

Negotiations on the UK's withdrawal from the EU

Brexit Monitoring Report

10 July 2019



The Assembly and

BREXIT

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National Assembly for Wales
Senedd Research

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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 12 June 2019. To view developments prior to this, see our previous Brexit Negotiations Monitoring Report.

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).

2. Developments in Westminster

On 24 May, the Prime Minister Theresa May announced that she would resign on Friday 7 June, triggering a Conservative Party leadership election. This process initiated on Monday 10 June and is ongoing. On 25 June, a Conservative Party press release confirmed that **a new leader will be announced on 23 July**. Prime Minister May has **officially stood down as leader of the party** but will continue as Prime Minister until this date.

No-deal Brexit

On 4 June, International Trade Secretary Liam Fox told BBC Radio 4's Today programme that **a 'no-deal' Brexit risks breaking up the Union:**

Number one is that we want a deal, because we think that is the best way to leave the European Union with minimal disruption. But equally, and it has to be delivered with equal volume and equal strength, if we can't get an agreement, we have to be willing to walk away, otherwise we have no real negotiating hand.

He went on to say:

The prospect of a no-deal might well be used by those who seek to break up the United Kingdom, to use that as a weapon in that particular battle, both I think in Northern Ireland and potentially in Scotland.

On 6 June, following suggestions that some Conservative Party leadership candidates would be prepared to prorogue Parliament to force a no-deal Brexit, Speaker of the House, **John Bercow stated** that Parliament **will not be prorogued:**

Parliament will not be evacuated from the centre stage of the decision-making process on this important matter. That is simply not going to happen; it is so blindingly obvious that it almost does not need to be stated—but apparently it does and therefore I have done.

The **Institute for Government published an analysis** of what actions the Speaker might take to include Parliament in the process, including allowing votes amendments to legislation, motions to be tabled and grant urgent questions and debates.

On 7 June, the **UK official responsible for Brexit border arrangements** resigned her position. As Director General of HMRC's Brexit border delivery group, Karen Wheeler's responsibilities included no-deal emergency planning for Dover and Ireland and the coordination of police, ports, customs and freight.

On 10 June, **it was reported that less than 10% of firms** had applied to the Transitional Simplified Procedures (TSP) scheme in preparation for a no-deal Brexit. The HMRC scheme allows UK firms to import goods from mainland Europe without customs declarations at the border and enables them to postpone payment of import duties for one year. Of the 240,000 firms estimated to need the scheme, 17,800 firms have applied.

On 12 June, a Labour-led **motion to avoid a no-deal** was defeated in the House of Commons by 309 votes to 298. The motion would have allowed Parliament to seize control of the Parliamentary agenda on 25 June. In Wales, the **First Minister encouraged colleagues in Westminster** to reject a no-deal Brexit and to find a 'practical way' forward ahead of the vote:

If Parliament succeeds in taking control of the agenda on 25th June, it should legislate not just to prevent no deal, but also to force the Government to bring forward a referendum bill by the 31st July. This must be done quickly – we cannot afford the economic damage being done every single day as a result of Brexit uncertainty and the Civil Service could be getting on with preparing the legislation while time is being frittered away on a Tory leadership election.

Of course, if an incoming Prime Minister is not prepared to accept this, they have an alternative – they can call a general election.

Following the defeat, Shadow Secretary of State for Exiting the European Union, Keir Starmer, advised that the Opposition would look for alternative opportunities and mechanisms to seek a majority against a no-deal.

On 25 June, the **Society of Motor Manufacturers and Traders (SMMT)** published new analysis estimating that a no-deal Brexit could cost UK car manufacturers more than £70 million extra per day:

Delays to shipments of parts to production plants are measured in minutes, with every 60 seconds costing £50,000 in gross value added – amounting to some £70 million a day in a worst case scenario. Combined with WTO tariffs, which for trade in passenger cars alone amount to £4.5 billion a year, this would deliver a knockout blow to the sector's competitiveness, undermining a decade of extraordinary growth.

The SMMT called on the next UK Prime Minister to secure a 'favourable Brexit deal'.

Expert panel to review migration rules for the devolved nations and English regions

On 24 June, the **UK Home Office announced** it has asked an expert panel to assess whether post-Brexit immigration rules should be different for Wales. The news follows

evidence that new immigration proposals will disproportionately affect Wales more than the rest of the UK. The UK Government wishes to review its plans to introduce a new minimum salary threshold of £30,000 for skilled migrants seeking five-year visas. Home Secretary Sajid Javid stated that:

These proposals are the biggest change to our immigration system in a generation, so it's right that we consider all of the evidence before finalising them. It's crucial the new immigration system works in the best interests of the whole of the UK.

He has asked the Migration Advisory Committee (MAC) to consider whether:

Salary thresholds are applicable to the whole of the United Kingdom or whether there is a need for greater regional variation

The MAC will report in January 2020. Wales' Counsel General and Brexit Minister, Jeremy Miles, has previously called for **any salary threshold to be 'well below £30,000'**. In response to the UK Government announcement, a Welsh Government spokesperson advised that:

A £30,000 threshold would not work for Wales and would hit our economy hard. Nurses, junior doctors, vets and a range of workers we need for our public services and industry will find it much more difficult and less attractive to come to Wales under these proposals.

During **Plenary on 11 June**, the Counsel General and Brexit Minister delivered a statement on immigration, during which he confirmed that the Welsh Government had not been consulted ahead of the **UK Government's white paper on post-Brexit immigration** but that Welsh Government was now involved in a 12-month engagement process with the Home Office, the Scottish Government and Northern Ireland representatives. Furthermore, the First Minister issued a **statement recognising the valuable contribution of EU nationals** to Wales. The statement announced that the Welsh Government has commissioned a legal firm to provide immigration support and advice to EU citizens in Wales, particularly to vulnerable groups.

UK review of devolution structures

On 4 July, it was reported that **Prime Minister Theresa May will announce a review** of devolution. The review will be chaired by former Scotland Office Minister, Lord Dunlop and will recommend improvements to inter-governmental relations, specifically on how UK Government departments co-operate on devolution.

3. Developments in Brussels

Withdrawal Agreement

Throughout June, EU leaders reiterated the EU's position that the Withdrawal Agreement will not be renegotiated. On 11 June, EU Commission President, **Jean-Claude Juncker explained** that:

This is not a treaty between Theresa May and Juncker. This is a treaty between the United Kingdom and the European Union. It has to be respected. It has to be respected by whomsoever will be the next British prime minister. There will be no renegotiations as so far as the content of the Withdrawal Agreement is concerned.

EU Council President, Donald Tusk, **later added** that:

Maybe the process of Brexit will be even more exciting than before because of some personnel decisions in London, but nothing has changed when it comes to our position.

On 12 June, the **European Commission published a communiqué** on Brexit preparedness in which it restated that:

Unless the United Kingdom ratifies the Withdrawal Agreement by 31 October 2019 or requests a third extension, to which the European Council (Article 50) agrees by unanimity, the period under Article 50(3) TEU will end then. The United Kingdom will then be a third country as of 1 November 2019 without an agreement to ensure an orderly withdrawal.

EU Council Summit 20-21 June

At the EU Council Summit on 20-21 June **EU Leaders agreed** that they:

- look forward to working together with the next UK Prime Minister;
- want to avoid a disorderly Brexit and establish as close a future relationship as possible with the UK;
- are open to talks when it comes to the Declaration on future UK-EU relations if the position of the United Kingdom were to evolve, but the withdrawal agreement is not open for renegotiation;
- have been informed of the state of play of planning for a no-deal scenario.

The EU launched its **new strategic agenda for 2019-2024** at the summit. The strategic agenda sets the overall direction and priorities for the EU. Following the summit, the **EU published its summit conclusions** and agreed to meet again on 30 June to further discuss appointments to senior posts.

Nominations for EU senior roles

On 2 July, current President of the EU Council, Donald Tusk, announced the nominations for the EU's senior roles. The EU Council, comprising EU heads of state and acting by qualified majority, proposes candidates to the European Parliament for approval under the **Treaty of Lisbon**. The Council nomination must take into account the **results of the European Parliament elections**, held in May.

The Council nominated German Defence Minister, **Ursula von der Leyen**, to succeed Jean-Claude Juncker as the next **EU Commission President. If successful, Von der Leyen will become the first female EU Commission President. Nominations for other roles were also agreed:**

European Council President – Charles Michel (interim Belgian Prime Minister)

European Central Bank – Christine Lagarde (Managing Director of the International Monetary Fund)

High Representative for Foreign Affairs and Security Policy – Josep Borrell (Spain's Minister of Foreign Affairs, the EU and Cooperation and former President of the European Parliament)

The **European Parliament must approve** the EU Commission President nomination within one month by an absolute majority (half of the existing MEPs plus one). The full Commission, including the Commission President and High Representative for Foreign Affairs and Security Policy must also be approved by the Parliament by a single vote of consent. Following this, the roles are formally appointed by the EU Council (acting by qualified majority).

ON 3 July, the **European Parliament also selected its new President. David-Maria Sassi**, an Italian MEP of the Democratic Party and former Vice-President of the EU Parliament, received 345 out of 667 votes. He will **serve for half the parliamentary term** (two and a half years) before passing the role to a member of the European Parliamentary Party for the rest of the term.

European Labour Authority established

On 13 June, the European Council **adopted regulations** establishing a new European Labour Authority, to be **based in Bratislava, Slovakia**. The **Authority will:**

- Improve access to information for employees and employers on their rights and obligations;
- supporting coordination between member states in the cross-border enforcement of relevant Union law, including facilitating concerted and joint inspections
- supporting cooperation between member states in tackling undeclared work
- assisting member states authorities in resolving cross-border disputes
- supporting the coordination of social security systems, without prejudice to the competences of the Administrative Commission for the Coordination of Social Security Systems

4. Developments in Wales

First Minister

Visit to Brussels

On 12 June, the First Minister met with political leaders, including **EU Chief Negotiator, Michel Barnier**, to discuss the Welsh Government's position on Brexit and potential ways forward for the UK Parliament. In an **accompanying press release**, the First Minister advised that:

During my meeting with Michel Barnier I called on him to ensure the European Council gives us sufficient time to hold a referendum, in which the Welsh Government would do all we can to make sure the UK votes to [sic] remain part of the EU.

The press release also reiterated Welsh Government's view that it 'continues to believe that the best option for the people of Wales is for the UK to remain within the EU'.

Withdrawal of diplomatic support

In **Plenary on the day of the Brussels visit**, the Counsel General and Brexit Minister, Jeremy Miles, provided context to the Assembly of reports that UK Government diplomatic support had been removed for the First Minister's visit to Brussels. Advising that Welsh Government were 'puzzled and disappointed' by the decision of the Foreign and Commonwealth Office:

I should say, as context, that we have been provided as a Welsh Government with high-quality support by the Foreign and Commonwealth Office on every previous occasion when Ministers have visited Brussels.

He went on to explain:

I can confirm that the FCO informed the Government that they'd only provide support while the First Minister was in Brussels today, including access to the car pool service, if we gave assurances that the First Minister would not undermine UK Government policy. We made it clear that the First Minister and Welsh Ministers take seriously, in their capacity as Ministers of the United Kingdom, their duties to the United Kingdom when abroad on official business, but that is not out of deference to the UK Government and it certainly isn't in consideration of getting access to car services. So, we refused to give any assurance that would fetter or inhibit the entitlement of the First Minister to speak up for Wales's national interest. Ultimately, as it happened, car facilities were then offered, but the First Minister is travelling using public transport

throughout his visit to Brussels today.

On 2 July, the **First Minister further described** the actions of the Foreign and Commonwealth Office (FCO) as 'crass in the extreme'. He explained:

I never go abroad to criticise the UK Government; I go to make the points that are made in this Chamber and that I make on behalf of Wales. If the Foreign Office believed for a moment that I would not say the things that I think are important to say on behalf of Wales by saying that I couldn't have a lift in one of their cars—a lift, by the way, that we pay for; it's not a free lift, we pay for it every time we use it. If they thought that that would lead me to change my mind, then that tells you just how detached that department has become from the realities of the way the United Kingdom operates.

He later reiterated Welsh Government's position that it wants the UK 'to be a success, and I want Wales to be a successful part of a successful United Kingdom'.

Diplomatic support was also removed for the Scottish First Minister, a move she branded as 'childish and pathetic'. On 25 June, the FCO **extended this policy** to cover any official or consular support on overseas visits used to campaign for Scottish independence. Speaking in Aberdeenshire, Foreign Secretary Jeremy Hunt stated that:

I believe in the union with every fibre of my being and British government policy is to protect, preserve, cherish and enhance that union. So we are not going to offer support to Nicola Sturgeon if she goes abroad to drum up support for independence.

Secretary of State for Wales

On 1 July, **Secretary of State for Wales, Alun Cairns, accused the First Minister** of 'scaremongering' about the possible impact of a no-deal Brexit. The accusation follows recent comments made by the First Minister. These included saying that at a recent British-Irish Council, there was not a:

Single voice that believed that leaving the EU without a deal would be anything other than deeply damaging.

And that:

The tensions inside the UK are more real and apparent than any time in my political lifetime.

Welsh Government support for a second referendum

Additionally on 25 June, the First Minister **wrote to all Welsh MPs** to urge them to take action to block a no-deal Brexit and to introduce legislation for a second referendum. The letter states that:

Any deal proposed by any Government should be subject to a referendum; and it would be outrageous for any Government to take the UK out of the EU without a deal – as a deliberate act or as a result of inaction – without seeking a specific mandate to do so.

The First Minister indicated that he strongly supported recent efforts to take control of the Parliamentary agenda and regretted that a recent **motion** tabled on the 12 June **failed by 309 votes to 298**. During Plenary on 2 July, **he cautioned** those proposing 'alternative arrangements' to the Irish backstop:

It is absolutely incumbent upon those people who talk about alternative arrangements on the border on the island of Ireland to come and explain to us how those alternative arrangements are to operate. It's no use just saying there are other ways in which this could be done. Those people who believe that have to come forward with a credible plan as to how that can be achieved.

The Assembly **passed a motion unequivocally supporting a second referendum** on 5 June for any Brexit outcome and that an option to Remain be included on the ballot paper. The **Counsel General and Brexit Minister disclosed** in their meeting of 16 May, the Secretary of State for Exiting the European Union, Stephen Barclay, had confirmed to him that the UK Government were making no such preparations.

Counsel General and Brexit Minister

Intergovernmental Relations

The Counsel General and Brexit Minister, spoke at an event hosted by the Wales Governance Centre on 17 June, in which he discussed the challenges facing intergovernmental relations. He reiterated **Welsh Government's calls** for:

- Robust intergovernmental structures
- An independent secretariat;
- A UK Council of Ministers;
- An independent dispute resolution mechanism;
- A Constitutional Convention to review UK constitutional arrangements.

Furthermore, he stressed the need for devolved administrations to be fully involved in the negotiation of international relations.

Shared Prosperity Fund

The UK Government has proposed a **Shared Prosperity Fund (SPF)** which will replace **EU Structural and Investment Funding** after Brexit. The Counsel General and Brexit Minister called for 'concrete assurances' from the UK Government that the Welsh Government could continue to make use of funds and align them to its priorities **during Plenary on 12 June**. He also revealed that the Welsh Government had offered its support to the Secretary of State for Wales, Alun Cairns, in designing a consultation but that this had not been taken up.

On 11 June, a motion was agreed during a **Plenary debate** on the SPF. **The motion** noted concern over the lack of information provided by the UK Government regarding the fund and rejected the concept of 'a UK centralised or UK-directed fund or one which seeks to bypass the devolved administrations post-Brexit'. The motion also called for the UK Government to fulfil its promise to Wales that it would 'not lose a penny' and to respect the autonomy provided by devolution to develop and deliver successor arrangements.

No-deal preparations

During **Plenary on 12 June**, the Counsel General and Brexit Minister, Jeremy Miles, advised that a review of no-deal preparations in health and social care had been undertaken. He reminded Assembly Members of the warehouse space purchased for medical supplies and explained that the Welsh Government were working with the UK Government to maintain arrangements for medical supplies. He urged health boards and practitioners in Wales not to stockpile medicines or issue longer prescriptions. On 23 June, the Welsh Government **issued a statement marking the third anniversary of the 2016 referendum**, in which the Counsel General and Brexit Minister stated that 'there remains no mandate for a no deal Brexit.'

Minister for International Relations and the Welsh Language

NHS and international trade

On 10 June, the **Minister for International Relations and the Welsh Language gave evidence** to the External Affairs and Additional Legislation Committee. Following reports that a post-Brexit UK trade agreement might result in privatisation of the UK's NHS systems, the Minister for International Relations and the Welsh Language stated

that:

Legally, it would be difficult for us to stop, because we don't have a veto over trade, in terms of the Welsh Government. Politically, I think it's extremely unlikely to happen.

The Minister went on to say that:

This is an area that is devolved, and we would be absolutely clear that we would want a say. This is an area that is devolved, and we would be absolutely clear that we would want a say in that. If they were to try and trample on our rights as a devolved area, then we would probably challenge them in court, because we think that they would be stepping on our toes, constitutionally.

The US Ambassador to the UK, Woody Johnson, **told BBC Wales** on 2 July that running the NHS would not be on the table in negotiations in a UK-US trade deal, but that US suppliers would want to have access to a 'fair and balanced marketplace' in NHS Wales as part of any deal. He stated that:

The NHS is a sacred entity in this country. What the president wants is to be part of the thousand or more companies that provide the NHS with soaps and disinfectants and surgical instruments, and all those things.

Trade

On 10 June, **in evidence** to the External Affairs and Additional Legislation Committee, the Minister for International Relations and the Welsh Language, Eluned Morgan, stated that the UK Government is developing a concordat, in consultation with the devolved administrations, that will set out how the UK administrations could work together on future trade deals. On 26 June **in Plenary** the Minister for International Relations and the Welsh Language discussed Welsh international trade:

We're actively working with companies across Wales to support them to grow their exports and are leveraging our international connections to link them with opportunities.

The Minister dismissed the idea that the UK could avoid tariffs during an implementation period and suggested that a UK-EU trade deal 'seems a long way away'.

Additionally, the UK Government **published figures** for inward investment into the UK during 2018-19. These found that the number of inward investment projects investing into the UK decreased by 14% compared to 2017-18. Over the same time period, the decrease in Wales was 10.5%. The Minister for International Relations and the Welsh Language **stated that**:

This reduction is without a doubt caused by the significant uncertainty businesses are facing because of Brexit. I have spoken to countless companies in recent months, who tell me they want to invest in Wales, but are put off by the uncertainty around what the UK's future relationship with Europe will look like.

This is causing significant harm to our economy. While the work of the Welsh Government has ensured the reduction in the number of investments is less than that for the UK as a whole, it's now up to the UK government to provide the certainty businesses need.

The European Grouping of Territorial Cooperation (EU Exit) Regulations 2019

On 20 June, the Welsh Government **issued a statement** regarding regulations made by the UK Government on 18 June under the European Union (Withdrawal) Act 2018. The regulations relate to European Groupings of Territorial Cooperation (EGTC), which are legal entities, designed to facilitate and promote cross-border, transnational and interregional cooperation. They allow public authorities to participate in cooperation activities as EGTC members. Welsh Government acknowledges that participation will no longer be available to UK public authorities post-Brexit but that they will have the option to apply for EGTC membership as third country members. Under the regulations, applications by Welsh public authorities would be made to the UK Secretary of State. Welsh Government describes its belief that the regulations:

Contains a provision preventing the Secretary of State from approving or rejecting an application without seeking agreement from the Welsh Ministers.

However, the Assembly's Constitutional Affairs and Legislation Committee (CLAC)'s **report on the regulations** identifies that:

The statement correctly indicates that in relation to a devolved Welsh authority the Secretary of State must seek the approval of the Welsh Ministers before granting approval of the application. If the Welsh Ministers do not agree, the application must be refused. On the other hand, if the Secretary of State is minded to reject the application, even if the Welsh Ministers consider that it should be approved, the Secretary of State must reject the application.

The report recommends that clarification be sought by the Committee on why the powers are not conferred on Welsh Ministers. On 2 July, the UK Parliament's European Statutory Instruments Committee **recommended upgrading the scrutiny of these regulations** to the affirmative procedure (requiring the regulations to be laid and approved by each House of Parliament) on the grounds of political importance.

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

Ireland

Ministerial visit to Dublin

During a **visit to Dublin on the 13 June**, the Minister for International Relations and the Welsh Language, Eluned Morgan, met with Ireland's Tánaiste and Minister for Foreign Affairs, Simon Coveney. They discussed the impact of Brexit, the role of Irish and Welsh ports in the flow of trade and joint programmes funded through the EU, such as the **European Territorial Co-operation programme**

Irish Consulate reopens in Cardiff

On 23 June, a **new Irish consulate** to boost Welsh-Irish trade reopened in Cardiff. The consulate, previously closed in 2009, reopens as part of Ireland's '**Global Ireland 2025' initiative**. The initiative, launched on 11 June is described as the 'most ambitious renewal and expansion of Ireland's international presence ever undertaken'. Other locations include Chile, Colombia, New Zealand, Jordan, Vancouver and Mumbai. The Welsh Government's **Minister for International Relations and the Welsh Language, Eluned Morgan, explained** that:

The relationship with Ireland is extremely important to Wales. The republic is our closest European neighbour, and one of our most important economic partners. As a Welsh Government, we are determined to forge far greater ties with Ireland in the months and years ahead.

Island of Ireland mapping exercise published

On 20 June, the **House of Commons Committee on Exiting the European Union** published a UK Government scoping document on North-South cooperation on the island of Ireland. The previously confidential paper from September 2017 was obtained by a member of the public via a Freedom of Information request. The **paper sets out 142 areas of cross-border cooperation** in a mapping exercise on shared policy areas undertaken by the EU and UK. Each area is considered in the context of the Good Friday Agreement and the degree to which existing EU legal and policy frameworks apply. An additional paper on **North-South cooperation on healthcare** was also obtained.