

# Negotiations on the UK's withdrawal from the EU

## Monitoring Report

18 January 2021



The Senedd and

**BREXIT**

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# 1. Introduction

## Summary of developments

**The UK and EU** reached agreement on their future relationship on 24 December in the form of three agreements. These provide the legal basis for UK-EU cooperation from 1 January. The agreements have been provisionally applied until 28 February 2021 whilst EU ratification is underway. This is expected to be completed in the coming months. The UK Parliament ratified the deal on 30 December. Meanwhile, implementation of the Withdrawal Agreement continues, with progress made on citizens' rights and the Northern Ireland Protocol.

**At UK level**, the UK Parliament passed the Future Relationship Bill and it was granted Royal Assent in one day. During the first week of January, an average of 1584 lorries per day attempted border crossings between Great Britain and the EU, compared to an average of 4067 at the same point last year. Traffic was expected to increase later in the month. Some businesses reported disruption to traffic between GB and the EU, including for perishable goods. Disruption was also reported to trade between GB and Northern Ireland. New trade continuity agreements came into effect, but negotiations with six countries were ongoing. Around 20 common frameworks for managing divergence were provisionally agreed shortly before the end of the transition period. The UK Government said it planned to conclude the Intergovernmental Relations Review at the earliest opportunity. The Internal Market Act was granted Royal Assent and the Trade Bill and Environment Bill continued to progress through Parliament.

**In Wales**, the Senedd was recalled on 30 December to debate the UK-EU agreement. The First Minister welcomed the agreement of the deal as a 'foundation on which to build'. The Welsh Government called for support for businesses to mitigate the impact of the end of the transition period and for the devolved governments to be able to feed into the governance of the UK-EU TCA. The Welsh Government planned to publish an analysis of the agreement and its implications for Wales by the February half term. The Minister for European Transition confirmed that contingency plans at Holyhead Port had been put in place. He said that volumes of traffic were lower than expected for the time of year. About 20-25% of freight vehicles had been turned away, but most of those had still been able to make their crossings as planned. The Welsh Government also announced plans to launch a legal challenge to the UK Internal Market Act.

## 2. UK-EU developments

On 24 December, the EU and UK reached an agreement on a **Trade and Cooperation Agreement (TCA)** that will govern their future relationship. The parties also reached agreement on a **Security of Information Agreement**. **A separate Nuclear Cooperation Agreement** was reached between the UK and Euratom. The EU and UK have published summary documents of the key provisions contained within the TCA and other agreements (collectively referred to as 'TCA' below).

The agreements have not yet been ratified on the EU side by the European Parliament. However, on 28 December the **European Council agreed** that the TCA could enter into force provisionally until 28 February 2021 to give the European Parliament time to consider and vote on the agreements.

On 28 December the **European Parliament stated** that it was consulting with the European Commission on extending the provisional application period to March, to enable the Parliament to vote on the agreement during its March plenary session. This has yet to be confirmed.

On 11 and 14 January the European Parliament's International Trade Committee and Foreign Affairs Committee **began their formal scrutiny** of the TCA. These committees will make a recommendation based on their reports as to whether or not the Parliament should ratify the TCA.

On the UK side, the UK Government introduced the **European Union (Future Relationship) Act 2020** to ratify the TCA. Section 36 of the Act disapplies the Constitution Reform and Governance Act 2010 (CRaG Act) process used to ratify most UK treaties. The Act received Royal Assent on 30 December 2020 (see section 3.1 for more information).

### Withdrawal Agreement implementation

#### Joint Committee meeting

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**The fifth meeting** of the Joint Committee took place on 18 December, in which the UK and EU discussed the implementation of the Withdrawal Agreement. The meeting provided an opportunity to take stock of the meetings of the Specialised Committees, citizens' rights and the Ireland-Northern Ireland Protocol. The Joint Committee also adopted a number of decisions pertaining to:

- setting dates from when certain provisions of the Withdrawal Agreement will apply to citizens of Iceland, Liechtenstein, Norway and Switzerland;
- the Northern Ireland Protocol, including an amendment and decision determining which goods are to be considered 'not at risk'.

The EU and UK also approved a list of 25 persons able to serve on the arbitration panel, established under Article 171 of the Withdrawal Agreement and made a series of unilateral declarations concerning procedures for Northern Ireland, such as the application of EU law as it relates to medicinal products. Lastly, the Joint Committee endorsed and agreed to publish the second edition of the Joint Report on Residence Rights, prepared by the Specialised Committee on Citizens' Rights (see below).

### Specialised Committee meetings

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The Specialised Committee on Citizens' Rights published its second **Joint Report on Residence Rights** on 15 December. The report provides a progress update on each of the EU Member States' and UK's settlement schemes.

## 3. Developments in the UK

### UK-EU agreement

The UK Government published the European Union (Future Relationship) Bill 2020 on 29 December 2020. It was fast-tracked through Parliament and became the **Future Relationship Act** on 30 December 2020.

The primary purpose of the Act is to implement the TCA and its associated agreements and provide a framework for the future implementation of arrangements contained in the Agreement.

The Future Relationship Act contains delegated powers for the purposes of implementing the TCA and associated agreements, including to Welsh Ministers in devolved areas (sections 31-33). Section 29 of the Future Relationship Act provides that domestic law is to have effect with the modifications that are required to implement the TCA.

The **House of Commons Future Relationship Committee reported** on the agreement on 30 December, recommending that there should be ongoing scrutiny. The **Committee took oral evidence** on the agreement from experts on 6 January. The temporary Standing Order that establishes the Future Relationship Committee expires on 16 January.

### End of the transition period

#### Trade between Great Britain and the EU

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From 1 January, trade between Great Britain and the EU takes place under the terms of the TCA. The EU has introduced full border controls, while the UK will phase in checks between January and July 2021.

On 31 December 2020, the UK Government published an updated iteration of the **Border Operating Model** to reflect the terms of the TCA. Alongside the Border Operating Model, a **case studies document** was also published. This outlines end-to-end scenarios for trading between GB and the EU under the terms of the future relationship agreement.

Since the end of the transition period, the number of lorries travelling between GB and the EU has been low. **During the first week of January**, an average of 1584 lorries per day were attempting border crossings, compared to an average



of 4067 at the same point last year. The **Road Haulage Associated estimated** that around one in five lorries were being turned away. However, the volume of HGV traffic is expected to increase over the coming weeks and to return to their business as usual levels for this time last year. By the end of January, the UK Government expects to see around 40,000 trucks heading to France each week. The situation at ports in Wales is considered in more detail at section 4.4 below.

Some disruption to business was reported. For example, some UK retailers including **John Lewis** suspended international deliveries. The **parcel company DPD** announced a temporary suspension of deliveries to the EU, while the **logistics company DB Schenker** reportedly suspended deliveries to the UK. Some businesses selling perishable goods into the EU including **fish and shellfish** reported delays and disruption.

The **House of Commons Treasury Committee took evidence** on the impact of the end of the transition period on business and the economy from financial services and logistics stakeholders on 11 January.

### Trade between Great Britain and Northern Ireland

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The Northern Ireland and Ireland Protocol in the Withdrawal Agreement also came into effect at the end of the transition period. This followed **agreement between the UK Government and EU** on the implementation of the Protocol in December 2020 (see section 2.1).

Disruptions to supply chains were reported as the Protocol was implemented. On 13 January, **Politico reported** that six supermarket chains had written to the Chancellor of the Duchy of Lancaster to caution that supply chains could become 'unworkable' after the three-month grace period for full compliance expired on 1 April. It reported that Marks and Spencer had withdrawn at least 380 products from sale in Northern Ireland and that Sainsbury's had replaced around 300 products with products from a different supplier on a temporary basis.

At Westminster, the **Northern Ireland Affairs Committee** took evidence on 6 January on the impact of the Protocol from Logistics UK, the Northern Ireland Retail Consortium and the Ulster Farmers' Union.

### Intergovernmental relations

The **Joint Ministerial Committee (European Negotiations)** met on 29 December following the agreement of the UK-EU TCA. In a statement, the **Minister for**

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**European Transition** said that he had called for the devolved Governments to be represented in the governance structures of the agreement and for economic support from the UK Government to help businesses manage the transition.

The EAAL Committee asked the Minister for European Transition about intergovernmental relations after the end of the transition period on 11 January, including input for the devolved governments into the governance structures in the UK-EU TCA. **The Minister said:**

We haven't yet received assurances as to what exactly we will be able to do to have an influence on those arrangements, but of course, from our perspective as a Government, arrangements need to be in place to ensure that does happen. That's part of the work that we have been undertaking as part of the review of inter-governmental relations. We need to map out what we see in the agreement on that work, which was ongoing previously, and ensure that our voice is heard in these arrangements.

In a letter to the House of Lords Common Frameworks Scrutiny Committee on 23 December, the **UK Minister for the Constitution and Devolution Chloe Smith MP said** that the UK and devolved governments were 'close to achieving a mutually agreeable conclusion' to the **Intergovernmental Relations Review**. She indicated that the UK Government intended to conclude the review 'at the earliest opportunity' and to publish it alongside the **Dunlop Review into UK Government Union Capability**.

## Common frameworks

The **Minister for European Transition updated the EAAL Committee** on the progress of the common frameworks programme on 11 January.

He said that that he had provisionally agreed 20 frameworks shortly before the end of the transition period on behalf of the Welsh Government and that he expected those frameworks to be ready for scrutiny following agreement by the Northern Ireland Executive. Three to four frameworks were not yet ready for scrutiny and the planned frameworks for services and mutual recognition of qualifications were delayed.

The Minister indicated that plans for the future development of common frameworks were still under discussion:

[T]here is now the [UK-EU] agreement, there's the Northern Ireland protocol, there's the internal market Act and the future relationship agreement itself. So, there's a range of ways in which we now need

to apply a set of lenses to those frameworks in the coming year. The work plan for doing that obviously is, as it were, still under discussion between officials and the four Governments, not least given that at least two of those elements have only just come into play really, but we will communicate to the committee the planned timetable as soon as we have it.

The **UK Government published** its ninth statutory report on the EU (Withdrawal) Act 2018 and common frameworks, covering the period from 26 June to 25 September 2020.

## Legislation

### New legislation enacted

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The **UK Internal Market Act** was granted Royal Assent on 17 December. **Our article provides an overview of changes to the Bill** during House of Lords stages and ping pong.

Because the Trade Bill was not granted Royal Assent by the end of the transition period, the UK Government brought forward data-sharing measures from Part 3 of the Bill in a new **Trade (Disclosure of Information) Bill**. This was granted Royal Assent on 17 December.

The **Private International Law (Implementation of Agreements) Act** became law on 14 December.

### Parliamentary consideration continues

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The **Trade Bill** completed report stage in the House of Lords on 6 January. Third Reading will take place on 18 January. The Government amended the Bill to provide for a new Trade and Agriculture Commission to be established to advise UK Ministers on the ratification of future free trade agreements (Part 3). The House of Lords also voted against the Government to make amendments, including to require the Secretary of State to lay draft negotiating objectives before the UK Parliament and to establish a code of practice setting out how Ministers should maintain standards established in law on matters including food, animal welfare and the environment.

The Welsh Government laid a **third legislative consent memorandum** to reflect these changes. **A legislative consent motion was approved** by the Senedd on 12 January.

The Environment Bill completed Committee stage in the House of Commons before the end of the transition period. The date for report stage is yet to be announced. **House of Commons Committees approved** the appointment of Dame Glenys Stacey as the Chair of the Office for Environmental Protection (OEP). The OEP will provide oversight of environmental law in England and Northern Ireland and across the whole UK for reserved matters. The **Welsh Government has indicated** that it intends bring forward legislation on environmental governance in Wales in the Sixth Senedd.

The **Medicines and Medical Devices Bill** began its report stage in the House of Lords on 12 January. The **Financial Services Bill** completed its Commons stages on 13 January and now passes to the House of Lords.

### International trade negotiations

As of 1 January 2021, EU trade agreements no longer apply to the UK. New agreements that the UK Government has negotiated to reproduce the effects of these agreements will have started to take effect.

The UK Government website shows the **progress made in rolling over these EU agreements** including the entry into effect mechanisms for the agreements that have been negotiated.

Negotiations are still ongoing with 6 countries: Albania, Algeria, Bosnia & Herzegovina, Ghana, Montenegro and Serbia. In **2019**, total identifiable bilateral trade between Wales and these countries was £527.5 million, of which exports were £12.7 million and imports were £514.8 million.

Some of the agreements are not yet fully in force, and therefore bridging mechanisms have been put in place in order to provide some continuity of trade. For example, a Memorandum of Understanding is in place between the UK and Canada, which will maintain tariff-free trade until the agreement has been fully ratified. The Memorandum of Understanding does not cover trade in services.

## 4. Developments in Wales

### UK-EU agreement

The Senedd was recalled on 30 December for a debate on the end of the transition period. In a statement, the **First Minister said** that the deal would 'make trade with our largest and most important market more expensive and more difficult', with a negative impact on businesses, citizens and young people.

The Welsh Government proposed a motion to regret that the UK-EU Trade and Co-operation Agreement did not meet the Senedd's aspirations and call on the UK Government to work with the Welsh Government to mitigate disruption. **The motion was agreed** by 28 votes to 24.

The **Minister for European Transition gave evidence** to the EAAL Committee on the agreement on 11 January. He said that the Welsh Government was analysing the agreement and its implications for the Welsh economy. He hoped that the analysis would be complete by the end of January and published by the February half term.

The Committee asked the Minister to outline the Welsh Government's response to the agreement against its negotiation priorities. The Minister indicated that he welcomed the removal of tariffs and quotas; reciprocal healthcare and social welfare provisions; and the commitment to non-regression on standards. However, he raised concerns about non-tariff barriers and the complexity of rules of origin rules; the lack of agreed mutual recognition of conformity assessments; loss of access to the EU's REACH chemicals database; loss of mutual recognition of qualifications; and security cooperation.

### Implementing legislation

The Welsh Government decided not to bring forward a legislative consent motion on the Future Relationship Bill as it was provided at short notice.

The EAAL Committee asked the Minister for European Transition about the Act on 11 January. **The Minister said** that there was no immediate need for secondary legislation under the Act. He said:

That's partly by virtue of the operation of section 29 in the Act, which is a—what's the best way of putting this—an omnibus provision, I suppose would be the benign way of describing it, which effectively

requires all domestic law to be interpreted in compliance or in conformity, rather, with the provisions of the agreement. That's highly unsatisfactory, obviously, for reasons that we will all be conscious of. But the one benefit of it is that it removes the immediate need for a whole raft of secondary legislation.

The Minister said that he would 'probably envisage using something like the Standing Order 30 mechanism to notify the Senedd' of the UK Ministers making regulations under the Act with the consent of the Welsh Government, but this was 'an evolving picture'.

## UK Internal Market Act

On 16 December, the Counsel General and Minister for European Transition **issued a statement saying** that if the Bill was enacted without further amendment, the Welsh Government would seek a declaration from the Administrative Court that:

the ambit of constitutional legislation cannot lawfully be cut down in this way and that the ensuing Act cannot be interpreted so as to have that effect.

The Bill received Royal Assent on 17 December.

In evidence to the EAAL Committee on 11 January, the **Minister said that:**

The UK Government responded to the letter that I sent—I couldn't promise you the date of it, but certainly, in the latter half of last week. So, that is being looked at now by Welsh Government lawyers, to take full account of the UK Government's response. I probably shouldn't speculate on what will happen next. But, having read the letter myself, I was, shall we say, left with many unanswered questions. So, I will expect to make an announcement to the Senedd about our next steps, so that the Senedd is kept informed of that, and to do that, I hope, in reasonably short order.

## End of the transition period:

Senedd Research has collated **sources of help and information** for businesses and citizens in Wales to navigate the end of the transition period.

### Welsh Government plans for ports and borders

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On 7 December, the **Welsh Government outlined its contingency plans** for possible disruption at the Port of Holyhead in preparation for the end of the transition period. The plan was aimed at mitigating the potential impact of delays for hauliers travelling to Ireland when the EU applies new border controls on UK traffic on 1 January 2021. It outlined 4 measures that would be introduced to

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minimise disruption, including a temporary contraflow on the A55 and the creation of a stacking site at Parc Cybi.

A **written statement published by the Welsh Government on 1 January**

confirmed that the contingency plans were in place. It was expected that the first few days of January would be quiet at the port, with traffic increasing later.

### Implementation

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The EAAL Committee asked the Minister for European Transition about the situation at Welsh ports on 11 January. The Minister said that traffic at Holyhead was lower than expected for January and that to date stacking arrangements for traffic management at Holyhead had not been used. **He said that:**

[a]bout 20 per cent or 25 per cent of those businesses are being turned away. As it happens, the vast majority of people are being sorted out in a very short space of time—probably 30 minutes or so—and most of them are able to pick up on their original booking, if you like.

He went on to say:

[S]ome of the hauliers being turned around, as it were, turned away to return, are large companies with sophisticated regulation and audit arrangements and compliance arrangements [...] we're obviously concerned about that.

On 9 January, the **Irish Government said** that freight volumes had been lower than anticipated, but were 'beginning to build'. It announced temporary easements of some customs requirements.

**North Wales Live reported** on 7 January that Stena Line had seen a 70% drop in freight trade on routes between Wales and Ireland and had cancelled some sailings between Holyhead and Dublin and Fishguard and Rosslare.

### Future preparedness

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The UK Government will **phase in checks** on goods imports arriving in GB from the EU between January and July this year.

New inland border infrastructure is required in Wales in order to complete new customs and other border formalities. The UK Government is leading on the development of an inland site near Holyhead, whereas the Welsh Government is responsible for delivering a site in south-west Wales. In evidence to the Committee on 11 January, the **Minister said** that two sites will now be needed, rather than one.

The Minister said he believed it was 'highly unlikely' that the infrastructure would be ready by July.

### Impact and mitigation

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The EAAL Committee asked the Minister for European Transition about the impact of the end of the transition period on businesses in Wales. The **Minister indicated** concerns about the impact on business and said:

[T]here will need to be, I think, a UK-wide intervention to support the economy in that period. Obviously, plainly, we are not simply dealing with the impact of transition, are we? We're also dealing at the same time with the impact of COVID. So, I think there needs to be a UK-wide intervention to support businesses through what is going to be quite a difficult period.

### International trade negotiations

The **Minister or European Transition issued a statement** on the UK Government's progress with trade continuity negotiations on 11 January. The statement notes that of the 12.5% of Welsh trade in goods that had access to preferential terms for non-EU trade before the end of the transition period, 11% is now covered by the continuity agreements.

The Welsh Government also published its **analysis of the UK-Japan trade agreement** and its impact on the Welsh economy on 10 December.