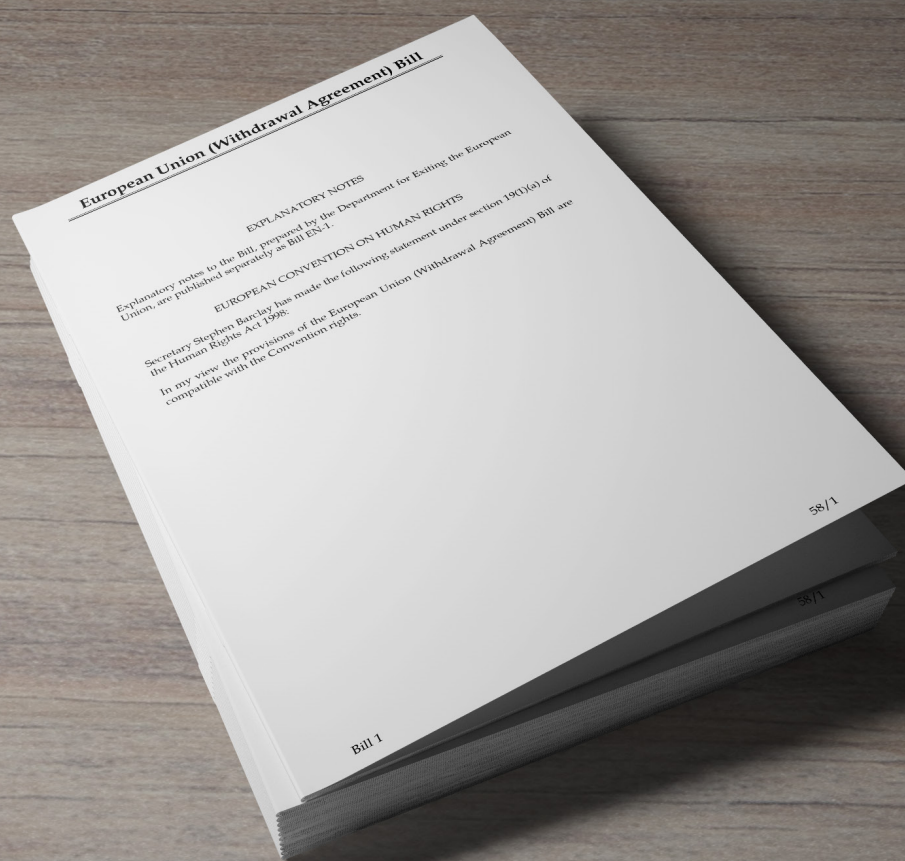


# The European Union (Withdrawal Agreement) Bill

## Research Briefing

January 2020



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National Assembly for Wales  
**Senedd Research**

# The European Union (Withdrawal Agreement) Bill

## Research Briefing

January 2020

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### Paper overview:

On 19 December 2019, the UK Government introduced the European Union (Withdrawal Agreement) Bill. This research paper provides an overview of the Bill including the background to its introduction, key provisions, legislative consent and the UK Government's impact assessment.



The Assembly and  
**BREXIT**

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## 1. Introduction

On 19 December 2019, the UK Government, after securing a majority in the general election, re-introduced the **European Union (Withdrawal Agreement) Bill** ('the Bill') into the House of Commons.

The main purpose of the Bill is to implement the Withdrawal Agreement, agreed between the UK and EU on 17 October 2019, so that it has legal effect in domestic law.

If the Bill is not passed by 31 January 2020 to give effect to the Withdrawal Agreement Bill domestically, the default legal position is that the UK will leave the EU without a deal, unless an extension to the Article 50 negotiating period is granted by the European Council.

This paper provides background to the Bill; an introductory guide to its key provisions; a summary of clauses requiring legislative consent; and an overview of the Bill's impact assessment.

## 2. Background to the Bill

The Withdrawal Agreement will be a legally binding international treaty but it will not automatically take effect in UK law. Instead, it needs to be incorporated into domestic law in order to have legal effect.

In **November 2017** the UK Government announced that the Withdrawal Agreement would be implemented in domestic law through legislation passed by the UK Parliament.

On 27 July 2018, the UK Government published a White Paper on **Legislating for the Withdrawal Agreement between the UK and the EU**.

Following the publication of the White Paper, the UK Parliament rejected the Withdrawal Agreement agreed between EU27 negotiators and former Prime Minister Theresa May in November 2018 on three occasions.

On 24 May 2019, Theresa May announced that she would resign on Friday 7 June, triggering a Conservative Party leadership election.

Boris Johnson became Prime Minister on 24 July 2019, and in his **first House of Commons speech as Prime Minister** the following day, he announced his intention to re-negotiate the Withdrawal Agreement without the Irish backstop.

On 17 October 2019 the UK Government and EU announced that they had reached **an agreement** on a deal for the UK's Withdrawal from the EU and a **revised political declaration on a future relationship**. The revised agreement includes a new **protocol on Northern Ireland and Ireland** which would see Northern Ireland following the EU's customs code for some goods, VAT rules and regulatory order on goods but remain within the UK's customs territory. This new arrangement for the island of Ireland would apply for a four-year initial period and then its continuity would be subject to the consent of the Northern Ireland Assembly. The revised Political Declaration supports a deep and ambitious free trade agreement with the EU and cooperation agreements in other sectors.

The revised agreement was supported by the EU 27 Member States at their Council meeting on 18 October 2019. On the EU side, the agreement will now be subject to ratification by the European Parliament before being formally adopted by the European Council.

The UK Prime Minister called an extraordinary session of the UK Parliament on Saturday 19 October 2019 to seek a meaningful vote on the terms of the **revised withdrawal agreement**. The only significant changes agreed to the text of the Withdrawal Agreement, as compared to that agreed by Theresa May, are in relation to the Protocol on Northern Ireland and Ireland.

The UK Government failed to secure support for the Withdrawal Agreement. Instead the UK Parliament voted in favour of an amendment to the Government's motion which stated that a meaningful vote on the revised agreement could only take place once legislation to implement the withdrawal agreement has been considered and passed by Parliament.

The failure to secure the vote meant the Prime Minister had to comply with the requirements of the 'Benn' Act (**The EU Withdrawal (No.2) Act 2019**) and request an extension from the European Council to the negotiation period to 31 January 2020.

On 22 October, a **House of Commons vote** to move the EU Withdrawal Agreement Bill, introduced the previous day, to its next stage passed by 329 votes to 299. However, the UK Government's programme of scrutiny for the Bill was rejected and the Prime Minister announced that the legislation would be paused until the EU has reached a decision on an extension.

On 23 October a **Legislative Consent Memorandum** relating to the Bill was laid by the Welsh Government. The Memorandum stated that the Welsh Government could not recommend that the Assembly gives its legislative consent to the Bill. The Scottish Government also recommended that **consent should not be given to the Bill**.

On 28 October, the President of the European Council confirmed that the EU would provide the UK with an extension to the 31 January but would provide the UK with an opportunity to leave at an earlier date should the Withdrawal Agreement be ratified sooner.

On 29 October the UK Government introduced a short Bill legislating for an early election on the 12 December 2019. The Bill passed by 438 to 20 votes.

Parliament was subsequently dissolved on 6 November 2019 and the original Bill fell.

After securing a majority in the general election, the Conservative UK Government reintroduced the Bill following the Queen's Speech on 19 December 2019. The following day the Second Reading of the Bill was approved by 358 to 234 votes.

### 3. Key provisions in the Bill

The Bill, as introduced on 19 December, is divided into five Parts containing 42 sections and five Schedules.

In summary, the Bill:

- enables the UK Government to ratify the Withdrawal Agreement;
- amends the *EU (Withdrawal) Act 2018* to give effect in UK law to the provisions in the Withdrawal Agreement relating to the implementation period, the protection of citizens' rights and other separation issues;
- gives effect to the EEA EFTA Separation Agreement between the UK and Norway, Iceland and Liechtenstein, and the Swiss Citizens' Rights Agreement between the UK and Switzerland;
- enables the UK to make payments to the EU in order to meet the commitments set out in the Withdrawal Agreement;
- gives regulation-making powers to implement the Protocol on Ireland/Northern Ireland; and
- provides for the direct application of the Withdrawal Agreement provisions in domestic law but also reaffirms parliamentary sovereignty.

As set out above, the Bill makes a number of amendments to the **European Union (Withdrawal) Act 2018**. The Withdrawal Act 2018 repeals the *European Communities Act 1972* (the Act through which EU law currently becomes part of UK law), but converts EU laws currently in place in the UK into domestic law on exit day. According to paragraph 18 of the **Explanatory Notes** to the Bill:

The Bill is designed to work in conjunction with the EU (Withdrawal) Act 2018. Provisions relating to citizens' rights and the financial settlement will remain separate to that Act, but the implementation of other parts of the Withdrawal Agreement and the additional commitments will require amendments to the Act.

## Implementation period

The UK and EU have agreed that there will be an implementation period from exit day until 31 December 2020 (Article 126) before the UK's new relationship with the EU comes into force.

The Bill amends the Withdrawal Act 2018 to give effect to Part 4 of the Withdrawal Agreement relating to the implementation period.

The Withdrawal Agreement includes the option for the implementation period to be extended once by a decision in the Joint Committee, before 1 July 2020, for up to one or two years. The Bill as introduced in December 2019 prohibits any UK Minister from agreeing to an extension of the implementation period in the Joint Committee (Clause 33). According to the [UK Government](#), the purpose of this additional provision is to reaffirm the UK Government's commitment that it will not extend the implementation period beyond 31 December 2020.

The previous Bill provided, in what was Clause 30, that any extension to the implementation period should be subject to the approval of the House of Commons, meaning that the UK Government would only be able to agree an extension if the Commons had passed a motion agreeing to the proposed extension. This Clause has been removed from the Bill as introduced on 19 December. During the implementation period, EU law will continue to apply in the UK under the terms set out in the Withdrawal Agreement. To ensure that EU treaties and law can continue to apply during the implementation period, the Bill amends the Withdrawal Act 2018 which provides for the repeal of the European Communities Act 1972 on exit day. The amendments ensure that the effect of the European Communities Act 1972 continues, despite its repeal on exit day, until the end of the implementation period (Clause 1).

In practice, this means that the repeal of the 1972 Act will be delayed until the end of the implementation period, and as a result the role of the Court of Justice of the European Union will also be preserved during this period. Delaying the repeal of the 1972 Act also means that the restrictions on the Assembly's legislative competence relating to compliance with EU law will continue to apply during the implementation period.

The Bill also modifies the definition of 'Treaties' and 'EU Treaties' in the 1972 Act to include the Withdrawal Agreement itself to ensure that the UK, via the 1972 Act, gives effect to EU law in the UK for the purposes of the implementation period as set out in the Withdrawal Agreement. As the UK will no longer be a Member State

during the implementation period, the UK will implement EU law as set out in the Withdrawal Agreement.

One of the implications of saving the effect of the 1972 Act during the implementation period is that existing EU-derived domestic legislation and EU-related references also need to be preserved.

The Bill amends the Withdrawal Act 2018 to provide that EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, is preserved so that it continues to have effect in domestic law during the implementation period (Clause 2).

To reflect the fact that the UK's relationship with EU law is to be determined by the Withdrawal Agreement, rather than as a Member State, the Bill sets out a number of 'Glosses' to determine how EU references in domestic legislation should be interpreted during the implementation period. For example, any reference to any EU law or EU Treaty in any EU-derived domestic legislation which still has effect in the UK during the implementation period is to be read as they apply in the UK by virtue of the Withdrawal Agreement. Similarly, the references to 'EU law' in the devolution statutes will be read in the context of the Withdrawal Agreement. The Glossary in Annex B to the Explanatory Notes defines 'Glosses' as:

Specific modifications to make clear the way that EU law terms should be read on the UK statute book, so that our laws continue to work during the implementation period.

The Bill gives UK Ministers and devolved Ministers a new power in the Withdrawal Act 2018 to make regulations in connection with the implementation period (Clauses 3 and 4). The regulation making powers of the devolved Ministers do not extend beyond the limits of the 'devolved competence' of a devolved authority as defined in Clause 4

The Withdrawal Act 2018 makes provision for EU law to be converted into 'retained EU law' upon the UK's withdrawal from the EU. Saving the effect of the European Communities Act 1972 to allow for an implementation period means the conversion of EU law into 'retained EU law' also needs to be delayed until the end of the implementation period. The Bill amends section 2 of the Withdrawal Act 2018 so that this conversion takes place at the end of the implementation period rather than on exit day (Clauses 25 and 26).

There is a new subsection in Clause 26 of the Bill as introduced in December. It amends the provisions in the Withdrawal Act 2018 which provide that pre-Brexit judgments of the Court of Justice of the European Union would continue to be binding on UK courts after the implementation period and only the UK Supreme Court could depart from those judgments. The new provision allows UK Ministers, by regulations, to specify the circumstances in which lower courts could depart from retained EU case law after the implementation period.

The Bill also amends the provisions in the Withdrawal Act 2018 enabling Ministers to correct deficiencies in retained EU law. As passed, the Withdrawal Act 2018 provides that the correcting power will expire two years after exit day. The Bill amends the Withdrawal Act 2018 so that the power would expire two years after the end of the implementation period rather than two years after exit day (Clause 27). This will also apply to the corresponding powers of Welsh Ministers under section 11 of and Schedule 2 to the Withdrawal Act. In practice, this means that UK Ministers and devolved Ministers will be able to correct any deficiencies that arise in the UK statute book at the end of the implementation period.

The Bill provides a role for the European Scrutiny Select Committee in relation to EU legislation adopted by the EU during the implementation period (Clause 29). The Bill amends the Withdrawal Act 2018 so that a Government motion must be debated and voted on within 14 days if a report on EU legislation made, or which may be made, during the implementation published by the European Scrutiny Select Committee states that:

- the Committee is of the view that the legislation raises a matter of vital national interest to the UK;
- that the Committee has into taken account appropriate evidence and consulted departmental select committees;
- and that the report sets out the wording of the Government motion to be moved in the House of Commons.

The Bill as introduced in December 2019 provides for an equivalent role to the European Union Committee of the House of Lords, which was absent from the previous version of the Bill.

### EU law in the UK and parliamentary oversight

The Bill inserts a new section into the Withdrawal Act 2018 to give effect to Article 4 of the Withdrawal Agreement which provides for the Withdrawal Agreement to produce the same legal effects in the UK as they would have in the EU and its

Member States (Clause 5). This means that rights and obligations created or arising by virtue or under the Withdrawal Agreement are to have direct effect in domestic law and can be relied upon and enforced in the courts.

The Bill also inserts a new section into the Withdrawal Act 2018 to provide UK Ministers with a power to implement the 'Other Separation Issues' in Part 3 of the Withdrawal Agreement which aim to provide legal certainty for individuals and businesses between the end of the implementation period and the start of the new UK-EU relationship (Clause 18). According to the Explanatory Notes to the Bill the power to implement these provisions in domestic law will enable an orderly conclusion of EU law in the UK at the end of the implementation period. A corresponding power is given to Devolved Ministers.

The Bill states that 'it is recognised that the Parliament of the United Kingdom is sovereign' (Clause 38).

The Bill also inserts a new section into the Withdrawal Act 2018 requiring the UK Government to report to the UK Parliament where, after the implementation period, the Joint Committee's dispute procedures, provided for under the Withdrawal Agreement, are used between the UK and EU (Clause 30).

### Citizens' rights

The UK and EU reached agreement on the rights of citizens in December 2017. This element of the revised Withdrawal Agreement has not changed since the Withdrawal Agreement that was agreed by Theresa May in November 2018.

Part 3 of the Bill makes further provisions relating to the implementation of citizens' rights as set out in the Withdrawal Agreement (and the EEA EFTA Separation Agreement and Swiss Citizens' Rights Agreement) so that they apply directly in domestic law. It also provides a means of redress where these rights are not properly implemented. These provisions include:

- regulation making powers to specify the deadline for applications to the EU Settlement Scheme (Clause 7), protect the right of frontier workers (Clause 8) and restrict rights of entry and residence (Clause 9);
- amendment of existing deportation provisions in the Immigration Act 1971 and UK Borders Act 2007 to reflect provisions in the Withdrawal Agreement (Clause 10);
- regulation making powers in relation to some appeals against citizens' rights immigration decisions (Clause 11).



In addition, the Bill provides that an appropriate authority (including the Welsh Ministers when acting within devolved competence) can make regulations for implementing the elements of the Withdrawal Agreement relating to professional qualifications; the co-ordination of social security systems; and non-discrimination and equal treatment for persons residing and working in the UK (Clauses 12-14).

The Bill establishes an independent body, the Independent Monitoring Authority ('the IMA'), to monitor the implementation and application of the citizens' rights part of the Withdrawal Agreement (Clause 15). The constitution and functions of the IMA are set out in Schedule 2 to the Bill. The Secretary of State is responsible for appointing the IMA's non-executive members and must ensure, so far as possible, that they have "a member who knows about conditions in Wales" relevant to the citizens' rights part of the Withdrawal Agreement. The Welsh Ministers must be notified who the Secretary of State proposes and why. If the Welsh Ministers approve the proposed appointment within a month, the Secretary of State must appoint that person. However, if the Welsh Ministers decide not to approve the appointment, the Secretary of State can either make the appointment anyway or propose a different person to appoint.

According to a **letter** from the Secretary of State for Exiting the European Union to the Counsel General and Brexit Minister, these changes giving devolved ministers a strong role in relevant appointments to the board of the IMA" were made to the Bill before it was first introduced in October 2019 as a result of collaborative work between the government on issues raised by the Welsh Government in January 2019.

The Bill as introduced in December 2019 also enables regulations to be made to transfer the functions of the IMA to another public body.

The previous version of the Bill as originally introduced in October 2019 inserted a new Schedule into the Withdrawal Act 2018 on 'Protection for Workers' Rights' (Clause 34 and Schedule 4).

The new Schedule placed a duty on UK Ministers introducing a Government Bill to make a "statement of non-regression" before Second Reading saying that the Bill will not result in the law of any part of the UK failing to confer "workers' retained EU rights". Alternatively, the Minister could make a statement to the effect that although a statement of non-regression is unable to be made, the Government wished the House to proceed with the Bill. Before making the statement, the Minister would consult with representatives of workers and employers.

The Schedule also placed a duty to lay reports before Parliament at regular intervals on any new EU legislation relating to employment rights or health and safety protections adopted and published. Where new legislation had been made, it required the report to state whether the law in place in the UK offers the same protections and if not, whether the UK Government intended to take any steps to implement the new EU workers' rights. The report would have had to be approved by both Houses of Parliament and the UK Government would have been required to consult with representatives of employers and workers.

This Schedule is not in the Bill as introduced in December 2019. Instead, it was announced in the Queen's Speech that protection for EU workers' rights will be included in an Employment Bill.

The Bill as introduced in December 2019 also removes the Government's existing obligations under section 17 of the Withdrawal Act 2018 in relation to unaccompanied children seeking asylum in the EU who have family members in the UK (Clause 37). The new provision replaces the duty on UK Ministers to seek an agreement with the EU in relation to family reunification for unaccompanied children seeking asylum in the UK or EU with a requirement to make a policy statement to Parliament within two months of passing the Act setting out the UK Government's policy intention in respect of any future arrangements with the EU.

### Financial settlement

The UK and EU reached an agreement on the financial settlement, often referred to as the 'divorce bill', in November 2017. This element of the Withdrawal Agreement has not changed since the Withdrawal Agreement negotiated by Theresa May.

The UK will owe the EU a sum of a money as a result of leaving the EU to honour financial commitments it incurred as a Member State. The Withdrawal Agreement includes agreement on the components of the financial settlement, the methodology for calculating the UK's share and the payment schedule.

The Bill sets out how the UK will make payments to meet the commitments set out in the Withdrawal Agreement (Clause 20).

Payments will be made from the UK's Consolidated Fund or, if the UK Government decides, from the National Loans Fund.

The Bill provides that such payments will end on 31 March 2021, and thereafter most financial settlement payments will become part of the UK Parliament's annual authorisation of Government spending.

The Bill also specifies that reimbursements from the EU to the UK are to be paid into the Consolidated Fund or the National Loans Fund.

The Bill as originally introduced in October 2019 would have allowed a Minister of the Crown to extend the life of the standing service provision under which the UK would make financial payments to the EU beyond March 2020. This provision has been removed from the new version.

### Protocol on Ireland/Northern Ireland

As stated above, on 17 October 2019 it was announced that the UK and EU had agreed a new protocol on Ireland and Northern Ireland.

The new protocol provides different arrangements to avoid a 'hard' land border on the island of Ireland to those agreed previously by Theresa May's Government

Under the new protocol, Northern Ireland would in the future follow the majority of the EU's rules on customs, VAT and goods regulations but would remain in the UK's customs territory. Goods that enter Northern Ireland from Great Britain will apply the EU customs code and tariffs and follow certain EU regulations on goods if they enter, or are at risk of entering, the EU. This means that there would be a regulatory border in the Irish Sea between Great Britain and Northern Ireland. This new arrangement would apply for a four-year period initially and then its continuity would be subject to the consent of the Northern Ireland Assembly.

The Bill amends the Withdrawal Act 2018 to give UK Ministers regulation-making powers to implement the Protocol on Ireland/Northern Ireland (Clause 21) and corresponding powers are given to Devolved Ministers (Clause 22).

### Negotiations on the future relationship

The previous Bill introduced in October 2019 provided a role for the UK Parliament in the future relationship negotiations by inserting a new section into the Withdrawal Act 2018 (what was Clause 31).

The previous Bill provided that an initial 'statement of objectives' setting out the UK Government's negotiating objectives would have to be made within 30 Commons sitting days of exit day. This statement would have to be consistent with the Political Declaration on the future relationship. The Bill specified that UK Government could not begin negotiations on the UK-EU future relationship without the Commons' approval of the statement. Any future revisions to the objectives would also have needed approval.

The previous Bill also placed a duty on the UK Government to report quarterly after the first 'statement on objectives' to update Parliament on progress.

The quarterly report on progress towards a future relationship treaty would have to be provided to the devolved legislatures and governments. However, they would not have had a formal role in the approval of any negotiating objectives or treaty.

The previous Bill provided that when the UK Government reached political agreement on future relationship with the EU it would have to lay before each House of Parliament a statement on the political agreement and a copy of the text of the negotiated treaty. The Treaty could not be ratified unless the House of Commons had resolved to approve it and the House of Lords had not voted against its ratification within 14 days. If the House of Lords voted against its ratification, Ministers would have to lay a statement explaining why they believed the treaty should be ratified in any event. The previous Bill provided that this process would replace the one in Part 2 of the Constitutional Reform and Governance Act 2010.

All of these provisions have been removed from the Bill as introduced in December 2019.

### Meaningful vote

The Bill repeals section 13 of the Withdrawal Act 2018 which provides for parliamentary approval of the Withdrawal Agreement and the framework for the future relationship, so that the Withdrawal Agreement may only be agreed if the House of Commons has approved them by resolution (Clause 31).

According to paragraph 319 of the Explanatory Notes to the Bill, this section of the Withdrawal Act is repealed:

to ensure that the Withdrawal Agreement can be ratified in a timely and orderly manner, and to remove provisions that are no longer needed.

The Bill also states that Part 2 of the Constitutional Reform and Governance Act 2010 does not apply to the ratification of the Withdrawal Agreement, meaning that the UK Government does not have to lay a copy of the final treaty before Parliament for a period of 21 sitting days (Clause 32).

### Commencement

Most of the Bill's provisions will commence on Royal Assent.

The remaining provisions will commence on the day or days provided for in regulations. For example, the provisions relating to citizens' rights and the implementation period will need to come into force on exit day.

### Documentation accompanying the Bill

The UK Government published the following documents alongside the Bill:

- [A Delegated Powers Memorandum](#)
- [Explanatory Notes](#)
- [European Convention on Human Rights Memorandum](#)
- [Regulatory Policy Committee Impact Assessment](#)

## 4. Legislative Consent

Under the Legislative Consent Convention, the UK Parliament does not normally legislate in areas of devolved competence or to alter the competence of the devolved legislatures or governments without the consent of the devolved legislatures.

The [Department for Exiting the European Union has written to the Welsh Government](#) asking for consent. The UK Government's assessment as to which clauses require consent is summarised in [Annex A](#) to the Bill's Explanatory Notes.

### The Welsh Government's assessment

A [Legislative Consent Memorandum](#) was laid by the Welsh Government on 23 October 2019 before the Assembly for consideration, in response to the previous Bill introduced in October 2019. Following the re-introduction of the Bill into the House of Commons in December 2019, the Welsh Government laid a [Legislative Consent Memorandum](#) on 6 January 2020 in relation to the new Bill. The Memorandum laid on 6 January is broadly similar to the previous Memorandum laid. Some changes are made to reflect the differences between the current Bill and the previous version of the Bill.

In paragraph 59 of the Memorandum, the Welsh Government states that it:

cannot recommend that the National Assembly gives its consent to the Bill.

The reasons for their recommendation are outlined in paragraphs 49 to 57 of the Memorandum.

A number of concerns which the Welsh Government previously raised regarding the Withdrawal Agreement remain, as outlined in paragraph 51:

In the Legislative Consent Memorandum we published for the Bill as it was introduced in October we said that we could not endorse the overall withdrawal 'deal' as advocated by the UK Government because the associated Political Declaration provided little assurance that the future relationship with the EU would be the very close partnership set out in our White Paper Securing Wales Future, a position that had been repeatedly endorsed by the National Assembly. We were also dissatisfied that the Withdrawal Agreement did not end the possibility of a no-deal exit at the end of the implementation period, and did not provide the protections we seek for workers' rights. These concerns with the deal remain.

Other concerns raised in the Welsh Government's Memorandum include:

- the removal from the previous version of the Bill of the clause giving Parliament a role in the oversight of the negotiations on the future relationship with the EU;
- the prohibition on seeking an extension to the transition period which raises the possibility at the end of the transition period of either no deal for the future trade relationship with the EU or a rushed and therefore inadequate deal;
- the regulation-making powers for the implementation of the Ireland-Northern Ireland Protocol which have no restrictions placed upon them, meaning that the powers of the Secretary of State could be used to amend the Government of Wales Act 2006;
- clause 38 asserting Parliamentary sovereignty, which should, according to the Welsh Government, contain references to the Acts of Parliament establishing the devolution settlements and to the UK Parliament not normally legislating with regard to devolved matters without the consent of the devolved legislatures;
- technical developments regarding clause 26, and the interpretation of retained EU law and relevant separation agreement law which should include the Welsh Ministers as statutory consultees for regulations to be made by UK Government Ministers providing for which courts or tribunals are not to be bound by any retained EU case law; and
- the ability to transfer the functions of the Independent Monitoring Authority (IMA) for citizens' rights to other public bodies. This is a concern as there are safeguards in place for providing that a non-executive member of the IMA is appointed who has knowledge of conditions in Wales relating to the relevant matters. The same safeguard is not in place for any other public bodies taking on the functions of the IMA.

The Welsh Government does nevertheless agree that legislation is necessary to provide "clarity and certainty for citizens and businesses" and that Parliament will ideally be responsible for such legislation. The Welsh Government also welcomes the fact that the Bill provides a significant degree of reassurance for EU citizens residing in the UK, and also agrees with the approach taken in the draft Bill in terms of broadly maintaining the status quo regarding the application of EU law in the UK during the transition period.

## Clauses requiring consent

The Welsh Government's position is clear: it cannot support the granting of legislative consent for the Bill as introduced. The Welsh Government in its Memorandum identifies clauses 1 to 6, clauses 12 to 19, clauses 21 to 22, clauses 25 to 29, clause 36, clauses 38 to 42, Schedules 1 to 2 and Schedules 4 to 5 as requiring the Assembly's legislative consent.

The clauses identified by the Welsh Government as those which require consent include those clauses listed by the UK Government in the Explanatory Notes to the Bill. However, the Welsh Government also identify additional clauses, which the UK Government had not identified as being subject to consent. The clauses identified by the Welsh Government as requiring consent are broadly similar to those clauses identified by the Scottish Government as requiring consent.

The Welsh Government and UK Government both agree that a Legislative Consent Motion is needed in relation to the following clauses:

- *Clauses 1 and 2*: Saved law for implementation period;
- *Clauses 3 and 4*: Supplementary power in connection with the implementation period, and powers corresponding to clause 3 involving devolved authorities;
- *Clauses 5 and 6*: General implementation of remainder of Withdrawal Agreement and the EEA EFTA and Swiss separation agreements;
- *Clauses 12 to 14, clause 16 and Schedule 1*: Recognition of professional qualifications, coordination of social security systems and non-discrimination, equal treatment and rights of workers etc and powers of devolved authorities;
- *Clause 15 and Schedule 2*: Independent Monitoring Authority for Citizens' Rights Agreements;
- *Clause 18 and 19*: Main power in connection with other separation issues and powers corresponding to section 18 involving devolved authorities ;
- *Clause 21 and 22*: Main power in connection with Ireland/ Northern Ireland Protocol, and powers corresponding to section 21 involving devolved authorities;
- *Clause 27*: Dealing with deficiencies in retained EU law;
- *Clause 28*: Ancillary fee-charging powers; and
- *Clauses 40 to 42 and Schedules 4*: Regulations, Consequential Provisions and the extent, commencement and short title clause.

In addition to the clauses listed above, the Welsh Government is also of the view

that a Legislative Consent Motion is needed in relation to a number of clauses, which the UK Government has not identified as needing consent, including:

- *Clause 17 and 39*: Interpretation clauses in relation to Part 3 and the Act;
- *Clauses 25 and 26*: Retention of saved EU law at the end of implementation period, and interpretation of retained EU law and relevant separation agreement law;
- *Clause 29*: Review of EU legislation during the implementation period; and
- *Clause 36*: Repeal of unnecessary or spent enactments. and

Annex A to the new Bill's Explanatory Notes lists a number of clauses which do require consent, despite the UK Government initially taking the view in the Explanatory Notes to the previous version of the Bill that these clauses did not require the consent of the devolved legislatures. These clauses include clause 3 (supplementary power to UK Ministers relating to implementation), clauses 5 and 6 (general implementation of remainder of Withdrawal Agreement and the EEA EFTA and Swiss separation agreements), clause 18 (power to Ministers of the Crown in connection with separation issues), clause 20 (financial provision), clause 21 (the conferral on UK Ministers of a power to implement the Protocol on Ireland/Northern Ireland) and clause 28 (ancillary fee-charging powers).

Legislative consent is sought as it is accepted by the UK Government that these clauses will alter the competence of the Welsh Government and the Assembly or legislate in areas of the Assembly's legislative competence.

It is provided in the Bill's Explanatory Notes that a Legislative Consent Motion is required in respect of clause 20 in relation to financial provision. The Scottish Government's Legislative Consent Memorandum also provides that this clause requires legislative consent. However, the Welsh Government's Legislative Consent Memorandum does not refer to this clause. In an **evidence session** with the External Affairs and Additional Legislation Committee on 6 January 2020, the First Minister agreed to write to the Committee outlining why the Welsh Government did not comment upon clause 20 in its Legislative Consent Memorandum. The First Minister also committed to outlining in writing the areas of dispute between the Welsh Government and the UK Government where consent is required.

## The Scottish Government

The Scottish Government laid a **Legislative Consent Memorandum** on 20 December 2019 and recommends that the Scottish Parliament does not give consent to the Bill.

## 5. Impact Assessment

The **Bill's Impact Assessment** (BIA) was published on 21 October 2019 and accompanied the previous Bill. An amended BIA has not been published alongside the Bill as introduced on 19 December 2019. This analysis is therefore a summary of the BIA published alongside the previous Bill.

The BIA for the previous Bill sets out the costs and benefits of implementing each aspect of the Withdrawal Agreement through legislation. The previous Bill's **Explanatory Notes** states that as the Withdrawal Agreement can be amended in certain and limited cases, the BIA analysis is not an assessment of the full Withdrawal Agreement. **The BIA did not provide an assessment of the impact of leaving the EU or of the overall Withdrawal Agreement or the agreed framework for the Future Relationship between the UK and the EU.**

### Regulatory Policy Committee (RPC) opinion on the Bill's Impact Assessment

The RPC is an independent body sponsored by the UK Government's Department for Business, Energy and Industrial Strategy which assesses the impact of new regulatory and deregulatory proposals affecting the economy, businesses, civil society, charities and other non-governmental organisations. It assesses the quality of evidence and analysis used to inform regulatory proposals, and provides advice in the form of 'opinions' which includes the issuing of a 'rating' to outline their assessment.

In its **assessment** of the BIA for the previous Bill, the RPC noted that the Government's analysis of the Bill's impact 'could benefit from improved evidence, to the level that the RPC would normally expect to see'. The RPC also issued the BIA with an 'unrated opinion'. The RPC stated that this exceptional decision not to rate this impact assessment 'in recognition of the unique circumstances that have prevented the Department from producing a more substantive impact assessment on all aspects of the Bill'.

The RPC issued a **statement** on 20 December 2019 which stated that it had not yet received an amended BIA which reflects any additional costs and benefits of the revised Bill published on 19 December. The RPC will publish a revised opinion if a new BIA is published.

### Cost

**The estimated net cost of the previous Bill was £167.1 million over ten years in present value terms.** The bulk of the costs were due to the setup of the Independent Monitoring Authority (IMA) on citizen's rights, which will monitor the implementation and application of the citizens' rights parts of the Withdrawal Agreement and EEA EFTA Separation Agreement. The Explanatory Notes states that the overall projected cost for the IMA over a 10 year period is expected to be £146 million, with the total annual running costs estimated to be in the region of £14.86 million.

According to the BIA the other monetised costs were those that may be incurred by intellectual property rights holders. These costs are estimated at around £2.4 million per year or £22.1 million over 10 years in present value terms.

All other elements and other impacts were not quantified in the BIA. Summary tables were provided explaining why it was not possible to monetise the impacts of the other elements of the Bill. Alternatively, in some cases a qualitative assessment of the impacts is provided.

### No deal scenario

Descriptions of a no deal scenario were included in the background analysis of the BIA so as to provide context of the potential impact of the previous Bill not being passed. The potential long run economic impacts of a no deal scenario are outlined in the UK Government's **EU Exit Long-Term Economic Analysis**. The BIA stated that there would be additional short term disruptive impacts caused by a no deal Brexit, however these impacts and costs have not been quantified.

### The financial settlement

The Withdrawal Agreement sets out how the UK and EU will settle their outstanding financial obligations to each other, which arise out of the UK's participation in the EU budget and broader elements of its membership of the EU. The OBR's **updated forecast** from October 2018 which was based on the assumption that the UK would have left the EU on 29 March 2019, estimated that the financial settlement would be £38.7 billion.

## Implementation period

During the implementation period, EU law will continue to apply in the UK under the terms set out in the Withdrawal Agreement. Therefore during this period, the UK's current arrangements with the EU will continue which the BIA states creates no additional costs.

## Protocol on Ireland/Northern Ireland (Protocol)

### Customs

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With regards to the new measures within the Protocol that impose customs checks on trade between Northern Ireland and Great Britain, the BIA stated that the movement of goods from Northern Ireland to Great Britain will result in businesses having to provide some information electronically. However due to data limitations, the BIA stated that it had not been possible to monetise the associated costs to business.

Goods moving from Great Britain to Northern Ireland will be required to complete both import declarations and Entry Summary Declarations as the UK will be applying the EU's customs code in Northern Ireland. This is anticipated to result in additional administrative costs for businesses. According to the BIA for the previous Bill, due to data limitations around the number and nature of consignments of goods that are moved from Great Britain to Northern Ireland, it is not possible to estimate the associated administrative costs on business. However, it does reference an **impact assessment** produced by the HMRC which estimates that the cost on a per-declaration basis vary between £15 and £56.

### Goods Regulation

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Under the proposals for the all-island regulatory zone on the island of Ireland, Northern Ireland will have to stay aligned with some of the EU Single Market's rules for goods. These include rules in relation to agri-food and sanitary and phyto-sanitary measures, as well as the placing on the market of manufactured goods. Goods moving from Great Britain to Northern Ireland will therefore have to meet the requirements of all relevant EU legislation.

In relation to regulatory checks for agri-food goods moving from Great Britain into Northern Ireland, the BIA stated:

Agri-food goods moving from Great Britain into Northern Ireland would need to be notified to the relevant authorities before entering Northern Ireland and would be subject to checks including identity, documentary and physical checks by UK authorities as required by the relevant EU rules.

Agri-food goods that enter Northern Ireland from Great Britain would also be required to do so via a Border Inspection Post or Designated Point of Entry, as well as provide some documentation to ensure regulatory compliance. It is anticipated that this would result in additional cost to businesses. However, the BIA stated that the cost impacts have not been monetised as they may be affected by decisions regarding future regulatory policy as well as the UK's future relationship with the EU.

## 6. Next steps

The Bill will be considered in the House of Commons by a Committee of the Whole House on 7 and 8 January 2020. The Third Reading debate is likely to be on 9 January.