

## Brexit update

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External Affairs and Additional Legislation Committee | 26 September 2016

### Research Briefing:

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#### 1. Introduction

This paper provides an update on the most recent developments on Brexit of relevance to Wales. It includes sections on the work in the Assembly and Welsh Government; EU-level; UK-level; and Scotland and Ireland. The period covered is 7 to 20 September, although reference is made to later events where information is available at time of final drafting.

#### 2. Developments in Wales

##### National Assembly for Wales

##### External Affairs and Additional Legislation Committee

*The External Affairs and Additional Legislation Committee is the lead Committee in the Assembly for co-ordinating the Brexit-related activities of Committees. The Committee is undertaking an inquiry into the Potential Implications of Leaving the EU in Wales. The first sessions of this inquiry began on 12 September. The Committee meets weekly – usually on Monday afternoons.*

A stakeholder consultation is in preparation and should be launched in the next couple of weeks to get views on: the implications of Brexit to Wales, key priorities and concerns, involvement in the negotiation process, and on future arrangements post-Brexit.

The First Minister, Carwyn Jones AM, appeared before the Committee on 12 September – a transcript of the session is available [here](#). He gave an update on the Welsh Government response and activities since the EU Referendum, restating the [six priorities](#) he'd identified on 24 June, as well as the various discussions he'd had with the Prime Minister and the Secretary of State for Exiting the EU, the other Devolved Administrations, and in the British Irish Council hosted in Cardiff in July (with a second BIC to take place in Cardiff at the end of October).

The First Minister noted that the new sub-Committee on Exiting the EU he had established in his Cabinet would meet monthly with its meeting taking place on 12 September. He also

noted that a new External Advisory Group to be chaired by the Cabinet Secretary for Finance and Local Government, Mark Drakeford AM, would meet shortly – and that details of its membership will be published soon – there was some discussion as to how representative this would be and whether members of all parties would be invited to participate.

He reiterated his desire to see a UK negotiating position agreed on a four–nation approach involving the Devolved Administrations, and stated that one of the red lines of the Welsh Government would be tariff free access to the Single Market – he stated membership was not an option as this had been rejected in the EU Referendum vote, but that he was flexible on which alternative model was pursued provided it guaranteed access for ‘as many sectors as possible’ to the European market. He also underlined the need for clarity from the UK Government over what its position is on Brexit.

Reform of the Barnett formula (one of the Welsh Government’s priorities) also featured in discussion with the First Minister reiterating his call for a new mechanism to replace Barnett with a regular review mechanism built in. On EU funding he called for a guarantee for projects/funding commitments to 2023, in order to enable projects supported under the current programmes to be completed. For CAP and Structural Funds he rejected outright any attempt to apply Barnett formula as a basis for reallocating existing funding in these areas in a post–Brexit settlement for these areas.

On [19 September](#) the Committee held the first in its series of themed expert seminars to inform its work in scrutinising the Welsh Government’s role in Brexit. This first seminar looked at “International law and trade” and comprised three panels of academics. The first part of the session considered the wider context of international law and how this affects the UK (and Wales) currently within the European Union, and how exiting the EU will impact on this, including any differences of impact depending on the nature of the exit and the post–EU arrangements that are put in place. The second part focused on the implications of Brexit to trade, including looking at the agri–food sector in Wales which is currently a net exporting sector, as well as looking more broadly at the wider impact of different international trade options.

Members of the Committee will visit Brussels on 26 September for a series of meetings to inform their work on Brexit. This includes meetings with MEPs (including Derek Vaughan), the Canadian and Swiss Missions to the EU, the Irish Perm Rep to EU, Commission officials and representatives from the UK, Scotland, Northern Ireland and Wales.

On 3 October the Committee will hold the second of its themed expert seminar: Funding, Research and Finance with a particular focus on research and mobility in education/training.

### **Climate Change, Environment and Rural Affairs Committee**

This Committee has launched an inquiry to look at [Future of Agricultural and Rural Development Policies in Wales](#), including a stakeholder consultation.

On 14 September the Committee held a [scrutiny session](#) with the Cabinet Secretary for this portfolio, Lesley Griffiths AM, with most of the session focusing on her assessment of the implications of Brexit to Wales, in particular looking at agriculture, rural development and the environment.

The Cabinet Secretary noted the Welsh Government's intention to secure through Brexit repatriation of all devolved powers affected by Brexit in her portfolio areas, and that on this basis they would be prepared to look at the merits of co-operation with the other nations of the UK with regard to an overarching UK framework for example within agriculture policy. She noted that she has invited Ministers representing similar portfolios to her own from across the UK to meet in Cardiff this autumn to discuss Brexit. She also highlighted a number of concerns regarding the 'guarantee on funding' set out in the letter by the Chancellor in August, in particular the impact this could have on rural development and agri-environment schemes in Wales. She also underlined the complexity of assessing the impact of the Brexit process – noting that some initial research by her officials had shown over 5,000 pieces of existing EU legislation directly impacted on the policy areas within her portfolio.

A number of the points made by the Cabinet Secretary were also covered in a written statement published on 15 September [EU Referendum – Engagement on shaping the future direction of Environment and Rural Affairs Policy](#) providing an update on her work in responding to the EU Referendum vote.

The Committee visited West Wales on 22–23 September as part of its evidence gathering to inform this inquiry, including meetings with farmers and other stakeholders, and on 28 September the Committee will hold a session with academics to explore future policies from a first principles basis.

## Other

A number of the other Assembly Committees are discussing possible inquiries into Brexit and as these firm up we will include details in this *Brexit Update*.

## Plenary debates

On 13 September the First Minister made a statement on Exiting the EU and took questions from the Leader of the Opposition, the other oppositions parties and Assembly Members (time of session: 15:24 – 16:19) . Brexit also featured in the urgent question to Cabinet Secretary for Economy and Infrastructure, Ken Skates AM (time of session: 14:20 – 14:36) , See [Record of Proceedings](#) for a full record of the session.

On 14 September the Assembly agreed two amended motions:

Calls on the Welsh Government to prioritise: (a) working proactively with the UK Government and other devolved governments ahead of the [triggering of article 50](#) and the subsequent negotiations;

Recognises the outcome of the referendum on 23 June and calls on the Welsh Government to engage positively with the UK and other devolved governments in securing the [best possible outcome for Wales during the forthcoming negotiations](#).

On 21 September the Assembly debated a motion about the importance of [full membership of the European single market](#) to the Welsh economy.

## Welsh Government

See *section 4.1* for relevant updates on Welsh Government's activities within the Assembly.

On 15 September Lesley Griffiths, Cabinet Secretary for Environment and Rural Affairs issued a Written Statement – [EU Referendum – Engagement on shaping the future direction of Environment and Rural Affairs Policy](#)

On 22 September the UK's Deputy Permanent Representative to the EU, Shan Morgan, visited Wales for a series of meetings with Welsh Government Ministers and senior officials.

On 26 September Cabinet Secretary Lesley Griffiths AM, visits Brussels for a series of meetings related to Brexit.

The Cabinet Secretary for Education has established a Higher Education Working Group on Brexit, which is due to meet for the first time on 28 September.

## Welsh stakeholders

The UK National Farming Unions (NFU), including NFU Cymru, met Asda's senior management team to discuss the impacts of Brexit on the food and farming industry. They represented their [members' initial views on trade, labour and agricultural policy](#), identifying a number of concerns that have the potential to impact UK supply chains. (19 September)

On 12 September in Ruthin [NFU Cymru held a Brexit roadshow](#) which included discussion on access to labour, the regulatory landscape post-Brexit and how this would be shaped by the trading relationship with the EU, and future funding arrangements. Roadshows were also held in Clynderwen on 19 September and Brecon on 21 September.

[Farmers' Union of Wales officials met Minister of State for Exiting the European Union](#), David Jones MP, in London to discuss the opportunities that Brexit offered, whilst also considering many of the wide-ranging issues of concern to farmers in Wales. (9 September)

On 14 September the Farmers' Union of Wales reminded Assembly Members that the [current levels of Bovine TB in Wales will cost us trade deals with Europe](#) if there is no change in policy.

Current figures from the [Farmers' Union of Wales online survey](#) suggest that 43% of respondents are excited about the referendum result, whilst 51 % feel anxious about what's to come once the UK leaves the European Union.

[The Cotswolds and the Gower Peninsula in Wales could be at risk](#) if the Government does not produce a world-leading policy for food, farming and the environment post-Brexit, said the Country Land and Business Association on 17 September. This same organisation also called for an early commitment the Home Secretary to establish post-Brexit sector schemes that will enable [farms and other rural businesses to keep employing workers from the EU and beyond as well as UK workers](#).

### 3. EU level developments

#### European Council/Council of Ministers

On 16 September an [informal European Council](#) of the EU27 (without the UK's participation) was held in Bratislava. The purpose of the meeting was for "political reflection on further development of an EU with 27 member countries". EU leaders agreed the [Bratislava Declaration and Roadmap](#) setting out a number of objectives for the coming months:

- restoring full control of the external borders
- ensuring internal security and fighting terrorism
- strengthening EU cooperation on external security and defence
- boosting the single market and
- offering better opportunities for young Europeans

See also [statement by European Council President Donald Tusk](#) following the Informal Council.

Brexit was not formally on the agenda, with EU leaders keen to reinforce the message that there will be no discussions on Brexit until Article 50 is triggered – this is also reflected in the lack of active preparation within the Council's own services for the negotiations.

In a [press statement](#) before the G20 meeting in China European Commission President Jean-Claude Juncker said "Brexit will not be the major subject and the major issue when we will meet in Bratislava" (on 16 September).

Ahead of the informal summit European Council President Donald Tusk said that Prime Minister May had told him that the [UK will launch Brexit by January or February 2017](#). There has been much speculation in media as to when the Prime Minister will trigger Article 50, and to date the Prime Minister has only stated that she is not considering triggering Article 50 before the end of 2016. 2017 is a year of key elections across Europe (the Netherlands before end of March; France in April; and Germany in September/October). On 15 September the BBC reported former European Council President Herman Van Rompuy as stating that [substantive Brexit negotiations](#) were unlikely to take place until a new German government was formed after next September's election. Didier Seeuws, who heads up the Council's UK

Taskforce on Brexit was Van Rompuy's Head of Cabinet when he was President of the European Council.

Following the Summit the Slovakian Prime Minister raised the prospect of a [veto by the Visegrad Bloc](#) (Poland, Hungary, Czech Republic and Slovakia) of any Brexit deal that limited people's rights to work in the UK.

Angela Merkel's Christian Democratic Union party suffered another [setback in the polls](#) last week with its worst ever result in Berlin state elections. This comes a couple of weeks after its defeat in Mecklenburg–Western Pomerania. There was again a surge in support for the far-right, anti-immigration AfD party which secured 14% of the vote and secured seats in the Berlin State Parliament for the first time, giving it [representation in 10 of the 16 state parliaments](#) in Germany. Merkel conceded that the government's immigration policy was one of the factors behind the result and migration is expected to be one of the central themes in the German national elections next autumn.

### European Commission

On 15 September President of the European Commission Jean-Claude Juncker made his annual [State of the Union address](#) to the European Parliament, setting out his vision of priorities for the coming year, which will form the basis of the European Commission's Work Programme for 2017 (due end of October). Juncker proposed a "positive agenda of concrete European actions" centring on preserving and uniting the union. The speech focuses on delivering a better Europe in five areas:

- Europe that protects;
- Europe that preserves the European way of life (with particular mention for values of peace, freedom of movement, and fighting discrimination/racism)
- Europe that empowers our citizens,
- Europe that defends at home and abroad; and
- Europe that takes responsibility.

On 14 September the European Commission announced that it had [set up the task force to support the work of Michel Barnier](#), who was appointed in July as Chief Negotiator for the Preparation and Conduct of the Negotiations with the UK.

We understand Barnier will have a team of around 30–40 key officials to co-ordinate this work. We also understand there is a general expectation that the Commission will take the lead role in the mechanics of the negotiations, working closely with the Council's UK Taskforce, headed up by Didier Seeuws.

### European Parliament

On 8 September the [European Parliament appointed Guy Verhofstadt MEP](#) as its representative on Brexit matters.

On 15 September the Parliament [endorsed Sir Julian King as Commissioner for Security Union](#). This followed a public hearing at the Civil Liberties Committee held on 12 September. Politico.eu published a sketch of his earlier Committee hearing, '[The Accidental Commissioner](#)'.

On 20 September the European Parliament's Information Office in the UK held a debate on [British Press Coverage of the EU Referendum](#).

On 22–23 September European Parliament President [Martin Schultz was scheduled to visit the UK](#) for meetings with the Prime Minister, the Mayor of London Sadiq Khan and the Labour leader Jeremy Corbyn. Also on his programme was a [speech at the London School of Economics](#) on "The EU and Britain – parting ways but working together".

### Other: EU media

According to an article in the Guardian, quoting Romano Prodi former President of the European Commission (and ex-Prime Minister of Italy), Member States are competing among themselves to have [British-based EU agencies and research centres relocated to their countries following the Brexit vote](#), including the London-based European Medicines Agency.

On 7 September the European Investment Bank confirmed [£82 million backing for the Humber Gateway offshore transmission link](#).

## 4. UK level developments

### UK Government

On 13 September [Theresa May spoke with German Chancellor Angela Merkel](#) about the (16 September) informal meeting of EU member states in Bratislava and the EU-Turkey migration deal.

On 8 September [Theresa May held her first formal bilateral meeting with European Council President Donald Tusk](#) to discuss the UK's withdrawal from the EU.

On 7 September Prime Minister Theresa May gave a [statement in Parliament on the G20 Summit in China and the UK's role in the world](#).

### House of Commons

On 16 September the Culture, Media and Sport Committee asked for evidence for a new [inquiry into the impact of Brexit on the creative industries, tourism and the digital single market](#).

On 14 September Charlie Elphicke MP was refused leave to introduce the [European Union \(UK Withdrawal from Membership\) Bill](#).

On 7 September Melanie Onn MP was given leave to bring in the [Workers' Rights \(Maintenance of EU Standards\) Bill](#). The second reading will be on 18 November.

On 6 September the EU Select committee [took evidence on a new inquiry](#) into UK–Irish relations, and continued taking evidence on the inquiry into parliamentary scrutiny of the Brexit process.

## House of Lords

*The House of Lords European Union Committee and its six Sub-Committees is undertaking a "co-ordinated series of inquiries into the key issues that will arise in the forthcoming negotiations on Brexit".*

On 12 September 2016 the European Union Committee took evidence from the Rt Hon David Davis MP, Secretary of State for Exiting the EU, on [parliamentary scrutiny of the forthcoming negotiations on Brexit](#).

On 13 September The EU Justice Sub-Committee took evidence at the start of their new inquiry: [Brexit: acquired rights](#).

On 14 September the EU Financial Affairs Sub-Committee continued to take evidence for its inquiry [Brexit: financial services](#).

Also on 14 September the EU Energy and Environment Sub-Committee continued its short inquiry into [Brexit and UK fisheries policy](#) by taking evidence from the Minister for Fisheries George Eustice MP and representatives from Norway and Iceland.

On 15 September the EU External Affairs and EU Internal Market Sub-Committees held a joint double evidence session on their inquiry "[Brexit: future trade between the UK and the EU](#)".

In addition to the above co-ordinated series of inquiries the House of Lords Constitution Committee published its report [The invoking of Article 50](#), which concludes that Parliament should be involved in triggering Article 50. There has been some discussion around whether the UK Government can trigger Article 50 through Royal Prerogative without the assent of Parliament, and a number of legal challenges have been presented to challenge this view, with Supreme Court ruling expected during the autumn.

The Chairman of the Constitution Committee, Lord Lang of Monkton, said:

"Parliament's assent could be sought by means of legislation or through resolutions tabled in both Houses of Parliament. An Act of Parliament would give greater legal certainty and could be used to enshrine the "constitutional requirements" required by Article 50, allowing for the setting of advantageous pre-conditions regarding the exit negotiations to be met before Article 50 could be triggered. A resolution could be simpler and quicker to secure but might not provide the same watertight legal

authority. We consider that either would be a constitutionally acceptable means of securing parliamentary approval for the triggering of Article 50.

On 7 September the Lords debated [Brexit: Belfast Agreement](#) and [Brexit: Constitutional Reform and Governance Act 2010](#).

On 14 September the Lords debated [Brexit: Single Market](#), and [Brexit: Scotland](#) on 15 September.

## 5. Scotland

### Scottish Parliament

#### European and External Relations Committee

On 12 September, the European and External Relations Committee published its first report on "[The EU referendum result and its implications for Scotland: Initial Evidence](#)".

The Committee's key conclusion was that continued access to the single market was crucial for Scotland. According to the Committee:

"A key conclusion from the early evidence that we have heard relates to the importance of access to the single market (both for services and goods), and the lack of tariff and non-tariff barriers (such as licensing). We consider that these are important priorities for the Scottish Government in its discussions with the UK Government on the UK's future relationship with the EU."

The Committee also concluded it was important that EU nationals currently living, working and studying in Scotland should be able to stay in Scotland and in relation to EU funding the committee recognised "the importance of fully-funded replacements for the current EU-funded programmes in Scotland in agriculture, fisheries, regional development, and research and technological development funding".

On 14 September the First Minister, Nicola Sturgeon [appeared before the European and External Relations Committee](#) to update it on the EU referendum and the implications for Scotland.

On the issue of the Scottish Government's approach to the negotiations the First Minister told the Committee:

"In terms of how we will seek to use our influence, as I set out to the chamber last week, first we will seek to make common cause with those of like minds across the UK, to try to reach the least-worst outcome for the UK as a whole. In my very strong view, that means remaining in the single market. At the moment, there is a lot of conflation between membership of the single market and access to the single market, which are two very different things. Membership of the single market is important.

Secondly, we will seek to explore differential options for Scotland. Our standing council of experts is already working on a spectrum of options, about which I can talk in more detail later."

On progress towards agreeing a UK wide approach to the negotiations the First Minister told the Committee:

“There have been extensive discussions, which are on-going, between Scottish Government officials and UK Government officials about what the process that will ensure that the Scottish Government and other devolved Administrations are meaningfully engaged will look like.

As I said, those discussions are on-going. They are not proceeding as quickly as I would like them to, but I hope that we will see some progress in the next few days. Mike Russell is going to London to meet David Davis tomorrow, and I hope that in October a multilateral meeting will take place, involving all the devolved Administrations. I will keep the committee fully updated as those discussions conclude...

... We want to be engaged in a way that gives us input into the decision making, rather than being treated as another consultee.

I know that that view is shared by the First Minister of Wales, who, when the British-Irish Council met in the summer, said that he thought that there was an argument for the Parliaments in different parts of the UK to have a say before article 50 is triggered. Although I cannot speak for the other devolved Administrations, I think that there is a common view that we are not going into the process just to be consulted; we want to be part of the decision making. That is what the discussions that we are engaged in are trying to achieve. Those discussions have not concluded yet, but as soon as they do—or when there are material developments—I will ensure that the committee is fully advised of that.”

The First Minister was also asked about whether the UK Parliament should have a role in triggering Article 50. In her response she raised the issue that if the UK Parliament does become involved in triggering Article 50 then it may instigate the LCM process. She told the Committee:

“I am speculating now, but if there is a decision that Parliament has to pass legislation, it brings the issue of a LCM into sharp focus. As I understand it, the Northern Irish action is very much about the need or otherwise for an LCM in the Northern Irish context, and it is that argument that could give the Scottish Government an interest in the situation as it develops. If there is House of Commons legislation, my view is that that would require an LCM, so the views of the Scottish Parliament would become central to the process.

As I say, I am talking about a legal action. I hope that we get to a position where, notwithstanding any legal action, the Prime Minister’s commitment that the Scottish Government and the other devolved Administrations will have a meaningful role in the decision-making framework will mean that the legal action is more of a moot point. Nevertheless, these are really important issues that are just some of the many issues that are at play just now that make me think that, rather than becoming less complicated as we move on from the referendum result, the road ahead will become more complicated across a whole range of different areas.”

The First Minister was also asked about the Scottish Government’s negotiating priorities. In response the First Minister reiterated the five interests against which the Government would assess its options, these interests are, “our democratic interests, our economic interests,

social protection, solidarity and influence”. On a specific position the First Minister told the Committee:

“I believe that the whole of the UK will be better served by remaining in the single market. If we can be part of a coalition of interests across the UK—let us call it a progressive alliance—in which we can make the case for continued single market membership, we will do that, but obviously, if that is not possible, we will have to explore different options up to and including the independence option.”

Finally, the First Minister also reiterated her view that the rights of EU citizens in Scotland should be protected when the UK leaves the EU. She told the Committee:

“It is essential to give people who have made their lives here and done us the honour of coming to live in and contribute to our country some certainty. We owe them that. Today, I call again on the UK Government and the Prime Minister to start providing that certainty.”

### **Scottish Parliament debate**

Following the First Minister’s appearance the Parliament debated the [implications of the EU Referendum Result and UK Negotiating Position](#). A key theme throughout the debate was the need to retain Scotland’s place in the single market.

### **Scottish and UK Government Brexit Ministers meet**

On 15 September, the Scottish Government Minister for Michael Russell Minister for UK Negotiations on Scotland's Place in Europe and David Davis, the UK Minister responsible for Exiting the EU met in London.

Following the Scottish Parliament debate of the previous day, the Scottish Government issued a [press release](#) in which Michael Russell was quoted as saying:

“During our discussions about the future with the nations of these islands, we continue to stress the absolute necessity of Scotland’s voice being an integral and meaningful part of the negotiating process. We will also highlight the importance of respecting and living up to the modern idea of distributed democracy which the different national parliaments and assemblies of these islands embody.

“With that in mind, I will meet with the UK Government’s Secretary of State for Exiting the European Union, David Davis, in London tomorrow to stress the crucial role this Scottish Government has to play in this process and reiterate the importance of Scotland and the UK remaining part of the single market.

“I look forward to working with everyone who shares that view and who wants to ensure that – whatever the current challenges – Scotland, as a European nation, continues to flourish.”

According to the [BBC](#), following his meeting with David Davis, Michael Russell said he expects to announce a formal process for Scottish input soon. According to the news report:

"Mr Russell told BBC Scotland the meeting – the first between the men in their new jobs – was a "good start".

He said he hoped to win the argument on staying in the single market.

But he warned it was "inconceivable" the UK government could negotiate on Scotland's behalf on devolved issues.

In a joint statement, Mr Russell and Mr Davis said the talks had been positive, with an "open exchange of views".

It added: "While we clearly come from very different standpoints, we both recognise that a good working relationship is vital.

"We agree that Scotland, as well as Wales and Northern Ireland, should be fully involved in discussions about the UK's future relationship with Europe in line with the PM's commitment to a UK approach and objectives for the negotiation.

"Ministers will continue to be in close contact as part of a regular programme of engagement."

## 6. Northern Ireland

The Executive has established a [Brexit Consultative Committee](#) to engage with the agri-food and environment sectors.

On 7 September the Centre for Democracy and Peace Building and EU DEBATE NI published a report [After the EU Referendum: Establishing the Best Outcome for Northern Ireland](#) running through the process of negotiating withdrawal, the role for Northern Ireland and potential implications.

## 7. British-Irish relations

### British-Irish Council

In the plenary debate on 13 September the First Minister noted that the next meeting of the British-Irish Council will take place in late October, following on from the post-EU referendum BIC held in Cardiff at the end of July.

## British–Irish Parliamentary Assembly (BIPA)

The British Irish Parliamentary Assembly (BIPA) Committee C – Economic Affairs has launched an inquiry into *The possible implications of the UK’s EU referendum on the agri-food sectors of the BIPA member countries*, with a view to producing a report in early 2017.

## House of the Oireachtas (Irish Parliament)

On 22 September the Houses of the Oireachtas (Dáil and Seanad) hosted an off-site *Symposium* on the topic of the *Economic implications of UK withdrawal from the European Union*. The British Ambassador to Ireland, His Excellency Robin Barnett, Ireland's Permanent Representative to the EU His Excellency Declan Kelleher and a range of other speakers from academia, business, representative bodies and groups participated in the Symposium.

## 8. Other reports published

*House of Commons Library:*

- [Brexit: trade aspects](#) Looks at possible options for the UK's trading relationship with the EU, post-Brexit.

*House of Lords Library:*

- [Brexit round-up](#) (summary of all Brexit-related activities in the Lords)

*Other:*

- [The EU referendum result and its implications for Scotland: Initial Evidence](#) (12 September, Scottish Parliament – European and External Relations Committee)
- [Brexit and the future of the European Union – what think tanks are thinking](#) (12 September, European Parliament Research Service)