Negotiations on the UK's withdrawal from the EU Brexit Monitoring Report

07 January 2020





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Introduction 1

This report provides an update on developments relating to the Article 50 negotiations on the UK's withdrawal from the EU. This edition covers the period since the UK General Election, held on 12 December 2019.

This paper provides:

- A headline summary of the latest developments;
- A more detailed analysis of the key developments at the EU and Westminster; and
- Analysis of the Welsh Government and National Assembly for Wales' responses to the latest developments.

Summary of developments

At a UK level, the General Election held on 12 December resulted in Prime Minister Johnson returning to office with an 80 seat majority in the UK Parliament. Following the election, the Withdrawal Agreement Bill was passed at its second reading on 20 December. The legislation is required to incorporate the revised Withdrawal Agreement into domestic legislation, enabling the UK to leave the EU on 31 January 2020. The Prime Minister has declared that the UK will not seek an extension to the transition period, meaning that the UK-EU future relationship will need to be negotiated by 31 December 2020. The Department for Exiting the European Union (DEXEU) will close on 31 January 2020.

Simon Hart MP has been appointed to succeed Alun Cairns MP as Secretary of State for Wales, with David Davies MP serving as a junior minister.

In the EU, the new European Commission took office on 1 December with Ursula Von Der Leyen succeeding Jean-Claude Juncker as EU Commission President. The UK did not nominate a UK Commissioner, citing domestic guidance that prevents the selection of candidates for senior international appointments during an election period. The EU has launched infringement proceedings against the UK. Von Der Leyen told the European Parliament on 18 December that negotiating the UK-EU future relationship by 31 December 2020 would be 'extremely challenging'.

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The Commission has published proposals for the EU's trade policy, including the appointment of a Chief Trade Enforcement Officer and a commitment to lead the efforts on updating and reforming the World Trade Organization. The EU has also taken steps to protect its rights in trade disputes in response to the halting of the WTO Appellate Body.

Charles Michel succeeds Donald Tusk as EU Council President and the Council has re-appointed Michel Barnier as Chief Brexit Negotiator for the EU. The Council has invited the Commission to provide a draft comprehensive mandate for a future relationship with the UK immediately after its withdrawal on 31 January 2020.

In Wales, the First Minister described the UK Government's commitment to reach agreement on a future relationship with the EU by the end of 2020 as 'dangerous and misleading'. The Welsh Government recommended against the Assembly granting consent to the October version of the Withdrawal Agreement Bill, on the grounds that the Political Declaration does not provide assurance of a close relationship between the UK and the EU and that it leaves open the possibility of 'no deal' if agreement on the future relationship is not reached by the end of the transition period.

2. Developments at UK level

General Election results

UK

The Conservative Party won **365 seats in the General Election** held on 12 December, gaining an 80 seat majority in the UK Parliament. Turnout was 67.3%. The Labour Party won 203 seats, whilst the Scottish Nationalist Party (SNP) and Liberal Democrats won 48 and 11 seats respectively. Plaid Cymru held its four seats from the previous election in 2017. Prime Minister Johnson continues in office, with **reports suggesting a Cabinet reshuffle in 2020**. On Brexit, he announced that he now has 'an overwhelming mandate, from this election, to get Brexit done and we will honour that mandate by January 31.'

A full analysis of the General Election results in Wales can be found in the latest blog from **Senedd Research**.

Responses from the EU and Wales

The First Minister **congratulated the Prime Minister** on his victory on Twitter, but warned that 'he must remember that the Conservatives are only the largest party in one of the four nations.'

The new EU Commission President, Ursula Von Der Leyen, also congratulated the Prime Minister, **stating that**:

We expect ratification of the Withdrawal Agreement to be ended by January. We are ready to move to the next phase in our relationship. We want our future relationship to be as close as possible.

Queen's Speech and Brexit legislation

The **Queen's Speech took place** on 19 December. The speech set out plans for a number of Bills that provide new powers that will be needed to replicate EU legislation following the UK's departure from the EU.

Several will replace Bills that fell at the end of the 2017-19 Parliament. Of these, the Agriculture, Fisheries and Trade Bills are likely again to include provisions within the Assembly's competence and to require legislative consent. A new Environment Bill is also likely to include provisions within the Assembly's competence.

On the same day, the **UK Government announced** that the Department for Exiting the European Union (DEXEU) will close on 31 January 2020.

Withdrawal Agreement Bill

The Government introduced the European Union (Withdrawal Agreement) Bill into the Commons on 19 December. This Bill incorporates the revised Withdrawal Agreement into domestic legislation, enabling the UK to leave the EU on 31 January 2020.

The House of Commons passed the Withdrawal Agreement Bill at its second reading on 20 December. The Government intends all Commons stages of the Bill to be completed by the end of 9 January.

The Withdrawal Agreement Bill is in large part the same as the Bill introduced in October. However, several changes have been made. These include:

- Removing Parliament's approval role in relation to the Government's negotiating mandate and the enhanced parliamentary approval process for any future relationship with the EU;
- Prohibiting UK ministers from agreeing to an extension of the transition period; and
- Removing procedural protections for workers' rights after they are transferred from EU law into domestic law.

In response to the Queen's Speech, the First Minister said that:

The PM's self-imposed ticking Brexit clock is dangerous and misleading. He is upping the ante on a no-deal Brexit by the end of 2020, which would be catastrophic for Wales.

New Commission President Von Der Leyen told the European Parliament on 18 December that completing negotiations by the end of 2020 would be 'extremely challenging'.

Simon Hart appointed Secretary of State for Wales

Simon Hart, MP for Carmarthen West and South Pembrokeshire, has been appointed Secretary of State for Wales to succeed Alun Cairns MP in the role. He told the BBC that he wants a 'positive relationship' with Cardiff. David Davies, MP for Monmouth and former Chair of the Welsh Affairs Committee, will serve as a junior minister.

Court case challenges validity of Withdrawal Agreement

The Good Law Project, led by Jolyon Maugham QC, has initiated legal proceedings against the UK Government regarding the revised Withdrawal Agreement. The case challenges whether the Northern Ireland Protocol contravenes section 55(1) of the Taxation (Cross-border Trade) Act 2018. This states that:

> It shall be unlawful for Her Majesty's Government to enter into arrangements under which Northern Ireland forms part of a separate customs territory to Great Britain.

Article 4 of the **revised Withdrawal Agreement** recognises that:

However, where goods are at risk of being moved into the Union, the EU customs code is to be applied:

> Northern Ireland remains aligned with the EU on goods and applies EU tariffs in Northern Ireland except for movements within the single customs territory of the United Kingdom, but only for as long as Northern Ireland wishes this system to continue.

The case therefore is likely to decide whether Northern Ireland being in the UK's customs territory whilst applying the EU's customs code contravenes the Taxation (Cross-border Trade) Act 2018.

The case will be heard **on 10 January 2020**. The House of Lords Library has produced a **briefing on the legislation** with more information.

Northern Ireland is part of the customs territory of the United Kingdom.

3. Developments at the EU

New EU Commission

On 27 November, the **European Parliament approved** the new Commission by 461 votes to 157 with 89 abstentions. The new Commission, led by former German Defence Minister Ursula Von der Leyen, began its five-year term on 1 December. Von der Leyen is the first woman to lead the European Commission. The new Commission replaces Jean-Claude Juncker's Commission and is responsible for leading on the Brexit negotiations with the UK.

President Von Der Leyen has published **Political Guidelines** for the new Commission which set out her priorities and plans for the work of the institution over the coming years. This includes the introduction of a European Green Deal, which aims to make Europe the world's first climate-neutral continent by 2050.

For more information on the impact the new Commission could have on Wales, read Senedd Research's blog article. The BBC has also produced a guide to individual Commissioners.

UK Commissioner

As the UK had been due to leave the EU on 31 October 2019, the Prime Minister **confirmed** that the UK would not nominate a new EU Commissioner. However, because an agreement was not reached between the UK and EU by the October deadline, a third extension to Article 50 was agreed until 31 January 2020. In agreeing to the request, the EU advised that this meant the UK would need to nominate a new UK Commissioner.

Selection of UK Commissioner

The Commission President-elect, Von der Leyen, wrote to the Prime Minister on 6 November to request a nominee by 11 November 2019. The UK Government did not put forward any nominees before the UK Parliament was dissolved for the General Election on 6 November. In its response to the Commission, the UK Government advised that it would nominate a Commissioner after the 12 December General Election, as **domestic guidance prevents** the selection of candidates for senior international appointments during an election period (see Section M, paragraph 10).

Infringement proceedings against the UK

Unhappy with the failure of the UK Government to meet the terms agreed on the extension, the EU launched what are known as 'infringement proceedings' against the UK on 14 November. Infringement proceedings are formal legal procedures that the EU can take against Member States that do not follow the EU's laws. Ultimately the proceedings can lead to fines or other sanctions, but they are usually resolved before they reach this point. The UK Government was given until 22 November to respond to the formal notice. It failed to respond and the approval process for the Commission continued without a UK Commissioner.

Latest EU Council meeting

EU27 leaders met on 12 and 13 December for the latest EU Council meeting, where preparations for the negotiations on future EU-UK relations were discussed. The Council concluded that:

- Michel Barnier would be reappointed for the negotiations on the future relationship;
- the future relationship would have to be based on a balance of rights and
- obligations and ensure a level playing field; and
- the Commission should submit to the Council a draft comprehensive mandate for a future relationship with the UK immediately after its withdrawal.

The UK Prime Minister had announced prior to the summit that he **would not** attend, if re-elected. It was decided that the **new President of the EU Council**, Charles Michel, would represent the UK.

UK-EU Trade

The EU's new Trade Commissioner, Phil Hogan, delivered a speech in Dublin on 6 December. On Brexit and the UK, he said:

> The most productive thing the UK government could do at this point is to focus on content, not timing: stop speculating about timelines and focus on the nuts and bolts of a trade agreement with the EU. We are still in the dark as to what type of FTA the UK will ultimately want. So the urgent priority for the next government must be to outline its preferences, and then carefully define its offensive and defensive interests for each stage of negotiations. [...]

And as I have also said on many occasions before, any deal we strike with the UK will be far inferior to being a member of the EU. It is regrettable that, even at this late stage, many members of the UK parliament and media still have not woken up to this fact. Unfortunately, the learning curve remains very wide.

EU Trade

EU Commission proposals

New Commission President Von Der Leyen's Political Guidelines propose the following trade measures:

- that a new Chief Trade Enforcement Officer be appointed to improve the compliance and enforcement of trade agreements, and regularly report back to the European Parliament;
- that every new EU agreement concluded will have a dedicated sustainabledevelopment chapter and the highest standards of climate, environmental and labour protection, with a zero-tolerance policy on child labour; and
- that the EU lead the efforts on updating and reforming the World Trade Organization.

WTO Appellate Body halted

As of 11 December, the WTO Appellate Body is unable to hear new appeals. The Body, which requires three judges to function, has been unable to fill its vacancies since the retirement of two of its members in 2019. Replacement appointees have been blocked by US President Trump, who is calling for reform of the Body's dispute resolution mechanism. The EU's new Trade Commissioner, Phil Hogan, released a statement in response, noting that:

> This is a regrettable and very serious blow to the international rulesbased trade system, which, for the past 24 years, has relied on the WTO's Appellate Body - and dispute settlement generally.

This is a critical moment for multilateralism and for the global trading system. With the Appellate Body removed from the equation, we have lost an enforceable dispute settlement system that has been an independent guarantor - for large and small economies alike - that the WTO's rules are applied impartially.

The statement was supported by the EU Council at its 12-13 December meeting, where EU27 leaders called for the adoption of Commission proposals to adapt current EU legislation to the new situation, in line with WTO rules.

EU Commission response

In response to the halting of the WTO, the Commission has taken steps to protect its rights under international trade agreements. The Commission proposes **an amendment** to its Enforcement Regulation, the EU's common legislative framework for the enforcement of its rights in international trade agreements.

The Commission **published its full legislative proposals** on 12 December. Meanwhile, a group of 54 states have pledged to continue to honour the WTO rules 'in good faith.'

EU Reform: Conference on the Future of Europe

France and Germany have suggested guiding principles for EU reform. The Conference on the Future of Europe will consider reforms to 'guide the future of Europe with a view to making the EU more united and sovereign.' The EU Commission has proposed that the Conference, originally suggested by French President Emmanuel Macron in March 2019, be held over two years between 2020 and 2022.

A first discussion was held at the EU Council meeting on 12-13 December. where it was agreed that work would begin on defining a Council position on the content, scope, composition and functioning of such a conference.

4. Developments in Wales

The Withdrawal Agreement Bill

The Secretary of State for Exiting the European Union has written to the Counsel General and Brexit Minister to ask the Welsh Government to seek the Assembly's legislative consent to the Withdrawal Agreement Bill. In the letter, he states that:

> The conduct of international negotiations and the approval of international agreements resulting from those negotiations, including the Withdrawal Agreement, is a reserved matter, and will be considered by the UK Parliament, including by MPs representing constituencies in Wales. The implementation of those agreements, where it would otherwise fall within devolved competence, is devolved.

In line with the tests set out above, National Assembly consent is not sought for the obligations in the Withdrawal Agreement, but for the manner in which provisions in this Bill implement those obligations in devolved domestic law.

The Welsh Government recommended against consent to the Withdrawal Agreement Bill introduced in October 2019. In a **legislative consent memorandum** tabledon 23 October, the Welsh Government said:

The Welsh Government has been clear that we cannot endorse the overall withdrawal 'deal' as advocated by the UK Government because the associated Political Declaration provides too little assurance that the future relationship with the EU will be the very close partnership which was set out in our White Paper *Securing Wales Future*. This position has been repeatedly endorsed by the National Assembly.

The Withdrawal Agreement does not end the possibility of no deal. If no future relationship is agreed the possibility of a no-deal exit at the end of the Implementation Period remains.

The devolved administrations were not given the opportunity to consider or contribute to either the Withdrawal Agreement or Political Declaration, nor were we engaged in the development of the clauses to implement the revised agenda.

On 24 October, the Chancellor of the Duchy of Lancaster told the Committee:

We would obviously like a legislative consent motion to pass. If the Welsh Assembly and the Scottish Parliament were to pass those motions, then that would be a very, very good thing. But, ultimately, I think it's just a statement of constitutional reality that treaties, international treaties, are for the UK Government to agree and the UK Parliament to ratify.

Other Brexit legislation

The Welsh Government has not yet indicated whether it will recommend that the Assembly grant consent to other UK Brexit legislation where it includes provisions within the Assembly's legislative competence. On 4 November, the **Brexit Minister and Counsel General** advised the External Affairs and Additional Legislation (EAAL) Committee on the Welsh Government's views on whether subsequent Brexit legislation for Wales should be taken through the UK Parliament or through the Assembly:

> [W]e obviously are looking at what a delayed or a deferred potential exit date means in terms of legislation; there are time points in the year that bring different pressures to bear; the UK Government will respond in particular ways when a new UK Government is elected. So, all of those things are in the mix, and they're all under review, from our point of view. There have been other discussions that we've had here, about whether we would mirror, if you like, what the Scottish Government has said publicly it wishes to do in relation to keeping pace legislation, or continuity legislation, so that Wales can continue to be aligned, in a dynamic way, to European regulation. So, there's a set of considerations going on about how best to achieve that.

Revised Withdrawal Agreement - Implications for Wales

Ports and transport

The **Chancellor of the Duchy of Lancaster** gave evidence to the Committee on the implications of the revised agreement between the UK and the EU on the port of Holyhead on 24 October 2019:

Some people have said that we should have an economic impact assessment. It's difficult, I think, to have an economic impact assessment because there are so many variables in play [...] [W]e absolutely have looked at how we can do everything possible to mitigate any adverse impacts, and also to help business to take advantage of new opportunities as well. On 4 November, Welsh Government officials from the **Welsh Government European Transition Team** advised the Committee that:

> [W]e've asked some questions about what kind of sectors, what kind of goods are going to be at risk in terms of that flow into the single market, and as yet we haven't had any confirmation about what the UK Government's assessment of those goods is. We've asked them around what kind of processes, what kind of infrastructure might be required if you have regulatory divergence between the island of Ireland and the rest of Great Britain, as could happen under the protocol, and all we've had is, 'Yes, they will need new processes' and 'Yes, there'll be new infrastructure.'

The **Welsh Ports Group advised the EAAL Committee** that there would be 'a major challenge for operators' and a 'big culture change for them to get used to'.

In a letter to the Brexit Minister and Counsel General on 4 December, the Committee called for the Welsh Government to outline the ways in which it is pressing the UK Government to conduct a full impact assessment of the revised Withdrawal Agreement on Welsh ports and to issue an update on preparations for new infrastructure.

Food and farming

On 24 October the **Chancellor of the Duchy of Lancaster** gave evidence to the Committee on the implications of the revised Withdrawal Agreement for food and farming in Wales:

[I]f we get the free trade agreement that we want, there won't be any tariffs or quotas. It will be the case that there is the possibility of some sanitary and phytosanitary checks being required, but it's also the case that, in the nature of the best in class free trade agreement that we want, those checks are conducted absolutely minimally because there is confidence in the regulatory integrity of the UK's institutions when it comes to questions like animal health.

The Committee took evidence from representatives of the **food and farming** sectors on 4 November 2019.

In a **letter to the Brexit Minister and Counsel General on 4 December**, the Committee noted the concerns of the Farmers' Union of Wales and NFU Cymru that the revised Political Declaration implies looser future trading arrangements. More broadly, the Committee noted the significant concerns expressed by representatives of the farming industry particularly in relation to the impact of continued uncertainty; the lack of Wales-specific legislation; and more generally the development of future policy in this area, after Brexit.

The Committee agreed that the future relationship with the European Union should prioritise frictionless trade, free from tariff and non-tariff barriers.

International agreements

On 4 November, the **Brexit Minister and Counsel General** discussed the Welsh Government's approach to seeking input into future international agreements with the Committee:

With regard to engagement with the UK Government on future economic partnership negotiations, Chair, you will know from previous appearances and references in the Chamber that this has been one of the areas we've been least satisfied with in terms of ensuring that we have a forum and a channel to make sure that our concerns not only are heard, but are reflected in mandates. There has never been the level of agreement from the UK Government to the sorts of principles underpinning that that we would want to see, in particular that the UK Government would commit to not normally proceeding without the agreement of the devolved Governments in relation to devolved matters.

In a letter to the Committee on 5 November, the **Minister for International Relations and the Welsh Language** commented on progress towards establishing a Joint Ministerial Forum on Trade:

> Under Boris Johnson's government, the Secretary of State for International Trade agreed to the set-up of the Joint Ministerial Forum on Trade and plans were in place for this to meet in October. This was cancelled given the upcoming general election. I hope that the incoming UK government do not once again start from scratch and we can build on the work to date to put in place formal intergovernmental arrangements as soon as possible. I will of course be pressing any new UK Ministers to progress this as a matter of urgency.

On 24 October 2019, the **Chancellor of the Duchy of Lancaster** commented on the UK Government's approach to involving the devolved institutions in international agreements at the Committee:

[T]rade negotiations are international negotiations, and we touched earlier on the reserved competences of the UK Parliament, and, of course, trade negotiations in countries like Canada and Australia and New Zealand are carried out by the Government. But it is important to make sure that we take account of the unique concerns and interests of all of the nations of the United Kingdom, and the best way to do that, I think, is by forging the closest possible relationship with the devolved

administrations at every turn.

On 18 December, the Committee published its report **UK international** agreements after Brexit: A role for the Assembly. The report proposes a revised model for Assembly scrutiny of international agreements. It recommends:

that any proposals for a revised process of UK Parliamentary scrutiny incorporates the need to consider the views of the Assembly before the ratification of an agreement.

On 4 December, the Assembly debated a Plaid Cymru motion that the devolved parliaments of the UK should be given a veto over trade matters which have the potential to affect devolved fields. The motion was amended by the Government to call for the devolved institutions to have a formal role in negotiations on international agreements when devolved competence is engaged, applying at all stages of negotiations and having statutory backing, and to call for a UKwide constitutional convention to be set up to ensure that future constitutional arrangements reflect this. The Assembly approved the motion as amended.

Welsh Government international strategy and Brexit

In December, the Committee published its Report on the Welsh Government's **Draft International Strategy**. The Committee noted the impact of uncertainty caused by Brexit on the international strategy but stated that this should not prevent the Welsh Government from moving forward with this work. The Committee recommended that the Welsh Government publish a suite of 'measurable targets and action points to sit underneath the finalised strategy'. The international strategy is due to be published in January 2020.

Common UK policy frameworks

The First Minister updated the Committee on the development of common frameworks in a letter on 6 December. This states that around 40 frameworks will be needed for Wales. The Welsh Government expects all frameworks to be in place by the end of December 2020. However, it also says frameworks can only be finalised when the UK's future relationship with the EU is clarified. Four outline draft frameworks for Wales were expected to be published by the end of December 2019. These were delayed because of the General Election.

The Committee published its report on **Common policy frameworks: Assembly scrutiny** in December 2019. This report proposes a scrutiny model for common frameworks for the Assembly to consider. Under this model, the Assembly would seek a commitment from the Welsh Government not to enter into any framework agreement until a committee had reported on the draft framework or the deadline for reporting had passed.

Following a meeting of the Joint Ministerial Committee (European Negotiations) on 10 October, the Brexit Minister and Counsel General **issued a statement** saying that:

> [T]he concern is the potential impact of contradictory statements by the UK Government on its commitment to common standards as against deregulation. We will be reviewing at the next JMC (EN) how the Common Frameworks arrangements can deliver against their original objectives in light of this tension.

The Chair of the Constitutional and Legislative Affairs Committee wrote to the Brexit Minister and Counsel General to ask about how the use of agreements between the Welsh Government and the UK Government relates to the Assembly's role in providing legislative consent. In his reply, the Minister said that:

> Intergovernmental agreements are by their nature, and should remain, the responsibility of the relevant executives, and should not be subject to consent by legislatures. The Welsh Government enters into a range of agreements, both legally binding and non-legally binding, and it would not be constitutionally appropriate given the separation of powers for the Assembly to consent to those, although of course Members can and do scrutinise them.

Intergovernmental relations

The First Minister updated the Committee on intergovernmental relations in a letter on 6 December:

> [I]n general terms, relations with the UK Government began to deteriorate after Boris Johnson became Prime Minister. Examples of this include reduced access to information about no deal planning and a lack of formal Ministerial engagement on the joint Intergovernmental Relations Review (despite greater progress at official level on the latter as a result of positive discussions with the previous Chancellor of the Duchy of Lancaster).

He added that:

It is very unfortunate that no meeting of the Joint Ministerial Committee (Plenary) has taken place for almost a year so we have been unable to jointly assess the state of relations at head of government level.

Intergovernmental relations review

On 4 November 2019, the **Brexit Minister and Counsel General** updated the Committee on progress towards the intergovernmental relations review:

> [T]he intention had been that we would be in a position by the end of September to have a detailed plan, together with a mapping of the existing inter-governmental ministerial fora and a set of proposed reforms to those, a mechanism for discussion that would introduce an element of independence into dispute resolution mechanisms and. lastly, of the major issues certainly, a set of principles for resolving the role of devolved governments and legislatures in international agreements. For reasons which I think are obvious at this point, that isn't a timetable that's been met.

On 24 October, the **Chancellor of the Duchy of Lancaster** commented on intergovernmental relations after Brexit at the Committee:

> I wouldn't want to pre-empt any of the conclusions of that conversation or the inter-governmental review [...] I do think that there is a case-again, I don't want to pre-empt the conclusions—for trying to make sure that we have regular Minister-to-Minister fora that enable all of these issues to be, in the way that you suggest, agreed and transparently committed to.

No deal preparations

In a letter to the Committee on 6 December, the First Minister said that:

The risk of no deal at the end of January is much reduced but, as it remains the legal default and we cannot be completely reassured that it will not happen, proportionate no deal preparations have continued since the dissolution of Parliament on 6 November. These have included consideration of whether any of our preparations need to be amended in light of a January exit date, continuing to engage with the UK Government on preparedness projects with a devolved intersect and confirmation of the priority areas where we will want to engage with the UK Government in the event of a January No Deal Brexit scenario.

The Committee took evidence from representatives of key sectors of the Welsh economy and public services on preparations for Brexit in evidence sessions on 4 November and 11 November.

In a letter to the Brexit Minister and Counsel General on 4 December the Committee noted that 'preparations for a potential 'no deal' in the food and farming sector in October were better, and more developed, than they had been in the run-up to the original March 2019 deadline'. The Committee also noted that representatives of health, higher education and local government had given 'a level of assurance' on their preparedness.

However, the Committee noted that '[t]he majority of stakeholders we spoke to expressed explicit concerns about the impact of 'no deal' and stated that it continued 'to have deeply held concerns about such an outcome and its damaging implications for Wales'.

