

Research Briefing
**Negotiations on the UK's
Withdrawal from the EU:
Monitoring Report -
08 March 2018**

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.

Author: **Nia Moss and Manon George**

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Contact Us

Nia Moss
Research Service
National Assembly for Wales
Tŷ Hywel
Cardiff Bay
Cardiff
CF99 1NA

 : 0300 200 6313

 : Nia.Moss@Assembly.Wales

 : seneddresearch.blog

 : [@SeneddResearch](https://twitter.com/SeneddResearch)

 : Assembly.Wales/Research

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1. Introduction

This report provides an update on developments relating to the Article 50 Negotiations on the UK's withdrawal from the EU since 8 February. Since this report was last produced the European Commission's Article 50 Taskforce has published draft legal text for the Withdrawal Agreement, the European Council has published its draft negotiating guidelines on the future relationship between the UK and the EU, and the European Parliament has published its draft resolution on the framework for a future relationship. In the UK the Prime Minister has made a speech outlining further detail on the Government's priorities for the future relationship. Following the failure of the UK Government to reach agreement with the Devolved Governments on amendments to the EU (Withdrawal) Bill, the Scottish and Welsh Governments have introduced Emergency 'continuity' bills.

This paper provides:

- A summary of the latest developments, documents and legislation published;
- An analysis of the key issues of interest to the External Affairs Committee ('the Committee'); and
- A summary of the Welsh Government's response to the latest developments.

Summary of developments

On 12 February the Assembly's External Affairs Committee held **an evidence session** with the Welsh Government's Cabinet Secretary for Economy and Transport on the UK Government's Trade Bill. He reiterated that the Welsh Government cannot recommend that the Assembly give its consent to the Bill unless it is amended.

On 14 February the UK's Foreign Secretary Boris Johnson made speech on **Uniting for a Greater Brexit**. The Prime Minister made a speech about future defence and security cooperation between the UK and EU at the Munich Security conference on 17 February.

On 20 February the Secretary of State for Exiting the EU **made a speech** about the future economic partnership between the UK and EU in which he stated that the UK would maintain its regulatory standards post-Brexit.

On 20 February the UK Government published **its initial response** to the suggested draft legal clauses on the Withdrawal Agreement **published by the European Commission** on 7 February.

On 22 February the UK's **Joint Ministerial Council on EU Negotiations** (JMC EN) met in London. It brings together Ministers from the UK Government and Devolved Governments. The UK Government failed to reach agreement with the Devolved Governments on **proposed amendments to the EU (Withdrawal) Bill** on its devolution provisions.

On 26 February the Chancellor to the Duchy of Lancaster and Minister of the Cabinet Office **made a speech** about devolution, Brexit and the Withdrawal Bill in which he stated that the UK Government had made a substantial 'offer' to the Devolved Government's in attempt to reach an agreement on the Bill.

On 27 February the Welsh Government's Cabinet Secretary for Finance **issued a statement** on the JMC(EN) discussions in which he said progress had been made towards reaching an agreement with the UK Government on the Withdrawal Bill. However, he said that the proposals made by the UK

Government were not sufficient to satisfy the Welsh Government's concerns and therefore the Welsh Government would seek to introduce an emergency bill to protect the Welsh devolution settlement after Brexit.

On 27 February the Secretary of State for International Trade **made a speech** on Britain's trading future.

On 28 February the European Commission published **a draft legal text** for the Withdrawal Agreement for discussions with the Council and the European Parliament. The text included a protocol on Northern Ireland and Ireland which suggested that Northern Ireland should stay in the Customs Union should no agreement be reached between the UK and EU on how a hard border could be avoided. The **Prime Minister responded** to the proposals during Prime Ministers Question Time that same afternoon. The European Parliament also **issued a response** to the proposed draft legal text.

On 2 March **the Prime Minister made a speech** on the UK's future economic partnership with the EU in which she outlined five tests for a future agreement between the UK and EU. These were that it implemented the decision of the referendum; that it secured a long-term enduring agreement; that it protects the UK's security and prosperity; that it is consistent with the kind of country the UK Government wants the UK to be and that it strengthens the union of UK nations.

On 6 March **the Assembly agreed a Motion** to allow the Welsh Government to proceed with the introduction of an emergency bill, ***The Law Derived from the European Union (Wales) Bill***. The Welsh Government states that the Bill is necessary to protect the current devolution settlement should no agreement be reached with the UK Government on amendments to the EU (Withdrawal) Bill. The Bill was formally laid on 7 March. The Welsh Government has however stated that its preferred option remains reaching an agreement with the UK Government on the EU (Withdrawal) Bill.

On 7 March the President of the European Council, Donald **Tusk published draft negotiation guidelines** for a framework on the future relationship with the EU. The guidelines are expected to be adopted by the Council at its meeting on 22-23 March. The European Parliament has also published **the draft text of a motion** outlining its views on the draft legal text on the Withdrawal Agreement and its views on a framework for a future partnership.

On the same day the Chancellor of the Exchequer **gave a speech** on Financial Services in which he outlined how cooperation with the EU in this area could be included within a future agreement with the EU.

During recent months and weeks the European Commission has been publishing a series of preparedness briefings for citizens and businesses on the UK's Withdrawal from the EU and a series of slides prepared to inform the EU's internal discussions on a future relationship. The latest documents in relation to preparedness were published on 27 February on **rail transport, maritime transport, consumer protection and passenger rights** and **animal health and welfare**. The latest series of slides were issued on 21 February on **transport, mobility** and **regulatory issues**.

Latest developments and documents published

The Negotiations

On 28 February the European Commission published [draft legal text for implementing the Withdrawal Agreement](#). The text was been sent to the European Council and Parliament for discussions before it will be shared with the UK as part of the negotiations. The text contains 6 Parts on common provisions, citizens' rights, separation provisions, transition, financial provisions and institutional and final provisions. It also contains a suggested protocol on Ireland and Northern Ireland. In its [questions and answers factsheet](#) on the proposed text the EU Commission states that on citizens' rights that the draft text reflects what was agreed in the Joint Report between the UK and EU in December and includes more details to fill in blanks not expressly covered by the Report. It also translates into legal terms the Commission's proposal that future spouses and civil partners be covered.

The protocol on Northern Ireland and Ireland includes, what the European Commission has called, a 'fall-back' position should the UK and the EU fail to reach an agreement on the border between the two countries. If implemented it would require full alignment between Northern Ireland and Ireland on the laws relating to goods, veterinary and plant health rules and require Northern Ireland to be covered the EU's customs code even if the UK opts to leave the Customs Union.

Part 6 of the draft text sets out proposal for governance arrangements for the Withdrawal Agreement. It suggests the establishment of a joint Committee made up of representatives from the EU and UK to supervise the operation of the agreement. Both the EU and UK will have recourse to this Committee in the event of a dispute and the Committee may decide to submit the dispute to the European Court of Justice for a ruling. Decisions by the Court of Justice will be binding on the EU and UK.

The Prime Minister has stated that the UK Government has made clear its objections on some elements of the draft legal text to the European Commission. Responding on the afternoon of its publication the Prime Minister stated:

We continue to stand behind all the commitments that we made in December, and my negotiating team will work with the Commission to agree how they should be translated into legal form in the withdrawal agreement. The hon. Gentleman is right: the draft legal text that the Commission has published would, if implemented, undermine the UK common market and threaten the constitutional integrity of the UK by creating a customs and regulatory border down the Irish Sea, and no UK Prime Minister could ever agree to it. I will be making it crystal clear to President Juncker and others that we will never do so.

Subsequent to this, on 2 March, [the Prime Minister made a speech](#) on the UK's future economic partnership with the EU in which she set out five tests for the relationship listed in the summary section of this paper. In addition to outlining these five tests the Prime Minister stated:

- That reaching a similar agreement with the EU as agreed between the EU and Canada on free trade would not be suitable as it would significantly reduce market access for the UK and the EU;
- That the UK may wish to seek to secure the associate membership of some existing EU agencies and in doing so would respect the remit of the European Court of Justice in relation to these bodies.

Specifically mentioned were the European Medicines Agency, European Chemicals Agency and the European Aviation Safety Authority.

- That notwithstanding the issues on agencies the jurisdiction of the European Court of Justice will end in the UK and an independent arbitration mechanism will need to be established to govern any agreement on the future relationship.
- That the UK may seek to keep some areas of regulation the same such as on state-aid but in some cases whilst the UK would maintain alignment of regulatory outcomes and standards it may implement these in different ways to the EU. As such the UK would seek a comprehensive system of mutual recognition of standards for goods.
- That the UK did not want to see the introduction of any tariffs or quotas on goods between the UK and the EU.
- That in addition to a free trade agreement the UK will seek agreement with the EU on data protection, energy cooperation, transport, the digital market, civil judicial cooperation, science and innovation, education and culture.
- That the UK will be leaving the Customs Union but a customs agreement between the UK and EU is needed. The Prime Minister reiterated the two options for a new customs arrangement proposed by the UK Government on 15 August 2017.
- That the UK would cooperate with the EU on the shared management of fisheries stocks and wanted to agree on reciprocal access to waters.

On 7 March the President of the European Council, Donald Tusk, published **draft negotiation guidelines** on a framework for a future relationship between the UK and EU. In publishing the guidelines **Mr Tusk said:**

Now, coming to the core of our future economic relationship. During my talks in London last Thursday, and in her speech last Friday, Prime Minister Theresa May confirmed that the UK will leave the Single Market, leave the customs union and leave the jurisdiction of the ECJ (European Court of Justice). Therefore, it should come as no surprise that the only remaining possible model is a free trade agreement. I hope that it will be ambitious and advanced – and we will do our best, as we did with other partners, such as Canada recently – but anyway it will only be a trade agreement.

I propose that we aim for a trade agreement covering all sectors and with zero tariffs on goods. Like other free trade agreements, it should address services. And in fisheries, reciprocal access to fishing waters and resources should be maintained.

[...]

Our agreement will not make trade between the UK and the EU frictionless or smoother. It will make it more complicated and costly than today, for all of us. This is the essence of Brexit.

The draft guidelines state that the European Council hopes to have as close as a relationship as possible between the EU and UK but the UK Government's current position on the Single Market and Customs Union will 'limit the depth' of a future partnership.

The draft guidelines agrees with the Prime Ministers' proposition that trade on goods in all sectors should be set at zero tariffs with no quota arrangements. However, it implies that this is contingent upon reciprocal access to fishing waters. The draft guidelines suggest that trade in services could be included but under host state rules. They also outline that the EU would be interested in reaching an agreement on intellectual property rights, aviation and access to the EU's research, innovation, education and culture programmes based on the wider conditions agreed for third part participation in these programmes. The guidelines also suggest the EU will seek an agreement on police and judicial cooperation and security and defence. However the guidelines state that any agreement will need to prevent unfair competition from the UK through things such as changing laws on taxation or lowering environmental or social standards. The guidelines state that the role of the European Court of Justice must also be respected.

In their **draft motion** on a framework for a future relationship with the EU, the European Parliament adopts a number of harder lines. Whilst the European Parliament doesn't have a formal seat at the negotiations table it will be required to approve the final deal. This the European Parliament points out in its draft motion includes agreeing to any framework for a future relationship. In its draft motion the European Parliament states that:

- The future agreement should be based on four pillars: trade and economic relations, foreign policy and defence, internal security and thematic cooperation on areas such as research and aviation.
- A future agreement should make reference to the movement of citizens between the EU and UK.
- The Parliament remains of the view that the best solution would be for the UK to remain a member of the Single Market and Customs Union.
- That the binding interpretation role of the European Court of Justice should apply across all sectors included in a free trade agreement with the EU and that decisions made by the Court on any disputes between the EU and UK should be binding.
- That EU standards should be safeguarded and that the UK's access to the EU market should correspond with the extent to which the UK maintains the EU's regulatory standards. It calls for the inclusion of a non-regression clause on standards to be included in a future partnership agreement.
- That access to the Single Market should also be contingent upon the level of access for EU vessels to UK fisheries grounds.
- That leaving the Single Market will mean that the UK loses passporting for financial services and that the UK's current position would lead to customs checks for goods.
- Supports the possibility of continued cooperation with the UK on aviation, research, youth mobility, energy, trans-boundary environmental issues, ICT and cyber-security.
- Supports the Commission's proposals in the draft legal text of the Withdrawal Agreement in relation to Northern Ireland and Ireland.

The draft text will be consider by the European Parliament in its **plenary session** on Tuesday 13 March.

UK legislation

The Sanctions and Anti-Money Laundering Bill, which started in the House of Lords in October 2017, provides for the establishment of a national sanctions regime after Brexit. The Bill was criticised for giving Ministers wide regulation-making powers with not enough parliamentary scrutiny. Amendments were passed in the Lords to set out the purposes for which sanctions regulations could be made and to remove the power to create new criminal offences by regulations. The House of Lords stages of the Bill concluded on 17 January. The Bill passed Second Reading in the House of Commons on 20 February and Committee Stage proceedings concluded on 6 March. The Bill will now go to Report Stage for further scrutiny.

The **Trade Bill** was reported to the House of Commons without any amendments on 1 February. The Welsh and Scottish Government **amendments to the Trade Bill** were not accepted during committee stage. Further **amendments** to the Bill have been tabled ahead of Report Stage but the date for report stage has not yet been announced. These amendments include a new clause tabled by Jeremy Corbyn which would ensure that regulations made by a Minister of the Crown within devolved competence require the consent of devolved Ministers. On 12 February the Committee held a **scrutiny session** with Ken Skates, Cabinet Secretary for Economy and Transport on the Trade Bill, the associated Welsh Government Legislative Consent Memorandum and the Welsh Government's paper, **Trade policy: Issues for Wales**. The Cabinet Secretary told the Committee:

First of all, I think the Bill as currently presented condescends. I also think that it introduces some incoherence and I'm not convinced that it deals with some critical proposals in an even-handed way. If I take that latter point first, in terms of the trade remedies authority, I don't think it's right that the Secretary of State should be the person with sole power and influence over the TRA. I think there is a role for Welsh Government and the other devolved administrations. In terms of incoherence, we now see, I think, a mismatch between the European Union (Withdrawal) Bill and the Trade Bill, and in terms of it being somewhat condescending, I think it gives UK Ministers a free hand to make rules in devolved areas without the consent of devolved Ministers, whereas UK Ministers have wider powers than it gives to devolved Ministers to make those same rules in devolved areas.

Paragraph 16 of the Welsh Government's Legislative Consent Memorandum states that whether or not legislative consent should be given for the Trade Bill will need to be considered in the context of the response to amendments put down by the Welsh Government to address their concerns with the Bill. Following the rejection of the Welsh Government's proposed amendments, the Cabinet Secretary told the Committee that he is still pressing for the amendments to be accepted. However, the Cabinet Secretary confirmed that the Welsh Government would not be advising the Assembly to consent to the Bill unless the Trade Bill is amended.

The External Affairs and Constitutional and Legislative Affairs Committees are due to report on the Legislative Consent Memorandum relating to the Trade Bill by 16 March.

The Taxation (Cross-border Trade) Bill was also reported in the House of Commons without amendment. The Bill, together with the Trade Bill, is intended to allow the UK to continue its existing trade policy as far as possible immediately after Brexit by allowing the Government to create a functioning customs, VAT and excise regime for the UK. **Amendments** have been tabled ahead of the Report Stage in the Commons, the date of which is yet to be announced.

The **European Union (Withdrawal) Bill** concluded its passage through the House of Commons on 17 January and received its first reading in the House of Lords the following day. The Lords Committee Stage of the Bill began on 21 February and is currently scheduled to sit for 11 days with the final day on 28 March but could go on for longer. **438 amendments** to the Bill have been tabled, including amendments jointly published by the Welsh and Scottish Governments which were not accepted in the House of Commons. Voting on amendments is expected to take place at the end of Committee Stage when every clause of the Bill has to be agreed.

The issue of devolution featured prominently during the first day of Committee Stage debate on 21 February, as the Lords discussed the role of the devolved legislatures in repealing the European Communities Act 1972. Lord Foulkes of Cumnock tabled an amendment providing that regulations bringing into force the repeal of the ECA 1972 should not be made until the Prime Minister is satisfied that resolutions have been passed by the devolved legislatures giving consent. **Lord Callanan, a DExEU Minister, rejected the amendment:**

I make it clear to noble Lords that we are committed to the devolution settlements and the conventions that have been established.

But these amendments go further than Sewel; as my noble friend Lord Forsyth pointed out, they would prevent this Parliament exercising its sovereignty. They would require this Parliament to seek consent to legislate in some cases that are not within devolved responsibility and do not affect devolved competence. We believe in the importance of this Bill, which is in the interests of the whole of the UK, and will work to deliver it together with the devolved institutions. But it is also not right that one part of the United Kingdom can hold a veto over the decision taken, in the referendum, by the whole of the United Kingdom and risk the certainty this Government are committed to providing.

The amendment was withdrawn after debate. However, amendments withdrawn in Committee are often brought back for a vote on consideration at Report Stage. With regards to clause 11, which the UK Government had **previously committed to amending** in the House of Lords, **Lord Callanan said:**

The Scottish and Welsh Governments asked us to work with them to amend Clause 11, and that is exactly what we have been doing. Officials have worked extensively on proposals and Ministers discussed these in their recent bilaterals in February. We have preserved the space to engage in meaningful discussion and sought to reach agreement with the devolved Administrations. We have not yet tabled an amendment precisely because those discussions still continue. Our proposed amendment will be discussed, as a number of noble Lords have pointed out, at the Joint Ministerial Committee on EU Negotiations tomorrow.

Lord Callanan also stated that the UK Government would **'definitely be producing an amendment before Committee.'**

On 22 February the JMC (EN) met and, amongst other things, discussed the UK Government's proposals for compromise amendments to clause 11. **The Communique** issued following the meeting stated that progress had been made in terms of discussions on clause 11 but that agreement had not yet been reached between the three governments on the form of the amendment.

On 26 February, Cabinet Office Minister David Lidington, gave a **speech** at Airbus in Broughton in which he expanded on the UK Government's proposed changes to clause 11:

So our proposal is to amend the Bill before Parliament to make clear that while frameworks are being agreed, the presumption would now be that powers returning from the EU should sit at a devolved level.

Westminster would only be involved where, to protect the UK common market or to meet our international obligations, we needed a pause – I stress pause - to give the governments time to design and put in place a UK-wide framework.

As I have said before, we expect to be able to secure agreement with the devolved governments about what frameworks should - or should not - apply to each power.

And where powers do need to be returned to a UK-wide framework, we will maintain the ability for the UK Parliament to legislate to do so.

Just as the current provisions within the EU Withdrawal Bill on releasing powers to devolved governments are intended to be by consensus and agreement with the devolved governments themselves, so we should expect this new, inverted power to operate in the same way - by consensus and by agreement.

On 27 February the Department of Environment, Food and Rural Affairs (DEFRA) published its **Command Paper** for the UK Agriculture Bill which is expected to be published in the summer. The Bill is expected to establish a new agricultural support system once the UK leaves the EU Common Agricultural Policy. There has been uncertainty as to how the UK Agriculture Bill will operate in terms of setting UK frameworks for agriculture and to what extent it will impact Wales. The remit of the Command Paper is predominantly England-only, however it does include questions on UK frameworks (section 13) and international trade (section 14). On UK frameworks the Command Paper states that 'good progress' has been made on identifying where a common approach is needed and that legislative frameworks or more informal arrangements will be put in place based on need.

Documents and Position Papers

Since the last monitoring report was published the EU has published its negotiation directives on the transition period, a position paper on suggested clauses for inclusion in the Withdrawal Agreement and a series of presentations made as part of the informal internal discussions on a future relationship. These are added to the table below.

Table 1 Position Papers and key documents 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 <u>blog post</u> 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 <u>has outlined</u> 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</p>

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
			which it was generated post withdrawal.
<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>

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
<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 to 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 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>
<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</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</p>

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
	<p>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>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</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</p>

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
	<p>where agreement cannot 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>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</p>

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
<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: Future Partnership Paper</u> <u>15 August 2017</u></p>	<p>issues related to 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</p>

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
			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.
Public Procurement 7 September to EU 27	Proposals for the rules and procedures on public procurement that should apply to procurement procedures and contracts on-going at the date of withdrawal.	None	
Intellectual Property Rights (including geographical indications) 7 September 2017 to EU 27	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.	None	
Use of Data and Protection of Information Obtained or Processed before the Withdrawal Date	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	Confidentiality and access to documents: Position Paper 21 August 2017	The paper states that the aim should be for the Withdrawal Agreement to ensure that the UK and EU have equivalent

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
7 September to EU 27	withdrawal.		protections and obligations on information and access to documents as it currently the case under existing EU legislation.
None		<p><u>Future Customs Arrangements: Future partnership paper</u> 15 August 2017</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-EU customs border. The UK would leave the customs union and be able to negotiate its own trade deals under both options. 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</p>

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
			wishes to explore it with the EU. 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.
None		<u>The exchange and protection of personal data: Future partnership paper</u> 24 August 2017	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.
None		<u>Collaboration on Science and innovation: Future partnership paper</u> 6 September 2017	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 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

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
			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.
None		<u>Customs Bill White Paper: legislating for UK's future customs, VAT and excise regimes</u> 9 October 2017	The <u>White Paper on the Customs Bill</u> sets out the UK Government's initial proposals for a standalone customs, VAT and excise regime following the UK's exit from the EU. The White Paper includes proposals for a contingency scenario should no deal be reached with the EU on a

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
None		<u>Preparing for our future UK trade policy</u> 9 October 2017	future trading relationship. The <u>trade policy white paper</u> sets out the UK Government's preferred positions for a new trade policy and indicates what legislation will be needed to implement that policy. The paper sets out five priorities for a new trading policy.
<u>European Council Conclusions</u> on progress made in the negotiations- 20 October	The Council concluded that insufficient progress has been made in the discussions on the Withdrawal Agreement to begin negotiations on the future relationship. It provided detail on where further progress is needed. It also stated that internal preparations between the 27 remaining Member States for discussions on a future trade relationship would begin.	None	
None		<u>Sanctions and Anti-Money Laundering Bill</u> 19 October	The Bill is considered necessary to ensure that the UK can implement an international sanctions regime following its exit from the EU.
None		<u>Technical Note: citizen's rights administrative</u>	The UK Government published further details on how the

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
		<u>procedures in the UK</u> 7 November	system for EU Citizens to apply for permanent UK residency will work. This was sent as a technical paper to the European Commission.
None		<u>Trade Bill 2018</u> 7 November	The Bill provides ministers with powers to make changes to domestic UK law to implement the WTO's Agreement on Government Procurement and any necessary changes if the UK replicates some of the EU's existing deals with third party countries. It also provides for the establishment of a new Trade Remedies Authority and gives HMRC new data and information powers and duties in relation to export and trade.
<u>Joint Report</u> from the negotiators of the European Union and the UK Government on progress during Phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU 8 December 2017	Both the EU and the UK Government reached agreement in principle in the areas under consideration during the first phase of negotiations, enabling talks to move to the next phase. The report sets out their agreed position on protecting the rights of Union citizens in the UK and UK	<u>Joint Report</u> 8 December 2017	

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
	citizens in the Union; the framework for addressing the unique circumstances in Northern Ireland; and the financial settlement.		
<u>Communication from the Commission to the European Council (Article 50)</u> on the state of progress of the negotiations with the UK under Article 50 of the Treaty on European Union 8 December 2017	Based on the Joint Report from the negotiators of the EU and the UK Government, the Commission recommended to the European Council (Article 50) to conclude that sufficient progress had been made in the first phase of the negotiations.		
None		<u>Prime Minister's commitments to Northern Ireland</u> 8 December 2017	Prime Minister Theresa May set out six key commitments to Northern Ireland that guided her in the negotiations with the EU.
European Council <u>Guidelines</u> 15 December 2017	Following the decision that sufficient progress had been made, the European Council (Article 50) issued draft guidelines to move to the second phase of negotiations where a transition period and the framework for the future relationship will be discussed.	None	
<u>Supplementary negotiating directives</u>	Supplementary directives for the negotiation of an agreement with	None	

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
20 December 2017	the UK setting out the arrangements for its withdrawal from the EU.		
<u>Slides on Fisheries</u> 17 January 2018	Presentation on fisheries to inform the internal preparatory discussions on a future relationship.	None	
<u>Slides on Aviation</u> 17 January 2018	Presentation on aviation to inform the internal preparatory discussions on a future relationship.	None	
<u>Slides on Governance</u> 19 January 2018	Presentation on governance to inform the internal preparatory discussions on a future relationship.	None	
<u>Slides on Security, Defence and Foreign Policy</u> 24 January 2018	Presentation on security, defence and foreign policy to inform the internal preparatory discussions on a future relationship.	None	
<u>Slides on Police and Judicial Cooperation in criminal matters</u> 24 January 2018	Presentation on police and judicial cooperation to inform the internal preparatory discussions on a future relationship.	None	
<u>Council (Article 50) negotiating directives on the transition period</u> 29 January 2018	Directives from the European Council setting out the guidelines for the Union's negotiator on a transition period with the UK	None	
<u>Slides on a Level Playing Field</u>	Presentation on a level playing	None	

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
31 January 2018	field to inform the internal preparatory discussions on a future relationship.		
<u>Slides on Services</u> 6 February 2018	Presentation on Services to inform the internal preparatory discussions on a future relationship.	None	
<u>Slides on International Agreements and Trade Policy</u> 6 February 2018	Presentation on International Agreements and Trade Policy to inform the internal preparatory discussions on a future relationship.	None	
<u>Position Paper on Transitional Arrangements in the Withdrawal Agreement</u> 7 February 2018	Paper outlining suggested legal text on transition for inclusion in a Withdrawal Agreement.	Response to Position Paper on Transitional Arrangements in the Withdrawal Agreement 21 February 2018.	Response with suggested amendments to the position paper published by the European Commission.
<u>Slides on Transport</u> 21 February 2018	Presentation on transport to inform the internal preparatory discussions on a future relationship.	None.	
<u>Slides on Mobility</u> 21 February 2018	Presentation on mobility to inform the internal preparatory discussions on a future relationship.	None.	
<u>Slides on regulatory issues</u> <u>21 February 2018</u>	Presentation on regulatory issues to inform the internal preparatory discussions on a future relationship.	None.	

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
<u>Brexit preparedness document rail transport</u> 27 February 2018	Information for citizens and businesses on the implications of the UK's withdrawal from the EU on rail transport.	None.	
<u>Brexit preparedness document consumer protection and passenger rights</u> 27 February 2018	Information for citizens and businesses on the implications of the UK's withdrawal from the EU on consumer protection and passenger rights.	None.	
<u>Brexit preparedness document animal health and welfare</u> 27 February 2018	Information for citizens and businesses on the implications of the UK's withdrawal from the EU on animal health and welfare.	None.	
<u>Brexit preparedness document maritime transport</u> 27 February 2018	Information for citizens and businesses on the implications of the UK's withdrawal from the EU on maritime transport.	None.	
<u>Draft legal text on the Withdrawal Agreement</u> 28 February 2018	Draft articles and clauses for a legal text to implement the agreement reached between the EU and UK on Withdrawal.	None.	
<u>European Council draft negotiation guidelines on a framework for a future partnership</u> 7 March 2018	Suggested guidelines from the Council to the Commission on agreement a framework for a future partnership between the EU and UK.	None.	

2. Key areas of interest to the External Affairs Committee

Given the Committee's work on monitoring the European Union (Withdrawal) Bill, of particular interest to the Committee will be fate of further discussions on amendments to clause 11 and also the Welsh Government's decision to introduce an emergency 'continuity' bill, the *Law Derived from the EU (Wales) Bill* into the Assembly.

On 5 March the Committee held **a scrutiny session with the Cabinet Secretary for Finance** where they considered the JMC (EN) discussions and the Welsh Government's Bill. The Cabinet Secretary told the Committee that if the three governments were to agree on an amendment to clause 11 of the Withdrawal Bill, the Welsh Government would not seek to continue to promote the Law Derived from the EU (Wales) Bill. He also stated that an additional JMC (EN) was scheduled for 8 March but indicated it was unlikely that the meeting would conclude with a final agreement on clause 11:

Do I currently think that we're likely to be in a position by the end of Thursday where I could come to the Assembly next Tuesday and say, 'No need to worry about that continuity Bill; forget that, because we've got everything all agreed'? I'd be surprised if we've managed to make as much progress as that.

Given the Committee's work on Ports and the concerns it has expressed of the potential implications for Welsh Ports of a hard border in the Irish Sea the publication of the draft text of the legal agreement on Withdrawal by the European Commission will be of particular interest. The Commission's fall-back position, which is supported by the European Parliament, for Northern Ireland to remain part of the customs union would create a border in the Irish Sea and have implications for Welsh ports and businesses. In her speech the Prime Minister reiterated that the UK would be leaving a customs union but stated that the UK would seek a customs agreement with the EU. The outcome of any such negotiations will also have an impact on this issue.

The Prime Minister's 2 March speech, the publication of the European Council's draft negotiating guidelines on the framework for a future partnership and the European Parliament's draft motion on the same subject are undoubtedly relevant to the Committee's inquiry into Wales Future Relationship with the EU. The Committee in its stakeholder conference on the inquiry and in the written evidence it has gathered heard that stakeholders wanted Wales and the UK to remain a member of several key EU agencies. The Prime Minister in her speech identified that the UK Government would be seeking associate membership in agencies such as the European Medicines Agency, the European Chemicals Agency and European Aviation Safety Agency. A number of stakeholders in their evidence also suggested that Wales and the UK should seek to continue to cooperate with the EU on innovation and research. A potential partnership in this area is mentioned in all three documents. Access to fishing waters is also mentioned in all three documents with the draft texts published by the European Parliament and Council suggesting that the level of market access the UK receives will be dependent on access for EU vessels to UK waters. A number of Welsh stakeholders in their evidence to the Committee called for the UK to maintain regulatory standards after exit and for the UK to ensure regulatory harmonisation with the EU. In her speech the Prime Minister stated that:

The UK will need to make a strong commitment that its regulatory standards will remain as high as the EU's. That commitment, in practice, will mean the UK and EU regulatory standards will remain substantially similar in future.

The European Parliament in its draft text calls for the inclusion of a non-regression clause:

Believes that maintaining a level playing field that includes a non-regression clause is necessary, preventing the UK the lowering the relevant standards while fully preserving the autonomy of EU decision-making.

The text of the European Council's draft guidelines states on the issue:

The aim should be to prevent unfair competitive advantage that the UK could enjoy through undercutting levels of protection with respect to competition and state aid, tax, social, environmental and regulatory measures and practices. This will require a combination of substantive rules aligned with EU and international standards, adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement mechanisms in the agreement as well as Union autonomous remedies, that are all commensurate with the depth and breach of EU-UK economic connectedness.

Welsh Government Response

Following the JMC (EN) on 22 February, the Cabinet Secretary for Finance **made a statement** on 27 February in which she said:

While intensive work at official level has been underway for a number of weeks, we were disappointed that the UK Government was only able to put a proposal on the table very shortly before the meeting. This meant that we were not able to have the full and meaningful discussion of the proposals which the importance of this matter merited.

In light of the failure to reach an agreement with the UK Government, on 27 February the Welsh Government announced its plans to introduce an emergency 'continuity' bill, the **Law Derived from the EU (Wales) Bill**. A draft of the Bill was published on the Welsh Government's website and the Assembly's Presiding Officer **issued her determination** stating that in her view the Bill was in competence, along with a **statement** setting out the issues she had considered in reaching her determination.

The Welsh Government issued a **press release** explaining why it was proceeding with the Bill:

The Welsh Government's preference remains for the UK government to amend their proposed EU Withdrawal Bill. But, as so much time has passed without any agreement between the governments on the amendments required, they need to proceed with the Continuity Bill as a fall-back option to protect Welsh devolution.

On the same day the Scottish Government introduced into the Scottish Parliament the **UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill**. The Scottish Parliament's Information Centre has produced a **summary of the key provisions in the Bill**.

On 6 March Assembly Members agreed that the Law Derived from the EU (Wales) Bill be treated as an Emergency Bill and also agreed the **timetable** for its consideration. A guide to Emergency Bills, produced by the Assembly's Research Service, can be found **here**.

Following the Assembly's agreement to treat the Bill as emergency legislation, on 7 March the **Law Derived from the EU (Wales) Bill** was formally introduced by the Welsh Government along with the Bill's **Explanatory Memorandum**. According to the **Welsh Government**, the Bill's aims are to:

- preserve EU law covering devolved areas after Brexit;
- enable the Welsh Ministers to ensure that legislation covering these subjects work effectively after Brexit and after the Withdrawal Bill repeals the European Communities Act 1972;
- enable Welsh Ministers to legislate to maintain regulatory alignment with the EU;
- ensure that UK Government Ministers will have to obtain the consent of the Welsh ministers before making regulations within the scope of the EU law within devolved competence.

The Welsh Government's Bill is drafted differently to the UK Government's Withdrawal Bill. The Withdrawal Bill provides for a general transposition into, and preservation of the entire body of EU law in, UK domestic law and describes it as 'retained EU law'. The Welsh Government's Bill does not provide for this general transposition. Rather, the Bill gives regulation-making powers to the Welsh Ministers to ensure that EU law covering subjects within the Assembly's legislative competence is preserved as part of the law in Wales after Brexit. In addition, the Bill empowers Welsh Ministers to modify EU law within devolved competence; but subject to a range of limitations intended to confine the changes to what is necessary in the light of Brexit.

The new body of EU law transposed by this Bill will fall outside the definition of 'retained EU law' in the Withdrawal Bill. As a result, the restrictions on the Assembly and Welsh Ministers in relation to modifying retained EU law – including the restrictions in clause 11 of the Withdrawal Bill, described above - would no longer apply.

The Welsh Government's Bill does not replace the Withdrawal Bill. Rather, the Bill will operate alongside the UK Government's Bill. Any EU law which is not retained or restated in regulations made by Welsh Ministers, for example provisions that fall outside the Assembly's legislative competence, will be captured by the Withdrawal Bill and transposed into domestic law as retained EU law.

Following the formal introduction of the Bill, the Cabinet Secretary for Finance made a **written statement** in which he said:

Our preference remains that those amendments are made and that the EU (Withdrawal) Bill operates fairly for the whole of the UK. Although we are working closely with the UK Government to secure those amendments, and indeed substantial progress has been made in recent weeks, we have yet to reach an agreement.

In these circumstances, it would be irresponsible for us to fail to prepare for a situation where consent for the EU (Withdrawal) Bill is withheld by the Assembly. The LDEU Bill is a fall-back option both to provide legislative continuity in Wales in a way that respects the devolution settlement. We must have continued legal certainty for Welsh businesses and citizens in Wales following the UK's exit from the EU – the LDEU Bill will provide the means of delivering that legal certainty.

What the Bill, categorically, does not do, is block or frustrate Brexit.

Stage 1 consideration of the Bill's general principles is scheduled for 13 March. **A Bill Summary** has been prepared by the Research and Legal Services.