

Research Briefing
**Negotiations on the UK's
Withdrawal: Monitoring
Report - 20 September 2017**

Produced for the External Affairs Committee



National Assembly for Wales
Research Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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1. Introduction

This paper provides an update on progress made in Article 50 Negotiations on the UK's withdrawal from EU since June 2017. Three rounds of negotiations have been concluded with a further two rounds currently scheduled to take place by 13 October 2017. The paper provides:

- A summary of the position papers published to date;
- An analysis of the key issues of interest to the External Affairs Committee ('the Committee');
- Responses from the UK Government and European Union;
- The Welsh Government's response and papers.

2. UK Government and EU Position Papers: An overview

The UK and EU have both published a series of position papers setting out their priorities for the negotiations. The EU **has published 14 position papers** in total including position papers on citizens' rights, the methodology for agreeing the financial settlement, a series of papers on technical aspects of the withdrawal agreement and a paper on the dialogue about the Ireland and Northern Ireland border.

Throughout the negotiations to date the EU has insisted that negotiations should take part in two phases. The first phase covering issues related to the UK's withdrawal from the EU and the second focussed on the UK's future relationship with the EU. The EU has stated that negotiations can only move to the second phase once sufficient progress has been made on phase one.

The EU's negotiating team is due to make a recommendation at the October meeting of the Council of Ministers as to whether 'sufficient progress' has been made.

Since June 2016 the UK Government has published seven position papers on issues related to discussions on the Withdrawal Agreement and six position papers on what the UK Government has called the future partnership. The position papers on the Withdrawal Agreement include papers on citizens' rights, Northern Ireland and Ireland and a number of technical divorce issues. The UK Government has stated that it does not currently intend publish its own position paper on the financial settlement.

The papers on future partnership include proposals on future customs arrangements, cooperation on security and research and the sharing of personal data. A summary of the position papers is provided in the table on the next page. Further analysis on the issues and papers of most interest to the Committee are provided in the next section of this paper.

Table 1 Position Papers published by the EU and UK

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
<p><u>Essential Principles on Citizens Rights</u> 29 May 2017 to EU 27 12 June to UK</p>	<p>Sets out the EU’s position on rights of UK citizens in the EU and EU citizens in the UK.</p>	<p><u>Safeguarding the position of EU citizens in the UK and UK nationals in the EU: Position Paper.</u> <u>26 June 2017</u></p>	<p>Sets out the UK position on the rights EU citizens should enjoy in the UK and that UK nationals should enjoy in the EU. See Research Service blog post for further detail.</p>
<p><u>Essential Principles on the financial settlement</u> 29 May 2017 to EU 27 12 June to UK</p>	<p>Sets out the EU’s proposals for a methodology that should be agreed during the Phase 1 negotiations on how the UK’s financial obligations to the EU should be calculated. Annex 1 contains a list of agencies, bodies and financial instruments to be included in the methodology.</p>	<p>None.</p>	<p>UK Secretary of State for DEXEU has outlined that the UK will ‘interrogate’ the EU’s position rather than set out its own.</p>
<p><u>Nuclear material and safeguard equipment (Euratom)</u> 23 June 2017 to EU27 13 July to UK</p>	<p>Sets out the EU’s proposals for the treatment and transfer of ownership of special fissile materials. Covers less areas than proposed by UK in equivalent paper.</p>	<p><u>Nuclear material and safeguards issues.</u></p>	<p>The UK Government sets out six principles it wants negotiations on these matters to achieve. It covers some additional areas to those covered by the European Commission including existing contracts for the supply of nuclear material and spent fuel and radioactive waste. The UK states that spent fuel and radioactive waste should remain the responsibility of the State in which it was generated post withdrawal.</p>

<p><u>Judicial cooperation in civil and commercial matters</u> 29 June 2017 to EU 27 13 July to UK</p>	<p>Sets out proposals for procedures to be put in place for cases pending at time of UK withdrawal.</p>	<p><u>Providing a cross-border civil judicial framework: a future partnership paper</u> 22 August 2017</p>	<p>The UK Government has set out its position for the procedures that should apply to cases pending at time of UK withdrawal and proposals for on-going cooperation in this area in a single paper. The paper states that Annex A of the paper responds directly to the EU's paper and sets out the UK Government's priorities should no agreement be reached on a future partnership. It states that no agreement on future cooperation is not however its preference. The paper states that leaving the EU will bring an end to the direct jurisdiction of the European Court of Justice but that the UK will seek an agreement with the EU that allows for close and comprehensive cross-border civil judicial cooperation.</p>
<p><u>Ongoing Police and Judicial cooperation in criminal matters</u> 29 June 2017 to EU 27 13 July to UK</p>	<p>Proposals for the procedures that will apply on-going procedures such as European investigation orders and European Arrest Warrants procedures at the date of withdrawal and the treatment of information obtained by these procedures.</p>	<p><u>Security law enforcement and criminal justice: Future Partnership Paper</u></p>	<p>Annex A of the paper provides a direct response to the issues raised by the EU in its paper. However, the UK advocates that discussions on the withdrawal issues on criminal matters take place with reference to discussions on a future partnership. The paper calls for a deeper relationship and cooperation on law enforcement and criminal justice issues between</p>

			the UK and EU than the EU currently has with third party countries. It states that it should be read in conjunction with other future partnership papers on security and data protection.
<p><u>Ongoing Union and Judicial Procedures</u> 29 June 2017 to EU 27 13 July to UK</p>	<p>Sets out the proposals for procedures to be put in place for cases before the European Court of Justice involving the UK or UK residents/legal persons on-going at the time of withdrawal and for proposals for on-going administrative procedures before Union institutions, bodies, offices and agencies concerning the UK or UK residents/legal persons. The EU proposed that the European Court of Justice should retain some competence to adjudicate in cases brought after the withdrawal against the UK about matters that happened when the UK was still a Member State.</p>	<p><u>Ongoing union judicial and administrative proceedings: Position Paper.</u> <u>13 July 2017</u></p>	<p>The UK Government recognises that there will be some cases pending at the point of withdrawal that should continue to fall within the jurisdiction of the European Court of Justice and seeks agreed criteria on the definition of 'pending'. It also seeks clarification of the role of the UK Advocate General and UK lawyers in the Court for a transitional period whilst cases are still pending. It does not agree that the European Court of Justice should retain some competence over cases brought after the withdrawal date relating to actions that took place before the withdrawal date.</p>
<p><u>Issues relating to the functioning of EU Institutions, Agencies and Bodies</u> 29 June 2017 to EU 27 13 July 2017 TO UK</p>	<p>The paper sets out the EU's position on what protections and immunities will apply to EU institutions and agencies in the UK at after withdrawal whilst the activities of the EU's bodies in the UK are being wound-up.</p>	<p><u>Privileges and Immunities</u> <u>13 July 2017</u></p>	<p>The UK's position paper agrees that protections and immunities should be offered to EU property, assets and operations in the UK for a transitional period after withdrawal. Negotiators on both sides have indicated that they are close to reaching agreement on this issue.</p>

<p><u>Governance</u> 29 June 2017 to EU 27 13 July 2017 to UK</p>	<p>The paper sets out the EU’s proposals for a dispute resolution mechanism for the Withdrawal Agreement, including that a Joint Committee be established to consider disputes. It states that the Joint Committee should make references to the European Court of Justice for binding decisions where agreement can’t be reached in the Committee. It states that the European Commission should retain full powers for the monitoring and implementation of the agreement on citizen’s rights.</p>	<p><u>Enforcement and Dispute resolution: Future Partnership Paper</u> <u>23 August 2017</u></p>	<p>The Paper includes proposals for a new enforcement and dispute resolution mechanism for both the Withdrawal Agreement and any future partnership. The paper states that a new mechanism will be needed as the jurisdiction of the European Court of Justice will come to an end. The UK’s position is that where the Withdrawal Agreement or any future partnership arrangements give rise to rights or obligations for individuals and business operating in the UK these will be given effect in UK law and enforced by UK courts. The position paper argues there is no precedent or imperative in EU or UK law which states that enforcement or dispute resolution has to fall under the direct jurisdiction of the European Court of Justice.</p>
<p><u>Goods placed on the market under Union law before the withdrawal date</u> 29 June 2017 to EU 13 July 2017 to UK</p>	<p>The paper sets out proposals for the procedures that should apply to goods that comply all Union rules and are placed on the market for sale before withdrawal date but have not been sold at the time of withdrawal.</p>	<p><u>Continuity in the availability of goods for the EU and the UK: Position Paper</u> <u>21 August 2017</u></p>	<p>The UK Government states that this issue should be resolved with reference to any future partnership. The UK seeks further discussion on the meaning of “placed on the market” and suggests it should include services associated with the supply of goods.</p>
<p><u>Customs related matters needed for an orderly withdrawal of the UK from the</u></p>	<p>Proposals for the customs procedures that should apply to goods whose movement started</p>	<p><u>Continuity in the availability of goods for the EU and the UK: Position Paper</u></p>	<p>The UK position paper on the continuity of goods acknowledges that customs issues related to</p>

<p><u>Union</u> 7 September 2017 to EU 27</p>	<p>before the date of withdrawal but ends on or after.</p>	<p><u>21 August 2017</u> <u>Future customs arrangements:</u> <u>Future Partnership Paper</u> <u>15 August 2017</u></p>	<p>goods on the market at time of withdrawal will need addressing but does so with reference to its proposals for a future customs relationship and states that the issue should be addressed with reference to a future partnership.</p>
<p><u>Guiding Principles transmitted to EU 27 for the Dialogue on Ireland/Northern Ireland.</u> 7 September to EU 27</p>	<p>Principles set out for the basis of discussions of the relationship between Ireland and Northern Ireland. No solutions are proposed for the Irish border and the paper places the onus on the UK to propose solutions.</p>	<p><u>Northern Ireland and Ireland: Position Paper</u> 16 August 2017</p>	<p>The position paper states that the Common Travel Area (CTA) between Ireland and the UK should remain, that swift progress should be made on the issue and that the rights of EU citizens in Ireland will not be affected by the CTA's continuance. The paper does not propose specific options for the land border but sets out principles to test models against. It cross-references the UK Government's proposals for future customs arrangements. It states that no solution agreed should require a new customs border between Northern Ireland and Great Britain. It makes specific proposals on agri-food products. It suggests that separate to the broader discussions on the financial settlement there should be an agreement to continue PEACE funding to Northern Ireland and border counties of Ireland.</p>

<p><u>Public Procurement</u> 7 September to EU 27</p>	<p>Proposals for the rules and procedures on public procurement that should apply to procurement procedures and contracts on-going at the date of withdrawal.</p>	<p>None.</p>	
<p><u>Intellectual Property Rights (including geographical indications)</u> 7 September 2017 to EU 27</p>	<p>Proposals for the continuation of the protection of intellectual property rights agreed before the date of withdrawal including the protection of protected food names. The EU suggests that the UK will need new domestic legislation to be in place before the date of withdrawal on protected food names.</p>	<p>None.</p>	
<p><u>Use of Data and Protection of Information Obtained or Processed before the Withdrawal Date</u> 7 September to EU 27</p>	<p>Proposals to the reciprocal rules and protections that should apply to data held or processed in the UK and the EU after the date of withdrawal.</p>	<p><u>Confidentiality and access to documents: Position Paper 21 August 2017</u></p>	<p>The paper states that the aim should be for the Withdrawal Agreement to ensure that the UK and EU have equivalent protections and obligations on information and access to documents as it currently the case under existing EU legislation.</p>
<p>None.</p>		<p><u>Future Customs Arrangements: Future partnership paper 15 August 2017</u></p>	<p>The position paper proposes two possible options for a future customs relationship. A highly streamlined customs arrangement between the UK and EU or a new customs partnership with the EU where the UK would align its border with the EU in such a way that it would remove the need for the UK-</p>

			<p>EU customs border. The UK would leave the customs union and be able to negotiate its own trade deals under both options.</p> <p>Under the second option the position paper proposes that the UK would mirror EU requirements for goods from the rest of the world where their final destination is the EU. It states that this would be unprecedented and could be challenging to implement but wishes to explore it with the EU.</p> <p>The paper proposes a time limited model of close association with the EU Customs union for a transitional period to avoid a cliff-edge for business and individuals on both sides.</p>
None.		<p><u>The exchange and protection of personal data: Future partnership paper</u> 24 August 2017</p>	<p>Sets out the UK Government's proposals for a new UK-EU model for the exchanging and protection of personal data based on the current EU approach. It suggests the Information Commissioner's Office could continue to cooperate with EU regulators.</p>
None.		<p><u>Collaboration on Science and innovation: Future partnership paper</u> 6 September 2017</p>	<p>It sets out the UK Government's proposals for a science and innovation agreement with the EU. It states the agreement should be broad and make room for new areas of research. It states that the UK's</p>

			continued access to EU research and innovation programmes will need to be negotiated along with the size of any financial contribution the UK would have to make to participate in them. It states that this contribution would need to be weighed against the UK Government's other spending priorities. Reference to the participation of Welsh Universities in existing programmes and networks is made.
None.		<u>Foreign Policy, defence and development: Future partnership paper</u> 12 September 2017	The paper proposes a future partnership with the EU on security and defence which is broader than any agreement the EU currently has with a third-party country. It sets out the areas where there is currently cooperation on defence, security and international development.

3. Areas of particular interest to the Committee

Key areas of interest to the Committee include the papers published by both the EU and UK on the relationship between Northern Ireland and Ireland and the UK Government's proposals for future customs arrangements.

The UK Government's position paper on Northern Ireland and Ireland makes cross-reference to its proposals for a possible future customs relationship with the EU. The paper does not set out proposals for different models for how the border could operate but instead lists principles against which it believes any future model should be tested. The UK agrees with the EU that a hard-border should be avoided. The Paper states that a new customs partnership where the UK mirrors the EU's requirements for goods from the rest of the world where the final destination of the goods is the EU could allow for the continuation of frictionless trade. Both the customs paper and Northern Ireland and Ireland paper acknowledge however that this would be an unprecedented model and could be challenging to implement. The Northern Ireland and Ireland paper also suggests that SME's trading on the border should be allowed a cross-border trade exemption to any customs and trade agreement reached between the UK and EU.

Of particular relevance to the Committee's work on Ports is the statement in the Ireland and Northern Ireland paper that any solution agreed should not require a new customs border between Northern Ireland and Great Britain.

Of particular interest to Wales will also be the paper's proposals on agri-food controls as responsibility for many of the controls around animal health and welfare lie with the Welsh Government and Assembly. The paper states that the UK and EU should prioritise addressing how to avoid a hard-border for Sanitary and Phytosanitary (SPS) measures for agri-food. The UK Government argues that the complexity of the EU's current third-country SPS measures would not be compatible with the common desire to avoid a hard border between Northern Ireland and Ireland. It emphasises that the Withdrawal Bill will mean that UK laws remain the same as EU laws at the point of exit and therefore an agreement could be reached between the UK and EU on regulatory equivalence on agri-food measures. It states that provided the agreement was sufficiently deep no SPS measures and checks would be needed on the border. This type of agreement could limit the ability of the UK and devolved nations in future to vary their SPS measures from those set by the EU.

As described in the table above, the UK Government's future partnership paper on customs arrangements proposes two broad options. One option proposes a highly streamlined customs arrangement and the other option proposes a new customs partnership with the EU. Of particular interest to the Committee will be the proposal that the UK would maintain a close partnership with the EU Customs Union for a transitional period. The customs paper states that the UK Government will work with the devolved governments to understand the practical impact of any new customs arrangements including the implications for ports in Wales.

In its paper on the dialogue on Northern Ireland and Ireland, the EU states that the responsibility for finding a solution to the border issues resides with the UK Government. It supports the principles of protecting the Good Friday Agreement, the rights of citizens under the Common Travel Area and the avoidance of a hard land border. It states that a more thorough understanding of issues other than the customs border issue is needed.

4. Views on progress made by the EU and the UK

In the **press conference on 31 August**, following the conclusion of the third round of negotiations, the EU's Chief Negotiator, Michel Barnier stated that progress had been made on some issues in relation to the discussions on citizen's right; on the procedures for cases pending at the time of withdrawal and maintenance of the Common Travel Area. However, he set out his view that no decisive progress had been made on the other main subjects. He said that at the current speed of negotiations he was unlikely to be able to recommend to the Council in October that sufficient progress has been made on phase one withdrawal to allow the negotiations to progress to talking about a future relationship. He emphasised the role of the European Parliament would play in making an assessment on progress.

On 7 September, **Mr Barnier called** on the UK Government to honour its financial commitments to enable progress in discussions on the financial settlement. In response to the UK Government's paper on Northern Ireland and Ireland **he stated**:

What I see in the UK's paper on Ireland and Northern Ireland worries me.

The UK wants the EU to suspend the application of its laws, its Customs Union, and its Single Market at what will be a new external border of the EU.

And the UK wants to use Ireland as a kind of test case for the future EU-UK customs relations.

This will not happen.

Creativity and flexibility cannot be at the expense of the integrity of the Single Market and the Customs Union.

This would not be fair for Ireland and it would not be fair for the European Union.

Speaking after the conclusion of the third round of negotiations, **the Secretary of State for Exiting the EU, David Davis stated** that concrete progress had been made in some areas. He emphasised his continued view that issues in relation to the withdrawal agreement and future partnership are linked and should be discussed alongside each other. In relation to the financial settlement David Davis stated that the UK Government has presented its legal analysis of the EU's position on 'on – budget issues, off-budget issues and the European Investment Bank'. He stated that mutual understanding of the different positions had increased but acknowledged that there are 'still significant distances to be bridged'.

The Secretary of State provided **an update to Parliament** on progress on the negotiations on 5 September. In this speech he outlined the areas relating to citizens' rights where agreement had been achieved. He stated that both sides were close to agreeing on issues related to post-exit privileges and immunities and on the confidentiality arrangements that will apply to information shared post-exit. He outlined that progress had been made on the definition of which on-going cases would fall within the category of cases 'pending' at exit. He called on the EU to be 'more imaginative and flexible' in its approach.

Following the conclusion of the second and third round of negotiations, the EU and UK have **published joint technical notes** setting out the areas of agreement and disagreement on the issue of citizens' rights.

The European Parliament's President, Antonia Tajani and Brexit coordinator Guy Verhofstadt issued a **joint statement on the negotiations** on 7 September. It outlined that the view of a clear majority of the Parliament's Conference of Presidents is that sufficient progress is unlikely to be made by the October Council to allow negotiations to progress. They announced that the European Parliament will adopt a resolution during its first October sitting on progress made on the rights of citizens, the Parliament's priorities for Northern Ireland and Ireland and its view on the financial settlement.

The Prime Minister, Theresa May, is due to make a speech in Florence on 22 September on the progress of the negotiations to date.

5. Welsh Government response and announcements

On 18 August, the First Minister, Carwyn Jones AM **issued a statement** in response to the publication of the UK's position papers on customs and Northern Ireland. He agreed with the position that there should be no new customs border between Northern Ireland and Great Britain and that there should be a transitional period for new customs arrangements to come into place. However he said the papers provided him with 'little confidence or assurance of a robust and plausible negotiation position for the UK'. He said the Welsh Government had not been consulted on the contents of the papers and had 'only minimal advanced notice'.

On 7 September the Welsh Government published its paper on **Brexit and the Free Movement of People**. The paper set out the Welsh Government's proposals for a spatially differentiated approach to immigration in the UK following Brexit should the UK Government opt to adopt a sector specific approach to immigration policy. It states that this would not be its preferred option but should the UK Government adopt such a sector specific approach it would seek greater control over migration to Wales.

In the paper the Welsh Government proposes that a differentiated and preferential approach should be given to migrants from EEA countries and Switzerland. The Welsh Government opposes a net migration target and suggests that migration for EEA and Swiss nationals should be more closely linked to employment. It provides the Norwegian model as an example. The Welsh Government also calls for better enforcement of workplace and employment rules and rights to prevent exploitation of migrant workers and the undercutting of domestic workers by unfair practices.

This paper on migration follows the Welsh Government and Plaid Cymru joint over-arching position paper on the future relationship between Wales and the EU, **Securing Wales' Future** and the Welsh Government's policy paper on **Brexit and Devolution**.