

External Affairs and Additional
Legislation Committee
**Implications for Wales of leaving
the European Union**

January 2017



National Assembly for Wales
External Affairs and Additional Legislation Committee

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The Committee was established on 28 June 2016. On 15 September 2016 its remit was agreed as:

(a) to examine the implications for Wales of the United Kingdom's withdrawal from the European Union and to ensure Welsh interests are safeguarded during the withdrawal process, in any new relationship with the European Union and in the intra-UK post-withdrawal arrangements for relevant policy, finance and legislation;

(b) to coordinate activity across Assembly committees in relation to point (a) above.

(c) to carry out the functions of the responsible committee under Standing Orders 21.8 to 21.11, with a consequential change to the remit of the Constitutional and Legislative Affairs Committee;

(d) to consider any other matter, including legislation, referred to it by the Business Committee.

Current Committee membership:



David Rees AM (Chair)
Welsh Labour
Aberavon



Dawn Bowden AM
Welsh Labour
Merthyr Tydfil and Rhymney



Michelle Brown AM
UKIP Wales
North Wales



Suzy Davies AM
Welsh Conservative
South Wales West



Mark Isherwood AM
Welsh Conservative
North Wales



Steffan Lewis AM
Plaid Cymru
South Wales East



Jeremy Miles AM
Welsh Labour
Neath



Eluned Morgan AM
Welsh Labour
Mid and West Wales

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Introduction

Following the referendum on membership of the European Union, the National Assembly for Wales (the Assembly) established the External Affairs and Additional Legislation Committee to consider the implications of the referendum result for Wales and to safeguard Welsh interests as the UK Government negotiates the UK's exit from, and future relationship with, the European Union.

We decided to concentrate our initial work on obtaining expertise through a programme of thematic seminars and a first call for written submissions. This has allowed us to identify emerging sectoral issues for Wales.

Alongside this work, we have held scrutiny sessions with the Welsh Government and started to explore how the Assembly might develop its approach as the exit process progresses.

This, our first report, is arranged in two parts. The first part provides a summary of the issues for Wales that have emerged from our initial work. Whilst further exploration of some issues will be required, we now have a clearer understanding of the complex challenges Wales faces as the UK moves towards leaving the European Union.

Part 1 is organised according to the areas that were given prominence by the experts we engaged with at our seminars and by stakeholders in the written evidence we received.

We hope that this first part of the report acts as a point of reference to inform the broader debate around the UK's exit from the EU and assists in communicating the issues that are important for Wales.

The second part of the report focuses on the Welsh Government's response to the referendum, what we know of the UK Government's position, and the role of the National Assembly for Wales. This includes any more formal role that the Assembly might be required to play in the exit process.

A number of significant developments occurred during the period within which we were finalising this report, including the Prime Minister's Lancaster House speech, the publication of the Welsh Government's White Paper and the Supreme Court's judgment on the Article 50 case. Whilst we have made some reference to these developments, we will consider them further in our future work.

Recommendations

Recommendation 1. We acknowledge that the Welsh Government's White Paper has provided additional evidence to support the Welsh Government's position. However, we recommend that the Welsh Government publishes all the evidence on which it bases its position, including details of the scenario modelling that has been done across all sectors and the studies it has commissioned internally and from external sources..... Page 44

Recommendation 2. We recommend that the Welsh Government provides a detailed assessment of the administrative changes it has made following the referendum and the financial implications of these changes. In doing so, it should be clear about those changes that have occurred as a direct consequence of the referendum outcome and those that were already planned or in progress. This assessment should include details of changes made in Wales and in the Welsh Government's office in Brussels..... Page 44

Recommendation 3. We recommend that the Welsh Government clarifies the role it sees its Brussels office playing in the negotiations. Page 44

Recommendation 4. We recommend that the Welsh Government provides us with its register of risks across all areas where Brexit will impact upon its activity. Page 44

Recommendation 5. We recommend that the Welsh Government sets-out the steps it has taken since 24 June 2016 to ensure that the maximum amount of European funding is secured and utilised before we exit the EU. Page 44

Recommendation 6. We recommend that the Welsh Government presses the UK Government for full involvement in shaping its negotiating position and direct participation in those negotiations which involve devolved areas of responsibility, or matters that affect devolved areas of responsibility, using the model of the devolved administrations' participation in the Council of Ministers. .
.....Page 48

Part 1: Emerging issues for Wales

- 1.** Our first phase of work focused on identifying emerging issues for Wales. Due to the complexity and breadth of questions posed by the referendum outcome, we decided to run a series of thematic seminars with expert witnesses to develop a high-level understanding of the main issues facing Wales.
- 2.** To engage a broader range of stakeholders during this first phase, we sought written submissions.
- 3.** The 'Brexit Seminars', combined with the written evidence received, have raised a range of issues that will require further consideration as the exit process unfolds.
- 4.** This part of the report provides a summary of the issues raised. If there was any doubt to begin with, the evidence gathered has confirmed that Brexit raises broad and complex issues for Wales. Brexit will cut across many areas of policy, as well as raising fundamental constitutional questions about devolution and the power dynamic between the UK Government, Parliament and the devolved administrations and legislatures.
- 5.** We also used the evidence we received to hold the Welsh Government to account. The second part of this report will focus on scrutiny of the Welsh Government, the role of the Assembly and emerging constitutional questions.

01. Future trade with the European Union and the Welsh economy

Summary of the issues raised

- The vast majority of the evidence received showed that ensuring free access to the Single Market (i.e. no tariffs and no non-tariff barriers) is of crucial importance to the Welsh economy.
- Witnesses expressed the view that curbing the free movement of people is likely to have negative implications for some businesses, universities, public services and infrastructure projects.
- Trade in agricultural products is a particularly challenging area.

6. We have explored the wide-range of different trade relationships that could exist between the UK and the European Union. In Brussels, we explored Switzerland’s relationship with the EU and we also discussed the Comprehensive Economic and Trade Agreement (commonly referred to as ‘CETA’) with the Canadian Government. We heard from an academic that was in favour of unilateral free trade and from those that would aim for an agreement that is as close to the status quo as possible.

7. We do not wish to repeat these debates here and refer interested readers to the transcript of our seminar on international law and trade¹ and the Research Service’s summary of different trading models in its publication *Wales and the EU: What does the vote to leave the EU mean for Wales?*²

Trade with the EU

8. The Welsh Government states that in 2014, more than 600 firms across Wales exported goods to the EU worth over £5 billion, equivalent to 43% of the total exports of goods. Furthermore it says that over 500 firms from other EU countries have operations in Wales, providing more than 57,000 jobs.

9. The Centre for Economics and Business Research (CEBR - March 2014) found that over 4 million direct and indirect jobs in the UK depend on exports to the EU. Approximately 200,000 of these jobs are in Wales, around 14% of the workforce.

10. UK Government Statistics for 2015 (HM Revenue and Customs) on Welsh exports of goods to the EU show that steel products accounted for just under 15% of the total, machinery and transport equipment around 25%, and export of petroleum, petroleum products and related materials just under 17% of the total. Food and live animals accounted for around 5% of the total exports of goods to the EU from Wales in 2015 (though in 2014, 90.7% of total exports of Welsh food and drink went to the EU with only 9.3% going to non-EU countries).

¹ See RoP EAAL Committee 19 September 2016

² National Assembly for Wales Research Service and Legal Service, *Wales and the EU: What does the vote to leave the EU mean for Wales?*, June 2016

The Welsh economy

11. Welsh GVA constituted 3.3% of total UK GVA for 2015. **Total Welsh GVA** was £55.8bn in 2015. Welsh GVA per head at £18,002 was 71% of the UK average, which was the lowest amongst the devolved countries and English regions.³

12. Manufacturing is the third largest industry in Wales **which constitutes 16% of the total Welsh GVA** at £8.9bn whilst agriculture is responsible for 0.7% of total GVA at £0.4bn. The contribution of agriculture to the Welsh GVA is greater than the UK national average. ⁴

Manufacturing

13. StatsWales publishes datasets on the **regional GVA by industry**. The data shows that the manufacturing sector in Wales makes the greatest contribution to regional GVA amongst the UK nations.⁵

Region	GVA (£ million) 2015	Percentage of total GVA
UK	166,868	10.1
England	138,645	9.7
Scotland	14,261	11.2
Wales	8,935	16.0
Northern Ireland	5,027	14.6

Source: StatsWales



Source: StatsWales

14. The profile of Welsh manufacturing is significant. Several large manufacturing sites in Wales are responsible for one link in a global value chain e.g. a car engine or an aircraft wing. The manufacture of this one part of a larger end product is likely to require the import and export (and re-import at times) of componentry. In a situation where tariffs are applied, the costs are multiplied thus

³ Office of National Statistics, Statistical Bulletin: Regional gross value added (income approach), 15 December 2016

⁴ StatsWales, Gross Value Added by area and industry, 15 December 2016

⁵ StatsWales, Gross Value Added by area and industry, 15 December 2016

putting manufacturing sites linked to global value chains at a competitive disadvantage when compared to those situated within the Single Market.

15. Professor Gerald Holtham, when appearing before us on 21 November, provided an indicative illustration of how broken up and interlinked the supply chain is in the automotive sector:

“BMW is assembling Minis in Oxford and it’s shipping half of the bits in and then shipping the car out. So, there’s a lot of to-ing and fro-ing, and it would require reorganisation of supply chains [if we were] facing an 8 per cent tariff or whatever it is. The problem in the car sector is that so much of the value is imported before you assemble the car that it’s all very well saying, ‘Well, you know, it’s only 8 per cent tariff’, but if the value added in the UK is only 25 per cent of the total, 8 per cent is a third of the local value added.

[...] that then starts to dwarf even the effect of a 20 per cent devaluation of the pound. It’s those broken supply chains that make it complicated. That would give, I’m sure, say, the German motorcar industry an interest in saying, ‘Let’s not rock the boat, let’s try and keep this going’, but you’ve got to get 23 countries to sign up. Spain and Slovakia will be eyeing up those car plants saying, ‘If they come out of the UK, they’ll probably come here.’ So, whether they would be so well disposed, I don’t know. I think that is one of the difficulties.”⁶

16. Explaining that leaving the EU would increase the cost of trading, Professor Swati Dhringa from the London School of Economics stated that:

“On average, the tariff rates that the European Union charged to countries that are members of the WTO were 6%, 18% and 3.3% in these sectors [plastics, meat processing and aircrafts manufacturing] in 2016. If the UK leaves the EU and is unable to negotiate duty-free access to the Single Market immediately, these tariff rates would apply to goods shipped from the UK to the EU.

Importantly, as UK and EU standards diverge, the non-tariff barriers to doing business would increase costs further. For example, the US is not part of the EU and faces substantial non-tariff costs when shipping transport equipment to the EU. These are estimated to be the equivalent of a tariff rate of 22% (Dhingra et al 2016). Leaving the EU would increase the tariff and non-tariff barriers that Welsh businesses would face when selling to the EU. This in turn would reduce trade and investment in Wales, leading to a contraction in manufacturing activity and jobs.”⁷

17. As a further illustration, World Trade Organisation ('WTO') figures show that the average applied duty for sweets by the EU was 20.2% and for clothes was 11.4%, dairy products are 33.5% and animal products 15.0%, manufactures is 2.6%.⁸

⁶ RoP EAAL Committee 21 November 2016 c.11-12

⁷ IOB 01 London School of Economics, Dr Swati Dhringa

⁸ World Trade Organisation, Tariff profile for the European Union, Accessed on 20 January 2016

18. Professor Holtham also suggested the possible need for a shift in economic policy, away from a focus on attracting inward investment and towards stimulating the growth of “domestically-focused” companies.⁹

Agricultural trade

19. At present, around 90% of Welsh food and drink exports go to the rest of the EU.¹⁰ Agriculture plays a greater part in the Welsh economy than it does for the UK as a whole.

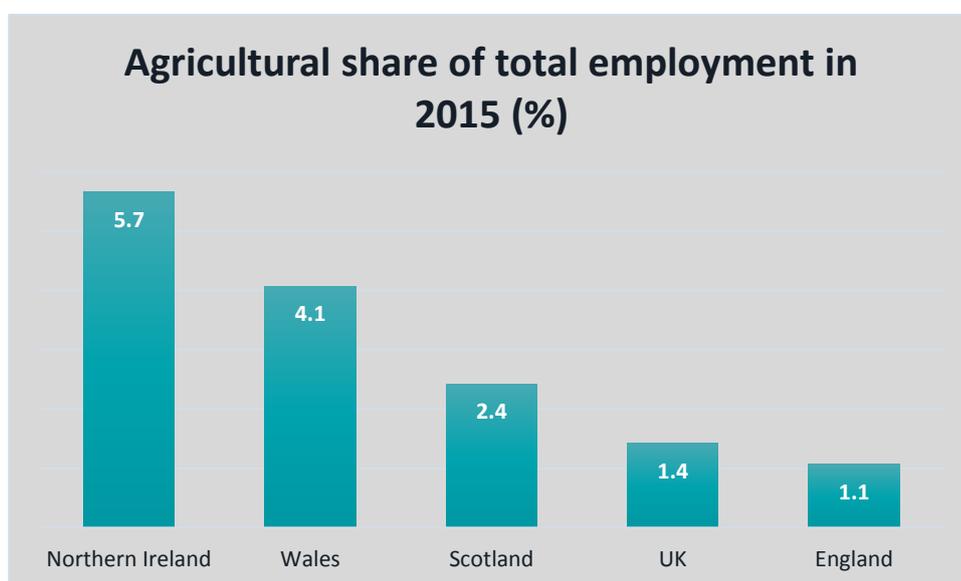
20. The UK Department for Environment Food and Rural Affairs (‘DEFRA’) published Agriculture in the United Kingdom 2015, which is a summary of findings sourced from the Agricultural and Horticultural Survey undertaken in June 2015.¹¹ The data allows comparisons to be made between the numbers of agricultural jobs across all regions in the UK.

21. The table shows the total number of jobs in the agriculture sector for both Wales and the UK. It also illustrates how dependent the Welsh economy is on the agriculture sector when compared to the UK.

	Wales	UK
Total farmers, partners, directors and spouses	41,619	294,000
Total farm workers	16,700	183,000
Total	58,319	476,000
Agricultural share of employment	4.07%	1.42%

Source: DEFRA

22. The data included in the DEFRA publication allows a comparison of the share of agriculture jobs as a percentage of total jobs for all UK regions.



23. The GVA is approximately £0.4bn for agriculture in Wales which is 0.69% of the total GVA for Wales and £8.5bn for the UK, which is 0.51% of total UK GVA.

⁹ RoP EAAL Committee 21 November 2016 c.26

¹⁰ IOB 26 NFU Cymru

¹¹ DEFRA, Agriculture in the United Kingdom 2015, 2016

Proportion of Agriculture GVA to Total GVA in 2015 (%)



24. Agricultural trade faces particular challenges outside the Single Market. It is not covered by the European Economic Area ('the EEA') agreement, meaning that in any of the Brexit scenarios the UK will need to negotiate a separate agreement for agricultural products or trade under WTO rules.¹²

25. Tariffs are high for agricultural products. For example, the EU's most-favoured-nation tariff on fresh lamb carcasses is 12.8% plus €1,713 per tonne. Trade negotiations in this area are difficult. Recent examples include the Doha Round, CETA and TTIP talks. Agriculture has been an area of dispute in each case.

26. In leaving the EU and the Single Market there will be additional costs (beyond the costs of any tariffs) associated with trade in agricultural markets. For example, the administrative cost of complying with rules of origin and conformity assessment procedures, reformulating products, labelling and packaging. These additional costs are estimated at around 5%-8% of the value of the product.¹³ Whilst Free Trade Agreements ('FTAs') are a way of minimising such costs, they are particularly difficult to agree in this area. Professor Alan Matthews told the us that:

“within this new generation of free-trade agreements there are ways of trying to address these regulatory trade barriers, but they're difficult and they're time consuming.”¹⁴

27. In the event that the UK has to rely on WTO rules, it would have to comply with international rules on farm support. As existing farm support is under an 'amber box' in WTO terms (i.e. they are to be reduced), there is uncertainty around whether they would apply to the UK after Brexit. Professor Swinbank suggested that current direct payment schemes, and environmental schemes, may not be WTO compatible.¹⁵

28. This view is supported by Professor Fiona Smith. Professor Smith also suggests a minimum timeframe of three to five years before post-Brexit trade deals with other countries can be agreed:

¹² Our seminar on international law and trade provides a useful discussion of World Trade Organisation rules as they might apply to the Welsh context. See RoP EAAL Committee 19 September 2016.

¹³ IOB 04 Professor Alan Matthews, Agricultural Dimension Professor Emeritus of European Agricultural Policy, University of Dublin.

¹⁴ RoP EAAL Committee 19 September 2016 c.129

¹⁵ IOB 02 Professor Alan Swinbank, Professor of Agricultural Economics, University of Reading.

“Countries like Australia and the United States have indicated that they want to negotiate trade deals with the UK government post-BREXIT, but favourable agri-trade deals with these countries is unrealistic for at least the next three to five years.”¹⁶

29. Under this scenario, the UK would have to rely on WTO rules for a number of years.

30. At our meeting on 7 November 2016, the First Minister voiced strong concerns about impact of Brexit on agricultural sector in Wales:

“I think the most difficult sector will prove to be agriculture, where tariffs are sky high, because, if you look, for example, at most trade deals, including that with Norway, agriculture, if I remember, is excluded. Trading blocs are particularly protective of their farming industries, so I do have a particular concern for farming and the export market we have, particularly for Welsh lamb, because history tells us that farming has tended not to do well if a trade-deal approach is used.”¹⁷

31. The First Minister suggested that differences in farming practice across the nations of the UK further complicates this:

“The other issue that’s complicated in farming is the four different nations often have four different priorities within farming. So, we all have different priorities... For me, it’s a question of making sure that all agricultural produce from all parts of the UK are all able to access the market on the same terms.”¹⁸

32. Speaking during a panel discussion at the Oxford Farming Conference on 4 January 2017, the Cabinet Secretary for Environment and Rural Affairs built on comments made to the Climate Change, Environment and Rural Affairs Committee on 14 September 2016,¹⁹ highlighting the fact that key areas of agricultural policy had been devolved to Wales since 1999, but that a UK framework which respected devolution may be needed in certain areas.

33. One mechanism commonly used in Free Trade Agreements are Tariff Rate Quotas (TRQs). TRQs are an agreed allocation of goods which can enter a market at no or low import tariff rates. For example New Zealand has agreed TRQs with the EU for New Zealand lamb and goat meat. This TRQ allows for 228,254 tonnes of New Zealand lamb to enter the EU market tariff free, once this tonnage has been imported any amounts above that are charged the full import duties charged to all other countries.

34. The future of such agreements is unclear, both in terms of the EU's agreement with New Zealand after the UK exits and any future trade agreement between the UK and New Zealand.

35. It is important to note that we have considered issues around agricultural trade from the perspective of the industry, rather than from that of the consumer.

¹⁶ IOB 03 Professor Fiona Smith, Warwick University

¹⁷ RoP EAAL Committee 7 November 2016 c.91

¹⁸ Ibid c.96

¹⁹ Record of Proceedings, 14 September 2016 [para. 18]

Our view

36. Manufacturing plays a greater part in the Welsh economy than elsewhere in the UK and the principal market for Welsh manufacturers is the EU. The imposition of tariffs poses significant risks for this sector, especially for manufacturers that exist within global value chains.

37. There are significant risks to the trade in agricultural products, particularly if the UK has to rely on WTO rules for a period of time (which appears likely). Welsh farmers do not want to see agriculture (which is culturally and economically important to Wales) traded off in favour of broader UK objectives such as access to service markets.²⁰

Free movement of people

38. Several organisations raised concerns around the need for continued access to European labour, for example the Food and Drink Federation²¹ and the Institution of Civil Engineers Wales Cymru.²²

39. The Food and Drink Federation provided an overview of the contribution its members make in Wales:

“In Wales, FDF’s members account for £4.3 billion in turnover – which has increased by 55 per cent over the last five years. This is significantly more than Welsh manufacturing in general, which grew by 11 per cent. The food and drink industry contributes almost £1.5 billion to the Welsh economy, support more than 22,000 jobs in Wales, contribute more than £302 million in Welsh exports, and invest more than £4 million in innovation, research and development. The productivity performance of Welsh food and drink manufacturing has increased steadily since 1997 and remains higher per employee than in the UK as a whole.”²³

40. It also provided an overview of its members’ UK workforce:

“Around 29% of the UK’s food and drink manufacturing workforce are non-UK EU nationals – almost 116,000 workers. They bring with them talent, spending power, flexibility and huge diversity. While we continue to take steps to develop home-grown talent through ambitious graduate and apprenticeship programmes, EU workers provide a highly valued solution to our skills gap. Our sector’s growth potential was already under pressure due to our ageing workforce, with the industry needing to recruit a further 130,000 workers over the next decade.”²⁴

41. We also heard concerns about the continued access to European labour from business and industry stakeholders at a workshop we held near Wrexham on 28 November 2016.

²⁰ IOB 26 NFU Cymru

²¹ IOB 22 Food and Drink Federation and the British Soft Drinks Association

²² IOB 15 Institution of Civil Engineers Wales Cymru

²³ IOB 22 Food and Drink Federation and the British Soft Drinks Association

²⁴ Ibid

42. The First Minister expressed the view that restricting the free movement of people was less of a priority for Wales than achieving unfettered access to the Single Market. We provide further details on this when considering the Welsh Government’s response in the second part of this report.

43. The Office for National Statistics (‘ONS’) produces a report, Population of the United Kingdom by Country of Birth and Nationality, which is based on the Annual Population Survey. It is a survey of population, not of immigration. The latest figures, for 2015, were released on 25 August 2016.²⁵

44. The estimates for the non-British population by nationality in Welsh local authorities in 2015 are shown in the table below:

Area	Total Population	European Union population Estimate	Thousands	
			Non-European Union population Estimate	
Isle of Anglesey	70	1	0~	
Gwynedd	121	2	3	
Conwy	114	3	1	
Denbighshire	94	1	0~	
Flintshire	153	4	0~	
Wrexham	136	8	1	
Powys	131	2	1	
Ceredigion	74	1	1	
Pembrokeshire	122	2	c	
Carmarthenshire	183	6	3	
Swansea	240	5	9	
Neath Port Talbot	140	1	1	
Bridgend	139	2	0~	
The Vale of Glamorgan	126	2	2	
Cardiff	353	11	20	
Rhondda Cynon Taf	236	2	2	
Merthyr Tydfil	59	2	0~	
Caerphilly	179	2	1	
Blaenau Gwent	69	1	c	
Torfaen	91	0~	2	
Monmouthshire	91	1	1	

²⁵ Office of National Statistics, *Population of the UK by Country of Birth and Nationality: 2015*, 25 August 2016

Newport	146	6	3
Wales	3,066	64	53
UK	64,265	3,159	2,408

c = not available due to disclosure control²⁶

0~ = rounded to zero

Source: Compiled by the National Assembly for Wales Research Service using ONS data.

45. It should be noted that the above are estimates based on the Annual Population Survey – there is no national register of a resident’s nationality.

46. We also heard concerns about the ongoing status of EU citizens currently working in Wales, particularly in relation to Higher Education and health and social care. More on these sectors is provided in subsequent sections of this report.

Our view

47. We recognise that perceptions of EU migration were a factor in determining the outcome of the EU referendum. Restricting the ability of EU citizens to work in the UK after Brexit will have adverse consequences for many public services, some businesses and future infrastructure projects in Wales. Careful consideration must be given to mitigating these consequence as a future immigration policy for the UK is developed.

²⁶ This is to protect the confidentiality of the data held. More information on disclosure control methodologies can be found on the Office of National Statistics website. Go to www.ons.gov.uk and search for 'disclosure control'.

02. Education, research and skills

Summary of the issues raised

- There is a need to clarify the status of EU students and academic staff in both Higher and Further Education Institutions.
- There has been a reliance on Structural Funds and European Investment Banks Funding to support capital infrastructure and work-based learning and skills development. Arrangements to replace this funding need to be made.
- Emphasis was placed on the importance of:
 - future participation in research and mobility programmes;
 - strategic partnerships and engaging globally; and
 - mutual recognition of educational qualifications (and continued participation in the existing EU schemes for this).

EU Structural funding for Higher Education in Wales

48. EU funding is important to the sector, with EU Structural Funds being viewed as an important source to help ‘fill’ the funding gap, and to enable key investments that otherwise would not have taken place.²⁷ The Swansea Bay Science Campus is a good example of this, combining EU Structural Funds with European Investment Bank finance.

49. Another example is the support from COFUND (part of Horizon 2020), for an initiative Strengthening International Research Capacity in Wales, submitted jointly by the Welsh Government and Welsh HE. Around €10m of EU funding will be available to support a series of international fellowships into Welsh universities.

50. The Welsh Higher Education Brussels (WHEB) Office encapsulates this:

“These initiatives complement major strategic developments within the universities such as the research institutes at Cardiff University and campus developments at Aberystwyth, Bangor and Swansea Universities. These key investments, supported by ESIF, EIB, government and industry will provide the infrastructure to facilitate increased participation in Horizon2020 and capitalise on grant capture.”²⁸

EU Funding, Research and Investment

51. On 3 October 2016, we held our second Brexit Seminar with Professor Colin Riordan, Vice Chancellor of Cardiff University and Professor Iwan Davies, Deputy Vice Chancellor of Swansea University.

²⁷ National Assembly for Wales, Fourth Assembly’s Enterprise and Business Committee, Inquiry into Horizon 2020, 2012

²⁸ Welsh Higher Education Brussels (WHEB) Office, *Written evidence in support of the Enterprise and Business Committee session with Welsh universities*, 21 October 2015

52. There were two aspects to the issues identified by Professor Riordan and Professor Davies. They can be characterised as ‘people and funding’.

53. In summary, the ‘people’ issues that need to be addressed are the:

- status of non-UK EU nationals who are currently studying in Wales or are planning to commence studying in Wales before the UK exits the EU;
- status of non-UK EU nationals working at Welsh universities; and
- the ability to recruit as freely as possible from within the EU and beyond (for students and staff).

54. In relation to staff currently employed by Welsh universities, Professor Riordan said:

“We would certainly want to argue very strongly, as I’m sure many people in this country would—I’ve not heard anything very much to the contrary from any side, to be honest—that those colleagues who are presently in this country and presently employed by us should be able to remain on the same basis as they are now and that, whatever their status is, it’s converted into something that equates to leave-to-remain and residents’ and working rights.”²⁹

55. In relation to structural funds, Professor Riordan stated that:

“... in the research and education space for the UK, we pay in about £5.4 billion and receive about €8.8 billion back. Again, that’s a gap that will need to be filled.”³⁰

56. Professor Riordan pointed to the substantial reductions to capital investment made available to universities in recent years:

“I think it’s worth noting that one of the biggest changes that has taken place since the coalition changed the system and introduced tuition fees and so on and so forth—or higher tuition fees and student loans—is that, and this part is often not noted, we’ve had a big reduction in capital investment available to universities. So, we used to, in Cardiff, receive maybe £14 million to £15 million a year in capital grants. That’s now £2 million or £3 million, and everything else we have to make up ... One big element of that is European Union structural funds”³¹

57. Looking to the future, Professors Riordan and Davies mentioned consideration of alternative forms of international co-operation and the establishment of an outward mobility agency for UK students. We heard a similar view from Bangor University during our stakeholder workshop near Wrexham on 28 November 2016.

²⁹ RoP 3 October 2016 c.11

³⁰ RoP 3 October c.14

³¹ Ibid c.13

Qualifications

58. The Education Workforce Council raised questions about the future role it might have in the assessment of the professional status of EU citizens seeking to have their teaching qualifications recognised in Wales. This role comes from the EU Directive 2005/36/EC.

“The Council will require clarification from the Home Office as to whether this scheme will continue to apply following Britain’s exit from the EU. Depending on the decision, the EWC and Welsh Government may need to develop alternative arrangements for persons from Europe who wish to have their existing qualifications recognised in order to teach in Wales, rather than retraining. In this regard, it is worth acknowledging that qualified teachers from countries outside the EU who wish to teach in Wales on a permanent basis already need to gain a teaching qualification here and are unable to have their existing qualifications recognised.”³²

59. Colleges Wales highlighted risks to competitiveness and the reputation of Welsh institutions should the recognition of qualifications cease on leaving the EU. Colleges Wales currently acts as a National Contact Point for three EU recognition tools.³³

Access to mobility programmes and the acquisition of international skills and experience

60. A number of written responses, including those from Colleges Wales, the Universities and Colleges Union, Cardiff University, Universities Wales and the NUS, called for continued access to Erasmus+ and Horizon 2020.³⁴

61. Cardiff University and Universities Wales called for consideration to be given to domestic policies, such as a new outward mobility programme framework to be developed.³⁵

62. A number of non-EU countries have access to Erasmus + and Horizon 2020. Professor Riordan's view on this was that:

“They have absolutely no influence on what happens. I’ve also heard directly from a Commission official—and this was before the vote even, but it was along the lines that, ‘If you do remain part of it, you will only get out what you pay in. You won’t get more.’ So, the present imbalance in our favour, which is essentially based on the excellence [...] of our science and our research—it would no longer work in our favour.”³⁶

63. Professor Riordan outlined his view on the prospect of a new outward mobility programme:

“One thing that the UK has never had is a well-funded student mobility programme for all UK students. [...] Maybe there’s an opportunity there to say,

³² IOB 06 Education Workforce Council

³³ IOB 14 Colleges Wales

³⁴ See IOB 14 Colleges Wales, IOB 23 Universities and Colleges Union, IOB 28 Cardiff University, IOB 29 Universities Wales and IOB 35 NUS

³⁵ See IOB 28 Cardiff University and IOB 29 Universities Wales

³⁶ RoP EAAL Committee 3 October 2016 c.32

‘Actually, what we really need is an outward-mobility agency for the UK that is well funded and provides grants to our students or, perhaps, helps organise work placements, or that pays for their travel or upkeep’. It could be a real opportunity, actually, to do something that we’ve never been able to do in this country before.”³⁷

The status of EU nationals

64. Universities Wales acknowledged the ‘enormous’ contribution made by EU students to Wales, a sentiment that other respondents also acknowledged in both financial and cultural terms.³⁸

65. It is estimated that EU students currently provide at least £24m to Welsh universities,³⁹ and the overall impact to Wales attributable to income from EU students was £47m. An EU student studying in Wales on average generates £19.7k for Wales, £9.8k of Welsh GVA and 0.19 FTE jobs. Additional impact is also generated in the rest of the UK from students studying in Wales. These are likely to be a conservative estimate according to HEFCW.

66. There is concern about the ongoing status of EU students, and in particular the 2018/19 cohort. Cardiff University has called for a guarantee to be offered to these students (as has been offered for the preceding two cohorts).⁴⁰

67. Cardiff University’s written submission makes the following points:

“12. Cardiff University is an international community that values students and staff that come to work and study with us from around the world. 17% of our academic staff and 5% of our students are EU nationals (10% of our research students are EU nationals). This diversity fosters creativity and innovation and is an important part of our culture.

13. We would like to work with both the UK and Welsh Governments to secure greater certainty for our staff and students from the EU. The main areas of uncertainty remain clarity on access to financial support and fees for EU students and clarity around immigration rules for both students and staff.”⁴¹

68. The University also advocates that any future agreement between the UK and the EU should:

“provide assurances that all existing EU staff will be able to remain in the UK following the UK’s exit from the EU, as well as allow Universities to recruit the best staff to work here”⁴²

³⁷ RoP EAAL Committee 3 October 2016 c.71

³⁸ IOB 29 Universities Wales

³⁹ In fees and other contributions based on 5,645 EU domiciled students studying in Wales using 2013/14 HESA data (The Economic Impact of International Students in Wales, UnisWales)

⁴⁰ IOB 28 Cardiff University

⁴¹ IOB 28 Cardiff University

⁴² Ibid

69. Universities Wales looks ahead and sees a role for the Welsh Government in making Wales an attractive destination for talented university staff after the UK leaves the EU:

“Regardless of the final settlement between the EU and the UK, it is important that the Welsh Government continues to publicly affirm the value placed on EU students and their contribution to Welsh universities, invests in supporting future recruitment overseas through promotional activity, and provides reassurances to current EU students that they will remain welcome in Wales following its departure from the EU”⁴³

Continuity of funding

70. Menai Science Park’s response focuses on the level of EU funding to the research community in Wales (through structural funds, Interreg and Horizon 2020). It calls for the Treasury to allocate additional funding to Wales to replace these sources of funding after the UK exits the EU. Further, it believes that Wales should negotiate with UK to secure a European Free Trade Association (‘EFTA’)–style arrangement in order to secure the “*highest levels of EU funds post Brexit*”.⁴⁴

71. Colleges Wales, Cardiff University and Universities Wales advocate continued participation in European research funding streams or, failing that, national policies and funding to replace them.⁴⁵

72. Cardiff University also called for reassurances over the status of the Cardiff and Swansea City Deals due to the involvement of higher education institutions and the European funding envisaged for these city deals.⁴⁶

73. At our meeting on 7 November 2016, the First Minister recognised higher education and research as a priority. He identified three issues: (i) student numbers from EU; (ii) EU funding; and (iii) ensuring Wales is not seen as unwelcoming place for international academic community to come to. He also stated that the Diamond Review and its conclusions would not be affected by Brexit.

74. The Welsh Government is also looking at alternative models for funding lifelong learning and employability initiatives that have to date been supported using EU funding.⁴⁷

Our views

75. We were encouraged by the positive way in which witnesses are approaching and addressing the challenges they face and to learn that they are already planning for their future outside the European Union.

76. The most urgent issue, as it appears to us, is the need to clarify the status of EU citizens studying and working at Welsh Universities and Colleges. We are aware of the Prime Minister's commitment to addressing this as soon as possible and hope that she is successful in doing so. We emphasise that this is an issue of utmost importance to Wales across many sectors.

77. There has been a reliance on Structural Funds and European Investment Banks Funding to support capital infrastructure and work-based learning and skills development. The Welsh

⁴³ IOB 29 Universities Wales

⁴⁴ IOB 09 M-SParc

⁴⁵ See IOB 14 Colleges Wales, IOB 28 Cardiff University, and IOB 29 Universities Wales

⁴⁶ IOB 28 Cardiff University

⁴⁷ RoP EAAL Committee 7 November 2016 c. 105 – 111.

and UK Government will need to ensure that arrangements to replace these sources of funding are made.

78. Emphasis was placed on the importance of future participation in research and mobility programmes. Whilst we see merit in this (and it would appear possible in return for a budget contribution) Professor Riordan also suggested establishing a UK outward mobility agency, of the type that currently exists in Germany and the USA. We believe that this should be investigated so that such a model could be developed after the UK exits the EU.

79. The mutual recognition of educational qualifications (and continued participation in the existing EU schemes for this) is important and must be addressed in the exit negotiations.

03. Environment, agriculture, marine and fisheries

Summary of the issues raised

There are concerns that:

- environmental protection could be lessened on leaving the EU;
- cost-free redress mechanisms will be lost;
- important implementation and enforcement frameworks could be weakened; and
- environmental protection measures could become fragmented.

Issues relating to future agricultural policy are being considered by the Climate Change, Environment and Rural Affairs Committee. This committee has stated that:

- Decisions on future agriculture, environment and rural development policies should be taken in Wales as they are devolved areas of competence.
- Current levels of European funding should be maintained and provided by the UK Government in future.
- The Welsh Government should protect additional funding for investment in agriculture, environment and rural development policies.

Agricultural policy

80. Beyond the significant concerns raised in relation to agricultural trade, which are covered in a previous section, concerns were raised over issues such as the shape of future investment in land management and the balance of power between the UK and Wales over agricultural policy.

81. From the UK's 2014-2020 Common Agricultural Policy allocation, Wales gets 8.96% of Pillar 1 funds and 13.7% of Pillar 2 funds. At our meeting on 7 November 2016. The First Minister said:

“There are some areas of expenditure where we wouldn’t want a Barnett share anyway. Agriculture is a prime example of it. If we had a Barnett share of spending on agriculture, we’d see significant cut in funding to Welsh farming. We’ve always been funded on the basis of the number of animals that we have, not people, which is fortunate because I think it's about five times higher as a result of that.”⁴⁸

82. The Climate Change, Environment and Rural Affairs Committee (the CCERA Committee),⁴⁹ is at an advanced stage with its inquiry into the future of agricultural and rural development policies in Wales.⁵⁰

⁴⁸ RoP EAAL Committee 7 November 2016 c.67

⁴⁹ The CCERA Committee’s homepage is available at: www.assembly.wales/SeneddCCERA

⁵⁰ Details of this inquiry are available at <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?Id=15876>

83. The Chair of the CCERA Committee, Mark Reckless AM, made a statement to the Assembly on 9 November 2016.⁵¹ He called on the UK Government to honour the promises of the leave campaign to maintain the same level of funding after Brexit. He also called on the UK Government to confirm that decisions on future agriculture, environment and rural development policies should be taken in Wales as they are devolved areas of competence.

84. Mr Reckless called on the Welsh Government to protect any additional funding provided by the UK Government for investment in these areas.

Our view

85. We see agriculture as a key issue of concern for Wales.

86. We do not wish to duplicate the CCERA Committee's valuable work in this area.

87. The evidence we have received will be made available to the CCERA Committee. We look forward to the conclusion of CCERA Committee's current inquiry and will consider whether to take further evidence in this area at that time.

Climate Change

88. In October 2016, the Committee on Climate Change ('the CCC') published a briefing note *Meeting Carbon Budgets – Implications of Brexit for UK climate policy*.⁵²

89. In summary, some the key points made by the CCC are that:

- New UK climate policies will be needed to reduce emissions where policies previously agreed through the EU no longer apply.
- Carbon budgets set by the UK are at least as challenging as the EU's commitments to tackle climate change. They must continue to be met after the UK has left the EU.
- Current EU policy approaches such as CAP do not directly target greenhouse gas (GHG) emissions – a UK based framework should link farming policies more closely with GHG emission reduction.
- EU Emission Trading System (EU ETS) covers emissions from electricity generation and heavy industry and provides a common carbon price for participants. The intent of the budgets must be preserved when the UK leaves the EU (i.e. expansion of low-carbon power generation).

⁵¹ RoP 9 November 2016 15:37 to 16:21

⁵² Committee on Climate Change, *Meeting Carbon Budgets – Implications of Brexit for UK climate policy*, October 2016

Our view

90. We are aware of the CCERA Committee’s work on climate change scrutiny⁵³ and will forward this information to the Chair of that Committee.

Nature conservation (marine and terrestrial)

91. From the perspective of the academics we heard from and Welsh Environment NGOs, the continuation of current EU environmental law (or its transfer into domestic law) is a priority.

92. There is concern that leaving the EU will result in lower environmental standards and that ambitions set at a European level will be abandoned.⁵⁴ Examples include delivery of the ambition behind the Marine Strategy Framework Directive and the Nature Directives.⁵⁵

93. The question of retaining European protected sites (such as Special Areas of Conservation and Special Protection Areas) in domestic law has been raised, with the suggestion that a less precautionary approach to their management and enforcement could prevail after Brexit.⁵⁶

94. Whilst the UK Government has indicated that it will be transferring European law into domestic law through the so-called ‘Great Repeal Bill’, the details of how this is to be done remain unclear.

95. Writing in response to the European Commission’s recent decision not to re-open the Nature Directives, Martin Harper (RSPB’s Conservation Director) summarised some of the questions that remain unanswered in relation to the UK Government’s proposed approach:

“... there are still many questions to be answered about the Great Repeal Bill. Can all EU environmental regulation be successfully converted into domestic law, and how will it be enforced? The European Court of Justice has been such a powerful force to ensure compliance with these laws, so who will play this role in the UK after we leave the EU?

The guidance and financial support mechanisms available at EU level, along with the monitoring and enforcement processes, have also played a key role in driving nature conservation progress in the UK. To date we have relied on these, and they have helped the UK Government deliver their nature conservation commitments. Replacing these will be a significant challenge.”⁵⁷

96. We also heard concerns about the significant implications for marine science and monitoring as it is comparatively expensive and often requires large capital assets. Uncertainty remains around how funding gaps (created by the loss of European funding) will be filled in the future and how funding would be distributed within the UK; with this affecting both universities and R&D companies.⁵⁸

⁵³ See <http://www.assembly.wales/en/newhome/Pages/newsitem.aspx?itemid=1639>

⁵⁴ IOB 38 WEL Marine Group

⁵⁵ The Birds and Habitats Directive and Species Directives.

⁵⁶ RoP 31 October 2016 c.194, 205-207

⁵⁷ Harper, Martin, RSPB Blog Post, *The EU Nature Directives are safe - so what next for protection of UK wildlife?*, 8 December 2016

⁵⁸ RoP 31 October 2016 c. 241, 242, 245

Guidance, implementation and enforcement frameworks, and redress

97. The loss of guidance offered by the European Commission, implementation and enforcement frameworks, and the inexpensive redress mechanisms offered by the European institutions are issues that will need to be addressed.

98. Currently, the European Commission acts as an enforcer of European law by referring matters to the European Court of Justice. This is free from costs to the complainant, with European Citizens and/or organisations able to raise matters with the European Commission for investigation.

99. It is difficult to see how such a system could operate in the UK post-Brexit. Short of new arrangements being developed, private individuals or organisations would have to rely on the UK judicial review process and bring proceedings at personal cost.

100. However, they will not be able to challenge the UK government itself (or any of the devolved governments either) for failure to enforce those standards.

101. This could be remedied if, in the 'Repeal Bill' (or elsewhere), the UK Government imposed an obligation on itself to ensure that the all the EU law applicable to the UK at the time of withdrawal was adhered to. The same obligation could be placed on the devolved governments, in respect of devolved policy areas and in respect of their territories.

102. The idea of a specialist Environmental Court has been mooted,⁵⁹ to fill the gap left by the Commission and ECJ. However, this would only enforce the law as it is in the UK and the question remains as to how protective of the environment that would be in future.

103. Processes such as the Strategic Environmental Assessment and Environmental Impact Assessment provide a strict framework against which implementation and enforcement can be judged. Professor Cowell identified a risk that these frameworks could be weakened and the loss of a cost-free facility for the pursuit of redress contributes to that weakening.⁶⁰

Non-EU treaties and the need for a cross-border approach

104. Wales Environment Link stressed the importance of upholding existing international agreements, such as the Convention on Biological Diversity, the Convention on Wetlands of International Importance (RAMSAR), the European Landscape Convention and climate change targets.⁶¹

105. There is a need for cohesion and consistency across intra-UK and international boundaries when it comes to protecting nature, managing common resources and tackling trans-boundary pollution. The oft-repeated phrase that air, water and wildlife do not recognise borders points to the need for a degree of consistency between European, UK and Welsh standards. This is particularly acute in the marine environment.⁶²

⁵⁹ RoP 31 October 2016 c.126

⁶⁰ RoP 31 October 2016 c.108

⁶¹ IOB 20 Wales Environment Link

⁶² IOB 38 WEL Marine Group

Fisheries

106. The Welsh fishing fleet is different in scale and character to the rest of the UK, with 91% of vessels under 10 meters in length⁶³ and the majority of the Welsh fleet fishing shellfish. Shellfish are non-quota species and, consequently, are under Member State control (the Welsh Government for the Welsh Zone ('WZ')). For these two reasons, Welsh fisheries are not as affected by EU policy, such as quota allocation under the Common Fisheries Policy, as the UK as a whole.⁶⁴ That said there may be opportunities for new management regimes and future changes to quota allocation and distribution that could benefit the Welsh fleet, such as accessing quota for commercial stocks within the WZ.⁶⁵

107. In terms of trade, the majority of shellfish landed in Wales are exported to the EU. This is another area where continued 'unfettered' access to the Single Market could be seen as a priority.

108. The European Maritime Fisheries Fund ('the EMFF') currently provides support for a range of activities including data gathering, fisheries enforcement measures and sustainable fishing practices. In the current funding round (2014-2020), Wales has been allocated €19.7 million. The Welsh Government will need to consider how this is to be replaced. We heard support for refocusing any replacement fund on sustainable management of fish stocks.⁶⁶

⁶³ Marine Management Organisation, UK Sea Fisheries Annual Statistics Report 2014, Last updated 21 September 2016

⁶⁴ RoP 10 October 2016 c.187

⁶⁵ RoP 10 October 2016 c.205, 210

⁶⁶ RoP 10 October 2016 c.259

04. Health and Social Care

Summary of the issues raised

- There is uncertainty around data for EU nationals working in these sectors, particularly non-registered professions and low skilled employment;
- There are concerns about the impact on workforce planning if restrictions on free movement are introduced, as well as the need for better planning of future training/skills requirements within public services;
- There is a need to maintain access to medical research and international collaboration;
- The importance of EU agencies such as the European Medicines Agency and need to continue participation in this;
- The need to ensure a framework for recognising professional qualifications is maintained; and
- The benefits to public health of action at EU level.

Public Health

109. The issue of cross-border health risks is particularly pertinent. The European Centre for Disease Prevention and Control (ECDC) is an EU agency designed to strengthen Europe's defences against emerging threats to human health posed by infectious diseases. The ECDC works in partnership with national health protection bodies across Europe to strengthen and develop continent-wide disease surveillance and early warning systems. By working with experts throughout Europe, ECDC pools Europe's health knowledge, so as to develop authoritative scientific opinions about the risks posed by current and emerging infectious diseases.

110. A number of responses expressed concerns about the potential impact on public health networks of exiting the EU. BMA Cymru Wales stated:

“The EU has a significant role in ensuring a cross-border approach to important public health issues, such as preventing pandemics and reciprocal access to healthcare through the European Health Insurance Card (EHIC). It is important, whether or not the UK remains part of the EEA, that an agreement to facilitate such cross-border cooperation remains.”⁶⁷

111. The Royal College of Anaesthetists support this position,⁶⁸ as does the Royal College of Physicians (Wales), arguing that existing EU frameworks underpinning health protection must be replaced by equivalent or even stronger safeguards.⁶⁹ The Welsh NHS Confederation (WNHSC) response puts the case for negotiating continued access to EU coordination mechanisms, as they

⁶⁷ IOB 31 BMA Cymru Wales

⁶⁸ IOB 25 Royal College of Anaesthetists

⁶⁹ IOB 8 Royal College of Physicians (Wales)

believe it would be more difficult for the UK to tackle in isolation what are inherently transnational threats.⁷⁰

112. BMA Cymru Wales, and the WNHSC in their responses, also set out their belief that the UK should maintain the public health regulations originating from EU Directives which have been enacted into UK law; the Royal College of Anaesthetists also argue for maintaining these safeguards.⁷¹

Medicines regulation

113. The European Medicines Agency ('EMA') is responsible for the scientific evaluation, supervision and safety monitoring of medicines for use in the EU. EMA works closely with national regulatory authorities in EU Member States and is responsible for assessing drug licence applications within the EU and marketing authorisation for Member States, Iceland, Liechtenstein and Norway.

114. A significant number of responses set out strong concerns on this issue. These include those from Genetic Alliance UK,⁷² Cancer Research UK,⁷³ the Royal College of Anaesthetists,⁷⁴ the Royal College of Physicians (Wales)⁷⁵ and the UK Faculty of Public Health;⁷⁶ they highlight the benefits to the UK of the existing single EU regulatory and authorisation framework and the influence this gives the UK in decision-making by the EMA. The responses also argue the need for continued alignment with EU regulatory frameworks for medicines and medical devices, and WNHSC state that:

“Having a single EU regulatory framework has allowed new health technologies to be brought more quickly to the market for the benefit of patients. For example, pharmaceutical companies can make new medicines available everywhere in the EU through the single centralised marketing authorisation procedure provided by the European Medicine Agency, instead of having to apply for authorisation in each individual member state.”⁷⁷

115. BMA Cymru Wales, for its part also reflects these concerns and calls for a four-nation approach to the impact of leaving the EU on medicines regulation.⁷⁸

Patient access to healthcare

116. There is common legislation in place covering the European Economic Area giving access rights for citizens of the participating countries to the various health and social care services. This includes the European Health Insurance Card ('EHIC'), which gives access to state-provided medical care during a temporary stay in another EU country, and rest of the European Economic Area. Directive 2011/24/EU also introduced scope for citizens to apply for reimbursement of healthcare treatment provided certain criteria are met, in any member state and on the same basis as they would in their home state.⁷⁹

⁷⁰ IOB 10 Welsh NHS Confederation

⁷¹ IOB 31 BMA Cymru Wales, IOB 10 Welsh NHS Confederation and IOB 25 Royal College of Anaesthetists

⁷² IOB 41 Genetic Alliance UK

⁷³ IOB 33 Cancer Research UK

⁷⁴ IOB 25 Royal College of Anaesthetists

⁷⁵ IOB 8 Royal College of Physicians (Wales)

⁷⁶ IOB 45 UK Faculty for Public Health

⁷⁷ IOB 10 Welsh NHS Confederation

⁷⁸ IOB 31 BMA Cymru Wales

⁷⁹ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare

117. The need for effective post-exit systems to ensure continued access to healthcare in another EU country was a key concern highlighted in a number of responses; these included the UK Faculty of Public Health, the Royal College of Surgeons of Edinburgh, the Royal College of Anaesthetists and WNHSC.⁸⁰

118. Similarly, responses from the UK Faculty of Public Health, Cancer Research UK, and the Royal Colleges of Physicians (Wales) and Anaesthetists report concerns about potential post-exit limitations on access for UK patients to EU-wide clinical trials.⁸¹ The Genetic Alliance UK and Cancer Research UK focus particular attention on this issue in terms of its implications for rarer conditions, which they believe have acquired a higher profile as a consequence of EU membership. The response from Cancer UK notes:

“To set up and run pan-EU trials efficiently and effectively, it is important that the legislation, guidance and standards governing their approval and conduct is aligned across member states. Such trials are especially important for rarer cancers and childhood cancers, where trials are often only feasible because they are able to recruit from a large pool of patients across the EU.”⁸²

119. Cancer Research UK also underlined the importance of the benefits that compatibility of regulation and standards bring to the UK. They propose that the UK/Welsh Governments should look to align with the new EU Clinical Trials Regulation:

“The Welsh Government should continue to work with the UK Government to consider the importance of aligning with the new EU Clinical Trials Regulation, which the UK has played a key role in shaping for the benefit of UK research. In particular, it should seek agreements that allow for the UK’s participation in the central review process for approving clinical trials, which will provide our researchers with access to the new EU portal and database.”⁸³

Employment legislation

120. Several pieces of EU legislation within the field of employment impact on the delivery of health care services, including those concerning:

- mutual recognition of professional qualifications, enabling health professionals from EU countries to work in the health care systems of other EU Member States;
- working conditions such as the Working Time Directive.

121. The mutual recognition of professional qualification is identified as vital by the key professional bodies who responded, including BMA Cymru Wales, the Royal Colleges, and WNHSC.⁸⁴ WNHSC also highlight the need for continued importance of protecting worker’s rights and health

⁸⁰ IOB 45 UK Faculty for Public Health, IOB 12 The Royal College of Surgeons Edinburgh, IOB 10 Welsh NHS Confederation and IOB 25 Royal College of Anaesthetists

⁸¹ IOB 45 UK Faculty of Public Health, IOB 33 Cancer Research UK, IOB 08 The Royal Colleges of Physicians (Wales) and IOB 25 Royal College of Anaesthetists

⁸² IOB 33 Cancer Research UK

⁸³ Ibid

⁸⁴ IOB 31 BMA Cymru Wales, IOB 10 Welsh NHS Confederation and consultation responses from the Royal Colleges

and safety legislation – views echoed by BMA Cymru Wales, the RCN and the British Association of Social Workers Cymru (BASW).⁸⁵

EU and third country workforce

122. The numbers of staff from EU countries working in Welsh health and social care is not reported centrally. The General Medical Council document *The state of medical education and practice in the UK report: 2015* show the majority of doctors in obstetrics and gynaecology were non-UK graduates, as were almost half of ophthalmologists. Between 2010-14 other key specialties such as medicine, psychiatry, paediatrics and pathology saw substantial increases in the number of non-UK graduates.⁸⁶ The Cabinet Secretary for Health, Wellbeing and Sport recently stated that around 6 per cent of doctors in Wales were trained in another EU country.⁸⁷

123. The Royal College of Nursing Labour Market Review 2015 show that the proportion of nursing staff joining the workforce from the EU rose from two per cent in 2010-11 to 8.8 per cent in 2013-14.⁸⁸

124. For social care, research undertaken by Independent Age indicates that nearly 1 in 5 care workers was born outside the UK – around 266,000 people. Non-EU migrants accounted for around 1 in 7 of these.⁸⁹

125. Many respondents highlighted the significant recruitment and retention difficulties faced by Wales in health and social care. They subsequently set out the need to ensure that health and social care staff from the EU retained the ability post-Brexit to remain or commence working in the UK and vice versa. This view was included in the responses from the RCN, BMA Cymru Wales, UK Faculty of Public Health, the Royal Colleges of Surgeons (Edinburgh), Anaesthetists, Radiologists and Physicians, the BASW, Wales Council for Voluntary Action and WNHSC.⁹⁰

Medical research

126. Medical research is another area where the EU dimension is of particular interest. This includes participation by Welsh universities and research teams, through competitive bidding, in the EU's research programme Horizon 2020.

127. A number of responses identified this as an area to be addressed. The UK Faculty of Public Health set out their concerns that EU partners may be reluctant to involve UK partners in future research projects.⁹¹ At the same time, they believe there are funding and partnership opportunities to be explored outside the UK,⁹² and Cancer Research UK stated that:

⁸⁵ IOB 31 BMA Cymru Wales, IOB 10 Welsh NHS Confederation, IOB 21 Royal College of Nursing, IOB 30 BASW Cymru

⁸⁶ General Medical Council, *The state of medical education and practice in the UK report: 2015*, November 2015 p.21

⁸⁷ Welsh Government Written Statement, Cabinet Secretary for Health, Wellbeing and Sport, *EU health and social care staff make huge contribution and are extremely valued, say Welsh Health Ministers*, 13 July 2016

⁸⁸ Royal College of Nursing, *A workforce in crisis? The UK nursing labour market review 2015*, October 2015

⁸⁹ Independent Age, *Moved to care: the impact of migration on the adult social care workforce*, November 2015

⁹⁰ IOB 21 Royal College of Nursing, IOB 31 BMA Cymru Wales, IOB 45 UK Faculty of Public Health, IOB 12 The Royal Colleges of Surgeons Edinburgh, IOB 25 The Royal College of Anaesthetists, IOB 16 The Royal College of Radiologists, IOB 08 The Royal College of Physicians (Wales), IOB 30 BASW Cymru, IOB 27 the Wales Council for Voluntary Action (WCVA) and IOB 10 Welsh NHS Confederation

⁹¹ IOB 45 UK Faculty of Public Health

⁹² Ibid

“Wales and the UK must explore opportunities to strengthen its world-class science base, building on and developing new global collaborations. [...]The UK has an opportunity to set itself apart as the top global destination for industry to conduct clinical trials, securing crucial investment and enabling patient access to innovative treatments.”⁹³

The Association of the British Pharmaceutical Industry also set out that the UK needs to remain at the forefront of medical and bio-scientific research,⁹⁴ and WNHSC note the growing scale of bio-scientific work in Wales:

“In Wales the life sciences sector employs around 11,000 people based at more than 350 companies and delivers a turnover of circa £2bn per year. These include companies in the ground-breaking fields of medical technology – biopharmaceuticals, regenerative medicine, diagnostics, e-health and biotechnology. Recognising this inherent strength and potential, the Welsh Government has established initiatives such as the Life Sciences Hub and Life Sciences Research Network Wales to ensure ongoing development of the sector in Wales, which is expected to deliver significant (over £1bn) economic impact by 2022.”⁹⁵

128. The WalesWorldWide.org website provides further information on biotech and pharmaceuticals industries in Wales. It sets out that Wales has 5% of the UK population but 10% of its life sciences workforce.⁹⁶

129. There are several hundred Welsh biotech and pharmaceutical companies leading developments in Wales, including Ortho Clinical Diagnostics, Quotient Bioresearch and Quay Pharma. Larval therapy firm, formerly ZooBiotic (now known as **Biomonde**), dominates the world market in such products (having been the first spin-out from an NHS Trust). The European Headquarters of **Biomet**, the global leader in the orthopaedics market, is in Bridgend.

130. It should also be noted, that the RCN, BMA Cymru Wales, WNHSC, the Royal College of Physicians and others all emphasised the potential post-Brexit disadvantages for Wales in terms of what they saw as the likelihood of reduced access to research funding, research collaboration across EU networks and free movement of scarce research staff. The need was identified for frameworks to be developed to address these issues.⁹⁷

Access to other EU funds

131. Several responses, including that from the Welsh Local Government Association and the BASW also highlighted the way in which they believe deprived and rural areas of Wales have benefitted from EU funding, and ask whether new arrangements will be in place to plug any financial gaps.⁹⁸

⁹³ IOB 33 Cancer Research UK

⁹⁴ IOB 18 The Association of the British Pharmaceutical Industry

⁹⁵ IOB 10 Welsh NHS Confederation

⁹⁶ See <http://www.walesworldwide.org/sectors-list/biotech-pharmaceuticals/>

⁹⁷ IOB 21 Royal College of Nursing, IOB 31 BMA Cymru Wales, IOB 10 Welsh NHS Confederation, IOB 08 The Royal College of Physicians (Wales).

⁹⁸ IOB 36 WLGA, IOB 30 BASW Cymru.

Our view

132. There is uncertainty around data for EU nationals working in these sectors, particularly non-registered professions and low skilled employment. The Welsh Government needs to gather this information so that informed workforce planning can be undertaken and to strengthen Welsh input into the development of future UK immigration policy. It is vital that patient care needs are met and immigration from the EU and elsewhere in the world to meet these needs will continue to be necessary after we leave the EU.

133. There are concerns about the impact on workforce planning if restrictions on free movement are introduced, and we believe that there needs to be better planning of future training/skills requirements within public services.

134. In keeping with messages we received from the education sector, there is a need to maintain access to medical research and international collaboration.

135. The importance of EU agencies such as the European Medicines Agency were emphasised. Clarity over the future regulation of medicines is needed.

136. As with education, a framework for recognising professional qualifications must be maintained.

137. There are many public health issues that are best addressed at an international level. Continued cooperation with the EU should be part of Wales's approach to public health in future.

138. The future of reciprocal healthcare arrangements is unclear and will need to be addressed in negotiations.

05. Equality and community cohesion

Summary of the issues raised

- The Welsh Government and the Assembly must be alert to any weakening of standards on equalities legislation;
- As the evidence of a spike in recorded hate crime at the time of the referendum suggests, Brexit has the potential to pose risks to community cohesion.

139. The Women’s Equality Network Wales (‘the WEN’) identified “the protection of equality, justice and human rights legislation” as a top priority for Wales and a Welsh Council for Voluntary Action (‘the WCVA’), survey of its members identified “equality and justice” as a top priority too.

140. The WEN calls on the National Assembly for Wales to commit to resisting any weakening of standards on equalities legislation post-Brexit:

“The EU has guaranteed standards for women's rights that are reflected in current UK legislation. While we understand that EU Directives won't disappear immediately following the UK's departure from the EU, there is a risk that, over time, rights could be rolled back because their continuance in legislation will depend on the political will of future governments. A number of key protections either derive from, or are guaranteed by, European law, e.g., maternity discrimination, maternity rights, equal pay, pension rights, part-time workers rights and the application of European discrimination law to all employers without exception. We are concerned that discrimination legislation which has been implemented via secondary legislation, e.g., maternity and parental leave regulations (1999) could be easier to repeal than primary legislation and could therefore be particularly vulnerable.”⁹⁹

141. On the prospect of a ‘Repeal Bill’ (from an equalities perspective) WEN believes that Wales will need to prepare for two potential outcomes:

I. The entire body of European law and the EU directives (equalities, workers’ rights) are transferred into domestic law with no change in equalities legislation and employment protections. As a result, nothing will change immediately, but there will need to be vigilance about any future reforms.

II. The primary legislation is transferred into domestic law, but the EU Directives are not retained which would mean that the UK loses the equalities legislation and employment protections contained in the EU directives.”¹⁰⁰

142. WEN also sought clarification on whether or not the EU Charter on Fundamental Rights will be transferred into UK law as part of the ‘Repeal Bill’.

⁹⁹ IOB 44 Women’s Equality Network Wales

¹⁰⁰ *ibid*

143. The WCVA and Wales Art International raised concerns about community cohesion and pointed to the role that third sector and arts organisations can play.¹⁰¹ Wales Art International said:

“If the Brexit vote has demonstrated anything, it is the need for public sector agencies to re-double their efforts to engage communities across Wales. Through our participation work, the Arts Council has valuable experience in showing how the arts can bridge into communities to celebrate diversity whilst also empowering those who feel marginalised.”¹⁰²

144. Churches in Wales emphasised the importance of maintaining the rights of and respect for minority communities.¹⁰³

145. The National Unions of Students (‘the NUS’) noted that:

“Perhaps the single most important concern that must be addressed, by both the National Assembly and the UK Parliament, is the rise in racism and hate-crime since the vote on 23rd June. By the middle of July, there had been a recorded rise of 42% in the reporting of hate-crime in England and Wales.”¹⁰⁴

146. Following the referendum, information released by the National Police Chiefs' Council (‘the NPCC’) showed an increase in the level of reported and recorded hate crime. At its peak, this showed a 58 per cent increase in the reporting of hate crime in comparison to 2015. This has since subsided and, whilst remaining at higher levels than 2015, the NPCC reports that reporting has returned to formerly seen levels for 2016. The Home Office Statistical bulletin *Hate Crime, England and Wales, 2015/16* includes an Annex that explores hate crime and the EU referendum.¹⁰⁵

Our view

147. There should be no weakening of equalities legislation and employment protections when we leave the European Union. We note the Prime Minister's commitment to protecting and enhancing the rights people have at work.

¹⁰¹ IOB 19 Wales Art International and IOB 27 Wales Council for Voluntary Actions (WCVA).

¹⁰² IOB 19 Wales Art International

¹⁰³ IOB 13 Churches Together in Wales

¹⁰⁴ IOB 35 National Union of Students

¹⁰⁵ Home Office, Statistical bulletin: Hate Crime, England and Wales, 2015/16, 13 October 2016

06. European structural and investment funds

Summary of the issues raised

- The implications for existing programmes in terms of closure and continuity of funding need to be set-out.
- The implications of potentially losing EIB investment are yet to be understood.
- The question of whether there will be a regional policy post-Brexit needs answering.

148. Under the 2014-2020 round of structural funds, Wales has been allocated almost £2 billion from the EU - with £1.6 billion going to West Wales and the Valleys and over £325 million to East Wales.

149. The Wales Governance Centre (the 'WGC') has published research that shows Wales – in contrast to the UK as a whole – is a net beneficiary of EU funds. Based on estimations of the Welsh contribution to the EU budget and Welsh public sector receipts from EU funding, it concludes that Wales had a net benefit of £245 million in 2014.

150. Dr Jayne Woolford, from the Wales Governance Centre, provided a written submission¹⁰⁶ based on an article she wrote on the implications of Brexit for UK ESIF programming and future regional policy. This article has been published in the European Structural and Investment Funds Journal.¹⁰⁷

151. Dr Woolford's submission provides a thorough assessment of the situation in Wales and some of the issues that need to be addressed. She summarised the key points as:

“The financial implications of Brexit will vary across the UK regions. As a net beneficiary of the EU and allocated €3 billion euros during the 2014-2020 programming period, the loss of ESI [European Structural and Investment] funds will be significant for Wales.

The biggest vulnerability in relation to ESIF [European Structural and Investment Fund] financial allocations and their potential loss to Wales relates to the timing and content of Article 50 withdrawal negotiations. The negotiation of an end date for programme eligibility and the extent to which the established regulatory procedures around N+3 and programme closure will be applied will be crucial.

The level and timing of commitments to projects and expenditure on the ground is increasingly vital in ensuring Wales benefits as fully as possible from the funding envelope allocated, especially in light of the recent HMT [Her Majesty's Treasury] funding guarantee.

¹⁰⁶ IOB 47 Cardiff School of Law and Politics, Dr Jayne Woolford

¹⁰⁷ Woolford, J, 2016, *Implications of Brexit for UK ESIF programming and future regional policy*, European Structural and Investment Funds Journal, 2016 (Volume 4, Number 3), Lexxion, Berlin/Brussels

Uncertainties exist around budget availability for EU reimbursements following Brexit and the conditional nature of the HMT guarantee. It is unclear whether WEFO [Welsh European Funding Office] will make use of flexibilities around programme modification and project reprofiling to manage risk.

Programme closure in the context of Brexit is additionally complicated by audit requirements that continue beyond the end of the programming period and hence EU membership.

Legal requirements under ESIF regulations suggest that, within the context of programme implementation, the UK will still be subject to all relevant aspects of EU law for a period of at least three years following withdrawal from the EU.

In terms of designating a future UK spatial policy, the debate can only be informed through the clear identification of the most successful targeting of localities, delivery models, funding priorities and types of initiatives to date – in the context of wider socio-economic policy and political developments.”¹⁰⁸

152. After considering the issues raised with us, we are left with a number of unanswered questions:

- What are the implications for the existing programmes (2014-2020) in Wales, including whether there will need to be a re-profilng of programmes and approved projects to take account of Brexit timeframe?
- Is there a risk of losing all or part of 2019 and 2020 funding allocations, despite the Chancellor’s guarantee?
- What are the implications of losing European Investment Bank support for important initiatives?
- Will the UK have a Regional Policy post-Brexit? and, if it does:
 - How would this be managed?
 - What role will the Welsh Government have?
 - How will it be designed?
 - What lessons can be drawn from the EU approach?

Our view

153. Wales has benefited financially from European Structural and Investment Funds. It is vital that in transitioning to any future investment strategy we do not lose the capacity in Wales to manage schemes, and in particular the capacity that has been developed through European Social Fund programmes to increase employment.

154. It is our intention to seek answers to these questions and we will launch an inquiry in 2017 into future policies for addressing regional disparities in economic performance.

¹⁰⁸ IOB 47 Cardiff School of Law and Politics, Dr Jayne Woolford

07. Preparedness of public services

155. On 17 October, we held a seminar focused on the impact of Brexit on public services.¹⁰⁹

156. At the point that we took evidence, there was concern raised at the lack of preparedness of public services for Brexit. It was recommended that, in the months leading up to the triggering of Article 50, such preparatory action be taken and that the Welsh Government should give a clear steer on this. One witness underlined the need for an “*authoritative source of advice and interpretation*” on Brexit for public services in Wales, stating that this should be the role of the Welsh Government.¹¹⁰

157. Dr Victoria Winkler, from the Bevan Foundation, told us that leaving the EU should not be used as a reason for delaying action to address other challenges that public services face:

“[...] leaving the EU is absolutely not a reason to do nothing. ... Irrespective of where Wales is in the world, we’ve still got demographic change, we’ve still got technological change, we’ve still got climate change, we’ve still got a relatively weak economy, and those things are still there, and they’ll be there this week, next year, and in 10 years’ time. So, if you like, leaving the EU is just another difficulty to put into that mix that has to be managed. So, the last thing I think any public sector leader should be doing is parking the changes that need to be made because we don’t know about Brexit. I think there are some other big challenges out there too.”¹¹¹

158. Concerns were also expressed at the anticipated negative impact of Brexit on public finances, including the loss of EU funding, and the need to address this in future financing arrangements for Wales.¹¹²

159. For the UK as a whole, the Office for Budget Responsibility (‘the OBR’) provided updated forecasts of public sector net borrowing debt **at the same time as** the Autumn Statement 2016 which was published in November. This estimated borrowing would be £122.1 billion higher over the 5 years up to 2020-21 compared to previous forecasts in March. The OBR provided an analysis of what had been the causes of these net revisions in their modelling.

160. Over the period 2016-17 to 2019-20, £58.6 billion increase in estimated public sector net borrowing debt was attributed to “Brexit forecast changes”.

¹⁰⁹ RoP EAAL Committee 17 October 2016

¹¹⁰ Ibid c.23

¹¹¹ Ibid c.57

¹¹² Ibid c.100

Sources of changes to public sector net borrowing since March 2016, £ bn

	2016-17	2017-18	2018-19	2019-20	2020-21
Effect of Government decisions	0.9	2.5	4.5	8.4	9.6
Brexit forecast changes	3.5	9.9	15.4	14.7	15.2
Non-Brexit forecast changes	7.8	7.3	4.6	3.0	2.9
Classification changes	0.5	0.4	0.5	6.4	4.1
Total	12.7	20.2	25.1	32.4	31.8

Source: OBR, [Economic and fiscal outlook](#), November 2016, Chart 1.4

Note: Figures may not add up to totals, due to rounding.

Our view

161. We intend to monitor the impact on public services and will be writing to all Welsh public bodies to alert them to our work and encourage them to engage with us.

162. We believe that the Welsh Government should take a lead in preparing public services for the challenges ahead and that it should be an authoritative source of advice and interpretation for public services when it comes to issues arising from exiting the EU.

Part 2: Scrutiny

08. The Welsh Government's response

163. Given the complexity of the issues raised by the referendum, we accept that the Welsh Government needed to take some time in articulating its position on responding to the challenges of Brexit.

164. The First Minister, the Rt Hon Carwyn Jones AM, issued a statement on 24 June 2016 setting out six priorities in the immediate aftermath of the vote to leave.¹¹³ These were:

Protecting jobs;

A full part to be played by the Welsh Government in discussions about the timing and terms of the UK withdrawal;

UK Government should negotiate access to the Single Market;

Continued participation in major programmes like CAP and Structural Funds up until end of 2020;

Overwhelming case for major revision of Barnett Formula to take into account needs arising from withdrawal from EU;

Constitutional shift resulting from Brexit means “the relationship between Devolved Administrations and the UK Government must now be placed onto an entirely different footing”.¹¹⁴

165. The Welsh Government also announced the creation of a Cabinet Sub-Committee on Brexit and an External Advisory Group to help inform its thinking.

166. There have been subsequent statements by the First Minister and Cabinet Secretaries on their work on Brexit (which has included stakeholder group meetings and sectoral working groups). The First Minister has also appeared before us twice.¹¹⁵

167. Whilst the First Minister has stated on several occasions that his number one objective for the negotiations is full and unfettered, tariff-free, access to the Single Market, there was no comprehensive statement of the Welsh Government's priorities for the negotiations until the publication of its White Paper *Securing Wales' Future on 23 January 2016 ('the White Paper')*. We have not had an opportunity to scrutinise this White Paper. We intend to do so in our next phase of work.

168. The Cabinet Secretary for Finance and Local Government, Mark Drakeford AM, presented 10 priorities to a conference in Swansea on 25 November 2016 (the Swansea conference)¹¹⁶ and has subsequently provided these to the Committee. These priorities carry particular weight due to Mr

¹¹³ Welsh Government Written Statement by the First Minister, *EU Referendum*, 24 June 2016

¹¹⁴ Ibid

¹¹⁵ 12 September 2016 and 7 November 2016

¹¹⁶ *What will Brexit mean for Wales?*, Swansea University, 25 November 2016

Drakeford's role as the Welsh Government's representative on the main inter-governmental Brexit forum – the Joint Ministerial Committee on European Negotiations (JMC(EN)).

169. The Welsh Government published a White Paper on its priorities for Wales on 23 January 2017.

Relationship with the European Single Market

170. There has been a debate over the past months on what 'access' to the Single Market means. We believe the First Minister's position on this is now clear, following his statement on 1 November 2016¹¹⁷ and his appearance before us on 7 November 2016, where he said:

"[...] the principle that is absolutely essential is that of full and unfettered access to the Single Market. For me, the settlement should be crafted around that one immovable principle."¹¹⁸

171. In summary, we understand this to mean full and unfettered access, no sectoral approach,¹¹⁹ tariff-free, and no regulatory barriers to participation.¹²⁰

172. At the Swansea Conference, the Cabinet Secretary for Finance and Local Government called for:

"Full, unfettered access to the Single Market, unencumbered by tariffs, quotas or any other technical barriers to trade."¹²¹

173. The Prime Minister has been clear in stating that the UK Government is not seeking any form of membership of the Single Market. She is seeking an agreement that allows:

"the greatest possible access to it through a new, comprehensive, bold and ambitious trade agreement".¹²²

174. The Prime Minister also alluded to the possibility of a sectoral approach, saying that the agreement "*[...] may take elements of current single market arrangements in certain areas*". She cites the export of "cars and lorries" and financial services as possible sectors.

175. The Welsh Government's White Paper states that:

"We believe that full and unfettered access to the Single Market for goods, services and capital – including our key agricultural and food products – is vital for the forward interests of Wales and the UK as a whole and we urge the UK Government to adopt this as the top priority for negotiation with the EU."¹²³

¹¹⁷ RoP 1 November 2016 14:16 to 15:12

¹¹⁸ RoP EAAL Committee 7 November 2016 c.9

¹¹⁹ Ibid c.84

¹²⁰ Ibid c.29

¹²¹ First point made by the Cabinet Secretary for Finance and Local Government at the Swansea Conference.

¹²² The Prime Minister's Office, 10 Downing Street, *The UK government's negotiating objectives for exiting the EU: PM Speech, 17 January 2017*

¹²³ Welsh Government, White Paper: Securing Wales' Future, 23 January 2016

Freedom of movement

176. The First Minister has acknowledged that a future trade deal with the EU that allowed freedom of movement of people “*would be problematic*”.¹²⁴ He does not see restricting freedom of movement as being as high a priority as maintaining unfettered access to the Single Market:

“If we look at freedom of movement, for example, to me it seems that many people are not content with the current system of freedom of movement, but I do think that it’s inevitable that there will be a need for a system of allowing people to move around Europe in order to keep economic growth moving. That, to me, is less important than the issue of full and unfettered access to the Single Market.”¹²⁵

177. The Cabinet Secretary for Finance and Local Government calls for a “*calibrated approach to free movement of people, which preserves its many advantages, while bearing down on exploitation of labour*”.¹²⁶

178. The Welsh Government's White Paper states that:

“In our view, the key is to ensure that, apart from students and those who are able to sustain themselves independently, freedom of movement of people is linked to employment. For students and researchers, we believe continued free mobility across Europe is in the best interests of Wales and the UK as a whole. Linking freedom of movement to employment should be complemented by rigorous enforcement of existing legislation to prevent exploitation of workers, particularly those in low-wage occupations.”¹²⁷

Funding

179. At our meeting on 12 September 2016, the First Minister rejected post-Brexit funding of agriculture and structural funds based on Barnett formula allocations. He called for guarantees over future funding based on current levels.¹²⁸ He goes further and suggests the need for a fundamental review of financial funding mechanism within the UK to limit the power of the Treasury,¹²⁹ and a replacement of the Barnett formula with an inbuilt periodic review mechanism.¹³⁰

180. At our meeting on 7 October 2016, Professor Michael Keating told us that Brexit is a big challenge for the Barnett formula. It has, in the past, dealt with incremental change but:

“It’s never had a really big hit like this, a whack of new money coming through all at once.”¹³¹

181. In response, Mr Akash Paun said:

¹²⁴124 RoP EAAL Committee 12 September 2016 c.28

¹²⁵ RoP EAAL Committee 7 November 2016 c.10

¹²⁶ Second point made by the Cabinet Secretary for Finance and Local Government at the Swansea Conference.

¹²⁷ Welsh Government, White Paper: Securing Wales' Future, 23 January 2016

¹²⁸ RoP EAAL Committee 12 September 2016 c.50

¹²⁹ Ibid c.58

¹³⁰ Ibid c.71

¹³¹ RoP EAAL Committee 7 November 2016 c.384

“I think the interesting thing about this moment, and the change is that the simplest thing to do—and almost certainly the preferred model from a Treasury perspective—will be just to add on the replacement funding for common agricultural policy and structural funds and other things on top of the block grant and then to ‘Barnettise’ it.”¹³²

182. Following a meeting of the Joint Ministerial Committee in October, the First Minister made a statement in Plenary on 1 November 2016. In relation to funding, he called for a revision of the Block Grant to Wales in light of the EU exit and said that this will become *“increasingly urgent for stability in the months ahead”* given the impact on access to EU funding.¹³³

183. On the question of UK-wide mechanisms for financing agriculture and initiatives that may replace structural funds post-Brexit, the First Minister appeared open to exploring this, but was clear that such arrangements must be:

“[...] agreed not imposed. Any kind of suggestion that, somehow, whatever replaces European structural funding should be controlled from London wouldn’t be acceptable.”¹³⁴

184. The Cabinet Secretary for Finance and Local Government has called for:

“[...] a full guarantee that funding which flows from the EU today, and would continue to flow in the future, will be provided at or above that level by the UK Treasury, once Brexit has taken place.”¹³⁵

185. On 19 December 2016, an agreement was reached between the Welsh Government and the United Kingdom Government on the Welsh Government’s future fiscal framework.¹³⁶ This includes a new needs-based factor to be included in the Barnett Formula from 2018-19.

186. We have yet to consider how this new agreement might address the points raised with us and we will return to this question in our future work.

Evidence to support the Welsh Government’s position

187. Until the publication of the White Paper, the Welsh Government had not provided details of the evidence underpinning its stated position. This contrasts with the Scottish Government which published an analysis of the potential implications of the UK Leaving the EU on Scotland's long run economic performance in August 2016.¹³⁷

188. The recently published White Paper includes annexes that provide a summary of the potential economic impacts on Wales from 'Brexit' (prepared by the Welsh Government's Chief Economist) and an evidence summary on EU Migration in Wales.

¹³² RoP EAAL Committee 7 November 2016 c.385

¹³³ RoP 1 November 2016 14:16

¹³⁴ RoP EAAL Committee 7 November 2016 c.58

¹³⁵ Third point made by the Cabinet Secretary for Finance and Local Government at the Swansea Conference

¹³⁶ HM Government and Welsh Government, The agreement between the Welsh Government and the United Kingdom Government on the Welsh Government’s future fiscal framework, 19 December 2016

¹³⁷ Scottish Government, *Potential Implications of the UK Leaving the EU on Scotland's Long Run Economic Performance*, 23 August 2016

Our view

189. We understand the breadth and complexity of the issues faced by the Welsh Government and that the process of identifying priorities has been more difficult in light of the UK Government's hesitancy in outlining its position (more on this below). Accepting the challenges the Welsh Government has faced, we believe that the Welsh Government could have outlined its position, and the evidence behind it, at an earlier point in the process. The Welsh Government should continue to develop the evidence that supports its position and do so transparently. Its White Paper takes a positive step in this direction.

Recommendation 1. We acknowledge that the Welsh Government's White Paper has provided additional evidence to support the Welsh Government's position. However, we recommend that the Welsh Government publishes all the evidence on which it bases its position, including details of the scenario modelling that has been done across all sectors and the studies it has commissioned internally and from external sources.

190. The First Minister has established an EU Transition team. It reports direct to the First Minister. This team has the task of leading and co-ordinating the Welsh Government's approach to Brexit. Beyond this, the Welsh Government has not provided detailed information on the internal restructuring that has taken place in its departments in response to Brexit.

Recommendation 2. We recommend that the Welsh Government provides a detailed assessment of the administrative changes it has made following the referendum and the financial implications of these changes. In doing so, it should be clear about those changes that have occurred as a direct consequence of the referendum outcome and those that were already planned or in progress. This assessment should include details of changes made in Wales and in the Welsh Government's office in Brussels.

Recommendation 3. We recommend that the Welsh Government clarifies the role it sees its Brussels office playing in the negotiations.

Recommendation 4. We recommend that the Welsh Government provides us with its register of risks across all areas where Brexit will impact upon its activity.

Recommendation 5. We recommend that the Welsh Government sets-out the steps it has taken since 24 June 2016 to ensure that the maximum amount of European funding is secured and utilised before we exit the EU.

The UK Government

191. Until the Prime Minister's speech on 17 January 2017, the UK Government had provided very few details of its approach to negotiations with the European Union, both in terms of the exit arrangements and any future relationship. Nor had it provided clarity on how issues such as future funding following the end of current European funded projects and how 'repatriated' powers that fall within areas of devolved competence will be managed.

192. The First Minister expressed his frustration at this lack of information on a number of occasions. On 1 November, he said:

"It is disappointing, and damaging to confidence, that the UK Government has so far been unable to offer a coherent outline of its broad approach to EU negotiations. Their excuses for not doing so are running thin and the

credibility of the UK is not helped by prevarication and – it must be said – confused and mixed messaging. The UK needs to get its act together.”¹³⁸

193. Sir Emyr Jones Parry described the notion that the UK Government won’t discuss its position publicly because it doesn’t want to give away bargaining power as “one of the most ridiculous arguments I have heard” and:

“[...] if you were doing a negotiation properly, you would have been talking to all the member states, trying to get the Germans and the French and others on-line before you ever got to Brussels. If they don’t do that, they’re lost. So, they’ve done all that. The illusion that you can somehow keep it secret is just that. I suspect it covers up the fact that they don’t know what the policy is.”¹³⁹

194. Sir Emyr explained that:

“As to being poker faced, I think you go into the negotiations and be poker faced about the extent of any fallback position, any nuances in your position. But you go in with a set of demands, and those demands are going to have to be pretty public.”¹⁴⁰

Our view

195. We have sought the UK Government’s involvement in our work. It has been slow to respond to our requests. We elaborate on this in a subsequent section of this report.

196. Whilst the Prime Minister's speech provided high-level details of the UK Government's approach to the negotiations, many questions remain unanswered. We respect the need for aspects of the UK Government's position to remain confidential. However, we believe greater clarity is needed around issues such as the precise role she sees for devolved governments and legislatures in process.

¹³⁸ RoP 1 November 2016 14:16

¹³⁹ RoP 21 November 2016 c.155

¹⁴⁰ Ibid c.172

09. Wales' voice in the negotiations

Clarifying the different aspects to the negotiations

197. Before exploring some of the ways in which the Welsh Government might approach seeking to influence the negotiations, it is worth articulating the different elements that comprise the 'package' of Brexit negotiations that will take place over the coming years. These can be grouped into four possible negotiations for ease of communication, though in reality at least some of them may be combined or take place in parallel:

- **Withdrawal agreement:** this focuses on the separation between the UK and the EU including institutional arrangements (e.g. what happens to the status of the UK within the European Investment Bank, the various EU agencies etc.), budget contributions, structural funds, pensions, acquired rights of UK citizens in other EU countries and vice versa, and possibly addressing the border between Northern Ireland and the Republic of Ireland. The withdrawal agreement would require qualified majority voting (QMV) amongst the EU27 within the Council and consent of the European Parliament. Article 50 states that the withdrawal agreement is to "take account of the framework for [the leaving State's] future relationship with the Union", which gives the UK the opportunity to seek to link these negotiations with the second and/or third stream below, or to request that parallel negotiations take place on those, for timing reasons.
- **Post-Brexit framework for co-operation with the EU:** covering the different types of models of Brexit (EEA, Swiss Model, Free Trade Agreement, trading under WTO rules, bespoke deal etc.); implications of access to free market, participation in EU programmes; whether or how the UK continues to co-operate in areas such as public health. This framework will require unanimity amongst the EU27 in Council, probably ratification by all Member States according to their own constitutional arrangements, and consent from European Parliament. The CETA (Canadian-EU) free trade agreement, went through this process – with final ratification held up by the Bruxelles-Capitale and Wallonia regions in Belgium.
- **Transitional arrangements:** i.e. whether any 'transitional arrangements' will be put in place before and until a Post-Brexit framework is agreed, which would cover similar issues. The nature of the 'transitional arrangements' would determine how it was to be agreed in Council and Parliament: if it was part of the withdrawal agreement it would require QMV in Council; if not it is reasonable to assume that it would require unanimity within Council as a separate agreement between the UK and EU27. In both scenarios Parliament would be required to give its consent.
- **Internal UK arrangements post-Brexit:** including how to deal with areas which have been traditionally dealt with at EU level, such as agriculture, regional development policy, environment, marine and fisheries policy, some of which (like the examples cited here) fall within devolved competence in Wales and the other devolved nations of the UK

198. In terms of the Welsh interest in the 'withdrawal agreement' negotiation itself, issues around the following will be of interest: the treatment of the land border on the island of Ireland (and what implications this could have for the status of the Welsh sea borders with Ireland); budget contributions (if these have implications for the Welsh block grant and structural funds) and

treatment of 'acquired rights' (particularly if this addresses the question of the status of EU nationals in the UK and British nationals in the EU post-Brexit).

199. The primary Welsh interests, beyond these point, will therefore lie in the other three areas: namely the implications of decisions around post-Brexit relations with the EU, any provision for transitional arrangements, and internal UK arrangements, for Wales.

200. In our series of seminars and in scrutiny of the Welsh Government we heard a range of views on the mechanisms that are being put in place within the UK for the negotiations, focusing in particular on the Brussels-level negotiations, and the role that would be afforded to the Welsh Government in this process.

Participation of Wales in the negotiations in Brussels

201. The UK Government has made it clear that it will lead in the negotiations in Brussels; indeed, the implication, as we see it, is that it will undertake them alone.

202. The First Minister appeared relaxed about the Welsh Government not being directly involved in the Brussels-level negotiations themselves, saying:

“I don't think we necessarily have to be in the room in the negotiations, but it's important that there is an agreed position before those negotiations start”.¹⁴¹

203. We heard evidence to the contrary from Professor Keating, from the University of Aberdeen, who suggested:

“Being in the room is shorthand for a lot of other things. It's knowing what is going on, it's being there when the trade-offs are made, it's getting all the papers and being briefed for the meetings in advance.”¹⁴²

204. Professor Keating also acknowledge that the UK Government was unlikely to allow this level of access to the negotiations.¹⁴³

205. The Cabinet Secretary for Finance and Local Government set-out a stronger position:

“Full involvement in shaping the UK's negotiating position and direct participation in those negotiations which involve devolved areas of responsibility, using the model of the devolved administrations' participation in the Council of Ministers.”¹⁴⁴

Our view

206. We take the view that the Welsh Government should push for access to the negotiations, along the lines suggested by the Cabinet Secretary for Finance and Local Government and for the reasons expressed by Professor Keating. It is our view that involving the devolved governments in this way would strengthen the UK's position and demonstrate its commitment to involve devolved governments meaningfully.

¹⁴¹ RoP EAAL Committee 7 November 2016 c.125

¹⁴² Ibid c.346

¹⁴³ Ibid

¹⁴⁴ Seventh point made by the Cabinet Secretary for Finance and Local Government at the Swansea Conference.

Recommendation 6. We recommend that the Welsh Government presses the UK Government for full involvement in shaping its negotiating position and direct participation in those negotiations which involve devolved areas of responsibility, or matters that affect devolved areas of responsibility, using the model of the devolved administrations’ participation in the Council of Ministers.

UK position to be agreed with the devolved governments ahead of negotiations

207. The First Minister has insisted that the final UK negotiating position should be agreed by the four administrations and that the final deal reached with the EU should be ratified by the four UK parliaments and legislatures.¹⁴⁵

Joint Ministerial Committee

208. At a meeting of the Joint Ministerial Committee (‘the JMC’) on 24 October 2016, Ministers from the four governments established a new Joint Ministerial Committee on EU Negotiations (the ‘JMC(EN)’) as part of the wider JMC framework.

209. It has the following terms of reference:

Working together in EU Negotiations

Through the JMC(EN) the governments will work collaboratively to:

- discuss each government’s requirements of the future relationship with the EU;
 - seek to agree a UK approach to, and objectives for, Article 50 negotiations; and
 - provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations; and,
 - discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive.”¹⁴⁶
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210. The JMC(EN) is chaired by the Secretary of State for Exiting the EU, the Rt Hon David Davis MP. The Cabinet Secretary for Finance and Local Government, Mark Drakeford AM, represents the Welsh Government. The JMC(EN) has agreed to meet monthly.¹⁴⁷

211. When we questioned the First Minister on the role of the JMC (and JMC(EN)) he said:

“Can I say it would absolutely not be acceptable for it simply to be a body where the UK Government brought forward its proposals for the other three Governments to accept or not? That’s not in the spirit of partnership working.

¹⁴⁵ RoP EAAL Committee 7 November 2016 c.64

¹⁴⁶ UK Government, Joint Ministerial Committee communiqué, 24 October 2016

¹⁴⁷ Department for Exiting the European Union, Joint Ministerial Committee on EU Negotiations communiqué, 9 November 2016

That's not what the Prime Minister said, so it's important that those words are adhered to."¹⁴⁸

212. In relation to the JMC(EN) and the need for a UK-wide negotiating position, he said:

"I would prefer to see a negotiating position adopted by the UK that has wide buy-in [...] Sensibly, they [the UK Government] would want to be in a position where they can get as much agreement as possible in order for there to be a degree of unity around that negotiating position. So, that is what this committee must do, but it has to do that on the basis of agreement and not take it or leave it."¹⁴⁹

213. In terms of dispute resolution, the First Minister accepted that the UK Government can ultimately take the final decision unilaterally:

"If you look at the dispute resolution process that we have in the JMC, ultimately, if there's a dispute with the UK Government, the matter is resolved ultimately by the UK Government. They are both party and judge in the same case, as it were. And that's an issue we've been arguing over for some time."¹⁵⁰

214. We received a mixed response to the creation of the JMC(EN).

215. We heard that the JMC structure is viewed as largely a weak mechanism, in which the UK Government has the prominent role. Whilst the JMC(EN) will meet more frequently than the existing JMC, with a work programme prepared in consultation with the devolved administrations, we heard scepticism around how strong a mechanism this would be for the Welsh Government (and other devolved governments) to shape the negotiations.

216. Dr McGowan, from Queen's University Belfast, described JMC(EN) as a "symbolic" body and "slightly weaker" than the existing JMC mechanisms.

217. Professor Keating set out his view:

"I think that that committee is weaker than the existing JMC mechanisms, which are themselves quite weak because the existing JMC mechanisms require circulation of papers; they require civil service back-up, committees at official level, and they're tied to a mechanism according to which devolved Ministers can actually go to the Council of Ministers as part of the UK delegation. Now, what I've seen from proposals for this committee has none of those extra features."¹⁵¹

218. Mr Paun, from the Institute of Government, was more cautious about criticising the new JMC(EN):

¹⁴⁸ RoP EAAL Committee 7 November 2016 c.114

¹⁴⁹ Ibid c.115

¹⁵⁰ Ibid c.121

¹⁵¹ RoP EAAL 7 November 2016 c.340

“Some of the signs have been quite discouraging; I would agree with that, but there is, at least, an agreement that this body will meet regularly.”¹⁵²

219. Sir Emyr Jones Parry described the JMC as follows:

“The JMC machinery was designed for another purpose. [...] Can I be unkind and say more as a talking shop, as an exchange of information, certainly not as a decision-making body with powers? So, is that the body for Wales to seek to influence what’s happening? I think it has a role. It’s not a bad thing for the First Minister or one of his Ministers to go to that body and set out the arguments, but what is the effect? I’d much rather if there were Cabinet Office machinery looking after these various negotiations and that Wales were plugged into it. There are a number of difficulties with that, not least that there doesn’t seem to be such a Cabinet Office machinery.”¹⁵³

Our view

220. Sir Emyr’s view is closest to that of our own, in that we believe that the Welsh Government should engage in the JMC process, however, on the basis of the evidence received, we have reservations about this structure. We believe that there is a need for a more equitable arrangement for facilitating inter-governmental relations within the UK. We believe that there is a case to be made for reform of the JMC so that it may become a UK Council of Ministers based on the principles of partnership and equality.

221. Where devolved issues, or matters that affect devolved issues, are being considered in Whitehall, we believe that the Welsh Government’s direct input should be sought. This includes the structures that are being established to inform the exit negotiations and future trade relationships with the EU and elsewhere.

222. There is also an important scrutiny role to play in monitoring inter-governmental arrangements. This is considered later in this report.

Welsh Government input into Whitehall

223. Our first challenge in approaching the question of how to ensure Welsh interests are being considered within Whitehall is that the mechanisms for preparing the UK Government’s position are currently difficult to determine.

224. We had hoped to hear from the Secretary of State for Exiting the European Union during our first phase of work, so that we could better understand how Whitehall is configuring itself and the extent to which Welsh interests are being represented. We wrote to the Secretary of State twice, on 8 October 2016 and 15 November 2016. In addition, our clerks have made numerous approaches to his department.

225. We received a formal reply dated 18 January 2017. We are pleased that the Secretary of State has now agreed to send his Minister of State, the Rt Hon David Jones MP, to attend a meeting in February 2017.

¹⁵² RoP EAAL 7 November 2016 c.344

¹⁵³ Ibid c.123

Our view

226. Whilst we are disappointed by the time it has taken the Secretary of State to respond, we look forward to the attendance of his Minister of State at a future meeting. For us to perform robust scrutiny of the Welsh Government, and to fulfil our duty to ensure issues of importance to Wales are being properly considered in the process, we expect the UK Government to engage with our work.

227. We will continue to explore the level of formal input the Welsh Government has into Whitehall.

228. We agree with Sir Emyr Jones Parry's suggestion that Wales needs to be 'plugged into' the Whitehall groups or committees that will be involved in preparing the detail of the UK Government's position for the negotiations.¹⁵⁴ He mentioned several possible groups that he believes have been established. He also explained his view that many of the once centralised structures (historically situated within the Cabinet Office) that coordinated Whitehall input to negotiations have been spread across several of the new departments (such as the Department on Exiting the European Union (DExEU) and the Department for International Trade (DIT)).¹⁵⁵

229. Our understanding is that DExEU was established to coordinate Whitehall efforts, but we remain unclear on whether this is the case across all policy areas.

Transitional arrangements

230. At the Swansea conference, the Cabinet Secretary for Finance and Local Government called for:

“A new focus on transitional arrangements. There must be no cliff edge to UK membership of the EU. The complexity of Article 50 negotiations means they will inevitably focus on how the UK will extricate itself from current arrangements. Future relationships with the EU and the rest of the world will have to be developed and agreed over a far longer period. Transitional arrangements which remain as close as possible to the existing position will provide the most stable platform for future negotiations.”¹⁵⁶

231. This view was supported by a number of respondents and witnesses, including Professor Gerry Holtham who suggested organising “some interim soft-landing arrangements”.¹⁵⁷

232. Sir Emyr Jones Parry's view is that he has no doubt that:

“[...] some form of transitional arrangements are going to be necessary, because there isn't the capacity either in legislatures or within the civil service to actually cover all those aspects that I've tried to set out within the time available.”¹⁵⁸

¹⁵⁴ RoP EAAL 7 November 2016 c.123

¹⁵⁵ Ibid c.126

¹⁵⁶ Sixth point made by the Cabinet Secretary for Finance and Local Government at the Swansea Conference.

¹⁵⁷ RoP EAAL Committee 21 November 2016 c.4

¹⁵⁸ Ibid c.189

233. In her speech on 17 January 2017, The Prime Minister stated that she would “*seek to avoid a disruptive cliff edge*” but she would not seek “*some form of unlimited transitional status*”. She explained that she wants to reach an agreement on the UK's future relationship with the EU by the time the two-year Article 50 process has concluded.

234. In stating this, she acknowledge that:

“From that point onwards, we believe a phased process of implementation, in which both Britain and the EU institutions and member states prepare for the new arrangements that will exist between us will be in our mutual self-interest. This will give businesses enough time to plan and prepare for those new arrangements.”¹⁵⁹

235. In the event that satisfactory deal cannot be reached, the Prime Minister suggested a change to UK's economic model with an emphasis placed on the freedom the UK would have to set competitive tax rates.

Our view

236. We support the Cabinet Secretary for Finance and Local Government’s call for a focus on transitional arrangements.

237. We recognise that even a relatively short period of time spent trading on WTO rules has the potential to be damaging to our manufacturing and agricultural sectors. This could have negative consequences for the Welsh economy.

238. Whilst the Prime Minister's objective of achieving a phased approach appears sensible, she did not address the consequences for the UK if this objective is not achieved. We need greater clarity around how the UK will mitigate the impact of having to trade under WTO rules.

¹⁵⁹ The Prime Minister's Office, 10 Downing Street, *The UK government's negotiating objectives for exiting the EU: PM Speech, 17 January 2017*

10. Intra-UK relations and constitutional questions

239. Our first phase of work has brought into focus some fundamental questions about the adequacy of the existing constitutional arrangements in the UK, which have gained new prominence in the process of considering the Wales Bill, and been commented on in the work of Assembly Committees and more recently by the Public Administration and Constitution Committee in the House of Commons.¹⁶⁰

UK-wide frameworks

240. After leaving the European Union, there are several areas of policy that might benefit from an agreed UK-wide approach or framework. For example, agricultural, marine and environmental policies and regional development policy (to replace structural funds).

241. The First Minister appears open to the possibility of UK frameworks in some areas such as animal health and agriculture, but with the proviso that any framework must be developed and agreed between the governments of the UK and not imposed by the UK Government.

“In some areas, it would make sense for there to be agreement—and I stress the word ‘agreement’—between the different Governments on a common policy: animal health, for example. It would be very difficult to have three different systems of animal health on this island. It would make sense for there to be one system—but agreed, not imposed; that’s the important issue from my perspective.”¹⁶¹

242. According to the First Minister, over 5,000 pieces of legislation currently affect devolved areas and would need to be evaluated. The First Minister believes that many of these legal instruments will be needed in the future and it would make sense to enshrine them in UK law.¹⁶² He also stated that in environment policy it would be sensible to agree minimum standards across the UK.¹⁶³

243. The Cabinet Secretary for Finance and Local Government has called for:

“Unambiguous recognition of the uninterrupted continuation of existing devolved competencies as the UK leaves the EU: devolved competencies currently regulated at the EU level must continue to be exercised by the devolved administrations, once we are no longer members of the EU: any new UK frameworks must be freely negotiated between all four Governments.”¹⁶⁴

and

“Wholehearted commitment to redrawing the relationship between the component parts of the United Kingdom, in the post European Union period,

¹⁶⁰ House of Commons Public Administration and Constitution Committee, *The Future of the Union, part two: Inter-institutional relations in the UK*, 6 December 2016

¹⁶¹ RoP EAAL Committee 7 November 2016 c.58

¹⁶² *Ibid* c.157-158

¹⁶³ *Ibid* c.171

¹⁶⁴ Eighth point made by the Cabinet Secretary for Finance and Local Government at the Swansea Conference.

including both the distribution of responsibilities and the machinery of government between the four nations.”¹⁶⁵

244. The Prime Minister has stated that:

“Part of that will mean working very carefully to ensure that – as powers are repatriated from Brussels back to Britain – the right powers are returned to Westminster, and the right powers are passed to the devolved administrations of Scotland, Wales and Northern Ireland.

As we do so, our guiding principle must be to ensure that – as we leave the European Union – no new barriers to living and doing business within our own Union are created,

That means maintaining the necessary common standards and frameworks for our own domestic market, empowering the UK as an open, trading nation to strike the best trade deals around the world, and protecting the common resources of our islands.

And as we do this, I should equally be clear that no decisions currently taken by the devolved administrations will be removed from them.”¹⁶⁶

Shared competence and inter-governmental co-operation

245. In considering the need for governments to work together on common approaches, we must also consider whether there is a suitable mechanism for this. On the basis of the evidence received, it is clear to us that, at present, such a mechanism is lacking. The First Minister’s view is that:

“The UK doesn’t have a mechanism where governments can come together—call it a mini council of ministers, possibly—come together and agree these common standards and agree a common approach that benefits everybody. We don’t have that structure in place at the moment and we will need it in the future.”¹⁶⁷

246. Devolution has taken place in context of the European Union with an EU framework sitting above many key devolved areas. The European Union can be described as a model based on the pooling of sovereignty and shared competence.

247. In her written submission, Dr Jo Hunt from Cardiff University’s School of Law and Politics, suggests that the UK will need to move towards a shared competence approach in a number of areas post-Brexit, with the principle of subsidiarity used to determine the appropriate level of government at which action is to be taken.¹⁶⁸

248. However, Dr Hunt points out that such an approach would be novel in the UK:

¹⁶⁵ Ninth point made by the Cabinet Secretary for Finance and Local Government at the Swansea Conference.

¹⁶⁶ The Prime Minister's Office, 10 Downing Street, *The UK government's negotiating objectives for exiting the EU: PM Speech*, 17 January 2017

¹⁶⁷ *Ibid* c.173

¹⁶⁸ IOB 42 Dr Jo Hunt, School of Law and Politics, Cardiff University

“Under the UK’s current constitutional structures, there is a tendency towards a binary allocation of competences as either devolved, for exercise at that level, or not devolved, and for exercise at the UK level. There is little experience of shared competence as practiced in the EU.”¹⁶⁹

249. Dr Hunt argues for:

“[...] a post-Brexit redefinition of powers which embraces the notion of shared competence and the meaningful operation of the principle of subsidiarity – that decisions should be taken at the lowest most effective level, and where this is at a UK level there are robust structures for the four legislatures to work together to devise the legislative response. The current internal intergovernmental machinery will require development to be able to deliver this new settlement.”¹⁷⁰

250. Dr Rachel Minto, from the Wales Governance Centre, advanced the suggestion that when considering post-Brexit policy co-ordination within the UK, inspiration could be drawn from the operation of the European Union.¹⁷¹ This complements Dr Hunt’s written submission¹⁷² and her oral evidence.¹⁷³

251. At our meeting on 7 November 2016, Professor Roger Scully, from the Wales Governance Centre, characterised the UK’s mechanisms for what he terms “shared rule” as “primitive”:

“While devolution has advanced quite a lot in terms of what scholars sometimes term ‘self-rule’ for Scotland, Wales and Northern Ireland, we have very little substantial mechanisms and process of any type for what is sometimes termed, ‘shared rule’, whereby the sub-state units contribute to the formal decision making of the state as a whole, and will have formalised relations with the state-level Government. That remains to this day very primitive in the United Kingdom, compared to many international examples.”¹⁷⁴

252. Professor Scully describes his view of how shared competence is considered by Whitehall:

“The predominant model that certainly Whitehall has understood has primarily been about bilateral negotiation at each of those individual unions, rather than incorporating them all into a structure that also then has to find some place for England, which remains the great unresolved question within the UK’s constitutional structures.”¹⁷⁵

253. Mr Paun, in addressing a slightly different question, makes a relevant point about how Whitehall might need to address policy areas that require a shared approach “[...] on those issues, the

¹⁶⁹ IOB 42 Dr Jo Hunt, School of Law and Politics, Cardiff University

¹⁷⁰ Ibid

¹⁷¹ Ibid c.233

¹⁷² IOB 42 Dr Jo Hunt, School of Law and Politics, Cardiff University

¹⁷³ RoP EAAL Committee 7 November 2016 c.241

¹⁷⁴ RoP EAAL Committee 7 November 2016 c.228

¹⁷⁵ Ibid c.240

relevant bits of Whitehall would have to, in a way they're not accustomed to, think about themselves as the English Government."¹⁷⁶

254. In line with Dr Hunt's written submission, Professor Scully believes that it can be argued that "[...] there's a very strong case for more substantial and more formalised mechanisms of shared ruling and inter-governmental co-operation."¹⁷⁷

255. We also heard that the extent to which the devolution settlements are embedded in EU membership has been underestimated in London. Professor Keating provided us with an assessment of the impact this could have on the UK's evolving constitutional settlement:

"I think one of the things that's not appreciated sufficiently in London is the way in which the devolution settlements are deeply embedded in EU membership, because we've only ever had devolution under the EU. This has permitted a much more expansive version of devolution than otherwise would be possible, because regulation was done at the European level, and therefore, Westminster was not worried about competition policy, state aids and so on, compared with what was proposed in the 1970s."¹⁷⁸

256. Professor Keating also suggests that the relationship between devolution and EU membership has provided a space in which ideas about shared sovereignty can be rehearsed, so that sovereignty debates do not become "zero-sum". It allows multiple perspectives on authority, rather than saying there's unitary authority.¹⁷⁹

257. He suggests that the indirect way in which devolution, and the UK's broader constitutional settlement, has developed ("*the pragmatic British tradition*" as he terms it) is ill suited to dealing with matters of principle:

"If you take an issue of principle: take back sovereignty—to where? To London or to Cardiff or to Edinburgh? [...] it means that the basis of the UK evolving constitutional settlement has been seriously undermined."¹⁸⁰

Our view

258. There is much work to be done in relation to the development of inter-governmental and inter-parliamentary relations. Our remit requires us to consider intra-UK post-withdrawal arrangements and, in particular, attention needs to be given to the question of shared competence.

259. We are concerned that Whitehall may not fully appreciate how concepts of shared competence have developed in the context of devolution settlements that are rooted in EU membership.

260. The case for using the EU's approach to subsidiarity as a possible principle from which to develop new intra-UK relationships is put well and merits further consideration.

¹⁷⁶ RoP EAAL Committee 7 November 2016 c.378

¹⁷⁷ Ibid c.234

¹⁷⁸ Ibid c.393

¹⁷⁹ Ibid

¹⁸⁰ Ibid c.395

261. We support the Cabinet Secretary for Finance and Local Government’s view that the Welsh Government should have “[...] direct participation in those negotiations which involve devolved areas of responsibility”.¹⁸¹

262. In addition, we believe that devolved governments should be fully involved in the development of polices and international agreements that affect areas of devolved competence.

263. Trade is highlighted as a very practical example of where future problems could arise (assuming the UK does not continue to be part of the EU Customs Union post-Brexit). International trade is currently a reserved (or non-devolved) competence; however, the terms of trade agreements could directly impact on devolved areas (such as agriculture and public service delivery).

264. We note arrangements elsewhere where similarly devolved governments and parliaments participate in trade processes, such as in Canada and Belgium. These deserve further exploration and the Welsh Government should consider them.

The Welsh Government’s position

265. Compared with Scotland and Northern Ireland, the Welsh Government is in a different position in terms of leverage on the UK Government and in the negotiations in Brussels given the leave vote in Wales.

266. Professor Scully described this as:

“There’s the old saying ‘speak softly but carry a big stick’, well, in our case, I think maybe we’re going to have to speak softly because everyone knows we don’t have a stick.”¹⁸²

267. We were told that there are various ways in which the Welsh Government could respond to this tactically, including focusing on a limited number of priorities in the negotiations,¹⁸³ as well as identifying who best to ally with in the negotiations to pursue these interests.¹⁸⁴ This could be with the other devolved governments, the UK Government, other EU Member States and Regions, and/or the European Parliament.

268. Sir Emyr Jones Parry told us that:

“[...] the primary interest of the Welsh Government, I think, is really in influencing the British Government and making sure that that position is one as compatible as possible with Welsh interests.”¹⁸⁵

Our view

269. We encourage the Welsh Government to build alliances with other devolved nations and regions within the UK in order to secure the best possible outcome for Wales.

¹⁸¹ Seventh point made by the Cabinet Secretary for Finance and Local Government at the Swansea Conference.

¹⁸² Ibid c.191

¹⁸³ Ibid c.257

¹⁸⁴ Ibid c.207

¹⁸⁵ RoP EAAL Committee 21 November 2016 c.196

270. The Welsh Government's priority should be influencing the UK Government's position, though it should continue to explore all avenues of potential influence.

11. Assembly scrutiny

Scrutiny of inter-governmental relations

271. With the creation of the JMC(EN) there is a need to develop a more formalised scrutiny arrangement with the Welsh Government.

272. We are aware of the written agreement between the Scottish Parliament and Scottish Government that aims to improve the scrutiny of formal inter-governmental relations ('IGR').

273. This appears to offer a good starting point from which to develop our scrutiny of the Welsh Government's activity within the JMC(EN) structure, and other inter-governmental relations that relate to our remit (within and outwith the JMC structure).

274. We have discussed this with the Cabinet Secretary for Finance and Local Government, when he appears before us on 23 January 2017 and we intend to write to the Cabinet Secretary to ask that in lieu of any formal agreement he considers providing details of agendas for forthcoming JMC(EN) meetings and a written note on what transpired at each meeting within a fortnight of it being held.

275. The First Minister showed a willingness to share information with us in relation to the JMC(EN) meetings, saying *"it's very easy to discuss what is discussed at those meetings, and to agree what our position is going into those meetings."*¹⁸⁶

Our view

276. We welcome the transparency the First Minister is willing to offer in relation to the JMC(EN) meetings and we look forward to developing appropriate scrutiny arrangements with the Cabinet Secretary for Finance and Local Government.

Inter-parliamentary relations

277. A recent House of Commons report characterised inter-parliamentary relations as the "poorer and less well-developed relative of IGR [inter-governmental relations]" and that "at a formal level there is no direct parliamentary equivalent to the JMC".¹⁸⁷

278. In the past, Assembly committees have successfully represented Welsh views at a European level by focusing on engagement with the European Parliament. This, in turn, provided a useful platform from which to scrutinise the Welsh Government's actions.

Our view

279. Whilst we recognise the absence of formal structures, the European Committees of the United Kingdom Forum¹⁸⁸ (the EC-UK Forum) has proved a valuable structure for sharing information at both elected member and official level.

280. We are committed to contributing to the EC-UK forum.

¹⁸⁶ RoP EAAL Committee 7 November 2016 c.131

¹⁸⁷ House of Commons Public Administration and Constitution Committee, *The Future of the Union, part two: Inter-institutional relations in the UK*, 6 December 2016 p.79

¹⁸⁸ The EC-UK is a forum of the Chairs of the European committees in the Scottish Parliament, Northern Ireland Assembly, and both Houses of Parliament and meets bi-annually.

281. Additionally, we welcome the Scottish Parliament’s initiative to host a conference for the members of the ‘Brexit’ committees from each of the devolved legislatures and the London Assembly.

282. We also intend to hold a series of meetings in London before Easter and hope to meet with colleagues from Parliament and the London Assembly.

283. We can see that there may be a case for a more co-ordinated approach to scrutinising IGR and, particularly from our perspective, the JMC(EN). This is something that we are exploring informally at this stage. The agreement developed in Scotland offers a good starting point.

284. Earlier in this report, we recognise that the Welsh Government should prioritise engagement with London. We believe that our focus must also shift to engaging with colleagues in the UK Parliament and the devolved legislatures.

285. We endorse and encourage the development of relationships between the Assembly and all the UK legislatures.

Repeal Bill

286. The Prime Minister’s conference speech proposing the introduction of a ‘Repeal Bill’ received significant interest in our subsequent evidence sessions.

287. The Legal section of the Assembly’s Research Paper of 24 June 2016 (section 5) identified the potential scope for this type of measure through use of a ‘transitional law’ to maintain all/most EU-based UK law for a period of time after withdrawal, to allow time for it to be reviewed and, potentially, repealed or amended. The Paper also sets out some issues that would need to be dealt with in the ‘Repeal Bill’:

“The work involved in reviewing and potentially replacing all UK laws which give effect to EU law and/or refer to EU legislation is so great that it is likely that the responsible government would seek to enact transitional provisions to keep all/much of those laws in force during a period after withdrawal (although this may depend on the length of the withdrawal negotiation period). It would also be premature to repeal/amend these laws until it is clear whether the UK will be bound in future by any of the EU obligations it implements (as it would be under an EEA or EFTA model or under an association agreement with the EU).”¹⁸⁹

288. One question that will arise is where the power resides to make such a transitional/saving provision, to keep EU-based law in force for Wales after withdrawal, or indeed to amend or repeal some or all of these EU-based laws: whether this is with the Welsh Government and the Assembly in devolved policy areas, or with the UK Government and Parliament.

289. The Assembly’s Chief Legal Adviser’s view is that this power lies with the Welsh Government and Assembly. For example, the Assembly has competence over “environmental protection”. Currently, it can use this competence to implement EU environmental law in relation to Wales.

¹⁸⁹ National Assembly for Wales Research Service and Legal Service, *Wales and the EU: What does the vote to leave the EU mean for Wales?*, June 2016

Therefore, if the UK Parliament, in the Repeal Bill, provides for EU-based environmental law to continue to apply in Wales post-Brexit, it will be “legislating with regard to devolved matters” – which normally requires the consent of the Assembly, under the Sewel Convention. The UK Government might seek to argue that Parliament would in fact be legislating about “relations with the EU”, rather than “environmental protection”. The Chief Legal Adviser does not consider that this argument would succeed – particularly as the Repeal Bill is not intended to come into force until the UK actually exits from the EU.

290. The same arguments would essentially apply if the Bill tried to affect a separate power, which the Welsh Ministers have, to amend or repeal, for Wales, a large number of laws based on EU Directives.

291. The Sewel Convention also calls for the Assembly’s consent before its competence can be modified by the UK Parliament – so, if the Repeal Bill attempted to remove the Assembly’s ability to legislate for environmental protection, agriculture, etc. where that legislation dealt with former EU laws, the Convention would dictate that the Assembly’s consent was needed.

292. It is possible that the ‘Repeal Bill’ will replicate the current position, under which UK Government Ministers have a parallel (‘concurrent’) power, with Welsh Ministers, to powers to make subordinate legislation on devolved policy areas for Wales, on issues originally derived from EU law. If the UK Government took a different view from the Welsh one on the desirability of mirroring existing EU law in devolved areas that could undermine devolved decision-making and lead to serious clashes. Such a provision in the ‘Repeal Bill’ would also, in principle, require Assembly legislative consent under the Sewel Convention, even though it would be reflecting the current position.

293. However, the Convention is subject to a number of exceptions. Moreover, the Supreme Court has now made clear, in its judgment of 24 January concerning the circumstances in which Article 50 of the Treaty on European Union can be triggered,¹⁹⁰ that the Convention is not legally binding - not even to the extent that it has now been entrenched in statute in the Scotland Act 2016 and, prospectively, in the Wales Bill currently before Parliament. This means that, if it is breached, no legal consequences can flow from that, although, as the Court said, political ones can and may. Such political consequences may be important, particularly as the Scottish Parliament and the Northern Ireland Assembly would, in principle, have the same expectations as the National Assembly for Wales in terms of application of the Convention. Moreover, the Supreme Court stressed the “important role” of the Sewel Convention “*in facilitating harmonious relationships between the UK Parliament and the devolved legislatures*”. The Court did not seek to diminish that role; simply, it clarified that it was a political role, rather than a legal one.

294. In the consultation we asked stakeholders to provide examples of areas where the introduction of a ‘Repeal Bill’ could have implications for Wales. The summary of consultation responses provides details on issues raised, and this provides a good starting point from which to undertake a detailed analysis in our future work in this area.

¹⁹⁰ Formally known as R (on the application of Miller and Another) v Secretary of State for Exiting the European Union [2017] UKSC 5.

Our view

295. We believe that the UK Government should respect the constitutional spirit of the current Sewel Convention as it applies to Wales, and to seek the consent of the Assembly for any provisions of the Repeal Bill which would be within the competence of the Assembly or which would modify that competence, whether or not section 2 of the Wales Bill is in force at the relevant time.

296. We are undertaking preparatory work so that we are in a position to respond quickly to the Bill's introduction. We plan to engage with stakeholders to identify detailed issues for Wales that arise from the introduction of a 'Repeal Bill' during the first quarter of 2017 i.e. in advance of its proposed introduction.

12. Continuation Bill

297. In relation to the 'Repeal Bill' discussion there has been some discussion around the idea of a 'Continuation Bill' being brought forward for consideration by the Assembly. The idea of such a Bill would be to restate the existence, in the law of Wales, of:

- all domestic law applicable to Wales made for the purposes of implementing any EU-law obligation/discretion, and
- all directly applicable/directly effective rights and obligations deriving from EU law,

that fall within the Assembly's competence.

298. The intention would be to pre-empt any repeal of the European Communities Act 1972, and also to make the 'Repeal Bill' unnecessary, as far as devolved policy areas in Wales were concerned.

299. Such an Assembly Bill could not completely protect the continued existence of EU-based law in devolved policy areas in Wales, however. This is for two reasons.

300. The first is Parliamentary sovereignty. The UK Parliament could repeal the Assembly Act. By convention, it should not do so unless the Assembly consented; but in these extraordinary circumstances, the UK Government might try to use its majority in the House of Commons to force through such a controversial repeal in breach of the Sewel convention. Such an action would, however, be likely to raise the profile of the issue of distribution of powers post-Brexit, which, it could be argued, would be helpful to Wales.

301. The second reason is that, currently, UK Government Ministers have powers to amend or revoke a large amount of legislation, affecting devolved policy areas in Wales, that is based on EU law. The 'Continuation Bill' might seek to remove those UK Ministerial powers - either expressly or by implication. In many cases, this is likely to be outside the Assembly's competence unless the Secretary of State gave consent – which appears improbable. Therefore, it may be that most of these UK Ministerial powers would need to be left untouched by the Assembly Bill – which would mean that it contained an important weakness in terms of protecting EU-based law's application to devolved policy areas in Wales.

302. At our meeting on 23 January 2017, the Cabinet Secretary for Finance and Local Government was asked about the UK Government's level of engagement with devolved administrations:

“There has been engagement, but it's been at lawyer to lawyer level so far. I know that lawyers in all devolved administrations have been asked to provide information to help the people who will be responsible for drafting the Bill. ... This needs to be stepped-up, significantly stepped-up”¹⁹¹

Our view

303. Once we have had an opportunity to consider the Repeal Bill, and should our analysis suggest that it encroaches on the devolution settlement, we would support the principle of protecting the devolution settlement through the introduction of a Welsh Continuation Bill.

¹⁹¹ RoP EAAL Committee 23 January 2017

Legislative Consent Motions

304. The Brexit process could involve multiple Acts of the UK Parliament, any or all of which could require under the terms of the Sewel convention, the legislative consent of the Assembly. The first Act will be an Act to authorise the UK Government to trigger notification under Article 50. Then there could be the 'Repeal Bill', as we explore earlier in this report. There could also be an Act of Parliament to approve the agreement on the terms of the UK's withdrawal from the EU. And there could be a separate Act approving the terms of the UK's future relationship with the EU, or, more traditionally, giving effect in domestic law to the terms of that future relationship (as the European Communities Act 1972 gave effect in domestic law to our relationship with the EU).

Our view

305. In our view, constitutional appropriateness would require the Assembly's consent for all of the potential Brexit-related Acts of the UK Parliament referred to above.

13. Beyond the Sewel convention

306. The Sewel Convention applies when the UK Parliament legislates on a matter which is normally dealt with by a devolved legislature as part of its work. Under the terms of the Convention, this will happen only when the devolved legislature has given its consent. The Convention is not legally binding, although it is politically important - a point clarified by the Supreme Court on 24 January 2017.

307. Beyond considering whether a legislative consent motion is required, a broader question remains around whether the Assembly should have a role in agreeing aspects of the process that are beyond the scope of existing convention. Most of the evidence we have taken to date focuses on the role of devolved governments and the power dynamic between them and the UK Government. There is a need for more work on the role of the Assembly in the process.

308. We heard evidence from several academics that suggested that a case could be made for the consent of devolved legislatures being sought in relation to the ratification of international trade treaties where they relate to or impinge upon devolved competencies.¹⁹²

309. In support of remarks made by Professor Keating at our meeting on 7 November 2016, Mr Paun offered the following view:

“My interpretation of the legal position is that there’s obviously an argument that the UK Government has made, and may well continue to make, that under the terms of all the devolution legislation, relations with the EU are in the category of reserved powers, but I think, like Michael Keating, on Brexit, that argument is going to be quite difficult to sustain, because withdrawing from the European Union is clearly going to affect quite significantly the operation of the devolution settlements, the powers and budgets of the devolved governments, and therefore it seems to me highly likely that legislative consent will be debated and voted upon at the devolved level.”¹⁹³

310. At the same meeting, the First Minister said that a final agreement should be brought to a vote in the four different Parliaments of the UK.¹⁹⁴

311. At our meeting on 16 November 2016, the Counsel General was asked for his view on the need for Assembly approval. He responded by saying that *“I think it’s inevitable that the matter will come before the Assembly and will come in the form of an LCM.”*¹⁹⁵

312. The Prime Minister stated in her speech on 17 January that:

“... the Government will put the final deal that is agreed between the UK and the EU to a vote in both Houses of Parliament, before it comes into force.”¹⁹⁶

¹⁹² RoP EAAL Committee 19 September 2016 c.18-19

¹⁹³ RoP EAAL Committee 7 November 2016 c.324

¹⁹⁴ Ibid c.22

¹⁹⁵ RoP EAAL Committee 16 November 2016 c.108

¹⁹⁶ The Prime Minister's Office, 10 Downing Street, *The UK government's negotiating objectives for exiting the EU: PM Speech, 17 January 2017*

313. No mention was made in her speech of offering the devolved legislatures a vote.

Our view

314. We believe that this convention should be extended to require the consent of devolved legislatures in circumstances where devolved competence is affected by non-legislative means, for example in relation to international trade treaties. This would, of course, include those relating to the European Union.

Annex A – Remit of the External Affairs and Additional Legislation Committee

The Committee was established on 28 June 2016. On 15 September 2016 its remit was agreed as:

- (a) to examine the implications for Wales of the United Kingdom's withdrawal from the European Union and to ensure Welsh interests are safeguarded during the withdrawal process, in any new relationship with the European Union and in the intra-UK post-withdrawal arrangements for relevant policy, finance and legislation;
- (b) to coordinate activity across Assembly committees in relation to point (a) above.
- (c) to carry out the functions of the responsible committee under Standing Orders 21.8 to 21.11.
- (d) to consider any other matter, including legislation, referred to it by the Business Committee.

Annex B – Schedule of evidence

The following witnesses gave evidence to the Committee. Transcripts of the meetings can be viewed at <http://senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=15161>

12 September 2016	
Rt. Hon Carwyn Jones	First Minister of Wales
Des Clifford	Director of the Office of the First Minister
Piers Bisson	Deputy Director, European Transition
19 September	
Dr. Jo Hunt	Cardiff University
Dr. Ricardo Pereira	Cardiff University
Professor Steve Peers,	University of Essex
Professor Alan Matthews,	Trinity College Dublin
Professor Alan Swinbank,	University of Reading
Professor Patrick Minford	Cardiff University
Professor Stephen Woolcock	London School of Economics
3 October 2016	
Professor Iwan Davies	Swansea University
Professor Colin Riordan,	Cardiff University
Neville Davies	
10 October 2016	
Dr Nerys Llewelyn Jones	AgriAdvisor Solicitors
Professor Janet Dwyer	University of Gloucester
Professor Wyn Grant	Warwick University
Professor Peter Midmore,	Aberystwyth University
Professor Richard Barnes	University of Hull
Griffin Carpenter	New Economics Foundation

17 October 2016	
Michael Trickey	Cardiff Business School
Victoria Winckler	Bevan Foundation
Professor Marcus Longley	University of South Wales
31 October 2106	
Professor Bob Lee	University of Birmingham
Dr Victoria Jenkins	Swansea University
Kerry Lewis	Aberystwyth University
Dr Charlotte Jennie Burns	University of York
Dr Richard Cowell	Cardiff University
Professor Dickon Howell	Newcastle University
Dr Stephen Hull	Associated British Ports Marine Environmental Research
Professor Volker Roeben	Swansea University
Dr Margherita Pieraccini	University of Bristol
7 November 2016	
Rt Hon Carwyn Jones AM	First Minister of Wales
Piers Bisson	Welsh Government
Andrew Slade	Welsh Government
Dr Joanne Hunt	Cardiff University
Dr Rachel Minto	Cardiff University
Professor Roger Scully	Cardiff University
Dr Lee McGowan	Queen's University Belfast
Professor Michael Keating	University of Aberdeen
Dr Akash Paun	Institute for Government
14 November 2016	
Mick Antoniw AM,	Counsel General for Wales
Jeff Godfrey	Director of Legal Services Department, Welsh Government

21 November 2016	
Gerald Holtham	University of South Wales
Sir Emyr Jones Parry	Learned Society of Wales
Professor Peter Halligan	Learned Society of Wales