the following week at plenary in Strasbourg. This meeting featured widely-reported 'heated' exchanges between MEPs of different political persuasions and European Commission President Jean-Claude Juncker.

UK Commissioner Lord Hill resigned his position on the Commission (as Commissioner for Financial Stability, Financial Services and Capital Markets Union), and it was announced last week that the UK Ambassador to France, Sir Julian King, was to be nominated as Lord Hill's replacement, albeit with a different portfolio. Sir Julian met Juncker on 11 July and was endorsed by Juncker. He will now have to appear before European Parliament hearing before he can formally take up the role of Commissioner.

Trade Commissioner Cecilia Malmstrom made a statement that negotiations with the UK on a post-Brexit deal would not start until the negotiations on withdrawal from the EU had been concluded. The UK Government has made clear it does not agree with this interpretation of Article 50, Minister for Europe David Lidington, speaking at the House of Lords EU Select Committee on 5 July, stating (page 15 of [transcript](#)):

The words of Article 50 imply that there are two stages, because it refers to the fact that the negotiations about departure may take account of the future relationship between the departing member and the European Union. They are two different things, **but Article 50 in no way prevents negotiations taking place in parallel rather than in sequence. It is a matter of political choice.** [Bold added]

The relevant section of Article 50 which refers to the process of withdrawal negotiations and the future relationship with the EU is paragraph 2:

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.

## 4. UK level developments

### 4.1 Triggering Article 50

In his resignation speech following the EU referendum, David Cameron stated that the decision on when to trigger Article 50 would rest with the next Prime Minister and government, once they were in place.

The role of Parliament in the process of triggering Article 50 has also been raised since the referendum outcome. The UK Government is arguing that the Prime Minister can trigger Article 50 without Parliament's consent, through the use of 'the Royal Prerogative'. This [article on the UK Constitutional Law Association web-site](#) provides a comprehensive and readable explanation of the issues around this.

A [legal challenge for a judicial review](#) of the use of these prerogative powers will be heard at a preliminary hearing on 19 July. Giving evidence to the House of Lords EU Committee on 5 July UK Government Minister Oliver Letwin said the government's legal advice was clear that the use of the Royal Prerogative in this case was justified, and they were confident they would be able to defend this position against legal challenge.

### 4.2 New Prime Minister and new UK Government

The events surrounding the successor to Cameron as Tory party leader and Prime Minister have been followed closely in UK media so we do not propose to reiterate these in detail here.

The appointment of the new leader, and Prime Minister, had originally been expected to be delayed until September. However, the withdrawal of Angela Leadsom MP from the Tory party leadership race on Monday has radically altered this timeframe. Theresa May is expected to be confirmed as Prime minister this week, following Cameron's resignation on Wednesday.

In a [statement](#) published on Monday Theresa May identified, in relation to Brexit:

The need of course to negotiate the best deal for Britain in leaving the EU and to forge a new role for ourselves in the world. Brexit means Brexit and we're going to make a success of it.

When launching her bid to be Tory leader at the end of June [Theresa May said](#) she intended:

...to create a new government department responsible for conducting Britain's negotiation with the EU and for supporting the rest of Whitehall in its European work.

"That department will be led by a senior Secretary of State -- and I will make sure that the position is taken by a member of parliament who campaigned for Britain to leave the EU."

### 4.3 Oliver Letwin scoping Brexit preparations

Clearly these events will have a direct impact on the preparatory work being undertaken by the Cameron government to lay the ground for the new government.

Cameron had, in the aftermath of the EU referendum outcome, appointed Oliver Letwin MP, Minister for Government Policy, Cabinet Office to scope out the implications of different Brexit scenarios for the UK. Mr Letwin appeared before a number of Parliamentary Committees last week to discuss the nature of his work. He told the Committee that he was working to an end date of 9 September, which was the working assumption for when the new Prime Minister and government was expected to be in place.

Mr Letwin described his role as comprised of three elements:

- **Building a team:** drawing together the necessary expertise (from Whitehall Departments and external recruitment) to prepare for the negotiations and for Brexit.
- **Fine-grained detailed factual work:** identify constraints, background situations that will need to be understood by those undertaking the negotiations after the new government is in place. He gave the example of detailed analysis of tariff and non-tariff barriers and impacts these would have on individual products/services.
- **Options papers:** prepare options papers on a wide range of different issues affected by Brexit. Aim to create as much flexibility for new government in its consideration of different negotiating options.

He underlined in his evidence that this preparatory work would not involve any engagement in negotiations, nor would it attempt to pre-judge different options or scenarios to be taken by the UK in these negotiations. He stated that this would be the task of the future Prime Minister and government.

It remains to be seen what will now happen to Letwin's taskforce following these events, and whether this work will be morphed into the new 'Brexit' Department. Theresa May said she would create one on becoming leader. It also remains to be seen what role if any Letwin will have in this.

#### 4.4 Involvement of Devolved Administrations

One of the issues that will be of particular importance to the Assembly will be the involvement of the devolved administrations in these preparations. During the evidence session with the Commons' Foreign Affairs Committee Oliver Letwin noted that contacts had been made with the devolved administrations at the level of officials. He also noted that his office had informed devolved administrations that his door is open for devolved Ministers to approach him to discuss any aspect of this preparatory work.

Mr Letwin also informed the Lords EU Committee he would write providing a 'full account... of all the engagement processes that we have set up with the devolved Administrations'.

The House of Commons European Scrutiny Committee (ESC), Chaired by Sir William Cash, held a joint Committee meeting with the Chair and members of the Welsh Affairs Committee (including David Davies MP and Geraint Davies MP) on 6 July to discuss the impact of Brexit

on the steel crisis. This session was with Anna Soubry MP, Minister for Small Business, Industry and Enterprise.

The ESC has also launched a [consultation](#) (deadline 30 September) on how EU scrutiny should adapt to Brexit.

#### 4.5 Petition for a second referendum

The House of Commons Petitions Committee announced on Tuesday that Parliament will debate on 5 September an e-petition calling for a [second EU referendum](#) to be held following the Brexit vote. The petition received the support of over 4.1 million people. Under the new [e-petitions system](#) introduced by the Commons in July 2015 the Petitions Committee will consider all e-petitions for debate in Parliament where the number of signatures is over 100,000.

### 5. Scotland

Scottish First Minister Nicola Sturgeon met European Commission President Jean-Claude Juncker and European Parliament President Martin Schulz the week following the EU Referendum. The meeting with Juncker was seen as being particularly symbolic, as it took place the same day as Cameron was in Brussels for the European Council meeting.

Sturgeon is making the case for Scotland's continued membership of the EU, despite the UK vote to leave.

Speaking after the meetings [Sturgeon said](#):

For my part, I've emphasised that Scotland voted to remain part of EU. If there is a way for Scotland to stay, I am determined to find it. We are in uncharted territory, and none of this is easy. My task is to bring principles, purpose and clarity to the situation, and to speak for all of Scotland... My concern at this stage is to ensure that once the UK negotiation with the EU starts, all the options are on the table. I don't underestimate the challenges but I am heartened by the discussions. Here, I've found a willingness to listen: open doors, open ears and open minds.

However, comments by Juncker and other EU leaders, including the Spanish Prime Minister Mariano Rajoy, and French President Francois Hollande ruled out the possibility of negotiations with Scotland separately to the UK. Quoted in the Guardian (29 June 2016), Juncker stated:

Scotland won the right to be heard in Brussels. So I will listen carefully to what the first minister will tell me but we don't have the intention, neither Donald [Tusk, president of the European council,] nor myself, to interfere in the British process. That is not our job.

Mariano Roy was also quoted as saying:

I want to be very clear: Scotland does not have the competence to negotiate with the European Union. Spain opposes any negotiation by anyone other than the government of the United Kingdom... I am

extremely against it, the treaties are extremely against it and I believe everyone is extremely against it. If the United Kingdom leaves ... Scotland leaves

The Scottish First Minister has also raised the possibility of a second independence referendum in a [speech](#) following the outcome of the EU referendum on 24 June:

...when the Article 50 process is triggered... the UK will be on a two year path to the EU exit door.

If [the Scottish] Parliament judges that a second referendum is the best or only way to protect our place in Europe, it must have the option to hold one within that timescale.

That means we must act now to protect that position. I can therefore confirm today that in order to protect that position we will begin to prepare the required legislation to enable a new independence referendum to take place if and when Parliament so decides.

The Scottish Government also raised the possibility that the Scottish Parliament could refuse to give a Legislative Consent Motion to the future repeal of the 1972 European Communities Act.

## 6. Northern Ireland

The implications of Brexit to Northern Ireland (and Ireland) has also been prominent in the news. The land border and the Peace Process provide particular challenges that will need to be addressed in the Brexit negotiations, whilst Northern Ireland like Wales is a beneficiary of significant sums of EU investment, through the Common Agricultural Policy, Structural Funds and the PEACE Programme.

Brexit was discussed at the meeting of the British Irish Parliamentary Assembly held in Dublin last week (which a number of Assembly Members attended), and at the North-South Ministerial Council (a meeting bringing together the Irish Taoiseach, Enda Kenny, and Northern Ireland First Minister Arlene Foster (DUP) and Deputy First Minister Martin McGuinness (Sinn Féin).

One of the ideas that has been floating is the creation of an All-Ireland Forum on Brexit, an initiative of the Irish Taoiseach (according to media reports), although this has not yet been formally raised as a suggestion.

Deputy First Minister Martin McGuinness has called for a 'border poll' (i.e. an Irish Unity poll). Under the Good Friday Agreement a referendum can be held to unite Northern Ireland with Ireland where the Secretary of State for Northern Ireland considers that

...a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland. [Schedule 1 paragraph 2. Belfast Agreement 1998]

Following the Brexit vote the Irish Government reported a surge in the number of applications from UK citizens for Irish passports, notably in Belfast and London. Irish Foreign Minister Charlie Flanagan stated:

Following the UK referendum, there has been a spike in interest in Irish passports in Northern Ireland, Great Britain and elsewhere... The increased interest clearly points to a sense of concern among some UK passport holders that the rights they enjoy as EU citizens are about to abruptly end.