



Fforwm Cymdeithas Sifil Cymru ar Brexit

Wales Civil Society Forum on Brexit

Brexit Update Issue 1

31 July 2018

This briefing has been written by the Forum coordinator – Charles Whitmore who can be reached at Whitmorecd@cardiff.ac.uk. It is the first in what will be a regularly published series of 10-minute read briefings designed to help civil society organisations stay up to date on Brexit by summarising key developments and information.

As a part of this project the Forum coordinator can provide tailored legal information on Brexit from Cardiff University academics. If you have any Brexit related questions or have work or information on Brexit you would like to share across the Forum, please get in touch.

The last few of weeks have seen several significant Brexit related developments:

- The UK Government has made a [written statement](#) on the UK Shared Prosperity Fund (UKSPF) highlighting very briefly some key features.
- The Welsh Government published the [findings from their consultation on EU Funding](#).
- The UK Government published their [White Paper on the Future Relationship with the EU](#).
- It also published a [White Paper on the future Withdrawal Agreement Bill](#).
- **The Customs Bill** completed its passage through the House of Commons and cannot be amended in the Lords.
- **The Trade Bill** will be discussed in the Lords after the summer recess (second reading scheduled for 11 September) and amendments will be possible.
- The Constitutional and Legislative Affairs Committee of the National Assembly for Wales (NAfW) highlighted that the Environmental Principles and Governance Bill **may violate the terms of the intergovernmental agreement (IGA)** on devolution.

EU Funding and the UK Shared Prosperity Fund

As part of its inquiry into preparations for replacing EU funding for Wales, on 27 June 2018, [the Assembly's Finance Committee held a session with the Cabinet Secretary for Energy, Planning and Rural Affairs](#), in which concerns were raised that few discussions had taken place between the Welsh and UK

Governments on the UK Shared Prosperity Fund at the ministerial level. Civil Society Organisations have pointed out that this has been despite an extensive consultation by the Welsh Government on the topic which ended on 23 March 2018. Concerns were also raised in the Finance Committee that the UKSPF

might involve a UK-wide bidding or challenge system, or simply use the Barnett formula – all of which would likely result in a loss of funding. The Barnett Formula is particularly controversial, as it determines how much public spending money is given to Wales by the UK Government based on population size and does not factor in need.

The Welsh Government has since [published its findings from the consultation on replacing EU funding in Wales](#) and [released a paper outlining its position](#). It then followed this with a more substantial policy document: [Reforming UK Funding and Fiscal Arrangements after Brexit](#). Some key points include: no reduction in funding, full devolution, integrating the scheme with the Wellbeing of Future Generations Act, removing artificial geographical restrictions, continued access to EU partnerships and networks (such as Horizon 2020, Erasmus+, Creative Europe

and the ETC's), greater delegation of appropriate planning, simplified access to funding schemes, strengthened monitoring based on results and the use a system based on need. It is acknowledged that a needs-based system is particularly necessary to reflect the increased reliance on EU funds in Wales relative to the other UK regions.

In Westminster meanwhile, [on 23 July 2018 an 'early day motion' was tabled by Jonathan Edwards MP](#), calling on UK Government to release further information on the UK Shared Prosperity Fund. Early day motions are ways for MPs to call for debates in Parliament. In practice this rarely happens, and they serve to draw attention to the topic to which they relate. The following day, James Brokenshire (Secretary of State for Housing, Communities and Local Government) made [written statement on the UKSPF](#), which, for the first time outlined some **key features**:

- **Fund objective:** tackle inequalities between communities by raising productivity, as set out in the modern Industrial Strategy.
- **Simplified** administration and access.
- **Devolution:** 'The UKSPF will operate across the UK. The Government will of course respect the devolution settlements in Scotland, Wales and Northern Ireland and will engage the devolved administrations to ensure the fund works for places across the UK'.
- **Consultation** before the end of the year.

While any information is to be welcomed, this statement is likely to cause concern within the devolved nations. The UK [Government has previously hinted](#) that that they may not support the level of control the Welsh Government is seeking over the UKSPF. So the lack of clear commitment in this statement to the level of devolution sought by the third sector in Wales will raise some eyebrows. In

addition, third sector organisations' concerns that the UKSPF would tackle inequality through work-related DWP skills programmes (as opposed to Wales' more social cohesion focused approach) would seem to be justified based on the stated fund objective. The UK Government has reiterated its intention to consult on the UKSPF before the end of the year.

Chequers, Resignations and Two White Papers

On 6 July Prime Minister Theresa May met with her cabinet at Chequers to discuss the future relationship with the EU. Following this the UK

Government [released a statement explaining](#) the broad lines of what it was negotiating for. This was then fleshed out in [the long-awaited](#)

[White Paper](#) that had been previously expected to inform the EU Council in June 2018.

This has come on the tail-end of a series of high profile resignations due to the plan outlining a closer relationship with the EU than the UK Government's 'red lines' originally suggested. While controversial within the UK Government, within academic circles the White Paper was acknowledged as providing a starting point for negotiations with the EU to move forward. It clarified the UK's position on things like future trade in goods, committed to not lowering labour and environmental standards (though this will remain a concern as the White Paper is not a binding or final document), and stated that the UK will remain a member of the European Convention on Human Rights. With that said, little was accomplished on the Irish Border, which remains a blocking point. [See for instance this post by the Institute for Government](#) where they assess what was done well and what is lacking. They also have a more detailed breakdown [available here](#). The UK in a Changing EU group has released something similar with an [analysis of what the white paper needed](#) to address and their [reflections after it was published](#). See also this [blog post from Dr Annegret Engel](#) of Cardiff University which provides a summary of some key points as well as an overview of implications for Wales and Welsh Businesses and Citizens.

As explained by UK in a Changing Europe's Dr Simon Usherwood [here](#), the White Paper is not a fixed plan but a statement of objectives the

UK will seek to negotiate with the EU, and therefore may not represent the final outcome. It has also been pointed out that the White Paper does not draw a clear distinction between two main negotiations that are taking place simultaneously: **The Withdrawal Agreement** and the **Future Relationship with the EU**. Those parts which are unclear will need clarifying quickly as the timeline is very tight, and some are likely to be sticking points for the EU which has so far proven unwilling to allow the UK to 'cherry pick' the free movement of goods, without accepting the other free movement principles - people, services and capital.

On 24 July 2018, the UK Government published a second [White Paper, this time on legislating for the Withdrawal Agreement Bill](#). This piece of legislation will give effect to the Withdrawal Agreement between the UK and EU (assuming one is reached) by providing for the transition period. This second White Paper makes it clear that the Withdrawal Agreement Bill will ensure EU Law remains applicable in the UK until December 2020 and will change parts of the recently passed Withdrawal Act to make this happen. It will also ensure that the citizens' rights aspects of the Agreement are implemented.

A network of civil society organisations that worked to improve the Withdrawal Bill called [The Repeal Bill Alliance](#), have also [pointed out that the Withdrawal Agreement Bill may represent a further opportunity to secure a domestic legal status for the EU Charter of Fundamental Rights](#)

Trade and Customs Bills

The Trade and Customs bills have now resumed the parliamentary process.

What do these Bills do?

The Trade Bill is designed to roll over the trade agreements the UK has benefited from

through EU Membership after exit day. Doing this will require changes to domestic legislation and this Bill is mostly about that process rather than the international agreements themselves (the UK cannot unilaterally change those). The Customs Bill

empowers the UK Government to establish a functional post-Brexit customs and VAT system. The Commons Library has published some in depth briefings explaining the implications of these two bills (the [Trade Bill Briefing is here](#) and [Customs Bill Briefing here](#)). It should be noted that the Customs Bill is what is known as a ‘supply bill’ and can therefore no longer be amended, but only accepted or rejected outright in the Lords (the Trade Bill will be amendable in the Lords however – with the Second Reading scheduled for 11 September 2018).

What concerns are civil society organisations exploring?

Both bills pose several challenges similar to those in the Withdrawal Act regarding the power the Government has to make these changes with little scrutiny. Initial concerns that the Trade Bill did not reflect the hard-negotiated wording of the Withdrawal Act on devolution have abated as the bill has been amended to reflect the progress made. However, Professor Jo Hunt from Cardiff University’s Wales Governance Centre has noted that earlier concerns have not yet been addressed. These pertain to the lack of commitment to devolved representation on the board of the new Trade Remedies Authority and the ability for UK ministers to correct legislation in devolved areas. It is unclear whether this will pose a problem for the NAFW, though it is likely that Scotland will

once again withhold consent without further changes.

The lack of oversight and democratic process surrounding international trade agreements is worrying civil society organisations because these instruments often have **equality, labour rights and environmental implications** that can result in lower standards. [The Trade Justice Movement](#) has published a briefing on the constitutional implications of the Trade Bill and raised concerns regarding the lack of Parliamentary oversight.

Why have these bills been in the news recently?

Both bills recently faced a series of amendments in the Commons. The Customs Bill (Third Reading on 16 July 2018) saw amendments designed to frustrate the UK Government’s White Paper vision. Commentators were surprised however when the UK Government actually supported them, sending very mixed signals to the EU. They also revealed ongoing deep divisions within the UK Government, as two of these passed by only three votes. The Trade Bill (Third Reading on 17 July 2018) saw an amendment aimed at softening Brexit which was defeated by a margin of six votes. Professor Weatherill argues [in this blog post](#) that these developments are already subverting the still fresh UK Government policy laid out at the Chequers meeting and in the subsequent White Paper.

Devolution – Intergovernmental Agreement (IGA)

Elin Jones, presiding officer of the NAFW, wrote to First Minister Carwyn Jones on 14 June 2018 to enquire about an amendment to the Withdrawal Bill which would require the UK Government to publish a draft bill preserving EU Environmental Law. The initial concern was that if the bill was to be UK-wide, a Legislative Consent Motion should be needed from the

National Assembly. This was later picked up by Mick Antoniw, chair of the Constitutional and Legislative Affairs Committee. He wrote to Mark Drakeford on 19 June 2018 about the potential for the suggested bill to violate the terms of the IGA.

Within identified policy areas, the IGA requires the UK Government to hold off on bringing

forward legislation in pre-identified areas that would be subject to UK wide legislative common frameworks (as the IGA provides for a collaborative process between the UK Government and devolved nations to develop these together).

Environmental affairs feature heavily in this list of pre-identified policy areas and so the UK Government committing to table broad environmental legislation raised concerns. This

resulted in an exchange of letters between Mark Drakeford and Mick Antoniw. The former [concluded in a letter dated 5 July 2018](#), that this bill will not violate the IGA because its scope will likely not cover policy areas that will require legislative frameworks and thus be subject to a devolved competence freeze. Given the broad scope of the bill, the concern may still be relevant, but the [most recent committee discussion concluded that they will “wait and see what may or may not happen...”](#)

Next Steps Towards Brexit

Autumn 2018 is shaping up to be the crunch time

It is hoped that the UK Government will be able to finalise the negotiations with the EU this coming October. The UK Government will then seek Parliament’s approval in the autumn on the withdrawal agreement and the future relationship, which it will do by voting on a motion. This will be the ‘**meaningful vote**’. If an agreement is not reached in October, the EU has started talking about the possibility of an emergency summit in November.

However, if all goes to plan, between November and January the Government will introduce the Withdrawal Agreement Bill into Parliament to cement the EU agreement in Law. With the UK due to leave the EU in March 2019, this leaves very little time for Parliament to scrutinise and amend this piece of legislation, and so the window for input will be tight. Of course, this could all change if the negotiations go on longer than expected, or if parliament raises serious objections to the agreement in the motion.

- ➔ Opportunities for input will lie **in influencing the initial motion in October**.
- ➔ And to a lesser extent, due to the limited time for scrutiny, in the **Withdrawal Agreement Bill**.
- ➔ It will also be important for organisations to get their voices heard on the other upcoming **Brexit bills and the flurry of Statutory Instruments**.
- ➔ The Trade Bill resumes its passage through Parliament on 11 September 2018.
- ➔ The Migration Advisory Committee is expected to produce its full Brexit / Immigration report this autumn, with the UK Government expected to produce a White Paper on Immigration and prior to the **Immigration Bill later in the year**.
- ➔ The UK Government may be consulting on the **UK Shared Prosperity Fund** later in the year.
- ➔ The UK Government consultation on Fisheries will end on 12 September 2018
- ➔ The UK Government is consulting on the Environmental Principles and Governance Bill until 2 August 2018. The draft bill is expected before the end of the year.
- ➔ Ministerial work and discussions between UK Government and the devolved administration regarding common frameworks is ongoing over the summer.