

The Withdrawal Agreement

Implications for Wales (January 2020)

January 2020

The Withdrawal Agreement

On 17 October 2019, the negotiators for the United Kingdom and the European Union reached an agreement on the text of a Withdrawal Agreement – a document that sets out the terms of the United Kingdom’s departure from the European Union.

In November 2018, we published an initial assessment of the previous version of the Withdrawal Agreement. This report updates our assessment to take account of the changes made to the Withdrawal Agreement following further negotiations under Article 50 during the autumn of 2019.



1. Background

The Article 50 negotiations

1. Since the triggering of Article 50 of the Treaty on European Union in March 2017, the United Kingdom Government and the European Union have been negotiating the terms of the United Kingdom's withdrawal from the European Union.
2. On the EU-side, the European Council issued guidelines for the negotiations (effectively providing the negotiating mandate), whilst the European Commission has conducted the negotiations with the UK Government.
3. The European Parliament has a decisive role at the end of the negotiations and it has played an important role in expressing its position on a range of issues relating to the withdrawal process.
4. The UK Government's side of the negotiations has been led by the Department for Exiting the European Union and, ultimately, the Prime Minister.
5. The negotiators reached a point where they had an agreed text of a Withdrawal Agreement.
6. This text has been agreed by the UK Government.
7. The European Council agreed the text, at a governmental level, on 17 October 2019.
8. The Withdrawal Agreement is now subject to ratification by the UK Parliament and the European Parliament.
9. Whilst there is no formal role for the Assembly in terms of ratifying the Withdrawal Agreement, the Assembly's legislative consent is required for aspects of the European Union (Withdrawal Agreement) Bill – the legislation that is required to implement the Withdrawal Agreement in the UK.
10. We have reported separately on the European Union (Withdrawal Agreement) Bill.

The Committee's work

- 11.** We have been considering the implications for Wales of exiting the European Union since our establishment as a committee in July 2016.
- 12.** Our first report summarised the implications for Wales of leaving the European Union.¹ Subsequently, we have published a range of reports that further consider the implications for Wales in legal, constitutional, economic and policy terms.²
- 13.** Alongside this work, we have monitored the progress of the Article 50 negotiations. We have done this through holding regular scrutiny sessions with the First Minister of Wales and other Welsh Ministers and the Counsel General.
- 14.** UK Ministers have engaged with us, through oral evidence sessions and correspondence.
- 15.** We sought the European Union's perspective by maintaining a regular dialogue with its institutions. This has included meetings with the European Commission's chief negotiator, Mr Michel Barnier, and the European Parliament's Brexit Co-ordinator, Mr Guy Verhofstadt MEP.³
- 16.** Throughout the course of the negotiations, we have sought to highlight the issues of importance to Wales and to ensure that the implications of Brexit for our country have been understood by both the UK and the EU.
- 17.** We reported on the previous iteration of the Withdrawal Agreement in November 2018.⁴ Whilst some notable changes have been made to the Withdrawal Agreement, particularly in relation to arrangements for the Ireland/Northern Ireland border, most of the Withdrawal Agreement text remains the same as the previous version.
- 18.** This report aims to update our November 2018 analysis.
- 19.** It is also important to note that the overwhelming likelihood is that the UK will leave the EU on Withdrawal Agreement terms on 31 January 2020. This makes

¹ External Affairs and Additional Legislation Committee, Implications for Wales of leaving the European Union, January 2017

² See the Committee's webpages for further details of its work

³ The Committee met Mr Barnier on 16 October 2017 and Mr Verhofstadt on 27 June 2017. Both meetings were held in Brussels.

⁴ External Affairs and Additional Legislation Committee, Withdrawal Agreement: Implications for Wales, November 2018

understanding the implications for Wales arising from the Withdrawal Agreement all the more important.

20. Our previous report reflected the possibility of different Brexit outcomes that are no longer probable in light of the outcome of the December 2019 general election. This report has been adjusted in light of this development.

2. The implications for Wales

Building on our previous work, we have compiled an assessment of the implications for Wales arising from the Withdrawal Agreement and accompanying Political Declaration on the EU-UK future relationship.

Sectoral analysis

21. The period within which we have been considering our response to the latest version of the Withdrawal Agreement has been especially dynamic.

22. To enable a response, we have focused our analysis on seven areas:

- The economy and trade with the EU;
- Ports and Transport;
- Agriculture, Food and Fisheries;
- Energy and Environment;
- Healthcare;
- Equality and Human Rights; and
- Institutions.

23. Annex A to this report provides details of this analysis under each of these headings.

24. It is important to note that this analysis builds on our previous body of work, which has been published.

3. Our view

The Welsh and UK Governments need to provide details of what the Withdrawal Agreement means for the people of Wales so that they can plan effectively for the transition period and beyond

Further information to help inform the public

25. In our view, there remains a lack of information on the economic, legal and constitutional impact of leaving the EU on the terms of the revised Withdrawal Agreement. We are particularly concerned that at time of publication a full impact assessment of the implications of the revised Protocol for Ireland-Northern Ireland on Welsh ports and business has not been published.
26. We believe that the Welsh Government, working with the UK Government insofar as their assessment relates to Wales, should publish a full impact assessment of the implications for Wales of the revised Withdrawal Agreement.
27. It is critical this information is published as quickly as possible to aid Members in their consideration of the EU (Withdrawal Agreement) Bill and for preparations to be made for the transition period.
28. At our meeting on 4 November, Welsh Government officials told the Committee they were pressing the UK Government for further information on the implications of the revised Withdrawal Agreement which they hoped would be provided to inform the Assembly's consideration of the Legislative Consent Motion on the EU Withdrawal Agreement Bill.

RECOMMENDATION

Recommendation 1. To ensure that Wales is as prepared as possible for the transition period, we recommend that the Welsh Government, working with the UK Government, prepares an assessment of the economic, legal and constitutional implications for Wales arising from our departure from the EU on the terms of the Withdrawal Agreement.

Annex A: Our analysis

Agreement on the withdrawal of the United Kingdom from the European Union – the extent to which it addresses issues raised by the Committee

This annex sets out the extent to which the revised Withdrawal Agreement addresses key issues raised by the Committee in its previous reports.

The paper is separated out into seven areas, as follows:

- The economy and trade with the EU;
- Ports and Transport;
- Agriculture, Food and Fisheries;
- Energy and Environment;
- Healthcare;
- Equality and Human Rights; and
- Institutional arrangements

1. The economy and trade with the EU

1.1. Issues raised by the Committee

The implications for Wales of leaving the European Union, published by the Committee in January 2017, set out a number of issues of concern in respect of the Welsh economy and trade with the EU.

The vast majority of the evidence received showed that ensuring frictionless access to the single market (i.e. no tariffs and no non-tariff barriers) is of crucial importance to the Welsh economy.

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 would pose significant risks for this sector, especially for manufacturers that exist within global value chains.

The Committee recognised 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 consequences as a future immigration policy for the UK is developed.

In November 2019, the Committee's report [Changes to freedom of movement after Brexit - the implications for Wales](#) called for the current proposed salary threshold of £30,000 for Tier 2 visas for EU nationals to be reduced in order to better reflect the Welsh context. Additionally the report recommended that the Welsh Government undertake exploratory work on a spatially-differentiated immigration policy after Brexit. It also recommended that the Welsh Government should call on the UK Government to produce a Shortage Occupation List for Wales.

1. 2. How the Withdrawal Agreement responds to these issues

Many of the issues around the economy and trade are covered in the sections below on the transition period, the future relationship, and the Protocol on Ireland-Northern Ireland. However, [the revised Withdrawal Agreement](#) covers goods placed on the market (Articles 40 to 46 of the draft agreement) and ongoing customs procedures (Articles 47 to 50 of the draft agreement). These highlight that goods placed on the EU market before the end of the transition period (also known as the implementation period) will be able to continue to circulate freely between the UK and EU, however the onus will be on businesses to prove that the good was placed on the market before 31 December 2020. In relation to ongoing customs procedures, goods that are under a customs movement at the end of the transition period will continue to be treated under EU law.

In relation to the ability of EU citizens to live and work in the UK after Brexit, Part Two of the revised Withdrawal Agreement covers citizens' rights. Articles 13 to 23 of the draft agreement cover the rights of EU citizens to live in the UK, while Articles 24 to 29 cover employment rights and professional qualifications.

The Withdrawal Agreement states that all EU citizens lawfully residing in the UK at the end of the transition period will be able to stay in the UK. If they have already lived in the UK continuously and lawfully for five years by 31 December 2020, EU

citizens will have the right to live in the UK permanently. EU citizens who have lived in the UK for less than five years, as at 31 December 2020, will be able to stay until they have lived in the UK for five years, and then will gain the right to reside permanently in the UK. Close family members will be able to join EU citizens who have the right to permanently reside in the UK if the relationship existed on 31 December 2020, and still exists when the family member wishes to come to the UK. Children born to EU citizens who have the right to reside permanently in the UK are also covered by the agreement.

EU citizens who work or are self-employed in the UK will be guaranteed broadly the same rights as they currently have. These include the right not to be discriminated against on grounds of nationality, and the right to equal treatment with UK nationals in areas such as the right to work (in employment or as self-employed); the right to help from Job Centres; conditions of employment and work; the right to social advantages (such as welfare benefits) and tax advantages; rights related to trade union membership; access to housing; and the right for their children to receive an education and to access training and apprenticeships. EU citizens with professional or trade qualifications covered by EU law who live or work in the UK will continue to have their qualifications recognised if they obtained or applied for recognition before 31 December 2020. This includes the recognition of a vast number of academic qualifications and periods of training or experience across many disciplines, including doctors, nurses, dentists and vets, teachers, architects, estate agents, carpenters, hairdressers and beauticians. It also specifically covers lawyers, auditors and people working in the trade and distribution of toxic products.

1.3. What will happen during the transition period

During the transition period until 31 December 2020, which is covered in Part Four of the draft Withdrawal Agreement, UK and EU businesses will trade on the same terms as they do now. Article 127 of the draft agreement highlights that the UK will be subject to EU law in the transition period, except where the agreement sets out exceptions. This means that there will be no tariffs or other non-tariff barriers to trade between the UK and EU during this period, and that the UK will continue to be in the single market and customs union. There will also be freedom of movement throughout this period. The revised agreement makes provisions to allow the recognition of professional qualifications obtained before the end of the transition period.

1. 4. What does the political declaration say about the future relationship between the UK and EU

The **political declaration**, published by the UK Government and the EU on 19 October 2019, highlights that the UK Government and EU agree to work towards an “ambitious, broad, deep and flexible” partnership with a comprehensive free trade agreement “at its core”. The partnership will be underpinned by provisions ensuring a level playing field for open and fair competition. The UK and EU will uphold “the common high standards applicable in the Union and the United Kingdom at the end of the transition period” on state aid, competition, social and employment standards, environmental standards, climate change and relevant tax matters.

On goods, the UK and EU aim to deliver no tariffs, charges or quantitative restrictions (overt or disguised quotas or other restrictions). The UK and EU will establish “ambitious customs arrangements”, while respecting the integrity of their separate markets. These arrangements could include mutual recognition of trusted traders’ programmes and administrative co-operation on customs and VAT. However, the revised agreement states that the application of customs checks will depend in part on “the extent of the United Kingdom's commitments on customs and regulatory co-operation”.

On services, the political declaration states that the future relationship will seek to develop a level of liberalisation in trade in services well beyond the commitments of World Trade Organisation (WTO) membership with substantial sectoral coverage. Host state rules will apply to market access and national treatment (i.e., mutual recognition is not envisaged), but with a guarantee of non-discrimination. With regard to professional qualifications, the outline political agreement says merely that “appropriate arrangements” are envisaged.

On financial services, the UK and EU will work towards agreeing that each other’s regulatory standards are equivalent by June 2020.

1. 5. The Protocol on Ireland-Northern Ireland

The UK and the EU have agreed a revised Protocol on Ireland-Northern Ireland. This new arrangement would apply for a four-year initial period and then its continuity would be subject to the consent of the Northern Ireland Assembly.

Northern Ireland will stay aligned to the EU's regulations on goods listed in the Annexes to the Protocol. This includes rules in relation to state aid and sanitary and phytosanitary measures. Compliance with these rules will be checked at

border inspection posts in ports and airports. As long as this alignment is in place this will, in effect, create a regulatory border in the Irish Sea after the UK leaves the EU.

Northern Ireland will apply the EU's customs code to any goods entering Northern Ireland that are intended for, or are “at risk” of entering the EU's single market via Ireland. The definition of goods “at risk” is to be considered during the transition period by the Joint EU-UK Specialised Committee established by the Withdrawal Agreement to oversee the Protocol.

The UK will be responsible for operating and enforcing the EU's customs code and will collect EU tariffs on relevant goods. Importers whose goods are deemed “at risk” but who can prove that their goods stayed within Northern Ireland will be reimbursed if the EU tariff rates they paid are higher than any UK tariff rates that would have applied.

Northern Ireland will remain part of the UK's VAT area but will comply with EU VAT rules for goods. The VAT system in Northern Ireland will be administered by HMRC and the UK Government will collect relevant revenues. Any VAT exemptions or reductions that have been agreed by the EU for Ireland may also apply in Northern Ireland to ensure fair competition.

If the Northern Ireland Assembly decided at a point in the future to not apply the Protocol then there would be a two year transition period where Northern Ireland would transition away from relevant EU rules and adopt UK legislation in relevant areas.

For as long as the Northern Ireland Assembly consents to the Protocol being in place then Welsh businesses who are exporting goods to Northern Ireland that are deemed to be at risk of entering the EU market via Ireland will be subject to additional checks at airports and seaports if they export directly into Northern Ireland.

It remains unclear what checks will be placed on goods travelling from Northern Ireland to the UK and what impact this will have on the Welsh economy.

2. Ports and transport

2.1. Issues raised by the Committee

In November 2019, the Committee took evidence on the implications of the revised Withdrawal Agreement and Political Declaration for Welsh ports and transport. The [Committee is](#) concerned that no impact assessment has been made of the impact of the revised Withdrawal Agreement on Welsh ports. The Committee also heard that clarity is needed as soon as possible on the need for new infrastructure arising as a result of the revised Withdrawal Agreement and Protocol on Ireland-Northern Ireland.

In August 2017, the Committee's report on [the implications of Brexit for Welsh ports](#) noted that customs delays at ports could have an unwelcome impact on Welsh roll-on roll-off ports, particularly Holyhead, Pembroke Dock and Fishguard. In its November 2018 [report on the preparedness of Welsh ports](#), the Committee reiterated these concerns and said that it had heard repeated concerns about the vulnerabilities of Wales' major roll-on roll-off ports (Holyhead, Pembroke Dock, and Fishguard) to any new delays after Brexit. The Committee was concerned about the lack of physical capacity and infrastructure to accommodate new customs and border checks. The Committee also noted stakeholders' concerns that a suitable technological solution to the problem of processing customs checks may not be ready and in place at the end of a transition period. In the Committee's previous work on Brexit preparedness, it agreed that mutual recognition of civil aviation certification must be secured after Brexit to ensure the continued smooth operation of air travel in the UK and the EU before Brexit and note that the EU (Withdrawal) Act 2018 contains provisions to facilitate this.

2.2. How the Withdrawal Agreement responds to these issues

Many of the issues around ports and transport are covered in sections 2.3 to 2.5 of this paper - on the transition period, the future relationship, and the Protocol on Ireland-Northern Ireland. However, as set out in section 1.2, the revised Withdrawal Agreement covers goods placed on the market (Articles 40 to 46 of the draft agreement) and ongoing customs procedures (Articles 47 to 50 of the draft agreement). Additionally, Annex IV to the draft agreement sets out a number of EU customs and excise databases that the UK will continue to have at least partial access to beyond leaving the EU. These include import and export control systems and tariff databases. This is an exception from Article 8 of the revised Withdrawal Agreement, which sets out that the UK will not have access to EU

networks, information systems or databases after the end of the transition period, unless they are included in the agreement.

2.3. What will happen during the transition period

The UK will remain in the single market and customs union throughout the transition period, meaning that current customs arrangements will continue to apply until 31 December 2020.

During the transition period, current arrangements for road haulage will continue. Currently, UK hauliers carrying out international journeys must hold a Standard International Operator's Licence along with a Community Licence for journeys to, from or through the EU. A Community Licence allows UK hauliers unlimited access to international journeys for operations in the EU including trade between EU countries and transit across the EU. It also allows for limited cabotage (the haulage of goods within a country by a foreign haulier) within the EU.

There is a wider European Conference of Ministers of Transport (ECMT) permit scheme that allows UK hauliers to carry goods to or through 43 countries (including all EU countries except Cyprus) with a limited number of permits available to the UK.

In terms of aviation, the UK will continue to be part of the single European aviation market, the European Common Aviation Area, during the transition period. However, under Article 128 of the revised Withdrawal Agreement, as is the case with all current EU agencies, it is not clear whether the UK will be able to continue participating in the European Aviation Safety Agency, and if so to what extent. The effect of Article 7 of the revised Withdrawal Agreement is that, after withdrawal, the UK will not be entitled to participate in the decision-making and governance of the bodies, offices and agencies of the EU. This loss of participation rights will, accordingly, apply in the transition period. Therefore, the UK Government's [explainer to the previous version of the Withdrawal Agreement](#) highlights that participation will be on a case-by-case basis. This explainer still applies as these provisions have not been amended in the revised Withdrawal Agreement. Article 128 of the revised Withdrawal Agreement, which notes that there are cases where the UK can be invited to attend certain meetings of the EU and meetings of EU bodies, offices and agencies, provided that at least one of two conditions is met:

- Where the discussion concerns "acts" (i.e. EU decisions) addressed to the UK or individuals or companies there (e.g. decisions that a UK company has breached EU rules); or

- Where the presence of the UK is necessary and is in the interests of the EU.

However, participations in the meetings will not include a right to vote.

2. 4. What does the political declaration say about the future relationship between the UK and EU

Customs arrangements are covered in the political declaration setting out the framework for the future relationship between the UK and the EU. This aims to work towards comprehensive arrangements creating a free trade area.

While the EU and UK will have regulatory autonomy, they will put in place provisions to ensure that regulatory arrangements are transparent, efficient, and avoid unnecessary regulatory barriers. The UK and EU will establish “ambitious customs arrangements”, while respecting the integrity of their separate markets. These arrangements could include mutual recognition of trusted traders’ programmes and administrative co-operation on customs and VAT. The extent of the UK’s commitments on customs and regulatory co-operation will be taken into account in applying checks and controls at the border. In other words, it would appear that the closer the alignment of rules and standards (and therefore the less the UK diverges from the EU), the fewer checks and controls will be required.

The political declaration will look to secure comparable market access for freight and passenger road transport operators, which will be based on relevant existing international obligations. Bilateral agreements on cross-border rail services will be established. Maritime connectivity will be based on international law.

In relation to aviation, the political declaration states that the UK and EU will seek to deliver a Comprehensive Air Transport Agreement, covering market access and investment, aviation safety and security, air traffic management and provisions to ensure fair and open competition. The UK and EU will seek to make further arrangements to enable co-operation with a view to high standards of aviation safety and security, including close co-operation between the European Aviation Safety Agency and the UK Civil Aviation Authority.

2. 5. The Protocol on Ireland-Northern Ireland

As set out in section 1.5, the revised Ireland-Northern Ireland Protocol will apply from the end of the transition period until such time as the Northern Ireland Assembly decides that it should no longer apply. Goods exported to Northern Ireland from Great Britain that are deemed to be ‘at risk’ of entering the EU

market via Ireland will be subject to additional checks both in terms of customs and regulatory compliance. It is as yet unclear what checks will apply to goods coming from Northern Ireland into the UK.

Additional infrastructure and checks are likely to be needed at Welsh ports but the UK Government is yet to publish further detail on the exact extent of these.

3. Agriculture, Food and Fisheries

3. 1. Issues raised by the Committee

In its March 2018 report, Wales's future relationship with Europe, Part one: a view from Wales, the committee noted that it recognises the challenges posed to trade in perishable goods such as farming, fishing and food by the creation of new non-tariff barriers after Brexit. Its view was that new non-tariff barriers such as plant and animal health checks would pose a threat to the continued export of Welsh agricultural, fishing and food products to the EU. The Committee concluded that it was vital for Wales that preferential market access, free of tariff and non-tariff barriers, is secured after Brexit. Following the publication of the revised Withdrawal Agreement and Political Declaration, in November 2019, the Committee reiterated that the future relationship with the European Union should prioritise frictionless trade, free from tariff and non-tariff barriers.

On fisheries, the Committee acknowledged that the majority of the Welsh fleet fishes for shellfish, which are non-quota species and, consequently, under Member State control. Therefore, Welsh fisheries are not as affected by EU policy, such as quota allocation under the Common Fisheries Policy, as the UK as a whole. In terms of trade, the majority of shellfish landed in Wales are exported to the EU, and so this is another area where continued “unfettered” access to the Single Market was seen as important by the Committee. The Committee agreed that non-tariff barriers could have a significant impact on fisheries, as even marginal delays for live shellfish exporters could have a large impact on businesses.

3. 2. How the Withdrawal Agreement responds to these issues

On agricultural trade, the revised Withdrawal Agreement provides that goods lawfully placed on the market in the EU or the UK before the end of the transition period may continue to freely circulate in and between these two markets, until they reach their end users, without any need for product modifications or re-labelling. This means that goods still in the distribution chain after the end of the

transition period will be able to reach their end users in the EU or the UK without having to comply with any additional product requirements.

The exception to this is Article 41 of the revised Withdrawal Agreement. This states that, during the transition period, the movement of live animals and animal products from the UK to the EU will not only be subject to “normal” EU law (in common with other “goods”), but will also be subject to additional checks under EU rules for third countries on imports and sanitary controls at the border. Imports from the EU to the UK will be subject only to EU-law rules, as EU law will apply generally to the UK during this period. Once the transition period comes to an end, trade in animals and animal products may be governed by a new trade agreement between the UK and the EU, or will be affected by the Protocol on Ireland-Northern Ireland if goods are exported directly to or from Northern Ireland. Apart from those considerations, imports to the EU will be governed by EU law and imports to the UK will be governed by UK law. According to the agreement, this is necessary in view of the high sanitary risks associated with such products, and the need for effective veterinary controls when these products enter the EU market or the UK market.

Article 54 of the draft agreement includes provision for geographical indications on foods such as Welsh lamb. These foods will automatically obtain both equivalent protection within the UK and maintain the existing protection in the EU. Plant variety rights will be granted the same protection.

3. 3. What will happen during the transition period

As noted in the trade section above, during this period, current rules will continue to apply as if the UK were a Member State, and the UK will continue to participate in the EU customs union and the single market. During the transition period, the UK will have to comply with the EU's external trade policy and so will not be able to enter into trade agreements with other countries unless approved by the EU, although it will be able to negotiate their terms. If the transition period is extended, the UK would cease to participate in the EU budget as if a Member State at the end of 2020, and the UK would not be part of the Common Agricultural Policy during the transition. The UK would be free to introduce new agricultural policies, providing the payments remain within certain agreed limits (outlined in Article 132 of the revised Withdrawal Agreement).

On fisheries, Article 130 of the revised Withdrawal Agreement states that the Common Fisheries Policy will continue to apply to the UK throughout the transition, so the UK will be bound by the decisions on fishing opportunities until the end of the transition period, but will not be able to vote on those decisions.

However, it will be consulted. The UK and the EU intend to conclude a new fisheries agreement in time by 1 July 2020 determine fishing opportunities for the first year after the transition period.

3. 4. What does the political declaration say about the future relationship between the UK and EU

As mentioned in section 1.4 above, Part II of the political declaration, on the economic partnership, will be important for the agricultural industry. This section outlines the intention to create a new free trade area with no tariffs, charges or quantitative restrictions across all goods, with “deep regulatory and customs co-operation” and provisions to ensure a level playing field. There will be some customs checks and controls on trade at the border, but the extent of these checks is not outlined and will depend on the degree of regulatory and customs co-operation.

In terms of fishing, the political agreement aims for co-operation bilaterally and internationally between the UK and the EU to ensure fishing at sustainable levels, to promote resource conservation, and to foster a clean, healthy and productive marine environment, noting that the United Kingdom will be an independent coastal state which can preserve regulatory autonomy whilst no longer being part of the Common Fisheries Policy.

As noted above, the UK and the EU intend to conclude a new fisheries agreement covering access to waters and quotas by 1 July 2020, in time to determine fishing opportunities for the first year after the transition period.

3. 5. The Protocol on Ireland-Northern Ireland

As set out in section 1.5 any agricultural or fisheries products exported directly into Northern Ireland at risk of entering the EU market via Ireland will be subject to additional customs and regulatory checks. There will also be checks on agriculture and fisheries goods exported from Northern Ireland to the UK but the extent of these have not yet been set out.

Agriculture and fisheries goods produced in Northern Ireland, unlike UK goods, will be free to enter the EU market as they do currently. The extent to which this is different to the rest of the UK will depend on any Free Trade Agreement agreed between the UK and the EU and the extent to which it leads to customs and regulatory alignment.

4. Energy and environment

4.1. Issues raised by the Committee prior to the publication of the Withdrawal Agreement

In its January 2017 report, the committee expressed concerns that environmental protection could be lessened on leaving the EU and that environmental protection measures could become fragmented. Its view was that carbon budgets set by the UK should be at least as challenging as the EU's commitments to tackle climate change and that they must continue to be met after the UK has left the EU.

Much of the Assembly's work in this area has been done by the Climate Change, Environment and Rural Affairs (CCERA) Committee. In its June 2018 report and October 2019 follow-up inquiry report, the CCERA Committee noted the considerable concern across the environment sector of the potential environmental "governance gap" post-Brexit. The Committee concluded that the Welsh Government's actions to create a domestic environmental governance body to replace EU governance functions were not sufficiently advanced. Such functions include: monitoring of and reporting on environmental law implementation; receiving citizens' complaints; and taking enforcement action for non-compliance with environmental law. The Committee was also critical of the Welsh Government's proposals relating to the core EU environmental principles (such as the precautionary principle) which it felt did not go far enough to re-instate the principles at a domestic level.

4.2. How the Withdrawal Agreement responds to these issues

Issues around the environment are covered in sections 4.3 to 4.5 of this paper, on the transition period, the future relationship, and the Protocol on Ireland--Northern Ireland. In terms of energy, the draft Withdrawal Agreement contains provisions relating to the UK's withdrawal from the European Atomic Energy Community (Euratom), including agreement that ultimate responsibility for spent fuel and radioactive waste remains with the State where it was generated, in line with international conventions and Euratom legislation.

4.3. What will happen during the transition period

During the transition period, EU environmental law will continue to apply in full in the UK, including the governance functions currently exercised by EU bodies such as the European Commission and the Court of Justice of the European Union.

4. 4. What does the political declaration say about the future relationship between the UK and EU

On energy, the political declaration states that the UK and the EU have agreed to put in place mechanisms to enable electricity and gas to be traded in a cost-effective and timely way. It states that they should consider co-operation on carbon pricing by linking a UK national greenhouse gas emissions trading system with the EU's emissions trading systems. In addition, it includes a statement that the future relationship should include wide-ranging Nuclear Co-operation Agreement between the UK and the Euratom, to ensure “existing high standards of nuclear safety”.

In terms of the environment, the updated political declaration includes key areas for environmental co-operation in the areas of climate change, sustainable development and cross-border pollution. Specifically on climate change, it states that the future relationship should reaffirm the commitments that the EU and the UK have made to international climate change pledges such as the Paris Agreement. However, while the UK and EU will continue to co-operate on environmental issues, the declaration states that their “decision-making autonomy” will be preserved.

4. 5. The Protocol on Ireland-Northern Ireland

For as long as the Protocol remains in force, Northern Ireland will maintain regulatory alignment on goods with the EU including on any regulations related to environmental standards such as energy efficiency standards, waste requirements or chemicals regulation. This will mean that goods entering Northern Ireland from the UK will be required to meet these standards in order to circulate within Northern Ireland.

Under Article 9 of the Protocol, Northern Ireland will remain aligned to the Single Electricity Market.

5. Healthcare

5. 1. Issues raised by the Committee

In its November 2018 [report on the preparedness of the healthcare and medicines sector in Wales](#), the Committee noted that concerns remained among stakeholders about the implications of Brexit for the health and social care workforce. In its [November 2019 report, Changes to freedom of movement after](#)

Brexit – the implications for Wales, the Committee reiterated this view and called for the current proposed salary threshold of £30,000 for Tier 2 visas for EU nationals to be reduced in order to better reflect the Welsh context.

5. 2. How the revised Withdrawal Agreement responds to these issues

In terms of the ability of EU citizens to work in the UK after Brexit, as set out in section 1.2, the revised Withdrawal Agreement provides that all EU citizens lawfully residing in the UK at the end of the transition period will be able to stay in the UK. In addition, the EU citizens who work or are self-employed in the UK will be guaranteed broadly the same rights as they currently have.

In relation to the continued recognition of medical qualifications, Article 27 of the revised Withdrawal Agreement states that EU citizens with professional qualifications covered by EU law who live or work in the UK will continue to have their qualifications recognised if they obtained or applied for a recognition decision before the end of the transition period. The professions falling under EU law (Directive 2005/36/EC) include nurses, midwives, doctors (general practitioners and specialists), dental practitioners and pharmacists.

The revised Withdrawal Agreement also provides that EU regulations on social security coordination will continue to apply to EU citizens living in the UK and UK nationals living in the EU at the end of the transition period. This means that citizens who have moved between the UK and the EU before the end of the transition period will have continued access to healthcare cover. In addition, the revised Withdrawal Agreement provides that where the UK or a Member State is responsible for the healthcare of these citizens, they will be entitled to reciprocal healthcare cover from their competent country.

Furthermore, in terms of reciprocal healthcare, the rights of UK nationals who are not living in the EU at the end of the transition period but have paid social security contributions in a Member State in the past will be protected. The revised Withdrawal Agreement will also protect the rights of individuals who are in a cross-border situation at the end of transition period, and who are entitled to a UK European Health Insurance Card (EHIC), so that they will still be able to benefit from that scheme for as long as they are in that cross-border situation. This applies to UK nationals who are studying in or visiting the EU.

Finally, the revised Withdrawal Agreement will protect the rights of people visiting the UK or the EU for planned medical treatment, where authorisation was

requested before the end of the transition period, so they are able to commence or complete their treatment.

In terms of continued involvement in EU bodies and agencies, the revised Withdrawal Agreement states that participation will be on a case-by-case basis.

With regards to the continued availability of medicines and medical devices, Article 41 of the revised Withdrawal Agreement states that goods placed on the EU market before the end of the transition period will be able to continue to circulate freely between the UK and EU, with the onus on businesses to prove that the good was placed on the market before the end of the transition period. This means that medicines and medical devices placed on the market before 31 December 2020 will continue to circulate freely between the UK and the EU and they will not require product modifications or relabelling. Additionally any compliance activity already undertaken for these goods, such as conformity assessments, will continue to be recognised in both the UK and the EU. However, the revised Withdrawal agreement requires the UK to transfer files or documents relating to certain ongoing product assessments to the EU, and vice versa. This applies to assessments of medicines and chemicals being carried out by the Medicines and Healthcare products Regulatory Agency (MHRA).

With regards to patent protection for medicines, Article 54 of the revised Withdrawal Agreement guarantees continuity of process in application for patent extension and provides that where the owners of a medicines or agrochemical patent have applied to UK authorities for a period of additional protection before the end of the transition period, that application will be considered in line with the current procedure and the level of protection provided will be the same as prescribed under EU law.

5. 3. What will happen during the transition period

As set out in section 1.3, there will be freedom of movement throughout the transition period. This means that EU citizens will continue to be able to come to the UK to work in the health and social care sector and enjoy the same rights as they currently have. Similarly, there will be continued recognition of medical qualifications between the UK and the EU.

As set out in section 1.3, there will be no tariffs or other non-tariff barriers to trade between the UK and the EU during the transition period and the UK will continue to be in the single market and customs union. This means that medicines and medical devices will continue to circulate freely between the UK and EU during the transition period.

Citizens' rights to healthcare cover including reciprocal healthcare and planned medical treatment will stay the same during the transition period.

The UK's involvement in EU institutions during the transition period will reflect the fact that it is no longer a Member State. However, Article 128 of the revised Withdrawal Agreement states that continued involvement in EU bodies and agencies will be on a case-by-case basis and the UK and the EU have agreed that representatives or experts from the UK will be able to continue to attend certain EU meetings, if invited, although they will not be able to vote.

5. 4. What does the political declaration say about the future relationship between the UK and EU

As set out in section 1.4, the political declaration highlights that the UK Government and EU will work towards agreeing a "broad" and "deep" partnership with a Free Trade Agreement at its core combining deep regulatory and customs co-operation, underpinned by provisions to ensure a level playing field for open and fair competition. These arrangements will apply to medicines and medical devices.

In terms of future cooperation in the area of health, the political declaration states that the UK and EU should co-operate in the same way that the EU does in its existing arrangements with third countries. This would involve co-operation in international fora on prevention, detection, preparation for and response to established and emerging threats to health security.

The UK and EU will explore co-operation of UK authorities with the European Medicines Agency.

With regard to the recognition of professional qualifications, the political declaration says only that "appropriate arrangements" are envisaged.

5. 5. The Protocol on Ireland-Northern Ireland

With regard to reciprocal healthcare, Article 3 of the Protocol guarantees that the UK can continue to make arrangements with Ireland relating to the Common Travel Area. This means that the UK and Ireland will be able to continue to guarantee the reciprocal rights of British and Irish citizens to access health services in the other state.

Article 7 of the Protocol states that full or partial access by the UK to EU networks, information systems or databases may be agreed, if such access is considered

“strictly necessary” to enable the UK to comply with its obligations under the Protocol.

6. Equality and Human Rights

6.1. Issues raised by the Committee prior to the publication of the Withdrawal Agreement

The Committee’s January 2017 report **The implications for Wales of leaving the European Union** highlighted that the Welsh Government and Assembly must be alert to any weakening of standards on equalities legislation.

The Committee’s joint report with the Equalities, Local Government and Communities Committee, published in October 2018, raised further concerns that relate to the draft Withdrawal Agreement:

- **The EU Charter of Fundamental Rights:** how will Charter Rights continue to apply in Wales.
- **Non-regression of existing equality and human rights obligations:** whether existing rights and obligations would be eroded or removed as a result of Brexit.

6.2. How the revised Withdrawal Agreement responds to these issues

Many of the issues described in section 6.1 are covered in the forthcoming sections on the transition period, the future relationship, and on the Protocol on Ireland-Northern Ireland. The main equality and human rights aspect potentially extending beyond the end of the transition period relates to Northern Ireland.

Article 2 of the Protocol on Ireland-Northern Ireland states that the UK commits to ensuring no diminution of the rights protected in the Rights, Safeguards and Equality of Opportunity chapter of **Belfast Agreement 1998 (the Good Friday Agreement)**. Article 2 states that the UK Government will continue to facilitate the related work of the institutions and bodies set up by the 1998 Agreement including the Northern Ireland Human Rights Commission (NIHRC), the Equality Commission for Northern Ireland (ECNI) and the Joint Committee of representatives of the Human Rights Commissions for Northern Ireland and Ireland. The UK Government will confer new powers on the NIHRC and ECNI to monitor, enforce, advise and report on the commitment.

6. 3. What will happen during the transition period

During the transition period, the UK will need to continue to interpret EU law in a manner consistent with the Charter of Fundamental Rights. Chapter 3 of this covers equality. However, there are two exceptions in relation to this. Article 127 of the revised Withdrawal Agreement highlights that Articles 39 and 40 of the Charter of Fundamental Rights will not be applicable to the UK either during the transition period, or after this. Article 39 relates to the right to vote and stand as a candidate in elections to the EU Parliament, and clearly the UK will no longer be electing MEPs after withdrawal. Article 40 enshrines the rights of EU citizens to stand and vote in municipal (local) elections in the EU Member State in which they live, on the same basis as nationals of that State. The UK will be free to continue to allow EU nationals to do so after withdrawal but will no longer be required to do so. The UK has signed continuity agreements in relation to the voting rights of citizens with Spain, Portugal and Luxembourg. In addition, the Senedd and Elections (Wales) Act 2020 recently passed by the Assembly will allow foreign nationals to vote in future Assembly elections. This will include EU citizens. Similarly the Local Government and Elections (Wales) Bill seeks to introduce similar rights in local government elections in Wales.

Additionally, four European Council Directives on equality will continue to apply to the UK during the transition period. These protect against discrimination on the same grounds as the Equality Act 2010: racial or ethnic origin, gender, pregnancy and maternity, marriage/civil partnership status, sexual orientation, gender reassignment, disability, age and religion or belief.

As stated, the content of the Equality Act 2010 mirrors and incorporates the provisions of these directives (although as the Equality and Human Rights Commission recognises some significant anti-discrimination laws on race, gender and disability were passed by the UK independently of EU law; these have since been incorporated into the Equality Act 2010). This is UK law, so will remain in place after the end of the transition period unless it is repealed or amended (and much of the content existed in UK law before being passed into EU law, while other aspects are derived from EU law). However, during the transition period, any adverse effect on that law would need to be measured against the European Convention on Human Rights. If the UK remains a signatory to the Convention after the transition period, this would also continue to be the case, although it is not clear whether this will happen.

6. 4. What does the political declaration say about the future relationship between the UK and EU

The outline political agreement states that an essential prerequisite to any future relationship will be that it is underpinned by long-standing commitments to the fundamental rights of individuals, including continued adherence to the European Convention on Human Rights. This means the UK will also continue to adhere to its system of enforcement, i.e. respecting judgements of the European Court of Human Rights.

As set out in section 1.4, the outline political declaration highlights the need for a level playing field for open and fair competition. In relation to equality and human rights, the employment and social provisions mentioned in the outline political declaration will be of particular importance.

6. 5. The Protocol on Ireland-Northern Ireland

The provisions of the Protocol on Ireland-Northern Ireland that cover the rights of citizens and on-going protections are set out in section 6.2 of this paper. Annex 1 of the Protocol sets out the areas of EU equalities law that will continue to be applied in Northern Ireland and to Irish citizens as a result of commitments made in the Good Friday Agreement.

7. Institutional arrangements

7. 1. Issues raised by the Committee prior to the publication of the Withdrawal Agreement

In its [report](#) on Wales' future relationship with Europe, the Committee recommended that the Welsh Government "explores the opportunities for both governmental and non-governmental organisations in Wales to effectively engage with the EU and its institutions after Brexit."

The second part of the Committee's work on Wales' Future Relationship with Europe has included some exploration of how non-EU countries and regions engage with the EU.

In addition to its work on Wales' Future relationship with Europe, the Committee has been considering its relationship with the European Union's institutions during the transition period as part of its inquiry into [EU Law in Wales: What happens during the Brexit transition?](#)

The Chair of the Committee has also opened a dialogue with the European Parliament and the Committee of the Regions on the possible shape of future structures to facilitate inter-institutional relations.

7. 2. How the revised Withdrawal Agreement responds to these issues

The revised Withdrawal Agreement makes provision about institutional arrangements to manage, implement and enforce the agreement, including dispute settlement mechanisms. Article 164 provides that a Joint Committee, including representatives of the EU and the UK will be established and that it will be co-chaired by the EU and the UK. It states that it will meet at the request of the parties but will meet at least once a year in any event. Six specialised Committees will also be established to assist in implementing and applying the Agreement.

In the event of a dispute relating to the interpretation of the Withdrawal Agreement, an initial political consultation would take place in the Joint Committee. If no solution is found between the UK and the EU, either party can request the establishment of an arbitration panel for a binding assessment (although either party can ask the panel to review its assessment). If the dispute involves a question of EU law it must be referred to the Court of Justice of the European Union (CJEU) for a binding ruling, and other appropriate questions can also be referred to the CJEU at the request of either party. If the UK or the EU does not comply with the panel's decision, the panel can impose a lump sum or penalty payment to be paid to the other party, and, if non-compliance continues, the aggrieved party can suspend the application of relevant parts of the Withdrawal Agreement, or other UK-EU agreements, so long as this is proportionate to the breach originally complained about, and does not affect the citizens' rights terms of the Agreement.

Article 132 states that the Joint Committee will also be responsible for adopting a decision on whether there should be an extension to the transition period and if so, whether this is for up to one or two years. As outlined above, the transition period can only be extended once and the request must be made before 1 July 2020. The Withdrawal Agreement Bill currently before Parliament, if passed as introduced, would prevent UK Minister from adopting such a decision in the Joint Committee.

7. 3. What will happen during the transition period

During the transition period, the UK will no longer be part of EU-decision making. This means that the UK will not automatically be represented in EU institutions,

agencies and bodies after exit day on 31 January 2020. As a result, Wales' representation on the Committee of the Regions, the European Economic and Social Committee and the European Parliament will come to an end. Likewise, the UK will not be able to act as a "rapporteur" for European authorities or for Member States during the transition period.

However, Article 128 of the revised Withdrawal Agreement states that during the transition period, representatives or experts of the UK may be invited to attend certain EU meetings, and meetings of EU entities where representatives or experts of Member States take part, where the UK's presence is necessary and in the interests of the EU, or where discussions relate to individual "acts" (legally-binding decisions) addressed to the UK or a UK citizen or company (e.g. a decision that a UK company has breached EU competition law during the transition period). However, the UK representatives will not have voting rights at such meetings.

The revised Withdrawal Agreement also states in Article 129 that the UK will not be able to participate in the work of any bodies set up by the international agreements concluded by the EU, although the EU may consult the UK.

7. 4. What does the political declaration say about the future relationship between the UK and EU

While noting that the agreements relating to the future relationship still need to be formally negotiated between the UK and EU, the political declaration highlights that both parties will work towards "an overarching institutional framework covering chapters and linked agreements relating to specific areas of cooperation." It notes that this could take the form of an Association Agreement and that it will be possible to review the future relationship.

To ensure the functioning of the future relationship, arrangements will be made for its management, supervision, implementation, review and development over time as well as for the resolution of disputes and enforcement. In addition the UK and EU will seek to ensure "regular dialogue", including to discuss opportunities for cooperation in areas of mutual interest. The UK and EU also support a dialogue between the European Parliament and the UK Parliament. This should enable the sharing of views and expertise on issues relating to the future relationship.

As part of the future relationship, the UK and EU have agreed that a Joint Committee should be established which comprises EU and UK representatives. The Joint Committee would be responsible for:

- managing and supervising the implementation and operation of the future relationship;
- facilitating the resolution of disputes; and
- making recommendations relating to the evolution of the future relationship.

The UK and EU agree that they should seek to resolve disputes through discussion and consultation, including through the Joint Committee. "[A]ppropriate arrangements for dispute settlement and enforcement" will be set up, including a flexible mediation mechanism. The Joint Committee or either party will be able to refer the dispute to an independent arbitration panel. The decisions of the panel will be binding. The panel will refer disputes raising any issues of EU law to the Court of Justice of the European Union (CJEU). Disputes not raising issues of EU law will not be so referred.

7. 5. The Protocol on Ireland-Northern Ireland

Article 165 of the draft Withdrawal Agreement provides for the establishment of a committee on issues related to the transition of the Protocol on Ireland-Northern Ireland. According to Article 14 of the Protocol, this committee would facilitate the implementation and application of the Protocol and make recommendations to the Joint Committee, established by the Withdrawal Agreement, on the functioning of the Protocol. The committee would comprise representatives of the EU and the UK.

Article 15 of the Protocol established a joint consultative working group to serve "as a forum for the exchange of information and mutual consultation". The working group would include representatives of the UK and the EU but would not have power to make any binding decisions.