

Negotiations on the UK's withdrawal from the EU

Brexit Monitoring Report

19 November 2018



The Assembly and

BREXIT

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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 11 October 2018.

This paper provides:

- A summary of the latest developments in the negotiations and the related UK legislation;
- An analysis of the key issues of interest to the External Affairs and Additional Legislation Committee (the Committee); and
- A summary of the Welsh Government's response to the latest developments.

Summary of developments

- The main development is the agreement of the **draft Withdrawal Agreement between the UK and EU**, with the UK Government Cabinet collectively signing this off on 14 November. An emergency summit of the European Council **has been confirmed by Donald Tusk**, the President of the European Council, for 9.30am 25 November to finalise and sign off the deal, provided that nothing extraordinary happens.
- A political declaration on the future relationship between the EU and the UK will be agreed by 20 November, and EU Member States will have 48 hours to evaluate it. An **outline political declaration of the future relationship** was published on 14 November.
- The Prime Minister, Theresa May, made a **statement to the press** on 14 November, in which she stated that the deal is the best one that can be negotiated, and delivers on the vote of the referendum. She went on to comment that the deal brings back control of the UK's money, laws and borders; ends free movement; and protects jobs, security and the union.
- The Prime Minister then made a statement to the House of Commons on the deal on 15 November.
- Accompanying the withdrawal agreement, the UK Government has published an **explainer of the agreement**, and also a **technical explanatory note** on how articles 6 to 8 of the Northern Ireland Protocol would operate if they came into effect. The European Commission has also published a **questions and answers document** on what is in the withdrawal agreement, and a **factsheet** on the protocol on Ireland and Northern Ireland.

- The Welsh Government **issued a statement** (ahead of the publication of the deal and associated documents) on 14 November stating that the deal needed to enable a future relationship with the EU that secures full and unfettered access to the single market and participation in a customs union. It stated that it needed to study the detail of the deal, and that all parts of the UK need time to scrutinise its proposals.
- On 13 November, the House of Commons Library published an updated version of **Brexit: devolved legislature business**.

1. Latest developments

Withdrawal Agreement negotiations

The most significant event in the negotiations since 11 October was the agreement of the **draft Withdrawal Agreement between the UK and EU**, with the UK Government Cabinet collectively signing this off on 14 November. An emergency summit of the European Council **has been confirmed by Donald Tusk**, the President of the European Council, for 9.30am 25 November to finalise and sign off the deal, provided that nothing extraordinary happens. The text below sets out the timeline leading up to this, highlighting key events over this period.

The European Council held a summit on 17-18 October, during which the heads of all the **EU Member States met to discuss Brexit**, amongst other matters.

On 18 October, the President of the European Council, **Donald Tusk made a statement** indicating that 'not enough progress has been made' to achieve an agreement and that he would be ready to 'convene a European Council on Brexit, if and when the EU negotiator reports that decisive progress has been made'.

On 22 October, having restated that 95 per cent of the Withdrawal Agreement is now settled, up from the 80 per cent figure quoted in Summer 2018, the UK Prime Minister, Theresa May, provided **an update** on the outstanding 5 per cent – namely, an agreement on the Irish border. She reported:

[We must make the commitment to] create an option to extend the implementation period as an alternative to the backstop. I have not committed to extending the implementation period. I do not want to extend the implementation period, and I do not believe that extending it will be necessary.

What I am saying is that if, at the end of 2020, our future relationship is not quite ready, the proposal is that the UK would be able to make a sovereign choice between the UK-wide customs backstop or a short extension of the implementation period.

Donald Tusk's statement also highlighted the possibility that:

[...] if the UK decided that an extension of the transition period would be helpful to reach a deal, I am sure that the leaders would be ready to consider it positively.

On 22 October, the Welsh Government's **European Advisory Group** published the minutes for its meeting held on 20 September. These minutes highlight that a short extension of the implementation period would be in line with the Group's call 'for the UK to request that the EU offers more flexibility regarding timings to secure a mutually beneficial deal between the UK and the EU'. This was reiterated by the Cabinet Secretary for Finance, Mark Drakeford, **in a statement the same day**.

However, **in a letter dated 24 October**, Dominic Raab, the Secretary of State for Exiting the European Union, indicated that he would be:

[...] happy to give evidence to the [House of Commons, Exiting the EU] Committee when a deal [on the Withdrawal Agreement] is finalised, and currently expect 21 November to be suitable.

In a speech on 12 November, Theresa May provided an update on the Brexit negotiations, **stating**:

This will not be an agreement at any cost.

Any deal must ensure we take back control of our laws, borders and money. It must secure the ability to strike new trade deals around the world.

Following an **update** provided to the Cabinet on the state of play of negotiations on the morning of 13 November, Downing Street said that a 'small number of issues' remained unresolved.

However, later that afternoon it emerged that a deal on a technical level had been reached and that there would be a Cabinet meeting on 14 November. The UK Government Cabinet collectively agreed to sign this off on 14 November. The Prime Minister, Theresa May, **made a statement to the press on 14 November**, stating that:

I firmly believe that the draft Withdrawal Agreement was the best that could be negotiated...

When you strip away the detail, the choice before us is clear. This deal which delivers on the vote of the referendum, which brings back control of our money, laws and borders; ends free movement; protects jobs, security and our union; or leave with no deal; or no Brexit at all.

I know that there will be difficult days ahead. This is a decision which will come under intense scrutiny and that is entirely as it should be and entirely understandable.

But the choice was this deal, which enables us to take back control and to build a brighter future for our country, or going back to square one with more division, more uncertainty and a failure to deliver on the referendum.

Future relationship

On 31 October, HMRC published an updated **partnership pack: preparing for changes at the UK border after a 'no deal' EU exit**. The pack is designed to 'help support businesses for day one if we leave the EU without a deal'.

In the meeting of the EU's College of Commissioners in Strasbourg on 13 November 2018, the **agenda** included a communication on an emergency response plan preparing for the UK's withdrawal from the EU, and a discussion on whether UK nationals would need a visa to travel to the EU.

That same day, the European Commission published proposals in the case of a 'no deal' Brexit. These proposals included that UK nationals could travel to the EU **without needing a visa** (if that notion was reciprocated by the UK for EU nationals). As well as intensifying its preparedness work, the Commission outlined its **contingency plan** in the event of a 'no deal' scenario.

The political declaration on the future relationship between the EU and the UK will be agreed by 20 November, and EU Member States will have 48 hours to evaluate it. An **outline political declaration of the future relationship** was published on 14 November.

Legislation

The **Agriculture Bill** is currently at the Committee Stage in the House of Commons, with the **Public Bill Committee** expected to report by 20 November. The Bill aims to provide the legal framework for leaving the Common Agricultural Policy and establishing new systems for agricultural and land management support across the UK. Schedule 3 of the Bill applies specifically to Wales and these powers were included at the request of the Welsh Government. These powers allow Welsh Ministers to continue making payments to farmers and land managers after Brexit, to make changes to current schemes and to implement replacement schemes. These powers are intended to be time-limited until the Welsh Government brings forward its own Agriculture Bill, which is expected before the end of this Assembly.

The **Fisheries Bill** was introduced in the House of Commons on 25 October. The date for Second Reading has not yet been announced. The main aims of the Bill are to control access to UK waters; to ensure that the UK can set its own fishing quota; to protect the marine environment; and to set out how the UK Government and the devolved administrations will work together on fisheries management. As in the case of the Agriculture Bill, the Welsh Government has stated that it will bring forward a Welsh Fisheries Bill.

The **Healthcare (International Arrangements) Bill** is the latest Brexit bill to be introduced in Parliament, having had its First Reading on 26 October. The Bill provides the Secretary of State with powers to fund and arrange healthcare outside the UK and to give effect to reciprocal healthcare agreements between the UK and other countries. The Assembly's legislative consent will be required during the passage of the Bill.

In the Assembly, the **Law Derived from the European Union (Wales) Act** (the LDEU Act) was passed on 21 March and received Royal Assent on 6 June. However, as part of the intergovernmental agreement reached with the UK Government in relation to the EU Withdrawal Act, the Welsh Government committed to repeal the LDEU Act. This would be done by regulation under section 22 of the Act. The draft regulations were laid before the Assembly on 8 June, and the 60-day period for representations expired on 1 October. One representation was received from the Constitutional and Legislative Affairs Committee. Following the laying of a **statement** on 13 November, the Welsh Ministers now intend to seek an Assembly resolution to approve the regulations and repeal the Act.

In terms of **subordinate legislation**, UK Government Ministers have said that they expect to lay around 800 Statutory Instruments (SIs) to prepare the statute book for exit day. So far, 129 Brexit-related SIs have been laid since the EU Withdrawal Act received Royal Assent on 26 June 2018, and 16 have completed their passage through Parliament.

In the Assembly, the Constitutional and Legislative Affairs Committee will be responsible for sifting and scrutinising regulations made by Welsh Ministers under the powers in the EU (Withdrawal) Act. The Committee has agreed a **protocol** with the Welsh Government for the scrutiny of these regulations. The protocol includes a commitment to an early warning system for SIs that are to be introduced, and an even flow of regulations.

Following changes to Assembly Standing Orders in October, Standing Order 30C requires that, for regulations made by UK Ministers under the EU (Withdrawal) Act,

the Welsh Government must lay a **written statement** notifying the Assembly of the regulations in question. Where the regulations amend primary legislation, the Welsh Government must also lay a **Statutory Instrument Consent Memorandum** (SICM) under Standing Order 30A. The Welsh Government has now laid two SICMs and 13 written statements relating to regulations to be made by UK Ministers in devolved areas.

2. Key areas of interest to the External Affairs Committee

Preparedness

A number of House of Commons and House of Lords Select Committees have taken evidence from Secretaries of State and Permanent Secretaries on preparedness in relation to aspects of Brexit. On **23 October**, the House of Commons' Health and Social Care Committee questioned Matt Hancock MP, the UK Government Secretary of State for Health and Social Care, on the likely impact of a 'no deal' Brexit on the health and social care sector. The session covered the key risks to patients, health and care services and companies, as well as the effectiveness of planning by the UK Government and stakeholders for a 'no deal' scenario.

On 23 October, the House of Lords' EU Energy and Environment Sub-Committee **wrote to Michael Gove MP**, Secretary of State for Environment, Food and Rural Affairs to highlight five 'serious concerns' in his department's preparations for a 'no deal' Brexit scenario. The Sub-Committee subsequently held a scrutiny session on 23 October with Claire Perry MP, Minister of State for Energy and Clean Growth, relating to no deal preparations relating to energy and the environment, following which it **wrote to her** regarding questions that remained following her session.

On 7 November, the House of Lords' EU Energy and Environment Sub-Committee published its **report on chemical regulations after Brexit**. It found that the UK Government's preparations for regulating chemicals after Brexit are not progressing quickly enough, risking human and environmental health and with potentially severe consequences for the chemicals sector.

On 12 November, the House of Lords' EU Internal Market Sub-Committee **held a session with Chris Grayling MP**, Secretary of State for Transport, on road, rail and maritime transport and contingency planning for the sector in the event of a 'no deal' scenario.

On 13 and 14 November, the House of Commons' Home Affairs Committee held scrutiny sessions with the Minister for Policing and **senior officials within the department and its agencies**. Issues covered included the preparations the Home Office is making to ensure that UK policing and security capabilities are maintained in the event of the UK exiting the EU without a deal in March 2019; and UK border operations and readiness for Brexit, focusing on staffing and IT systems.

On 14 November, the House of Commons' Public Accounts Committee published its report on **DEFRA's progress of Brexit**. This found that:

There is a high level of risk in the Department's portfolio, with many of its plans dependent on co-operation from other departments, the devolved administrations and agencies and the goodwill of EU member states. The Department is too complacent about the levels of disruption or interruption to trade that may be faced. Fundamental issues for food, chemical and animal importers and exporters are yet to be resolved.

Replacing EU funding streams

On 14 November, **the Assembly debated** the Finance Committee's report into the **replacement of EU funding streams in Wales**. Wales currently receives **around £680 million** per year from EU funding streams, including Structural Funds, the Common Agricultural Policy, and Horizon 2020. The Committee's report made 11 recommendations, which **were all accepted** by the Welsh Government. Key recommendations include that Wales should be 'not a penny worse off' in terms of funding as a result of Brexit, and that the UK Shared Prosperity Fund and agricultural support should be devolved to give the Welsh Government maximum flexibility to shape policy.

Since the report has been published, there have been **a number of developments** relating to regional development and agricultural support.

The Welsh Government has allocated £350,000 from its EU Transition Fund to build a partnership with the Organisation for Economic Co-Operation and Development to inform its future regional investment approach and the implementation of its economic action plan. The Wales Office held a stakeholder event in Cardiff on the UK Shared Prosperity Fund on 8 and 9 November. The First Minister stated in Plenary that it is not clear how the fund will operate, how much money will be available, or how it will interact with the devolution settlement. He went on to say that the Wales Office appears to have cut across devolved responsibilities despite having no powers of its own in this area.

On 14 November, there was a Westminster Hall debate on **the UK Shared Prosperity Fund and Wales**. During this, the Parliamentary Under-Secretary of State for Wales, Nigel Adams MP, confirmed that the UK Government will consult on the fund by the end of 2018, and that it is committed to engaging with the devolved administrations as it develops its proposals.

The UK Government Secretary of State for Environment, Food and Rural Affairs, Michael Gove MP, **announced an independent review** of post-Brexit agricultural funding levels across the UK from 2020-22 on 16 October, which has committed to not using the Barnett formula to exclusively determine allocations to the UK nations.

The Wales Civil Society Forum on Brexit (set up by the Wales Governance Centre and the Wales Council for Voluntary Action) **presented its concerns** to the Cabinet Secretary for Finance on 24 October. These include its fears that the UK Shared Prosperity Fund will not give Wales the level of funding it currently receives from Structural Funds, will deprioritise tackling poverty and social exclusion, and will not be shaped by the public, private and third sectors in Wales.

Future trade arrangements

The Welsh Affairs Committee has commenced its inquiry into **Brexit, trade and customs**, focussing on what different options for future UK-EU trade and customs arrangements would mean for Wales, and what opportunities there are for Wales in securing new trade agreements with non-EU nations. The Cabinet Secretary for Economy and Transport **submitted written evidence** to the inquiry, which was published on 30 October. In oral evidence to the Committee on 12 November, the President of the Irish Road Haulage Association told the Committee that they are looking at alternative shipping routes such as Rosslare to Cherbourg. In relation to how prepared Welsh ports are for a 'no deal' scenario, the policy director of the UK Road Haulage Association commented 'I would say not prepared at all'.

The Scottish Parliament's Finance and Constitution Committee **published its report** into the UK Government's Trade Bill Legislative Consent Motion on 31 October. The report did not recommend that the Scottish Parliament gave legislative consent to the Bill unless the clauses that constrain the powers of Scottish Ministers in devolved areas are removed. It also called on the UK and Scottish Governments to resolve their impasse on the operation and meaning of the Sewel Convention, and noted its disappointment that the Bill is silent on the role of devolved administrations in negotiating post-Brexit trade arrangements.

Common Frameworks

On 13 November, the UK Government **published the first report** on common frameworks and the use made by the UK Government of powers under section 12 of the EU (Withdrawal) Act. This highlighted that the UK Government has not yet made any regulations under this Act to temporarily freeze the Assembly's powers. It goes on to state that:

On the basis of the significant joint progress on future frameworks, and the continued collaboration to ensure the statute book is ready for exit day, the UK Government has concluded that it does not need to bring forward any section 12 regulations at this juncture. On this basis, the Scottish and Welsh Governments continue to commit to not diverging in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussions continue.

3. Welsh Government response

Giving **evidence to the Committee** on 11 October, Robin Walker MP, Parliamentary Under-Secretary of State for Exiting the European Union stated:

We want to ensure that we've taken on board the views of the devolved administrations, [...] but it's not a situation in which, politically, they can necessarily drive the UK position on these issues more broadly, and that's the nature of the discussions we sometimes have to have in these forums: to explain where we agree, where we disagree, where there is important information we can take on board, but also where we may not reach agreement.

A fifth meeting of the Interparliamentary Forum on Brexit was held in the National Assembly for Wales on 25 October. Following the meeting, a **joint statement** was issued reasserting in relation to intergovernmental arrangements that 'the consensus view of committees is that the Joint Ministerial Committee (JMC) mechanism is not fit for purpose'. However, Robin Walker MP did not concede to Welsh Government's proposal for a Council of Ministers, **stating** that additional work streams have been created:

I think we've also recognised [...] that there needs to be additional machinery to support this process, and the ministerial forum on EU negotiations [...] has been set up with the specific aim of reporting back to JMC(EN) on upcoming negotiations on the future relationship.

The First Minister gave evidence to the Committee **on 5 November**. When asked how often the Welsh Government is updated by the UK Government on Article 50 negotiations, the First Minister said that it's "as and when, really."

At the moment, we have no real understanding of what the final deal might look like. We've been proactive in putting forward our own policy positions. We've done that, of course, with the different White Papers that we have published. There is involvement in the negotiations in the sense that we have pressurised the UK Government to make sure that we are involved.

However he did say that devolved involvement in the negotiations has improved since March 2017 but that there was still room for "greater involvement." According to the First Minister:

[...]one of the issues that needs to be resolved is that the UK Government sometimes takes the view that international relations are not devolved and that, therefore, we don't need to be consulted on issues that are international issues but which nevertheless have an effect on devolved areas—health being one, for example.

He went on to say that the Welsh Government does not know beforehand what the UK Government's negotiating position is and that they have to "read in the newspapers" what might come out of the negotiations.

With regards to the Assembly's involvement in any Brexit deal, the First Minister said that "there will be a vote" and that the question of what such a motion would look like would need further discussion. He said:

I always took the view that any agreement should be confirmed by the Parliaments, plural, of the UK and not just Westminster, because there are so many devolved areas that are affected. So, yes, there will have to be a debate.

More recently, the Welsh Government's Cabinet Secretary for Health and Social Services, Vaughan Gething AM, and his Scottish counterpart, Jeane Freeman MSP, wrote a **joint letter to the UK Minister for Immigration**, Caroline Nokes MP. In that letter they ask the UK Government to reconsider its decision not to include family members in its **EU Settlement Scheme** and offer to host a pilot of doing so in Wales and Scotland. They said that if the UK Government did not do so 'we would not feel comfortable actively promoting the scheme to health and social care staff in Wales and Scotland'. The letter also reports:

[...] earlier ministerial engagement would have provided a more timely opportunity to discuss and agree matters such as including family members in the [EU settlement scheme] while still in its planning stages.

On 30 October, Mark Drakeford, the Cabinet Secretary for Finance, issued a **written statement** responding to the UK Autumn Budget 2018, referring to the implications for Wales:

Brexit continues to weigh on growth prospects for both Wales and the UK as whole. While the Chancellor spoke yesterday about the promise of more funding to come in the event of a good Brexit deal. The negotiations between the UK and the EU remains far from certain and the threat of a disruptive and disastrous no deal Brexit, which would hit Wales disproportionately hard, edges ever closer.

In reply to a question not reached in Plenary on 13 November, the Cabinet Secretary for Finance provided an update on the Welsh Government's discussions with the UK Government regarding Brexit:

Ministers continue to strongly make the case for a Brexit that protects the interests of Wales at every opportunity. In recent weeks these have included bilateral ministerial phone calls, a ministerial forum, and the British-Irish Council. A Joint Ministerial Committee (European negotiations) will take place later today.

The Joint Ministerial Committee on European Negotiations (JMC(EN)) met on 13 November. A **Communiqué** was issued following the meeting. It states that discussions included an update on negotiations, including further developments in relation to the Withdrawal Agreement and the Future Framework.

On **13 November** the Minister for Housing and Regeneration, Rebecca Evans AM, visited the plenary session of the European Parliament in Strasbourg in her capacity as the Welsh Government's representative on the UK Ministerial Forum on European Negotiations. The Forum meets as a sub-group of the JMC (EN). A written statement was issued following the meeting which stated that the purpose of the visit was to:

[...]discuss with European Parliamentarians and others issues including the prospects for the successful conclusion to the negotiations between the UK and the EU27 on the Withdrawal Agreement and the associated Political Declaration; the process for securing the approval of the European Parliament for the Agreement; and the potential, in the event of a deal not being secured or being voted down in the House of Commons, of an extension of the Article 50 process and measures to mitigate the worst potential effects of 'no deal'.

In response to a question in Plenary on 14 November about the draft Withdrawal Agreement between the UK and the EU, the Cabinet Secretary for Finance **stated that:**

Llywydd, neither the Welsh nor the Scottish Government have had advanced sight of the text so far. I was in London yesterday for the latest meeting of the Joint Ministerial Committee on European negotiations and was able to discuss the content of the withdrawal agreement and the political declaration, and, indeed, the explainer document that is to be published alongside it, with the Deputy Prime Minister of the United Kingdom and with Scottish Ministers as well. I understand that the First Minister is speaking with the Prime Minister later this afternoon.

The Welsh Government **issued a statement** (ahead of the publication of the deal and associated documents) on 14 November stating that:

[...]it is essential that the deal enables a future relationship with the EU27 to be reached which includes full and unfettered access to the single market and participation in a customs union.

We need to see the details of the deal as soon as possible. All the nations of the UK need time to scrutinise what is being proposed as it will have a huge impact on our future.