

# Negotiations on the UK's withdrawal from the EU

## Brexit Monitoring Report

18 March 2019



The Assembly and

BREXIT

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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 4 February 2019.

This paper provides:

- A headline summary of the latest developments in the negotiations and related UK legislation;
- A more detailed analysis of the key developments at Westminster and Brussels;
- Analysis of the Welsh Government and National Assembly for Wales' response to the latest developments; and
- An analysis of issues of interest to the External Affairs and Additional Legislation Committee (the Committee).

### Summary of developments

The European Union is preparing a number of unilateral actions in the case of 'no deal' Brexit, usually depending on reciprocal measures in the UK. The Council, Parliament and Commission are preparing positions on **air travel; visa free travel; road freight and road passengers; Erasmus+ students, social security coordination rules and the EU budget; railways; customs preparedness; animal imports and exports.**

30 January: **President Juncker and Chief Negotiator Michel Barnier spoke at the European Parliament** during the debate on Brexit, the day after the **House of Commons voted against both a 'no deal' Brexit and the backstop**. They said that the Withdrawal Agreement, including its backstop, will not be re-negotiated. They said the Withdrawal Agreement delivered on keeping the Irish border 'as is', the UK being a single Customs territory, and safeguarding the Single Market.

31 January: The seventh meeting of the Ministerial Forum (EU Negotiations) was held in Edinburgh and a **Ministerial Forum communiqué** was published. The Counsel General and Brexit Minister, Jeremy Miles AM, attended.

7 February: In a **joint statement on behalf of the Prime Minister and President Juncker** they agreed to keep working to try to find a way that is acceptable to the Houses of Parliament, the European Parliament and the EU27.



The UK Government's preparations for 'no deal' include information about: **International driving permits; bus and coach drivers; lorry and goods vehicle drivers; Transitional Simplified Procedures for customs; Staying in the UK for longer than 3 months if there's no Brexit deal**; as well as HMRC **letters on no deal Brexit advice for businesses only trading with the EU**. There is also an **agreement between the UK, Norway, Iceland and Liechtenstein to protect citizens' rights**, and a similar **agreement between the UK and Switzerland**.

On 5 February **the Prime Minister spoke in Belfast**, and on 11 February she **responded to Jeremy Corbyn**, following his **five Brexit demands letter** to her of 6 February.

On 7 February **First Ministers of Scotland and Wales issued a Brexit joint statement** asking the Prime Minister to reject 'no deal' and ask for an extension to the Article 50 period.

On 12 February the Prime Minister gave a **statement in the House of Commons**, followed on 14 February by a **debate on Brexit**, which the Government lost.

In the Dáil, on 21 February, the Joint Committee on the Implementation of the Good Friday Agreement debated the **Impact of Brexit on the Good Friday Agreement**.

On 25 February the **eighth meeting of the Ministerial Forum (EU Negotiations)** was held in Cardiff. Jeremy Miles AM attended.

On 26 February the Prime Minister gave a **statement in the House of Commons**, followed on 27 February by a **debate on Brexit**. The House resolved to hold a second 'meaningful vote' on 12 March, and if that is rejected, on 14 March to vote on whether to leave without a deal.

On 26 February the Government published **Implications for business and trade of a no deal exit on 29 March 2019**, which it says is a fair reflection of the current state of readiness for a no deal exit. The document goes on to say:

there is little evidence that businesses are preparing in earnest for a no deal scenario, and evidence indicates that readiness of small and medium-sized enterprises in particular is low. ... As of February 2019, many businesses in the food supply industry are unprepared for a no deal scenario. ... Despite the use of a continuity approach where possible, and notwithstanding very significant efforts to prepare for a no deal scenario, the impact of a no deal scenario is likely to be severe in a number of areas. Overall, the cumulative impact from a 'no deal' scenario is expected to be more severe in Northern Ireland than in Great Britain, and to last for longer.

On 27 February the Government announced that other 18 parties to the **WTO Agreement on Government Procurement** have agreed that the UK can continue to participate in that market:

Overseas businesses will be able to bid for £67 billion worth of public sector contracts in the UK every year. In return, British suppliers will be able to bid for £1.3 trillion worth of government contracts overseas in a wide range of sectors from large infrastructure to professional and business services

The Prime Minister flew to Brussels on 11 March for further clarifications on the Withdrawal Agreement and Political Declaration. There was a **press conference**, during which President Juncker said "There will be no further interpretations of the interpretations; and no further assurances of the re-assurances". The **Joint Statement supplementing the Political Declaration**, an **Instrument relating to the Withdrawal Agreement**, and a **Commission Communication** were published. Also **President Juncker wrote to President Tusk** asking that the European Council on 21-22 March endorse the documents, subject to the House of Commons passing the Withdrawal Agreement.

On 5 March the Assembly held a debate on the **EU Withdrawal Negotiations**. The debate was held at the same time as a **similar debate in the Scottish Parliament**. The resolution was: opposition to the Withdrawal Agreement, rejection of 'no deal' and extension of the Article 50 period.

Also on 11 March the Government published the list of goods that can travel on the **government-secured freight capacity** - medicines, baby milk, veterinary medicines, energy sector chemicals.

In the House of Commons on 12 March, the Attorney General presented his **Legal Opinion on Joint Instrument and Unilateral Declaration concerning the Withdrawal Agreement**.

On 13 March, the Government published **temporary rates of customs duty on imports after EU Exit**, and confirmed that **“it will take a temporary approach to avoid new checks and controls on goods at the Northern Ireland land border if the UK leaves the EU without a deal.”** The UK's temporary import tariffs will therefore not apply to goods crossing from Ireland into Northern Ireland.”

Later that day there was another debate on the **UK's Withdrawal from the European Union**. The decision was to reject leaving the European Union without a Withdrawal Agreement and a Framework for the Future Relationship.

Also on that day, the Exiting the EU Committee published its emergency report **Response to the 12 March 2019 vote on the Withdrawal Agreement and Political Declaration: next steps for Parliament**, setting out its recommendation to **extend Article 50 and hold indicative votes to find way forward**.

The **14 March debate resolved** that the Government should ask for an extension of the Article 50 period. The motion passed stated that if there is another vote on the Withdrawal Agreement by Wednesday 20 March, and if the vote passes, the Government should ask for an extension to 30 June. If the vote is not passed “it is highly likely that the European Council at its meeting the following day would require a clear purpose for any extension, not least to determine its length, and that any extension beyond 30 June 2019 would require the United Kingdom to hold European Parliament elections in May 2019.”

On 18 March, the Speaker of the House of Commons, John Bercow, **ruled that** he would not allow another vote on ratification of the Withdrawal Agreement and Political Declaration in the House of Commons if it was the same, or substantially the same, motion as had previously been presented to the House of Commons on 12 March.

On 20 March the Prime Minister **wrote to Donald Tusk**, President of the European Council, to request a three month extension of Article 50 to 30 June 2019. In a speech on 20 March responding to the letter, Donald Tusk **stated that** he believes that a short extension will be possible, but it will be conditional on a positive vote on the Withdrawal Agreement in the House of Commons.

On 20 March the Prime Minister **made a statement on Brexit** outside 10 Downing Street. In her statement, the Prime Minister said that she was not prepared to delay Brexit any later than 30 June, and did not want the UK to participate in the upcoming elections to the European Parliament.

On 21 March, at a meeting of the European Council, EU leaders **agreed to an extension** of Article 50 until 22 May 2019, provided the Withdrawal Agreement is approved by the House of Commons during the week beginning 25 February. If the Withdrawal Agreement is not approved during that week, the Council agrees to an extension until 12 April.

## 2. Developments in Westminster and Brussels

### Timeline of key developments up to the second 'meaningful vote'

On 6 February, in a **letter to the Prime Minister**, Labour leader Jeremy Corbyn said that the UK Government would need to enshrine five changes to the Political Declaration in law to secure Labour support for a Withdrawal Agreement. These would include a permanent and comprehensive UK-wide customs union, close alignment with the EU Single Market and dynamic alignment on rights and protections. The Prime Minister's **response** to Mr Corbyn on 10 February stressed the importance of the UK having an independent trade policy and rejected the idea of automatically following changes of EU rules on workers' rights or environmental protection. She said the UK Government would however be 'prepared to commit to asking Parliament whether it wishes to follow suit whenever the EU changes its standards in these areas'.

The Prime Minister had previously said that if a revised deal was not brought back to the House by Wednesday 13 February, the UK Government would make a statement and, again, table an amendable motion for debate the next day. The Prime Minister **made that statement** on 12 February and tabled a **motion** to be debated on 14 February. In her statement, the Prime Minister referred to her talks the previous weeks with the President of the European Commission, and talks the previous day between the Brexit Secretary and Mr Barnier where the ideas put forward by the Alternative Arrangements Working Group were discussed. Mrs May said:

The talks are at a crucial stage, and we now all need to hold our nerve to get the changes that this House requires and to deliver Brexit on time.

The motion debated on 14 February said that the House of Commons welcomes the Prime Minister's statement, reiterates its support for the approach to leaving the EU that MPs voted for on 29 January (against 'no deal' and with alternative arrangements to the backstop), and notes that conversations with the EU are ongoing. Following the debate, MPs rejected the UK Government's motion by 303 to 258 votes.

On 26 February, the Prime Minister made a **statement in the House of Commons**, and this was followed on 27 February by a **debate**. The House of Commons voted by 502-20 to note the Prime Minister's statement on Leaving the European Union of 26 February, and further note that discussions between the UK and the EU are ongoing. The agreed motion also required the Prime Minister to seek at the earliest opportunity a joint UK-EU commitment to adopt part two of the Withdrawal Agreement on Citizens' Rights and ensure its implementation prior to the UK's exiting the European Union, whatever the outcome of negotiations on other aspects of the Withdrawal Agreement. In particular, the motion noted the Prime Minister's commitment to hold a second 'meaningful vote' by 12 March.

On 11 March, the Prime Minister **made a statement** in Strasbourg saying that the UK and the EU had agreed legally binding changes to strengthen the deal that MPs rejected in January. Three documents were published: a **joint instrument** agreeing that the EU cannot act with the intent of applying the backstop indefinitely; a **joint statement** in relation to the political declaration, which sets out commitments to enhance and expedite the process of negotiating and bringing into force the future relationship; and a **unilateral declaration** stating that if the backstop comes into use and discussions on the future relationship break down, there would be nothing to prevent the UK instigating measures that would ultimately dis-apply the backstop.

On 12 March, the Attorney General published his **legal advice** to the Prime Minister regarding the documents published the previous day. The advice concludes that although the new Joint Instrument and Unilateral Declaration have legal weight and reduce the risk that the UK becomes 'indefinitely and involuntarily detained' in the backstop, the legal risk remains. He says:

If both parties deploy a sincere desire to reach agreement and the necessary diligence, flexibility and goodwill implied by the amplified duties set out in the Joint Instrument, it is highly unlikely that a satisfactory subsequent agreement to replace the Protocol will not be concluded...However, the legal risk remains unchanged that if through no such demonstrable failure of either party, but simply because of intractable differences, that situation does arise, the United Kingdom would have, at least while the fundamental circumstances remained the same, no internationally lawful means of exiting the Protocol's arrangements, save by agreement.

## House of Commons votes on 12-14 March

On 12 March MPs **voted** on the Prime Minister's Brexit deal and the additional documents on the Northern Ireland backstop. The Speaker did not select any amendments to the motion. MPs voted 391 to 242 to reject the Prime Minister's deal.

Following the vote the Prime Minister **said**:

I profoundly regret the decision that this House has taken tonight. I continue to believe that by far the best outcome is that the United Kingdom leaves the European Union in an orderly fashion with a deal, and that the deal we have negotiated is the best, and indeed the only, deal available.

The Prime Minister then confirmed that she would hold a free vote the following day on whether the House of Commons supported leaving the EU without a deal on 29 March. She explained that if the House voted against a 'no deal' Brexit, she would bring forward a motion on 14 March on whether Parliament wished to seek an extension to Article 50. According to the Prime Minister:

If the House votes for an extension, the Government will seek to agree that extension with the EU and bring forward the necessary legislation to change the exit date, commensurate with that extension.

But let me be clear: voting against leaving without a deal and for an extension does not solve the problems that we face. The EU will want to know what use we mean to make of such an extension, and this House will have to answer that question. Does it wish to revoke article 50? Does it want to hold a second referendum? Or does it want to leave with a deal, but not this deal? These are unenviable choices, but thanks to the decision that the House has made this evening, they are choices that must now be faced.

The Prime Minister also **announced** that she would 'publish information on essential policies that would need to be put in place if we were to leave without a deal'. Accordingly, the UK Government published its **'temporary' arrangements** for avoiding a hard border on the island of Ireland in the event of a 'no deal' Brexit. The UK Government states that it will not introduce any new checks or controls on goods at the Irish border. It also published its **temporary tariff schedule** for imports into the UK, which will come into effect from 11pm on 29 March in the event of a 'no deal' Brexit, along with **accompanying guidance** for businesses. **The proposed tariffs** would apply for a period of 12 months while a full consultation and review is undertaken to inform a permanent approach to tariffs.

On 13 March, in response to the vote in the House of Commons on the Withdrawal Agreement, Michel Barnier in a **statement** at the European Parliament plenary session in Strasbourg said:

Following these votes, it will be for the British government to tell us – I hope positively – how it wishes to proceed, to finally bring together a constructive majority for a proposal. It is the UK's responsibility to tell us what it wants for our future relationship, what its choice is, what its clear line is.

We must now ask that question before asking about any possible extension. Extending the negotiation: for what reason? The Article 50 negotiation is now over. We have the treaty. It is here.

We are in a very serious moment because the risk of no deal has never been higher, including an accidental no deal. I recommend that nobody underestimates this risk or its consequences.

On 13 March MPs voted in favour of a motion to rule out leaving the EU on March 29 without a deal. The motion tabled by the UK Government recognised that 'no deal' would be the legal default if the UK Parliament chose not to approve the deal agreed between the UK and EU.

The Speaker selected two amendments to the 'no deal' motion. The first amendment, amendment (a) tabled by Caroline Spellman MP, altered the motion to reject the UK leaving the EU in any circumstances. MPs narrowly voted in favour of this amendment by 312 to 308. The second, amendment (f), in the name of Damian Green MP, which called for an extension to enable more time for a managed 'no deal' exit, was defeated by 164 to 374.

The motion as amended was put to a vote and approved by 321 to 278. Following this the **Prime Minister said**:

The legal default in UK and EU law remains that the UK will leave the EU without a deal unless something else is agreed. The onus is now on every one of us in this House to find out what that is. The options before us are the same as they always have been: we could leave with the deal that this Government have negotiated over the past two years; we could leave with the deal that we have negotiated but subject to a second referendum, but that would risk no Brexit at all—[Interruption]—damaging the fragile trust between the British public and the Members of this House; we could seek to negotiate a different deal, but the EU has been clear that the deal on the table is indeed the only deal available.



The Prime Minister had previously committed to bringing forward a motion on whether MPs supported seeking an extension to Article 50 if they voted against leaving without a deal. Therefore, after the vote, the Prime Minister confirmed that a debate and vote on a potential extension would be held the next day. The **Prime Minister said**:

If the House finds a way in the coming days to support a deal, it would allow the Government to seek a short, limited technical extension to article 50 to provide time to pass the necessary legislation and to ratify the agreement we have reached with the EU.

Let me be clear: such a short technical extension is likely to be on offer only if we have a deal in place. Therefore, the House must understand and accept that if it is not willing to support a deal in the coming days and as it is not willing to support leaving without a deal on 29 March, it is suggesting that there will need to be a much longer extension to article 50. Such an extension would undoubtedly require the United Kingdom to hold European Parliament elections in May 2019. I do not think that that would be the right outcome, but the House needs to face up to the consequences of the decisions that it has taken.

On 14 March Council President Donald Tusk **tweeted** that he would 'appeal to the EU27 to be open to a long extension if the UK finds it necessary to rethink its Brexit strategy and build consensus around it'.

On 14 March MPs voted on whether to instruct the Prime Minister to seek an extension to the Article 50 negotiating period. The Prime Minister's **motion** asked the House of Commons to agree that:

- the Government will seek to agree an extension to Article 50 with the EU; and
- if the House votes in favour of the Prime Minister's Brexit deal by 20 March, then the Government will seek to agree a one-off extension until 30 June 2019 for the purpose of passing the necessary EU exit legislation.

The motion also asked MPs to agree to note that if they chose not pass the deal by 20 March, then it is 'highly likely' that the European Council at its meeting on 21 March would require a clear purpose for any extension and that any extension beyond 30 June 2019 would require the UK to hold European Parliament elections in May 2019.

Amendments to the government's motion were selected by the Speaker, including an amendment tabled by Sarah Wollaston MP on a second referendum. MPs voted against this amendment by 85 votes to 334. However, the UK Government were close to losing on two amendments. MPs voted 302 to 318 against Labour's frontbench amendment which asked for an extension to Article 50 as an opportunity to find a majority way forward. They also voted 312 to 314 against Hilary Benn, Chair of the Brexit Committee's, amendment which would have accepted an extension until June 30 but would have required parliamentary time for backbenchers to put forward a motion on the way forward.

MPs **voted** 412 to 202 in favour of the final unamended motion agreeing that the UK Government should seek an extension to Article 50.

### Developments since 14 March

On 18 March, the Speaker of the House of Commons, John Bercow, **ruled that** he would not allow another vote on ratification of the Withdrawal Agreement and Political Declaration in the House of Commons if it was the same, or substantially the same, motion as had previously been presented to the House of Commons on 12 March.

On 20 March the Prime Minister **wrote to Donald Tusk**, President of the European Council, to request a three month extension of Article 50 to 30 June 2019. In her letter, the Prime Minister stated that she was requesting the extension to try to ratify the Withdrawal Agreement and Political Declaration, and subsequently to pass the Withdrawal Agreement Bill to enact the UK's commitments under the Withdrawal Agreement into domestic law. The Prime Minister also requested that the European Council approves the supplementary documents published on 11 March, in order that she is able to meet the requirements of the ruling of the Speaker of the House of Commons on 18 March.

In a speech on 20 March responding to the letter, Donald Tusk **stated that** he believes that a short extension will be possible, but it will be conditional on a positive vote on the Withdrawal Agreement in the House of Commons. He also stated that the duration of a short extension is also open, as the request to extend Article 50 until 30 June has some merits but also raises some political and legal questions. Donald Tusk also stated that European Council approval of the supplementary documents would be possible, and not present any risks.



On 20 March the Prime Minister **made a statement on Brexit** outside 10 Downing Street. In her statement, the Prime Minister said that she was not prepared to delay Brexit any later than 30 June, and did not want the UK to participate in the upcoming elections to the European Parliament.

On 21 March, at a meeting of the European Council, EU leaders considered the Prime Minister's requests. **In a statement** after the meeting, Donald Tusk said that the Council approves the Instrument and Joint Statement agreed in Strasbourg on 11 March. He also said that the Council agrees to an extension of Article 50 until 22 May 2019, provided the Withdrawal Agreement is approved by the House of Commons during the week beginning 25 February. He said that if the Withdrawal Agreement is not approved during that week, the European Council agrees to an extension until 12 April, and expects the UK to indicate a way forward before this date. He emphasised that there can be no opening of the Withdrawal Agreement that was agreed in November 2018. In explaining the significance of 12 April, he said:

What this means in practice is that, until that date, all options will remain open, and the cliff-edge date will be delayed. The UK Government will still have a choice of a deal, no-deal, a long extension or revoking Article 50.

Later that evening, the Prime Minister **made a statement** welcoming the Council's approval of the Strasbourg agreement, as well as the extension of Article 50. She said that any further extension would mean UK participation in the European Parliament elections, adding that she believed that it would be wrong to ask people in the UK to participate in these elections three years after voting to leave the EU. She said:

What the decision today underlines is the importance of the House of Commons passing a Brexit deal next week so that we can bring an end to the uncertainty and leave in a smooth and orderly manner.

## Next steps

Elections to the European Parliament are scheduled to take place between 23 and 26 of May 2019. On 11 March Jean-Claude Juncker, President of the European Commission, stated in a **letter** to the President of the European Council, Donald Tusk, that

the United Kingdom's withdrawal should be complete before the European Parliament elections... If the United Kingdom has not left the European Union by then, it will be legally required to hold these elections, in line with the rights and obligations of all Member States as set out in the Treaties.

On 13 March the Commons Exiting the EU Select Committee (the Brexit Committee) published its **Response to the 12 March vote on the Withdrawal Agreement and Political Declaration: next steps for Parliament**. This follows previous reports published on **28 January** and **16 January**.

With regards to the length of an extension to Article 50 negotiations, the Brexit Committee notes in its response that during discussions in Brussels it heard that it would not be a problem if the UK did not hold European elections provided that Brexit happens before the end of June, because the first session of the new European Parliament will not convene until 2 July. It therefore recommends that the UK Government should urgently clarify what its understanding of the position is. The Brexit Committee believes that:

it may be necessary to request an extension beyond the end of May and, unless a protocol can quickly be agreed in discussions with the EU which removes the obligation on the UK to participate in the European Parliament elections, the UK should be prepared for the possibility of having to hold these elections at the end of May.

In terms of what should happen next, the Brexit Committee reiterates its recommendation made in January 2019 that the UK Government should hold a series of indicative votes on different options for how to proceed with the Brexit process:

We reiterate our recommendation that the House of Commons must be given an opportunity to identify what new approach might secure a majority in the House of Commons. Making provision, therefore, for the House to hold a series of indicative votes should now happen without delay so as to begin the process by which a clear plan can be identified.

## Brexit legislation

The **Trade Bill** started its Report Stage in the House of Lords on 6 March, when two amendments were made to the Bill. The first inserts a new clause to the Bill that gives the UK Parliament more power over the contents of international free trade agreements covered by the Bill, and requires the devolved administrations to be consulted. The second amendment mandates the UK Government to 'take all necessary steps to implement an international trade agreement which enables the United Kingdom to participate after exit day in a customs union with the European Union'.

The **second day of Report Stage** took place on 13 March. Three non-government amendments were passed. The first would not allow a trade agreement between the UK and EU to be ratified unless it is compatible with the Good Friday Agreement, does not affect trade between Ireland and Northern Ireland and customs arrangements are made. The second amendment sets an objective for the relevant Secretary of State to secure a mobility framework in a trade agreement with the EU that provides reciprocal rights to work, live and study for the purpose of trade in goods and services. The final amendment states that the provisions in parts 1-3 of the Bill can only come into force if there is a withdrawal agreement and framework for a future relationship with the EU that has been approved by the House of Commons.

The **Third Reading** of the Bill in the House of Lords took place on 20 March. Four amendments were agreed, three from the UK Government and one opposition amendment. These were all agreed without a vote. The Bill has now returned to the House of Commons for **consideration of amendments** (sometimes known as ping-pong).

Amendment 1 requires regulations to implement continuity trade agreements to maintain UK levels of statutory protection in relation to a number of areas.

Amendment 2 sets out the areas in which UK levels of statutory protection need to be maintained – protection of animal, human or plant life or health; animal welfare; environmental protection; and employment and labour. It also highlights that statutory protection is defined as primary legislation, secondary legislation, or retained EU law.

Amendment 5 adds 'civil' to the text, meaning that regulations under subsection 2 (1) may make provision for civil penalties for failing to comply with the regulations.

Amendment 7 replaces clause 11 of the Bill with a new requirement that the UK Government should seek to secure an international trade agreement with the EU that enables the UK to fully participate after exit day in the European Medicines Agency; the European Chemicals Agency; the European Aviation Safety Agency; the European Maritime Safety Agency; the European Network of Transmission System Operators for Electricity; and the European Network of Transmission System Operators for Gas.

The UK Government has said that legislative consent is required from the devolved legislatures in respect of the Bill, as parts of it make provision in areas that are within the Assembly's legislative competence. It is the view of the Welsh Government that Part 1 of the Bill requires legislative consent, as do its associated schedules, 1 to 3. While the Welsh Government's initial position was that it could not recommend that the Assembly gave legislative consent to the Bill, it has secured amendments and non-legislative commitments that mean it has published a supplementary legislative consent memorandum (LCM) recommending that the Assembly does give legislative consent to the Bill. Following reports on the supplementary LCM by the **External Affairs Committee** and the **Constitutional and Legislative Affairs Committee**, the Assembly approved a legislative consent motion in relation to the Bill on 12 March. It is likely that the Assembly will be required to approve a further LCM based on the amendments passed since this was approved.

The **Healthcare (European Economic Area and Switzerland Arrangements) Bill** started its Second Reading in the House of Lords on 5 February. Members discussed a range of issues raised by the Bill, including UK reciprocal healthcare agreements with EU member states and other countries around the world, the protection of British citizens in the event of a 'no deal' Brexit, data security and government payments for healthcare provided outside the UK.

The Committee Stage started on 19 February. Committee members discussed subjects including the duty of the government to consult the devolved administrations of Scotland, Wales and Northern Ireland, and ensuring the regulations made under the Bill do not negatively affect legislation passed in those administrations or any EU legislation retained following Brexit.

The Bill had its Report Stage in the House of Lords on 12 March. Members discussed requirements for consultation with devolved authorities and Government reporting on healthcare payments made under the Bill. There were also two amendments made to the Bill. The first amendment concerned the opening clause of the Bill, which allows the Government to make payment arrangements for healthcare provided outside of the United Kingdom. It removes the words 'outside of the United Kingdom' from the clause and defines the specified area as being 'in a European Economic Area country or Switzerland'. The second amendment was in relation to a section of the Bill that listed the possible powers that could be delegated to the Secretary of State under the new law. The amendment removes the words 'for example', before the list of powers, on the grounds that the phrase increases the scope for expansion of those powers at a later date.

The title of the Bill has been changed from the Healthcare (International Arrangements) Bill to the Healthcare (European Economic Area and Switzerland Arrangements) Bill.

The Third Reading of the Bill in the House of Lords **took place on 19 March**. A number of minor amendments were passed, and the Bill has returned to the House of Commons for consideration of amendments.

The Welsh Government has published a **supplementary legislative consent memorandum** for the Bill, and a motion to give legislative consent to the Bill was agreed in Plenary on 12 March. However, as changes were made to the Bill in the House of Lords on the same day, it is likely that another memorandum will be published in due course.

The **Fisheries Bill** has completed its Committee Stage in the House of Commons. The Bill provides a number of powers that will enable UK and Welsh Ministers to introduce secondary legislation and contains provisions relating to Wales at the request of the Welsh Government. A **supplementary LCM** in relation to the Bill was laid on 10 January. The Cabinet Secretary states that she believes that it is appropriate to deal with these provisions in this UK Bill to ensure a UK-wide approach to creating the fisheries framework, but has also stated that the Welsh Government will bring forward a Welsh Fisheries Bill in the future. The Climate Change, Environment and Rural Affairs committee has taken evidence on the LCMs from stakeholders and from the Minister for Environment, Energy and Rural Affairs, and has **published a report**. The Constitutional and Legislative Affairs Committee (CLAC) has also considered the Bill and **published a report**. A date for the Report Stage in the House of Commons has yet to be announced.

The **Immigration and Social Security Co-ordination (EU Withdrawal) Bill** has been considered by the Public Bill Committee, which has reported the Bill without amendments to the House. The Bill is now due to have its Report Stage and Third Reading on a date to be announced. The purpose of the Bill is to end free movement and protect the status of Irish citizens in UK immigration law. In the view of the UK Government, the immigration matters to which the provisions of the Bill relate are not within the legislative competence of the Assembly.

## Subordinate legislation

In terms of subordinate legislation, 491 Brexit-related statutory instruments (SIs) have been laid in the UK Parliament since the EU Withdrawal Act received Royal Assent on 26 June 2018, and 289 have completed their passage through Parliament.

The Welsh Government has indicated that up to 150 UK Government Brexit SIs will be made in areas devolved to Wales ahead of exit day. Around 124 have been brought forward to date. A further 50 are to be made by Welsh Ministers and the Constitution and Legislative Affairs Committee has considered 38 of these so far. Twenty-seven of these have been subject to the negative procedure, while 11 are subject to the affirmative procedure and are yet to be approved by the Assembly.

On 6 February 2019, CLAC **published a progress report** on the scrutiny of Brexit regulations, and also sent an **accompanying letter** to First Minister regarding the scrutiny of Brexit legislation. One of the main findings of the report was that Government has not got the balance right between permitting UK Ministers to act on behalf of Welsh Ministers and making its own legislation. The Committee was concerned at the lack of detailed information contained in SI written statements, and believes that the Government should table motions seeking the consent of the Assembly to regulations that are subject of Statutory Instrument Consent Memorandums. The Committee also expressed concerns about the capacity and priorities of the Welsh Government in dealing with the volume of legislation needed to correct the Welsh statute book.

The First Minister **responded to CLAC** on 11 March. He stated that the Committee's report did not match his experience of legislating for Brexit, and that he did not accept that the Assembly has been marginalised or bypassed. In relation to the committee's point about allowing UK Ministers to act on Wales's behalf, the First Minister says that what has been happening is 'co-operation with the UK Government in order to deliver an operable statute book', adding that The Welsh Government has never attempted anything on this scale since devolution began.



In relation to written statements under Standing Order 30C, the First Minister acknowledged that the Committee has been diligent in writing to the Welsh Government about concerns with specific written statements and that the templates and guidance issued to the officials preparing those statements have been revised to improve their quality.

In relation to motions on SICMs, and the committee's preference for Welsh Ministers to lay motions for all SICMs, the First Minister said that Standing Orders make it clear that it is the choice of Ministers or Members to lay a motion.

In a letter to the Chair of the External Affairs Committee on 11 March, Brexit Minister Jeremy Miles gave an update on progress relation to Brexit SIs. In the letter, he said that all the required negative SIs are being laid in time for them to come into force by 29 March. Additionally, he stated that the Government are anticipating up to eight SIs that are intended to come into force after 29 March, adding that the majority of these would make amendments to Welsh law in consequence of UK legislation that has not yet been made.

### 3. Developments in Wales

During Plenary on 5 February, in response to a question by Lynne Neagle AM on the implications of a 'no deal' Brexit for the automotive sector in Wales, the First Minister Mark Drakeford stated that leaving the European Union without a deal would be 'disastrous' for the industry. He went on to say that 'such a possibility should be taken off the table by the UK Government and an extension sought now to the article 50 timetable'.

On 7 February, the First Minister issued a joint statement with the Scottish First Minister following their attendance of the first meeting of the European Union Exit and Trade (Preparedness) Committee. The statement noted that:

[...] all the evidence we have seen to date suggests that the UK is simply not prepared for a 'no deal' Brexit in less than 2 months' time. Our firm view is that such an outcome to the Brexit negotiations would be a catastrophe which would cause significant short-term disruption to the lives of ordinary citizens as well as to businesses and long-term harm to our economy.

The First Minister referred to the jobs lost at Shaeffler in Llanelli and the cancelled investment at Nissan in Sunderland, suggesting that this is a forecast of what is to come. Due to the uncertainty caused by the possibility of a 'no deal' scenario, the First Minister restated:

The point has been reached where there is now no time to waste. We therefore renew our call for the Prime Minister to make clear that she and her government will ensure 'no deal' is taken off the table. This should include putting forward secondary legislation now to remove 29 March 2019 as exit day from the EU (Withdrawal) Act.

On 11 February, the First Minister replied to a **letter** by the Llywydd regarding the scrutiny of Brexit-related legislation. In his reply, the First Minister reassured that:

The Welsh Government's approach reflects the real and pressing need to respond to the extraordinary circumstances surrounding Brexit, rather than any attempt to limit or frustrate the Assembly's role as a legislature. [...] The Welsh Government will, as far as is possible in the timescales involved, seek to enable Assembly scrutiny through timely and responsive engagement.

In Plenary on 12 February, in response to concern raised by Llyr Gruffydd AM regarding a perceived 'over-reliance on Westminster legislating on our behalf', the First Minister restated Welsh Government's policy, saying that:

[...] the responsibility to legislate is in the hands of the Assembly. We want to see the Assembly dealing with those particular responsibilities unless there is a specific reason that we can't do it in that way. Of course, Brexit does create the context where that specific reason arises.

What we're doing is the same as they are doing in Scotland. Where the House of Commons can do things that are entirely technical and that don't change our policy at all, because there is insufficient time for us to redo things that they do. [...] But, if policies change, then we bring them to the floor of the Assembly, and that's what we've done.

During Plenary on 13 February, questions were posed to the Brexit Minister Jeremy Miles AM. In summary, in reply to various questions, the Brexit Minister made a number of key comments including:

- With regard to the steps that Welsh Government will take in a 'no deal' scenario to collaborate with HMRC to ensure that the port of Holyhead doesn't come to a stop, the Brexit Minister said that discussions were taking place both with the UK Government and HMRC, and said that collaboration with the UK Government in this field has improved over the recent period.
- Welsh Government has called for a joint ministerial committee on international trade, to enable a formal system to be put into place to agree negotiating positions and to resolve the sorts of tensions that will inevitably arise in this area. The Brexit Minister stated further that UK Government Ministers have indicated in the House of Lords recently their intention to create exactly that sort of forum.
- The British-Irish Council is an absolutely essential forum in cementing relationships across the UK both in the context of Brexit and in terms of future relationships more generally. Welsh Government has memoranda of understanding or action plans already in place with Brittany and with the Basque Country, and are about to embark on a similar set of discussions with the Galicians. Furthermore, Welsh Government has developed, in particular with Quebec, for example, a memorandum of understanding around the aerospace sector.
- A concordat is being developed that will specifically detail how the Department for International Trade and the devolved administrations will work together for future UK trade agreements with third countries after the EU exit.

On 21 February, the Welsh Government's European Advisory Group published the **minutes** for its meeting on 17 January. The meeting included an update on developments and negotiations, preparedness presentations, the Shared Prosperity Fund and European Transition Fund and the next steps to be taken. The following meeting was held EAG meeting was held on 21 February, however its minutes are not yet available.

On 5 March, a motion tabled by Rebecca Evans, Minister for Finance and Trefnydd, was passed. The motion opposed the deal brought forward by Theresa May, stated that a 'no deal' outcome is unacceptable, and called for an extension of Article 50 to renegotiate a deal. The motion read:

To propose that the National Assembly for Wales:

1. Reiterates its opposition to the damaging EU exit deal agreed by the UK Government.
2. Agrees that a 'no deal' outcome to the current negotiations on EU withdrawal would be completely unacceptable on 29 March 2019 or at any time.
3. Calls on the UK Government to take immediate steps to prevent the UK leaving the EU without a deal, and further agrees that the Article 50 process should be extended so that agreement can be reached on the best way forward to protect the interests of Wales, Scotland and the United Kingdom as a whole.

During Plenary questions posed to Rebecca Evans, Minister for Finance and Trefnydd, **on 6 March** she stated that the Welsh Government has called on the UK Government 'time and time again [...] that an emergency budget must be forthcoming, additional funding must be forthcoming, in the event of a disastrous 'no deal' Brexit'.

The Brexit Minister, Jeremy Miles AM, on 11 March published **potential draft clauses** for the UK Government's anticipated Withdrawal Agreement Bill. In the accompanying statement, he stated that:

The purpose of our draft clauses is to illustrate how changes to the Political Declaration to reflect our policy objectives – above all, continued participation in a customs union with the EU and the single market – could be anchored in the primary legislation which will be necessary to enact the Withdrawal Agreement in UK law. [...] The draft clauses also provide for the National Assembly for Wales (and potentially the other devolved legislatures) to shape the negotiations and for scrutiny by both the National Assembly and by Parliament of the final agreement(s) reached with the EU. Finally, they provide for a process of Parliamentary decision making if it becomes clear that negotiations with the EU have reached an impasse.

Notably, the clauses offered by Welsh Government include a provision for the **procedure if no agreement on future relationship 8 months before the end of the transition period.**

On 19 March the First Minister made a **Plenary statement** on EU negotiations. He stated that:

In our view, there are two ways in which progress could be made... Renegotiating the political declaration in this fashion, by committing to participation in a customs union and the single market, together with dynamic alignment with the social, environmental and labour market standards of the European Union, would be welcomed, as we know, by the EU27 and, we believe, could be achieved quickly and outside the withdrawal agreement itself..

A second vote is a proposition that is yet to secure a majority in the House of Commons. It would require a longer extension than 30 June, with all that it implies for European elections. And a second referendum campaign would be fought in a way that would inevitably be divisive. But let me reiterate again: if the House of Commons decides that a public vote is the way through the morass that has been created, then the Welsh Government will support that course of action.

## 4. Areas of interest to the External Affairs and Additional Legislation Committee

### House of Commons' Scottish Affairs Committee report on Scotland, trade and Brexit

On 10 March, the House of Commons Scottish Affairs Committee published its report on **Scotland, Trade and Brexit** following the launch of its inquiry to identify Scotland's priorities for future trade policy post Brexit, examine what role the devolved administrations should have in setting UK trade policy and looked at how the two Governments work together to promote Scottish exports. The Committee learned that repatriating trade policy presented an opportunity for the UK Government to improve its engagement with the devolved administrations. The Committee's report:

- Requests an update on the UK Government's commitment to publish a concordat outlining the role of the devolved administrations in future UK trade policy;
- Recommends that the UK Government explore new options to facilitate extensive consultation with the devolved administrations when setting negotiating mandates in the future, including the establishment of a JMC sub-committee on international trade. This recommendation was supported by Welsh Government in its **written evidence**;
- Recommends that the UK Government commit to including representatives from the devolved administrations in the UK negotiating team for future trade agreements that will impact on devolved competencies; and
- Recommends the UK Government set out the steps it will take to involve the devolved administrations in every step of the trade negotiation process.



## Stronger Towns initiative

On 4 March, the UK Government launched a £1.6 billion fund to stimulate jobs and growth in England. Based on a needs-based formula, the **Stronger Towns** fund will boost coastal communities, market towns, and de-industrialised towns. More than half of the money will be allocated to the north of England and will be spread over seven years. The announcement of the fund has been criticised by the devolved nations for not providing clarity on whether funding will be made available to them. The UK Government confirmed that it will seek to ensure similar towns in Wales, Scotland and Northern Ireland benefit from the fund and will announce this information “in due course”. First Minister Mark Drakeford has **requested clarity** from the UK Government, stating that:

It's not clear as to how much of the £1.6bn is to find its way into the Welsh budget.

The UK Government has since committed to setting out arrangements for Wales, Scotland and Northern Ireland in its forthcoming Spending Review. More information on how the fund will operate in England can be found on the UK Ministry for Housing, Communities and Local Government [Q&A webpages](#).

## Impact of Brexit on Further and Higher Education

The Children, Young People and Education Committee's December 2018 report, **Degrees of Separation**, looks at the potential impact of Brexit on higher and further education in Wales. On 1 February, Welsh Government **published** its response to the Children, Young People and Education Committee's report. The three key areas from the report are student and staff immigration; significant EU programmes (ERASMUS+ and Horizon) and meeting industry skills demands after Brexit.

Welsh Government accepted all 12 of the report's recommendations fully, in part or in principle, stating that:

Welsh Government remains committed to supporting HE and FE sectors in preparing for Brexit as we recognise their significant contribution to the economy, social justice, public services and culture in Wales and we have been very clear that we continue to welcome people from the EU working or studying in Wales.

Both an agreed Brexit and a 'no deal' Brexit will, under current plans, result in significant changes to how EU staff and students come to, and study in Wales as part of a more restrictive future immigration system. For other key higher and further education areas, the political uncertainty around the Brexit process is driving considerable uncertainty.