

# Negotiations on the UK's withdrawal from the EU

## Monitoring Report

25 February 2020



The Assembly and

**BREXIT**

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The Assembly and

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## 1. Introduction

This report provides a headline summary and analysis of the latest developments in the UK-EU negotiations, at the UK level and in Wales since 23 January.

### Summary of developments

**In the EU**, the Commission published its draft proposals for the negotiations in early February, which have since been the subject of discussions among Member States and the European Parliament. The draft proposals have reportedly been updated to reflect this input and are expected to be finalised at the EU's General Affairs Council on 25 February.

The **UK Government also** set out its approach to negotiations with the EU in a statement issued on 3 February. The Department for Exiting the European Union was dissolved and the Government confirmed that UK Chief Negotiator David Frost would lead the negotiations and report to the Prime Minister. UK and devolved Ministers met at the Joint Ministerial Committee (EU Negotiations) and the Ministerial Forum on trade. The Fisheries and Environment Bills were introduced to Parliament and the Agriculture Bill was considered by public bill committee. The Government set out plans for a new immigration policy for after the end of the transition period.

**In Wales**, the Counsel General and Brexit Minister said that the UK Government had 'made little effort' to take Welsh Government views into account in publishing their negotiating objectives. He said that the Welsh Government wanted to influence the UK Government's strategic choices within and between negotiations, but that to do that they needed access to underlying information. The Minister for International Relations and the Welsh Language told the External Affairs and Additional Legislation (EAAL) Committee that the UK and Welsh Governments were working to agree a concordat on Welsh Government engagement in international trade negotiations. The Welsh Government laid legislative consent memorandums indicating that it was content with the UK Fisheries Bill as drafted and that it had outstanding concerns about the UK Agriculture Bill. The Welsh Government also responded to the Committee's reports on common frameworks, international agreements and the Welsh Government international strategy.

## 2. Developments in the UK-EU negotiations

### UK position

On 3 February, the **Prime Minister delivered a speech** and **issued a written statement** confirming that the UK is seeking either a future relationship based on a free trade agreement (FTA) or one which continues on the terms provided by the Withdrawal Agreement:

The question for the rest of 2020 is whether the UK and the EU can agree a deeper trading relationship on the lines of the free trade agreement the EU has with Canada, or whether the relationship will be based simply on the Withdrawal Agreement deal agreed in October 2019, including the Protocol on Ireland / Northern Ireland.

He went on to state that an FTA would be central to the future UK-EU relationship, with additional agreements covering specific areas, such as fisheries, internal security and 'more technical' agreements, such as on aviation or civil nuclear cooperation. Each agreement should include dispute settlement arrangements. The following areas are suggested for inclusion in a UK-EU FTA:

National treatment and market access for goods; Trade remedies; Technical barriers to trade; Sanitary and phytosanitary measures; Customs and trade facilitation; Cross-border trade in services and investment; Temporary entry for business purposes; Regulatory framework; Mutual recognition of professional qualifications; Financial services; Road transport; Competition policy, subsidies, environment and climate, labour and tax.

More detail is provided for two further agreements on fisheries and internal security, followed by further areas of cooperation:

Air transport; Border, immigration and social security cooperation; Participation in EU programmes; Other areas of mutual interest.

On such cooperation, the statement explains that 'future cooperation in other areas does not need to be managed through an international Treaty, still less through shared institutions.' The statement ends with a note on financial services equivalence and data adequacy which recognises that the UK will be 'operating exactly the same regulatory frameworks as the EU at the point of exit. The UK intends to approach its own technical assessment processes in this spirit.'

### David Frost speech, Brussels 17 February

The UK's lead Brexit negotiator **delivered a speech** at a university in Brussels on 17 February in which he sets out the latest position. He stated that whilst the UK Government's preferred option is a 'Canada-Free Trade Agreement-type relationship' with the EU, it is 'ready to trade on Australia-style terms' if this isn't possible. He also stressed the importance of sovereignty to the UK Government and stated that the UK will 'have a huge advantage over the EU' in being able to set new high standards, attract investment and be able to expedite decision making.

### EU position

The EU Commission published its **negotiating proposal** on 3 February 2020. This is expected to be finalised at the **EU's General Affairs Council meeting** on 25 February 2020. The proposal sets out the EU's vision for a comprehensive future relationship, made up of a 'single package' comprising three elements (governance, economic partnership and a security partnership), based on the rules-based international order. It refers to the UK as a:

Non-Schengen third country that cannot have the same rights and enjoy the same benefits as a member.

The proposal provides a detailed overview of the EU's negotiating position across the **economic partnership**, consisting of the following areas:

Goods; Services and investment; Financial services cooperation; Digital trade; Capital movements and payments; Intellectual property; Public procurement; Mobility; Transport (aviation, road and rail); Energy and raw materials; Fisheries; Small and medium-sized enterprises (SMEs); Global cooperation; Level Playing Field (LPF) and sustainability (competition, state-owned enterprises; taxation; labour and social protection; environment; climate change; sustainable development).

Paragraph 85 of the proposals states that fisheries will:

guide the conditions set out in regard of other aspects of the economic part of the economic partnership.

In reaching the EU's objective, the partnership should include provisions that build on existing reciprocal access conditions, quota shares and the traditional activity of the EU fleet. An agreement on fisheries should be reached by 1 July 2020, as per the commitment in the **Political Declaration**, in order for arrangements to be in place for the first year post-transition.

For the EU's envisaged **security partnership** with the UK, the proposal sets out its position relating to:

Law enforcement and judicial cooperation in criminal matters; Foreign policy, security and defence; Thematic cooperation (such as on cyber security and irregular migration).

The envisaged **governance arrangements** include proposals on institutional arrangements, such as structure, management, administration, supervision and dispute resolution. This includes the ability of a UK-EU governing body to refer a dispute to an independent arbitration panel. On questions of EU law, disputes should be referred to the CJEU. In the event of non-compliance with a decision of the panel or CJEU, the proposals suggest a system of financial compensation or taking appropriate measures, such as suspending its obligations under the agreement in cases of persistent non-compliance. The envisaged procedure is available as an **infographic flow chart**.

### Gibraltar

The EU proposals confirm that **Gibraltar will not be included** in the territorial scope of the agreements concluded in the negotiations, although this does not preclude further separate agreements regarding Gibraltar, which will require the prior agreement of Spain.

### European Parliament resolution

The European Parliament supported the Commission's proposals in a resolution **adopted on 12 February**. The resolution expands on the Commission's proposals in more detail in some areas, including on the Ireland/Northern Ireland Protocol, fisheries, international obligations and transport.

## 3. Developments in the UK

### UK Government Task Force Europe

The Department for Exiting the European Union was dissolved on 31 January. In a written statement on 3 February, the **Prime Minister said**:

Those of its functions which are still required have been transferred to relevant government departments.

The **Government confirmed** that UK Chief Negotiator **David Frost** will lead the Task Force Europe negotiations team and report to the Prime Minister. The task force will be supported by the UK Ambassador to the EU **Tim Barrow** and will work with other departments on specific policy areas.

In the Government reshuffle, **Michael Gove** remained Chancellor of the Duchy of Lancaster and became Minister for the Cabinet Office, responsible for 'overseeing devolution consequences of EU exit' and 'overseeing constitutional affairs and maintaining the integrity of the Union'. **Elizabeth Truss** remains Secretary of State for International Trade.

### UK legislation

#### Agriculture Bill

The UK Government introduced the **Agriculture Bill** to the House of Commons on 16 January. The Bill extends powers to Welsh ministers to continue the current agricultural support system in Wales and makes provision in a number of other areas including fertilisers and organic farming. Unlike the 2017-19 Agriculture Bill, it does not extend powers to develop a replacement for the Common Agricultural Policy in Wales.

The Bill was debated at **Second Reading** on 3 February and is now being considered by a **Public Bill Committee**. The Committee is expected to report to the House of Commons by Tuesday 10 March.

The Welsh Government laid a **legislative consent memorandum** on the Bill on 12 February. This stated that the Welsh Government was content to use the Bill as a legislative vehicle but that it had 'outstanding concerns' about the Bill's provisions on identification and traceability of animals (clause 32), agricultural tenancies (clause 34 and Schedule 3), and the regulation of organic products (clause 36).

**Speaking to the Public Bill Committee** on 13 February, Welsh Government representative Tim Render said that the Bill granted UK and Welsh ministers concurrent powers on identification and traceability and organics and said that the Welsh Government was discussing whether those powers could be 'subject to consent by devolved Administrations rather than just consulting'.

When the 2017-19 Agriculture Bill was passing through Parliament, the UK and Welsh Government disagreed over whether powers for the Secretary of State to set levels of agricultural support in compliance with WTO obligations were reserved or not. They reached a **Bilateral Agreement** setting out a procedure for the Secretary of State to use those powers. Welsh Government representative Tim Render **told the Public Bill Committee** that the UK Government had agreed to carry over that agreement.

### Fisheries Bill

The UK Government introduced the **Fisheries Bill** to the House of Lords on 29 January. The Bill provides a UK framework for fisheries outside of the EU's Common Fisheries Policy in relation to fisheries, fishing and aquaculture. It permits the UK to determine, among other things, access to UK waters, quotas and the licensing of fishing boats. The House of Lords debated the Bill at **Second Reading** on 11 February. Committee stage will begin on 2 March.

Consent is required for the Bill from the devolved nations, as it falls within their legislative competence. In Wales' case, it also modifies the Assembly's legislative competence by extending its ability to legislate for Wales and the Welsh zone for fishing, fisheries and fish health. The Welsh Government said that it supported the Bill as drafted in a **legislative consent memorandum** on 12 February, stating that there is a need for a UK-wide approach. It further explained that, as certain arrangements need to be put in place before the end of the implementation period, it would agree to take powers for Welsh Ministers via the UK Bill until a Wales Fisheries Bill was introduced to the Assembly.

### Environment Bill

The UK Government introduced the **Environment Bill** to the House of Commons on 30 January. The Bill provides a legal framework for environmental governance and includes provisions on waste, resource efficiency, air quality, environmental recall, water, nature, biodiversity and conservation covenants. The House of Commons will debate the Bill at Second Reading on 26 February.

Consent is required for the legislation from the devolved nations, as the Bill falls within their legislative competence, although only some of its provisions apply to each nation. These are set out in a table included in the **Bill's Explanatory Notes**. The Welsh Government has not yet laid a legislative consent memorandum in relation to the Bill.

### Direct Payments to Farmers (Legislative Continuity) Act

The **Direct Payments to Farmers (Legislative Continuity) Act** gained Royal Assent on 29 January. The Assembly had voted to agree a **legislative consent motion** on 22 January. The Act is to enable the UK and devolved Governments to make direct payments to farmers during 2020. Senedd Research has produced a **blog on the legislation** and what it means for Wales.

### UK immigration policy

The Home Office issued a policy statement on **plans for a UK immigration system** on 19 February. This sets out how skilled workers will be able to come to the UK after 31 December 2020. It states that no general route for workers designated low-skilled will be opened.

The Home Office states that all applicants will need a job offer from an approved sponsor; a job at appropriate skill level; and English language skills to the required level. This will bring them up to 50 'points'.

They will also need to gain at least 20 additional points. These additional 20 points can be made up in different ways:

- 10 points - Salary of £23,040 – £25,599
- 10 points - PhD in subject relevant to the job
- 20 points - Salary of £25,600 or above
- 20 points - Job in a designed shortage occupation
- 20 points - PhD in a STEM subject relevant to the job

The Home Office states that the system will take effect from January 2021, but that applications will open in the autumn. It also states that the EU settlement scheme will remain open for applications until 30 June 2021. Other immigration routes, for example for seasonal agricultural workers, will remain outside the new system. Family reunion and asylum will also fall outside the new system.

## House of Commons select committee chairs elected

House of Commons **select committee chairs** for the new Parliament were elected. **Hilary Benn** (Labour) was re-elected Chair of the Exiting the EU Committee. **Angus Brendan MacNeil** (SNP) became Chair of the International Trade Committee; **William Wragg** (Conservative) became Chair of the Public Administration and Constitutional Affairs Committee; and Stephen Crabb (Conservative) became Chair of the Welsh Affairs Committee.

## Intergovernmental relations

### Joint Ministerial Committee (EU Negotiations)

The **Joint Ministerial Committee (EU Negotiations)** met in Cardiff on 28 January for the first time since the restoration of the Northern Ireland Executive. The First Minister chaired the meeting. Ministers agreed a communique stating that:

The Committee discussed the UK's exit from the EU, including the role of the devolved administrations in EU exit negotiations and the strategic choices relating to leaving the European Union. The Committee also discussed other issues, including an update on the intergovernmental relations review.

### Ministerial Forum for International Trade

The Minister for International Relations and the Welsh Language met with UK and other devolved ministers at the **Ministerial Forum** on 23 January. The meeting was chaired by Department of International Trade minister **Conor Burns**.

## 4. Developments in Wales

### EU future relationship negotiations

#### Welsh Government negotiating priorities

The **Counsel General and Brexit Minister responded** to the initial UK and EU negotiating positions in a statement on 3 February. This stated that:

[T]he UK Government has made little effort to take into account our views and concerns in publishing these objectives.

The **Counsel General and Brexit Minister** also laid a written statement on the Joint Ministerial Committee (EU Negotiations) meeting on 28 February. This said that:

On strategic choices [within and between trade negotiations], I stressed the Welsh Government wants to engage with the UK government but in order to do so we need to see the underlying information being considered by them.

The **Committee asked the Counsel General and Brexit Minister** on 27 January whether the Welsh Government was able to publish 'any more detail of the red lines you have as a Government'. He said that:

[C]urrently, unfortunately, I think it is going one step too far. For this reason: the document is a general response to the political declaration, which was quite wide ranging in itself. [...] our ability to describe in more detail what the options are is reliant on [our] role, and sharing information and sharing those options from the Government in Westminster.

#### Welsh Government role in negotiations

In his statement on the Joint Ministerial Committee (EU Negotiations) meeting on 28 February, the **Counsel General and Brexit Minister** said the First Minister had argued that:

the principle of not normally proceeding without the agreement of the devolved governments in relation to devolved matters needed to be agreed urgently by the UK government.

The **Committee asked the Counsel General and Brexit Minister** on 27 January if the Welsh Government had 'a contingency plan for ensuring that the Welsh Government can influence the negotiations'. He said that:

[I]f we don't have a basis on which we can agree with the UK Government for our role, then we can't, as it were, force ourselves into that process of negotiation [...] [W]e will have to take all opportunities possible to ensure publicly that we state what we think is in the best interests of Wales.

## International negotiations

### Welsh Government role in negotiations: Trade Concordat

The **Minister for International Relations and the Welsh Language** told the **Committee** on 10 February that the Welsh Government was engaging with the UK Government with a view to agreeing a concordat for a role in international trade negotiations and expected to agree terms of reference soon. She said that the UK Government had assured the Welsh Government in the past that it would not negotiate new agreements until that concordat was agreed, but that it was not now clear that commitment would be met.

### Welsh Government role in negotiations: Response to Committee report

The **Welsh Government responded** to the Committee's report **UK International Agreements: A Role for the Assembly**, accepting or accepting in principle all recommendations.

The Welsh Government said that it could not commit to lay a memorandum before the Assembly assessing the implications of the UK Outline Approach to the negotiations when the Outline Approach is published, because it might not be able to identify those implications. It committed to provide 'any information on these matters that is reasonably clear from the UK Outline Approach'.

The Committee had also recommended that the Welsh Government should seek Assembly consent before seeking that the UK Government reach any agreement that would constrain the future legislative competence of the Assembly. In response, the Government said it would 'make clear any provisional agreement we may reach in the context of confidential negotiations would be subject to scrutiny by the Senedd'.

### Welsh Government priorities: Expert stakeholder advisory group

The **Minister for International Relations and the Welsh Language** told the Committee that she expected the Welsh Government's expert stakeholder advisory group to inform trade priorities to meet for the first time around Easter.

### Welsh Government international strategy

The **Welsh Government responded** to the Committee's **report on the Draft International Strategy** on 5 February, accepting all the Committee's recommendations.

The Committee had recommended that the Welsh Government set out the outcomes that it hopes to deliver through the strategy and a suite of measurable targets and action points. The Welsh Government response states that that the strategy sets out what it hopes to achieve, but that '[i]t is difficult to set out measurable targets at a time when the relationship with Europe remains in a state of flux'. The Welsh Government also said it did not intend to publish further detailed plans beyond those set out in the strategy.

### Common frameworks

The **Counsel General and Brexit Minister issued a provisional response** to the Committee's report **Common policy frameworks: Assembly scrutiny** on 23 January. He said that the Welsh Government recognised the crucial role of the Assembly in the common frameworks process, but that he was not yet able to respond fully because the frameworks programme was still under intergovernmental discussion. He committed to offer a full response by the end of March.

In evidence to the Committee on 27 January, the **Counsel General and Brexit Minister commented** on the impact of potential divergence between different parts of the UK on the development of common frameworks:

If you have one part of the UK deregulating and other parts seeking to align or build upon EU standards, that will require the frameworks to operate in a particular way [...] I'm hoping that the next JMC(EN) in February will be able to consider that.

The Minister also commented on the need to develop principles and governance for the UK internal market:

All of those [issues] are going to need to be bottomed out before we're able to finalise the common frameworks programme, essentially.

## EU citizens in Wales

The **Assembly debated** the Committee's report **Changes to Freedom of Movement after Brexit: Implications for Wales** on 22 January.

EU citizens living in Wales had submitted 50,100 applications to the EU settlement scheme by the end of January 2020, **according to the Home Office**. On 13 February, the **Counsel General and Brexit Minister announced** additional funding to support councils to raise awareness of the scheme and help EU citizens to apply.