

# Negotiations on the UK's withdrawal from the EU

## Brexit Monitoring Report

04 February 2019



The Assembly and

**BREXIT**

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The Assembly and

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## 1. Introduction

This report provides an update on developments relating to the Article 50 Negotiations on the UK's withdrawal from the EU since 19 January 2019.

This paper provides:

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

### Summary of developments

- Following the Prime Minister's Brexit deal being voted down in the House of Commons, she made a **statement on 21 January setting out her next steps**.
- Following the UK Prime Minister's **meeting on 21 January with New Zealand Prime Minister Jacinda Ardern**, a spokesman for 10 Downing Street stated that 'the two leaders reaffirmed their shared desire to forge an ambitious, high quality free trade agreement after the UK leaves the EU'.
- On 22 January, the Welsh Government cancelled its Plenary business for the day and replaced it with a **series of statements** by Ministers on the impact of a 'no deal Brexit' on their portfolios and the work that was being done to prepare for this.
- On 28 January, the House of Commons Welsh Affairs Committee visited the Port of Holyhead to consider the **impact of Brexit scenarios for trade**. The Committee Chair stated that 'the importance of Welsh ports for UK trade should not be underestimated'.
- On 28 January, the Committee for Exiting the EU published its final report, **Response to the vote on the Withdrawal Agreement and Political Declaration: Assessing the Options**.
- On 28 January, the UK Government outlined the **'no deal' arrangements for EU citizens wishing to visit and stay in the UK**.

- On 29 January the Prime Minister made a **statement in the House of Commons, followed by a debate**. Following votes on the amendments to the motion the Prime Minister had put forward, the House “rejects the United Kingdom leaving the European Union without a Withdrawal Agreement and a Framework for the Future Relationship, and requires the Northern Ireland backstop to be replaced with alternative arrangements to avoid a hard border; supports leaving the European Union with a deal and would therefore support the Withdrawal Agreement subject to this change.” The Prime Minister said that the government will “seek to obtain legally binding changes to the withdrawal agreement that deal with concerns on the backstop while guaranteeing no return to a hard border between Northern Ireland and Ireland”.
- Also on 29 January the Irish Government published its **initial assessment of economic and fiscal impact of ‘no deal’ Brexit**, and issued a **statement on the outcome of the Westminster votes**.
- On 30 January, in the European Parliament, **President Juncker and Michel Barnier spoke about the Commons vote**, saying “The backstop is part and parcel of the Withdrawal Agreement and it will not be renegotiated”; recalled that the EU27 governments and the UK government agreed the Withdrawal Agreement (including the Backstop) in November; and finished saying that “the EU is ready ... to be more ambitious and to rework the nature and intensity of our future economic relationship”.
- 30 January: The European Parliament’s summary of the debate, **MEPs urge UK to break current deadlock**, said “The majority of MEPs who took the floor underlined the EU’s need to continue preparing for a no-deal scenario and made clear that the backstop was needed to ensure that there is no return to a hard border in Ireland, to secure peace and stability and to preserve the integrity of the single market”.
- On 30 January the Assembly **held a debate** on the prospects for a Brexit Deal following the House of Commons vote. The motion passed stated that the Assembly condemns the UK Government for its failure to engage in meaningful negotiations on the EU withdrawal deal on a cross-party basis and in terms of genuine engagement with the devolved institutions; reiterates its view that a ‘no deal Brexit’ would be catastrophic for Wales and believes that everything possible must be done to prevent this including extending Article 50 if required; believes that if a deal cannot be secured that includes participation in the single market and a customs union, then preparations for a public vote should begin; and believes that the UK Parliament should, with immediate effect, step up its engagement with the devolved legislatures on these issues.

- On 4 February, the Prime Minister made a statement in Northern Ireland. She stated that the UK Government would secure a deal which honours its commitments to Northern Ireland and that commands broad support across Northern Ireland.

## 2. Developments in Westminster and Brussels

### Timeline of key developments

After the Prime Minister's Brexit deal was voted down in the House of Commons on 15 January, Theresa May made a statement on 21 January setting out her next steps. The statement noted the six key issues that have been at the centre of her cross-party discussions. These included:

- leaving with 'no deal';
- holding a second referendum;
- the Irish backstop;
- the precision around the future relationship in the political declaration;
- sustaining social and environmental standards, and workers' rights; and
- the status of EU citizens in the UK and UK citizens in the EU.

In terms of the engagement with Wales, Scotland and Northern Ireland, the Prime Minister stated:

While it will always be for Her Majesty's Government to negotiate for the whole of the UK, we are also committed to giving the devolved Administrations an enhanced role in the next phase, respecting their competence and vital interests in these negotiations.

On 23 January, the Prime Minister met with the First Minister of Wales. During the meeting, Mark Drakeford **urged** the Prime Minister to 'show flexibility, take no deal off the table, and extend Article 50'. It was also **announced by a UK Government spokesman that** the First Ministers of Wales and Scotland have both been invited to attend meetings of a new Cabinet sub-committee that will bring together work on preparations for the UK's exit from the EU, spanning both deal and no deal outcomes.

Following its meeting on 23 January, the **European Parliament's Brexit Steering Group reiterated** that:

[...] the Withdrawal Agreement is fair and cannot be re-negotiated. This applies especially to the backstop, since it is the guarantee that under no circumstances will there be a hardening of the border on the island of Ireland while at the same time safeguarding the integrity of the Single Market. The EU remains clear, firm and united on this even if the negotiated backstop is not meant to be used.

As required by section 13(6) of the European Union (Withdrawal) Act 2018, the Prime Minister tabled an amendable motion on 21 January outlining her next steps. Seven of the amendments tabled were selected by the Speaker of the House of Commons, John Bercow for debate on 29 January 2019. These were (in order of voting):

- **Amendment (a) – proposed by Jeremy Corbyn (Leader of the Opposition)** – required ministers to secure sufficient time for the UK Parliament to consider and vote on options to prevent the UK leaving the EU without a ratified Withdrawal Agreement and Political Declaration, and that those options should include negotiating changes including a permanent customs union with the EU; dynamic alignment of workers' rights; a strong relationship with the single market; and legislating to hold a public vote on a deal or proposition that commands the support of the House of Commons. **The amendment was defeated 327-296.**
- **Amendment (o) – proposed by Ian Blackford (Scottish National Party Westminster Group Leader)** - noted that the Scottish Parliament, National Assembly for Wales and House of Commons all voted overwhelmingly to reject the Prime Minister's deal; calls for the Government to seek an extension of Article 50; agrees a No Deal outcome should be ruled out; and recognises that if the UK is an equal partnership of nations, the people of Scotland should not be taken out of the EU against their will. **The amendment was defeated 327-39.**
- **Amendment (g) – proposed by Dominic Grieve** - would have allowed the House of Commons to take the lead in discussing a range of alternatives to the Withdrawal Agreement and Political Declaration on six days before the end of March 2019. It would then hold indicative votes on these alternatives. **The amendment was defeated 321-301.**
- **Amendment (b) – proposed by Yvette Cooper** – attempted to remove the possibility of a 'no deal' scenario by allowing the House of Commons time to pass the European Union (Withdrawal) (No. 3) Bill. This Bill would have required the Prime Minister to seek to postpone the day upon which the UK leaves the EU if the Withdrawal Agreement and Political Declaration were not approved by the House of Commons by 26 February. This would have required seeking to extend Article 50 until 31 December 2019. **The amendment was defeated 321-298.**

- **Amendment (j) – proposed by Rachel Reeves** - would have required the Prime Minister to seek to postpone the day upon which the UK leaves the EU if the Withdrawal Agreement and Political Declaration were not approved by the House of Commons by 26 February. **The amendment was defeated 322-290.**
- **Amendment (i) – proposed by Dame Caroline Spelman** – called for the rejection of the United Kingdom leaving the European Union without a Withdrawal Agreement and a Framework for the Future Relationship (i.e. avoiding a ‘no deal’ scenario). **The amendment passed 318-310.**
- **Amendment (n) – proposed by Sir Graham Brady** – called for the Ireland-Northern Ireland ‘backstop’ to be replaced with alternative arrangements to avoid a hard border; supported leaving the European Union with a deal and would therefore support the Withdrawal Agreement subject to this change. **The amendment passed 317-301.**

The European Parliament debated the state of play relating to the UK's withdrawal from the EU with Jean-Claude Juncker (the President of the European Commission) and Michel Barnier (the EU27's Chief Brexit Negotiator) on 30 January.

### Response and next steps following the House of Commons votes on 29 January

Following the votes on 29 January, the Prime Minister **made a statement to the House of Commons**. She stated that a majority in the House of Commons have said that they would support a deal if changes are made to the Ireland-Northern Ireland ‘backstop’. The Prime Minister also stated that she would take forward changes relating to workers’ rights, and move to address concerns about parliamentary scrutiny of the future relationship between the UK and EU. She said she would seek to renegotiate the Withdrawal Agreement with the EU in order to secure legally binding changes to the ‘backstop’ that would alleviate concerns. The Prime Minister also highlighted that she agreed that the UK should not leave without a deal, but opposing a ‘no deal’ scenario is not sufficient to stop this from happening.

During the European Parliament debate on 30 January, Jean-Claude Juncker said that the House of Commons vote on 29 January has increased the risk of a ‘no deal’ Brexit, although he believes an agreement will happen. He confirmed that the EU will not renegotiate the Withdrawal Agreement, and the House of Commons vote will not change that. He said that the EU has no desire to use the ‘backstop’, but it is a safety net as Ireland's border is also the EU's border.

Michel Barnier reiterated that the Withdrawal Agreement will not be renegotiated, and like Juncker he said that it is the best and only way to secure an orderly withdrawal of the UK from the EU. He also called the ‘backstop’ necessary and is part of the solution to the Irish border issue.

The Prime Minister also announced during the House of Commons debate **on 29 January** that she would make a statement and table an amendable motion by 13 February if no new deal has been agreed by then.

The Prime Minister also committed during the debate to work through the proposals known as the ‘**Malthouse Compromise**’. These have been commented on in the media over recent days, although the House of Commons Library highlights that full details of the plan are currently unclear as it has not been formally published. However, it has produced a blog that sets out as much details of the ‘Plan A’ and ‘Plan B’ as are known.

The ‘Plan A’ referred to is to revise the Withdrawal Agreement and Political Declaration. This proposes to replace the ‘backstop’ with a time-limited alternative that would avoid a hard border on the island of Ireland by concluding a free trade agreement between the UK and EU, the operation of mutual recognition of standards, customs facilitation processes, and promises to not put in place border infrastructure as technology would be used to undertake border checks. There would also be a longer transition period until the ends of December 2021.

The ‘Plan B’ mentioned sets out proposals for a managed ‘no deal’ scenario if the deal set out in ‘Plan A’ does not happen. Under the ‘Plan B’, the UK would approach the EU to ask it to honour the Withdrawal Agreement without the ‘backstop’, and promise to pay relevant financial contributions for a transition period until the end of December 2021.

## Brexit legislation

The **Fisheries Bill** has been the focus of the Climate Change, Energy and Rural Affairs (CCERA) Committee so far this term. The Bill provides a number of powers that will enable UK and Welsh Ministers to introduce secondary legislation and contains provisions relating to Wales at the request of the Welsh Government. A **legislative consent motion** in relation to the Bill was laid before the Assembly on 15 November, and a **supplementary LCM** was laid on 10 January. The Cabinet Secretary states that she believes that it is appropriate to deal with these provisions in this UK Bill to ensure a UK-wide approach to creating the fisheries framework, but has also stated that the Welsh Government will bring forward a Welsh Fisheries Bill in the future. The CCERA committee took evidence on the LCMs from stakeholders **on 16 January** and from the Minister for Environment, Energy and Rural Affairs **on 24 January**. The Constitutional and Legislative Affairs Committee (CLAC) has also looked at the Bill and both committees will be reporting by the 12 February deadline. The Bill has completed its Committee Stage in the House of Commons, but a date for the Report Stage has yet to be announced.

The **Healthcare (International Arrangements) Bill** completed its journey through the House of Commons on 21 January. The Bill provides the Secretary of State with powers to fund and arrange healthcare outside the UK and to give effect to reciprocal healthcare agreements between the UK and other countries. At the Report Stage, the House of Commons rejected a number of clauses and agreed to the Third Reading of the Bill without a division. The Bill has now been passed onto the Lords for consideration. In the Assembly, a **legislative consent memorandum** for the Bill was tabled on 15 November. In it, the Welsh Government agrees that the Bill is necessary to ensure residents can continue to benefit from reciprocal healthcare arrangements, but it also raises concerns about the extent to which the Welsh Government will be involved in shaping those arrangements. Both CLAC and the Health and Social Care (HSCS) Committee published reports on the LCM on 22 January. **CLAC recommended** that the Minister should pursue, with the UK Government, an amendment to the Bill that requires the UK Ministers to seek the consent of the Welsh Ministers before exercising functions in devolved areas. The **health committee** also shared concerns about lack of provision to seek the consent of Welsh Ministers before making regulations, and therefore supported the Minister's position not to recommend consent until amendments are brought forward to address these concerns.

The **Trade Bill** reached its Committee Stage in the House of Lords on 21 January. During the debate, MPs discussed the impact of the Bill on Government procurement and the implementation of international trade agreements. There was one division on a proposed amendment that put in place a condition on the Bill continuing to Report Stage. **Baroness Smith of Basildon** proposed an amendment that the committee's report is not received until the Government has presented to both Houses proposals for a process for making international trade agreements once the UK is in a position to do so independently of the EU, including roles for Parliament and the devolved legislatures and administrations in relation to both a negotiating mandate and a final agreement. This amendment was passed, which means that the Bill will complete its committee stage in the House of Lords but not progress to Report Stage until the government's proposals are received.

The **Immigration and Social Security Co-ordination (EU Withdrawal) Bill**, had its Second Reading on 28 January. Some concerns about the Bill were raised at that stage, but the Bill ultimately passed its Second Reading without division and will now proceed to the Committee Stages. The Public Bill Committee will consider the Bill and is expected to report by 7 March 2019. The purpose of the Bill is to end free movement and protect the status of Irish citizens in UK immigration law. In the view of the UK Government, the immigration matters to which the provisions of the Bill relate are not within the legislative competence of the Assembly.

In terms of **subordinate legislation**, 350 Brexit-related SIs have been laid in the UK Parliament since the EU Withdrawal Act received Royal Assent on 26 June 2018, and 108 have completed their passage through Parliament. In terms of regulations made by Welsh Ministers, 15 **proposed negative instruments** have come before the Constitutional and Legislative Affairs committee, and the Committee has proposed that **one SI should be subject to the affirmative procedure** rather than the negative.

Assembly Standing Order 30C now requires that, for regulations made in devolved areas by UK Ministers under the EU Withdrawal Act, the Welsh Government must lay a written statement notifying the Assembly of the regulations in question. Where the regulations amend primary legislation, the Welsh Government must also lay a Statutory Instrument Consent Memorandum (SICM). The Welsh Government has now **laid written statements** in relation to 81 regulations to be made by UK Ministers in devolved areas, **as well as 16 SICMs**.

On 25 January, the Welsh Government published a **written statement** under Standing Order 30C on the State Aid (EU Exit) Regulations 2019. In this the Counsel General and Brexit Minister highlights that while the Welsh Government considers state aid to be devolved, the UK Government does not. Therefore the UK Government has not requested Welsh Ministerial consent under the terms of the Intergovernmental Agreement. The statement also highlights that the Welsh Government has requested to be given a meaningful role in the State aid regime going forward, however the Regulations that have been laid do not provide for this. That said, the Welsh Government considers that the regulations do achieve the Welsh Minister's overarching policy objectives of securing and maintaining the confidence of EU partners, facilitating a dynamic alignment with EU State aid rules and enabling effective cross-UK alignment.

### 3. Developments in Wales

#### Welsh Government preparedness for a 'no deal' Brexit

On 22 January, the Welsh Government rearranged its Plenary business following the 'meaningful vote' the previous week, with items on the agenda replaced by Ministerial statements on the impacts of a 'no deal' scenario on their portfolios and the actions the Welsh Government is undertaking to mitigate these as far as possible.

The First Minister, Mark Drakeford AM, made a **statement** updating the Assembly on the UK Government's proposals for Brexit. He stated that the UK Government should move to rule a 'no deal' scenario out:

The truth is that nobody really knows what will happen in the event of a 'no deal' Brexit. It follows that neither Wales nor the United Kingdom as a whole can be truly prepared for all the possible eventualities. This Welsh Government will do everything we can and use every opportunity to join with others to persuade the Prime Minister to turn away from this disastrous course, to halt the damage it would cause to our country, and to find a better way forward.

The First Minister also called for the UK Government to extend Article 50 once it has ruled out a 'no deal' scenario. He stated that the UK Government should secure a deal that commands the support of the House of Commons, and is based on participation in the single market and a customs union. If this cannot be done, he stated that the severity of a 'no deal' Brexit is such that if a deal cannot be reached then only a public vote can break the deadlock.

In response to a question about the constitutional implications of Brexit, the First Minister said that a number of Committees in the Assembly and elsewhere have stated that the current inter-governmental machinery that we have in the United Kingdom cannot bear the weight of Brexit. He stated that the Welsh Government is at the forefront of efforts to improve these. The First Minister also highlighted that the JMC (Plenary) is currently working on a review of these, "difficult to persuade the UK Government to find the energy, the time and the commitment to make those very important things happen".

The Minister for Health and Social Services, Vaughan Gething AM, made a **statement** on the impact of a 'no deal Brexit' on health and care services in Wales. In his statement the Minister raised concerns about the future supply of radioisotopes to Wales in the event of a 'no deal' scenario because supplies are imported from the EU. He also said that a 'no deal' Brexit, including changes to migration policy, will lead to "a tighter health and social care labour market across the UK" which would consequently impact services.

In terms of the work that his department has been doing to mitigate a 'no deal' Brexit, the Minister stated:

*We've been working closely with the NHS, the local authorities, professional and representative bodies to plan and prepare wherever possible.*

This work has included commissioning research to assess the composition of the social care and childcare workforce in Wales to identify how many EU workers are employed in the sector. In terms of ensuring the supply of medicines, the Minister said that the Welsh Government is reliant on the work being undertaken by the UK Government and the pharmaceutical industry "to ensure that stocks and dedicated transport routes are available".

In response to a question about reciprocal healthcare arrangements in a 'no deal' scenario, the Minister said that he is not currently in a position to recommend to the Assembly that it consents to the UK Healthcare (International Arrangements) Bill, for the reason that the powers delegated to UK Ministers under the Bill are "well beyond what is necessary" to ensure that reciprocal arrangements remain in place.

The Minister for Economy and Transport, Ken Skates AM, made a **statement** on the impact of a 'no deal' Brexit on transportation. During this, the Minister highlighted the impact of this scenario on ports, particularly in relation to border arrangements, customs and safety checks.

He stated that the UK Government had made a 'worst case' scenario assessment for all ports across the UK. The modelling in this states that it is likely that delayed traffic at Holyhead could be held within the confines of the port and any overflow on the A55 would be unlikely. However, the Welsh Government has been working with partners to develop contingency plans for mitigating traffic overflow should this occur:

*Potential sites on Anglesey have been identified and assessed, including the existing Roadking truck stop facility. My officials have met Roadking to discuss the use of this particular site. It is geographically well placed, there are no developmental issues and suitable infrastructure is already in place. We will now discuss terms with Roadking, but this is not the only option available to us. Parc Cybi is another option. This is a Welsh Government development site and has sufficient capacity for 40 HGVs. And there's a further fall-back option: the A55 could be used. Across Anglesey, roadworks are carried out with daytime lane closures and minimal disruption. Similar measures could be used, in the unlikely event that they were necessary, in order to manage freight delays at the port.*

The Minister also answered a question about Fishguard and Pembroke Dock ports, stating that while these ports are not currently considered to be at a high risk of traffic disruption, the Welsh Government is working with the local authority and others to continually review the need for precautionary measures.

He also highlighted the potential risks facing road hauliers, due to the permitting risks that they would face under a 'no deal Brexit'. The Minister said that greater clarity is needed about the future arrangements and the implications of permit restrictions, including what they could mean for Welsh hauliers and the ports and the businesses and individual consumers that rely on them.

The Minister also repeated calls for Air Passenger Duty to be devolved to Wales to maximise the impact of Cardiff Airport after Brexit.

The Minister for Environment, Energy and Rural Affairs made a **statement** on the impact of a 'no deal' Brexit on the environment, agriculture and fisheries. In emphasising that these are the areas most closely tied to the EU through the large body of devolved legislation, she said the Welsh Government had been working since the EU referendum to review 1,200 pieces of legislation and amend 900 pieces, to ensure a working statute book by exit day.

She said that the Government have been working to ensure that the necessary systems are in place to meet EU requirements on third countries. The Minister noted, however, that much of this has been delivered in conjunction with UK Government departments due to the shortened timescales and to ensure that plans are in place for exit day.

Her statement also included an update on the work that Government officials are doing on emergency planning to safeguard food supplies, an uninterrupted energy supply and water supply. Although her statement concentrated primarily on the work of the Government, she concluded by saying that she was concerned by the evidence from business organisations that suggest that many businesses are not yet actively preparing for Brexit and for a 'no deal' scenario:

Faced with a threat of this scale, we can only do so much. Businesses must also act, and quickly, because the scale of the challenge cannot be underestimated.

The Minister for Housing and Local Government made a **statement** on preparing public services for a 'no deal' Brexit, including civil contingencies. She stated that the Government is working through a range of partnerships for contingency planning around potential disruption at ports, to help ensure food security, and to maintain the availability of medicines and supplies.

She gave an update on the Government's plans to create support infrastructure to help quickly identify emerging issues and allow quick and effective decision making by all those involved, adding that those arrangements would enable co-ordinated public and media communications about civil contingency matters that will be shared across the public sector.

In terms of national-level response, the Minister said that there are plans to mobilise the Emergency Co-ordination Centre Wales if necessary, with Welsh Government staff being called upon to assist the core resilience team. She also gave an update on the Grant Thornton Brexit preparedness toolkit for local authorities, which gives a guide to authorities on how to plan effectively across their range of services.

The Minister concluded her contribution by emphasising that Government civil contingency planning is no way signalling that an emergency is expected, but rather the Government's desire to work with public services and partners to ensure that they are prepared for a 'no deal' Brexit and that mitigations are in place to minimise the need for a civil contingencies response.

The **Counsel General and Brexit Minister** also made the concluding statement on the impact of a 'no deal' Brexit on Wales. In his statement, he said that:

- Replacing single market participation with World Trade Organization rules could result in a UK economy up to 8 per cent to 10 per cent smaller than would otherwise have been the case;

- Incomes could be up to £1,500 to £2,000 per person lower in a 'no deal' scenario, consequently impacting living standards.
- New free trade agreement would add 0.2 per cent to GDP, compared to the 8-10 per cent loss caused by the reduction in access to European markets;
- loss of access to research funding, collaborations, exchange programmes and international talent will damage universities and colleges, as well as "stifle innovation" and "narrow" horizons.

In terms of what the Welsh Government is doing to prepare for Brexit, the Counsel General and Brexit Minister said that a new business resilience fund is being used to provide financial help to businesses to prepare for Brexit. Discussions are also ongoing with the Development Bank of Wales about how they might respond to any cash-flow problems in a 'no deal' scenario, including making use of the £130 million flexible investment fund set up in 2017 in response to Brexit.

### Debate on External Affairs and Additional Legislation Committee reports on Brexit preparedness

On 29 January, the Assembly held a **Plenary debate** to note the three reports the External Affairs and Additional Legislation Committee published in November and December 2018 about preparedness for Brexit. These focussed on **ports**, **healthcare and medicines**, and the **food and drink** sector.

On ports, the Committee called on the Welsh Government to publish its contingency plans for managing traffic at Welsh ports should new delays and checks become necessary after Brexit. The Welsh Government's **response** to the report highlighted commercial sensitivities around publishing the options for managing traffic relating to Holyhead. In responding to the debate, the Counsel General and Brexit Minister highlighted that some of the confidentiality issues that applied at the time when it responded to the Committee's report do not apply, and further detail on this was set out in the Minister for Economy and Transport's Plenary statement on 22 January. The Minister for Economy and Transport has written to the Committee around the possibility of this information being shared on a confidential basis.

On healthcare and medicines, the Committee's report expressed concerns about the continued supply of medicines, access to clinical trials and maintenance of the health and social care workforce.

Responding to the debate, the Counsel General and Brexit Minister stated that:

We have been doing, and continue to do, everything we can to ensure that the assurances that UK Ministers are giving about the ability of the buffer requirements placed on pharmaceutical companies, the additional warehousing and alternative transport routes, including air routes for radioisotopes, are well founded. On medical devices and consumables, as the health Minister outlined, we will use UK arrangements where that is the right thing to do, but we are already taking additional steps, including with regard to storage capacity, where we have areas of concern or where we feel we can provide additional certainty in Wales.

In relation to the food and drink sector, the Committee's report set out its concerns around trading on WTO terms under a 'no deal Brexit', and geographical indications for protected foods. In response to these concerns, the Counsel General and Brexit Minister stated that the Welsh Government is working closely with the UK Government to ensure there is a UK-wide contingency plan with a view to maintaining food supply to the public if a worst-case scenario arises, and on geographical indications. It is also working with the food and drink sector to allow businesses to check their readiness and understand the implications for their supply chains for 'no deal' through our Brexit portal and through the business resilience and red meat project.

The Counsel General and Brexit Minister also highlighted an overarching theme from all three reports, around communication, and stated that the Welsh Government agreed with the Committee's assessment of the importance of this. It has recently developed Paratoi Cymru, a single, comprehensive source of information for the people of Wales about the actions it is taking to prepare for the significant impact of a 'no deal' Brexit.

### Welsh Government debate on 30 January

On 30 January, the Welsh Government and Plaid Cymru tabled a **motion for debate** in Plenary that day. The motion proposed that the Assembly:

- Condemns the UK Government for its failure to engage in meaningful negotiations with the devolved institutions on the EU withdrawal deal;
- Reiterates its view that a 'no deal' outcome would be catastrophic for Wales, and that the UK Government and Parliament must do everything in their power to prevent no deal, including extending Article 50;

- Believes that if the UK Parliament cannot unite around an alternative proposition which includes participation in the single market and a customs union, then the only option which remains is a public vote; and
- Believes the UK Parliament should, with immediate effect, step up its engagement with the devolved legislatures on these issues.

In opening **the debate**, Brexit Minister Jeremy Miles welcomed the fact that the House of Commons had stated clearly that a 'no deal' Brexit is an unacceptable outcome to the Brexit negotiations, and said that this demonstrated that decisions taken within the Assembly were informing opinion. However, he emphasised that this does not mean that 'no deal' is impossible, saying that unless the EU27 also agreed to the extension of article 50, 'no deal' would not be avoided. He therefore called for an immediate extension to Article 50.

Two amendments were tabled to the debate, from UKIP and Plaid Cymru. In introducing the UKIP amendment, Neil Hamilton said that taking 'no deal' off the table would not respect the result of the referendum, because 'no deal' is 'the strongest weapon Britain ever had'. Adam Price said that the 'only real choice is a no-deal Brexit or a people's vote', and his amendment on behalf of Plaid Cymru called on the Welsh Government to facilitate a parliamentary delegation to be sent on behalf of the Assembly to meet with representatives in Westminster to put the case for Wales.

The Conservatives did not table an amendment to the motion, but Darren Millar said that the Prime Minister has been 'consistently fighting hard to make sure we have a deal', adding that this is 'the only deal on the table.'

At the end of the debate, the UKIP amendment was defeated and the Plaid Cymru amendment was not put to the vote, and so the original motion was passed.

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

### Brexit preparedness

On 28 January the UK Government **published advice** for people visiting the UK, EU or European Economic Area in the event of a 'no-deal' Brexit. This includes advising UK nationals living or working in the EU to register for access to healthcare in the EU/EEA country they live in.

On 30 January the European Commission **published its final set of contingency proposals** for a 'no deal' Brexit. The press release states that there is an "increasing risk" that the UK may leave the EU without a deal. The latest set of 'no deal' contingency measures are in the area of the Erasmus+ programme, social security coordination and the EU Budget. These follow the publication of **contingency plans for EU fisheries** on 23 January,

The contingency measures seek to ensure that in the event of a 'no deal' Brexit:

- students and trainees participating in **Erasmus** abroad at the time of Brexit from the EU can complete their studies and continue to receive the relevant funding or grants;
- the **social security rights** of EU citizens who exercised their right to free movement before exit day are safeguarded;
- the EU is in a position to honour its commitments and to continue making payments in 2019 to UK beneficiaries for contracts signed and decisions made before exit day, on condition that the UK honours its obligations under the **2019 EU Budget**, and that it accepts the necessary audit checks and controls;
- fishermen and operators from EU Member States can receive compensation under the **European Maritime and Fisheries Fund** for the temporary cessation of fishing activities; and
- the EU is in a position to grant UK vessels access to EU waters until the end of 2019, on the condition that EU vessels are also granted reciprocal access to UK waters. The **proposal** also provides for a simplified procedure to authorise UK vessels to fish in EU waters and EU vessels to fish in UK waters.

On 31 January, the Institute for Government published **Brexit: two months to go**, which looks at the UK Government's progress in preparing to leave the EU without a deal. Of the 11 areas it looked at, it found that the UK Government was fully prepared in just 1 of these. The report stated that:

The problems facing the [UK] Government in being ready for a no deal Brexit are largely a reflection of the sheer scale and complexity of the task. But the Government's approach to no deal preparations – being unwilling to talk publicly about plans and developing an adversarial relationship with Parliament – has caused further problems.

The report found that in eight areas the UK Government will not be able to mitigate fully the major negative impacts of no deal in 2019. These are:

- The border: Preparing for a new customs regime and regulatory requirements.
- Agriculture, fisheries and food: Implementing new systems for managing agriculture and fisheries, ensuring supply chains are maintained.
- Health: Creating new testing regimes and ensuring supply chains are maintained.
- Services: Preparing for changes to regulatory regimes and terms of access to the EU market.
- Energy and environment: Creating a new nuclear safeguards regime, replacing other functions currently carried out by EU agencies.
- Competition, tax and data: Securing an "adequacy" decision to allow data flows to continue, beefing up the Competition and Markets Authority, implementing new tax regimes and creating new trade policy. Securing an "adequacy" decision to allow data flows to continue, beefing up the Competition and Markets Authority, implementing new tax regimes and creating new trade policy.
- Law and justice: Finding replacements for EU tools allowing cooperation law enforcement.
- International agreements: Rolling over existing EU agreements with other countries around the world

### International treaties

In the UK, the **negotiation and ratification of international treaties is an executive role**, i.e. carried out by the UK Government under the Royal Prerogative. The UK Parliament has only recently acquired a formal right to ratify some international treaties under **Constitutional Reform and Governance Act 2010**.

The House of Commons' International Trade Committee and the House of Lords' Constitution Committee have both recently highlighted the limitations of parliamentary scrutiny processes for international treaties. The Constitution Committee in the House of Lords has been undertaking an inquiry into **parliamentary scrutiny of treaties**. Mick Antoniw AM gave evidence to the Committee in November 2018, in his capacity as Chair of the Constitutional and Legislative Affairs Committee. The Committee held its final evidence session on 30 January with UK Government Ministers. Some of the key questions **for the session** included:

- What are the consequences of Brexit for the nature and volume of UK treaty-making in the future?
- Is it right that treaties receive significantly less parliamentary scrutiny and approval than primary legislation and affirmative statutory instruments?
- Should some or all treaties require the express approval of the House of Commons?
- What impact would there be on the Government's treaty-making activity if there was increased parliamentary scrutiny and engagement?
- The Prime Minister's statement to the House of Commons on Monday 21 January said that there will be consultation with Parliament on the negotiating mandate for the UK's future partnership with the EU. How will this work in practice?
- How should the devolved executives and legislatures be involved in treaty-making and scrutiny? How do you see the Sewel Convention applying to treaties?

### Next steps for Brexit

On 28 January the Commons Exiting the EU Select Committee published its **Response to the vote on the Withdrawal Agreement and Political Declaration: Assessing the Options**. This follows the Committee's **interim report** published on 16 January calling on the UK Government to hold a series of indicative votes on different options for how to proceed with the Brexit process. The four options identified in that report were as follows:

1. Hold another vote in Parliament on the draft Withdrawal Agreement and Framework for the Future Relationship.
2. Leave the EU with no deal on 29 March 2019.
3. Renegotiate the deal to seek:
  - a. changes to the text in the Withdrawal Agreement on the backstop arrangements;
  - b. a Canada-style deal; or
  - c. to join the EEA and remain in a customs union or a variation on this.
4. Hold a second referendum with the option of choosing between different Brexit deals or staying in the EU.

The Committee's full report published on 28 January provides an assessment of the different options put forward as alternatives to the Prime Minister's Brexit deal.

On the option of a 'no deal' Brexit, the Committee states, amongst other things, that:

- A lack of both time and transparency has hampered the UK Government's preparations;
- The scale of the task and the short timeframe to put new processes and systems in place and to prepare the statute book raise "significant risks";
- It has concerns about the readiness and capacity of businesses for such a scenario;
- A move to trading with the EU on WTO terms could have a "a very significant impact" on the competitiveness of some UK exports, particularly agricultural exports, due to higher tariff rates and also non-tariff barriers including increased product standard checks and checks on rules of origins. However, setting a zero-tariff policy towards WTO partners would mean that the UK would not be able to offer tariff reductions in trade negotiations and would have less leverage in future trade deals;
- There could be "major disruption" at the UK' borders;
- It may be possible to maintain an open border in Ireland;
- The UK could lose the current arrangements for cooperation and exchange of information in the area of policing and law enforcement;
- There could be uncertainty for EU citizens living in the UK and UK citizens living in the EU about their legal status and the continuity of the rights that they currently enjoy as a result of free movement.

In terms of renegotiating the current Brexit deal, the Committee said:

- It would require the unanimity of the 27 EU countries;
- If the House of Commons decided to accept the Withdrawal Agreement but amend the Political Declaration in a way that sets out a clear end state for the future UK-EU relationship, there “will inevitably be trade-offs between the level of UK regulatory autonomy and the level of market access and opportunities for future EU/UK co-operation in a range of fields.”
- A Canada-style free trade agreement with the EU would not enable frictionless trade to continue and under such arrangement Northern Ireland would trade under different rules from the rest of the UK;
- A Norway Plus agreement would enable frictionless trade on the condition that the UK continued to adhere to EU rules but along with following Single Market rules, the UK would need to be in a customs union with the EU.

With regard to a second referendum, the Committee noted that if the UK chose hold a second referendum it would need to make a request to the European Council for an extension to the Article 50 period. According to the Committee:

There have been indications that the EU27 would look favourably on a request for an extension if it was to allow time for the ratification process to be completed, for a second referendum, or for a general election. The EU27 appear unlikely to look favourably on a request for an extension to allow more time for negotiations, although it has been suggested that there would be a greater chance of allowing some further negotiations on the Political Declaration. If the EU were to agree an extension, it is likely to be time limited rather than open ended.

It would also be possible for the UK to unilaterally revoke Article 50 but it must be “unequivocal and unconditional”.