

# Agenda – External Affairs and Additional Legislation Committee

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Meeting Venue:	For further information contact:
Video conference via Zoom	Alun Davidson
Meeting date: 3 December 2020	Committee Clerk
Meeting time: 14.00	0300 200 6565
	<a href="mailto:SeneddEAAL@senedd.wales">SeneddEAAL@senedd.wales</a>

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In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health.

This meeting will be broadcast live on [senedd.tv](http://senedd.tv).

## Registration period

(13.30–14.00)

## 1 Introductions, apologies, substitutions and declarations of interest

(14.00–14.05)

## 2 Common UK policy frameworks – Evidence session with academics

(14.05–15.30)

(Pages 1 – 34)

Professor Kenneth Armstrong - University of Cambridge

Professor Nicola McEwen - The University of Edinburgh

## 3 Papers to note

(15.30–15.35)

### 3.1 Paper to note 1: Correspondence from the Counsel General and Minister for European Transition to the Chair regarding the UK–Japan Comprehensive Economic Partnership Agreement – 23 November 2020

(Pages 35 – 46)

### 3.2 Paper to note 2: Preparedness in Wales for the end of the transition period – Consultation responses

(Pages 47 – 286)



- 3.3 Paper to note 3: Provisional Food and Feed Safety and Hygiene Common Framework**  
(Pages 287 – 414)
- 3.4 Paper to note 4: Correspondence from the Counsel General and Minister for European Transition to the Chair of the Legislation, Justice and Constitution Committee regarding the Joint Ministerial Committee (EU Negotiations) – 1 December 2020**  
(Page 415)
- 4 Motion under Standing Order 17.42(vi) and (ix) to resolve to exclude the public from the remainder of the meeting**  
(15:35)
- 5 Evidence session with academics – consideration of evidence**  
(15.35–15.50)
- 6 Consideration of international agreements**  
(15.50–16.05) (Pages 416 – 433)
- 7 Consideration of forward work programme**  
(16.05–16.20) (Pages 434 – 436)

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

**Jeremy Miles AS/MS**

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition

**Agenda Item 3.1**



Llywodraeth Cymru  
Welsh Government

Eich cyf/our ref  
Ein cyf/Our ref

David Rees MS  
Chair of External Affairs and Additional Legislation Committee  
Senedd Cymru  
Cardiff Bay  
CF99 1NA

23 November 2020

Dear David,

Further to my letter dated 16 November, please find enclosed the finalised text of our report on the UK-Japan Comprehensive Economic Partnership Agreement (CEPA). We are issuing the text to you in advance of publication to assist your analysis of the agreement within the UK Parliament's ratification process timescales. We will also send you a link to the final, translated report as soon as it is published online.

Yours sincerely,

A handwritten signature in black ink, consisting of a large 'J' followed by a wavy line and a short horizontal stroke.

**Jeremy Miles AS/MS**

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

# Welsh Government Report on the UK-Japan Comprehensive Economic Partnership Agreement

## 1. Executive Summary

- 1.1 The UK has left the EU and the transition period will end on 31 December 2020, after which EU trade agreements, such as the EU-Japan Free Trade Agreement (FTA) will cease to apply to the UK. The UK is seeking to reproduce the effects of existing EU agreements in place with some 70 countries for when they no longer apply to the UK.
- 1.2 Although continuity is being sought with the majority of these countries, the UK and Japan decided that, rather than simply 'rolling over' the EU-Japan agreement, they would use the EU-Japan Economic Partnership Agreement (EPA), which came into force in February 2019, as the basis for a future UK-Japan free trade agreement (FTA). It was agreed that this 'continuity plus' approach would allow for the EPA to be maintained in effect, whilst allowing scope for both parties to seek enhancement in areas of mutual interest.
- 1.3 Negotiations started on 9 June, and the agreement was formally signed on 23 October, allowing for both parties to begin their formal domestic ratification procedures. The UK's ratification procedure began on 2 November when the agreement text and an explanatory memorandum were laid in parliament under the Constitutional Reform and Governance Act (commonly referred to as the CRaG process). The agreement is expected to be ratified after 21 sitting days on 7 December, unless either of the Houses of Parliament chooses to pass a motion stating that it should not be ratified. On the Japanese side, we are not aware of anything that will delay their ratification process.
- 1.4 The UK-Japan CEPA is approximately 80% the same as the EPA, but it goes further in a number of areas. Some of the key enhancements from the perspective of the Welsh Government include, but are not limited to:
  - Japan has agreed ambitious digital provisions with the intention of reducing barriers to digital trade by promoting regulatory cooperation, enabling the two-way free flow of data and minimising costs associated with digital trade. Online protection for businesses and consumers is a key feature of these provisions. On Financial Services a focus on regulatory cooperation, clarity for business and increased transparency for short term business travel should benefit both UK and Japanese financial service suppliers and investors.
  - There have been some alterations to existing chapters we support including sanitary and phytosanitary (SPS) provisions and a new chapter on Trade and Women's Economic Empowerment.

- Rules of Origin arrangements have provided continuity for UK exporters that are utilising the EU-Japan EPA arrangements in their exports to Japan, especially with the securing of the extended cumulation arrangements to allow for the use of EU materials and processing to count as originating within the UK. Some removal of the less restrictive Product Specific Rules when compared to the EU-Japan Agreement may offer more opportunities for manufacturers of both Parties in certain goods to source the raw materials they need from other countries in their exports to one another.
- The liberalisation timetable of tariffs in cars and car parts not being accelerated beyond the timetable as agreed in the EU-Japan EPA which provides a degree of continued security for domestic manufacturers of these products.

1.5 Overall, the Welsh Government supports CEPA and recognises that it provides the continuity with the EPA we sought. For example it was important that CEPA replicated the EPA where ratification of the agreement was contingent on parties adhering to the Paris Climate Accord<sup>1</sup>. The Senedd was the first Parliament in the world to declare a climate emergency and it was key that CEPA did not undermine our ability to regulate in order to transition to a low carbon nation and meet our climate targets<sup>2</sup> as well as supporting the Welsh low carbon goods and services sectors and ensuring a level playing field where we do not simply ‘export’ our emissions to Japan (a globally responsible Wales<sup>3</sup>).

1.6 Failure to reach and ratify an agreement by the end of the transition period would have led to the UK ‘falling out’ of the EPA. This would mean UK businesses already exporting to Japan would have reverted to trading on Most Favoured Nation (MFN) terms under World Trade Organization (WTO) rules as of 1 January 2021. The resultant imposition of barriers to trade (tariff and non-tariff) compared to our current arrangements would have put at risk the strong trading and investment links that have been developed:

- Trade - in 2019 goods exports to Japan were worth £296 million.
- We currently have approximately 65 Japanese-owned businesses based in Wales employing over 8,000 staff. Many of these companies are important to our manufacturing and automotive sectors.

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<sup>1</sup> Eckhardt, J 2020, *An assessment of the EU-Japan EPA and its implications for a UK-Japan Free Trade Agreement*. National Assembly for Wales.

<sup>2</sup> Welsh Government have accepted the UK Committee on Climate Change’s recommendation to increase Wales’s 2050 target to 95% and have requested further advice on how the new 2050 target affects the interim targets and carbon budgets set in 2018. We expect to receive the CCC’s advice in December and will ask the Senedd to update the emissions reduction pathway in Spring 2021.

<sup>3</sup> ‘A globally responsible Wales’ is one of the seven well-being goals put in place by The Well-being of Future Generations (Wales) Act 2015: <https://www.futuregenerations.wales/a-globally-responsible-wales/>

## **2. Trade between Wales and Japan**

- 2.1 In 2019, Welsh goods exports to Japan were valued at nearly £296m and imports from Japan valued at just over £639m<sup>4</sup>.
- 2.2 In 2019, Japan was the 11th largest export market for Wales accounting for around 1.7% of Welsh exports of goods, and the 6th largest import market with around 3.5% of Wales' total goods imports coming from Japan.
- 2.3 Latest estimates of Welsh trade in services show imports and exports of services were valued at £5.3bn and £7.4bn respectively in 2018<sup>5</sup>. No country breakdown is currently available, therefore it is not possible to estimate the value of Welsh trade in services with Japan.
- 2.4 Further details on trade between Wales and Japan can be found in Annex A.

## **3. Welsh Government Involvement in the UK-Japan Negotiations**

- 3.1 Although only the UK Government has the power to conclude international agreements that bind the whole of the UK, the Welsh Government has a responsibility to make representations to the UK Government about those agreements given our strong interest in them, particularly where they touch on devolved matters. In addition, the Senedd has the power to pass laws relating to the observation and implementation of international obligations, meaning that the Welsh Government and the Senedd have a legitimate and crucial interest in the negotiation and terms of any international agreements which will require Welsh implementation.
- 3.2 In *Trade Policy: the issues for Wales* the Welsh Government set out the importance of developing deep and sustained co-operation mechanisms between the Devolved Governments and UK Government on trade. We called for the establishment of a Ministerial Forum as well as meaningful consultation and a memorandum of understanding that all could sign up to. For our part the Welsh Government committed to being a constructive partner, sharing analysis and working with UKG to provide leadership on stakeholder engagement.
- 3.3 We have since worked closely with the Department for International Trade (DIT) to develop a constructive working relationship. DIT have this year established the Ministerial Forum for Trade which we fully support. However, although working relationships with DIT remain positive we have failed to formalise these relationships through a concordat. Discussions on the concordat have been ongoing now for around two years. Despite the fact that

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<sup>4</sup> HMRC Regional Trade Statistics, 2019

<sup>5</sup> [ONS International trade in services by subnational areas of the UK: 2018](#)



DIT are working to the spirit of the concordat, we believe it is essential to finalise the governance arrangements to enable us to feed in appropriately to the important trade negotiations which are already underway.

- 3.4 In terms of the CEPA, the UK Government shared draft text of chapters relating to devolved matters with the Welsh Government throughout the negotiations and before finalisation and then all legally agreed text after it had been 'legally scrubbed'. Welsh Government lawyers and policy officials have considered aspects of these chapters throughout the negotiations.

#### **4. Analysis of CEPA Text and Impact Assessment**

- 4.1 The UK Government has published an Impact Assessment on the deal, based on economic modelling which was externally commissioned.
- 4.2 The DIT modelling suggests that over 15 years the agreement could result in a 0.05% to <0.15% impact on Gross Value Added (GVA) in Wales, which is similar to other nations of the UK. Point estimates of the associated monetary value suggest a gain of around £34m for Wales, although this should be interpreted as an indicative order of magnitude rather than a precise estimate. The Welsh Government's economic assessment, which is based on the UK Government's modelling, is attached at Annex A.
- 4.3 Economic modelling is used to show us the estimated impact of tangible changes, including tariff and non-tariff changes. These changes will be minimal, as our tariffs were already very low under the EU-Japan agreement. Although assumptions are made to capture the long term impacts of removing non-tariff barriers, these so called 'softer' benefits are more difficult to accurately measure.

#### **5. Impact of CEPA on Key Sectors and/or Industries in Wales**

- 5.1 Below we consider the key areas of difference between CEPA and EPA for Wales. Our economic analysis is largely based on the UK impact assessment which used results derived from Computable General Equilibrium (CGE) modelling<sup>6</sup>. CGE can provide a useful indication of the potential magnitude of economic impacts resulting from policy changes, however, results should not be treated as economic forecasts.

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<sup>6</sup> This type of modelling is appropriate when there is a significant change in trade policy and an assessment of the impacts on the whole economy is needed. The model considers linkages between domestic markets within each economy and provides impacts at a sectoral and aggregate level. It also considers the knock-on consequences to trade flows of third parties, reflecting trade creation and trade diversion effects, as well as the allocation of resources within an economy.

5.2 Given the complexity of producing robust estimates at lower levels of aggregation, CGE modelling results do not consider the impact of CEPA on individual sectors below the UK level. For Wales, results have only been provided at the whole economy level showing the estimated change to Gross Value Added (GVA) compared to the baseline of trading with Japan on WTO terms. These results have been produced by apportioning the UK level results to each UK nation based on employment. Whilst there are limitations associated with this approach, data limitations means that this is the most suitable option currently available to us.

5.3 In terms of the sectors considered below, where applicable we provide:

- The UK Government Impact Assessment GVA estimates for the sector UK-wide. Unless otherwise stated we have concluded that there is no evidence to suggest this impact would be different in Wales.
- Our assessment of the most relevant issues for Wales.

### **Automotive**

#### *UK Impact Assessment*

5.4 **UK Impact Assessment Conclusion: Negative impact of between -0.05% and <-0.5% on UK GVA associated with the manufacture of motor vehicles over 15 years.**

#### *Most relevant issues for Wales*

5.5 The agreement confirms that the liberalisation of auto tariffs and parts will continue on the basis of the timetable agreed in the EU-Japan deal but not be accelerated. Approximately 5 years remain before import duties are reduced from 10% to 0% (1 February 2026 is the end date).

5.6 We are content that this is the best possible outcome that could have been achieved in these negotiations, as it provides continuity until at least 2026 for Japanese companies that own Welsh automotive plants. If tariffs on Japanese cars and car parts had been reduced at a faster rate, this could have encouraged Japanese firms to on-shore their manufacturing operations, and sell cars and car parts directly to the UK before 2026. This could have threatened the short-term viability of Wales-based automotive plants owned by Japanese companies. An increase in competition from Japanese imported cars and parts would also have had a wider negative impact on the Welsh automotive sector as a whole.

5.7 The agreement will also see two UK import tariffs covering electrical control units, which are often used in the production of cars, being eliminated at entry

into force, instead of in 2024 as agreed in the EU-Japan Agreement. The elimination of these two tariffs should be beneficial for the Welsh automotive industry based on available data, as it would help reduce the cost in importing these electrical components for use in the production of certain cars and car parts.

- 5.8 The CEPA also replicates the EPA in relation to the convergence of standards and regulations for motor vehicles and parts. This is especially important in helping to reduce regulatory barriers for the sector between the two Parties, as well as helping to facilitate trade with the EU going forward.

### **Rules of Origin**

#### *Most relevant issues for Wales*

- 5.9 The ROO arrangements agreed as part of CEPA help to provide continuity for Welsh exporters that are utilising the EPA arrangements, with additional benefits achieved in some areas.
- 5.10 It has been agreed that EU materials and processing can be recognised (i.e. cumulated) in UK and Japan exports to one another for all products that currently rely on EU inputs to access preferential tariffs.
- 5.11 The UK and Japan have also agreed a provision that seeks to ensure continuity for UK exports to the EU which contain Japanese inputs. Welsh Government welcomes this provision, but recognises that it will only come into effect if a similar provision is included in the UK-EU trade deal.
- 5.12 There have also been positive changes to Product Specific Rules (PSR) which will be less restrictive than the EU-Japan Agreement for certain goods. For example, on various agriculture goods (such as pet food, sugar confectionary, baked goods), and other goods including certain textiles, the CEPA removes certain restrictions from the rules contained in the EPA. This will allow Welsh exporters of those goods to import key ingredients from other countries and use them in their exports to Japan. This opens up new opportunities for our exporters that previously may have not been able to access the EPA Agreement due to the strict rules for those goods.

## **Agriculture and Food and Drink**

### *UK Impact Assessment*

- 5.13 **UK Impact Assessment Conclusion:** Small positive impact of between 0.05% and <0.5% on UK GVA associated with the agri-food sector over 15 years.

### *Most relevant issues for Wales*

- 5.14 Geographical Indications (GIs) are names used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. They can raise consumers' awareness and help pave the way for exporting businesses to attract and inform overseas customers.
- 5.15 The UK Government has secured:
- continuity of effect with the EU-Japan EPA, maintaining protection for three products (none of which are Welsh).
  - a provision that stipulates that as soon as practically possible after entry into force, each Party shall consult and provide a list of GIs to the other Party for addition to the Agreement, subject to examination and opposition procedures.
- 5.16 The UK Government has publicised that it will provide Japan with a list of up to 70 additional GIs in January 2021, almost the entire register of the UK's protected products, and that these products will go through examination and opposition procedures set out in Japanese domestic law. Unless there are circumstances where a Japanese producer of a competitor product opposes a GI, the UK Government advises that this process will take approximately 5 months. Fifteen of the products the UK has said it will seek to register in Japan are of Welsh origin and include Welsh lamb and Anglesey sea salt.
- 5.17 These provisions could have a slightly positive, albeit limited, impact on Wales' food and drink sector in the long-term depending on the extent they are used by Welsh businesses.
- 5.18 The SPS chapter represents near continuity with the EU-Japan Agreement with some amendments to a few provisions. Although we are supportive of the provisions made in the chapter we were disappointed that the UK Government was unable to secure additional provisions on Anti-Microbial Resistance, which is a priority area for Welsh Government.

## Data and Digital

### *UK Impact Assessment*

- 5.19 **UK Impact Assessment Conclusion:** most services sectors associated with data and digital are found to have a small positive impact of between 0.05% and <0.5% on UK GVA over 15 years.

### *Most relevant issues for Wales*

- 5.20 The CEPA contains a number of new and forward looking provisions acknowledging the increasing volume and complexity of digital trade.
- 5.21 The Trade in Services, Investment Liberalisation and Electronic Commerce chapter of the CEPA focusses on building an open, secure and trustworthy online environment. It does this by supporting the improved two way cross border flow of data whilst at the same time protecting domestic regulatory and national security laws and regulations.
- 5.22 Provisions beneficial to Welsh business include providing assurances on the omission of onerous restrictions for two way UK-Japan cross border data transfer and support for the publication of machine-readable datasets to increase governmental transparency.
- 5.23 It is difficult to model how these provisions could lead to long-term economic benefits. However, we believe that these provisions will be positive for Wales' digital and cyber security cluster companies looking to export services to Japan.

## Financial Services

### *UK Impact Assessment*

- 5.24 **UK Impact Assessment Conclusion:** Small positive impact of between 0.05% and <0.5% on UK GVA associated with financial services over 15 years.

### *Most relevant issues for Wales*

- 5.25 There are a number of benefits, particularly relating to commitments on promoting regulatory and legal transparency and cooperation between both Parties that should increase certainty and clarity for UK financial services providers operating in Japan and vice versa.
- 5.26 In addition, the UK and Japan have committed to improved business mobility arrangements. This provision is likely to prove of particular benefit to the financial and professional services sector, as it will allow for the easier

temporary movement of highly skilled professionals and family members between the two nations. Specifically, more transparent visa arrangements will be put in place with technical modifications to permitted lengths of stay and an expanded definition of intra-corporate transferees. This should help to improve business mobility across several professional services sectors.

- 5.27 The agreement also contains safeguards on the use, storage and processing of financial data. In practice, this means that companies setting up subsidiaries in Japan will not be obliged to store financial data in Japan. This will eliminate the barrier to trade caused by additional costs involved in setting up and maintaining computer servers in multiple markets.
- 5.28 Whilst it is difficult to understand the extent to which these sectoral benefits will accrue to Wales, we have a strong and highly innovative financial services sector that is well-positioned to exploit the benefits. A range of Welsh financial services suppliers either already exporting services to Japan or seeking to do so, could benefit from these provisions which could deliver a long-term positive economic impact to Wales.

## **Welsh Consumers**

### *UK Impact Assessment*

- 5.29 The UK Government's Impact Assessment shows that Wales imports around 7% of the UK's total imports from Japan. Whilst the modelling estimates a potential saving of up to £4m for Welsh consumers, the evidence directly linking tariffs to consumer prices is mixed and we expect the scale of the savings to be linked to the extent to which savings from lower import costs are passed onto final users.
- 5.30 The UK impact assessment modelling also estimates an increase in the long run average real wage<sup>7</sup> in the UK of around 0.09% (£0.8 billion). This is found to be consistent across most types of occupation apart from service workers (0.08%). Indicative estimates of the long run impacts on the composition of employment in UK sectors suggests the largest negative impact will be felt in the chemical, rubber and plastic sector (below -0.5%), followed by manufacture of motor vehicles, machinery & equipment, and other services sectors (-0.05 to <-0.5%). The largest positive impact will be within the textiles, apparel and leather sector (above 0.5%).

### *Most relevant issues for Wales*

- 5.31 Consumer protection is woven throughout Chapter 8 on Trade in Services, Investment Liberalisation and Electronic Commerce. Provisions beneficial to consumers include extending online protection to cover commercial activities.

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<sup>7</sup> nominal wages adjusted for impact of inflation

The CEPA also contains a new article on the adoption of a legal framework to protect the personal information of users of e-commerce. In line with its forward leaning ambitions the chapter supports activity at multilateral level and seeks to facilitate cooperation in emerging technologies, Artificial Intelligence (AI) and the Internet of Things (IoT).

## **Cross-cutting Issues – Social, Labour, Environmental and Animal Welfare**

*Most relevant issues for Wales*

### Climate Change and the Environment

- 5.32 The UK-Japan CEPA largely replicates the Trade and Sustainable Development (TSD) chapter in the EU-Japan Agreement, including those related to the environment and climate change. We are supportive of these provisions.
- 5.33 Modelled estimates suggest the UK-Japan CEPA is not expected to have significant impacts on Greenhouse gas emissions (CO<sub>2</sub> and Non-CO<sub>2</sub>), energy usage, trade-related transport emissions and wider environmental impacts such as air quality, biodiversity, and water use/quality. The agreement is estimated to increase domestic greenhouse gas emissions marginally by 0.028% compared to projected levels in 2035. However, this does not take into account future policy measures to reach net zero by 2050.

### Social and labour provisions

- 5.34 The UK-Japan CEPA largely replicates the Trade and Sustainable Development (TSD) chapter in the EPA. References to labour laws and conventions have been included throughout the TSD chapter which is consistent with the EPA.
- 5.35 The agreement provides for the establishment of a bilateral UK – Japan joint dialogue with civil society and a panel of experts to sit, which is similar to the EU – Japan processes established by the EPA. A difference is that the UK and Japan governments have two years to establish a committee and a list of experts whereas the EU and Japan agreed to establish a committee and panel in one year.
- 5.36 We are awaiting clarification from the UK Government on how the domestic advisory group would work and clarification about the role of the devolved governments.
- 5.37 The UK-Japan CEPA has a new, additional chapter on Trade and Women's Economic Empowerment which the EU-Japan Agreement did not contain.

The chapter establishes channels between the two nations to cooperate on furthering opportunities for women in roles as business owners and workers. A Working Group will support and oversee the delivery of cooperation activities. We are supportive of these provisions.

- 5.38 In terms of enforcing commitments within the CEPA, the UK-Japan CEPA mostly replicates the effects of the dispute settlement provisions in the EPA, but SPS provisions are not subject to the provision detailed. Both Parties agreed to seek to resolve any differences on SPS matters amicably through regular conversations and technical discussions and if these processes should fail, any dispute will then be settled using the WTO system.

#### Animal welfare provisions

- 5.39 Animal welfare provisions are identical to provisions made in the EU-Japan Agreement, with a commitment to establish a technical working group on animal welfare. We are broadly supportive of this provision, but as animal welfare is a devolved issue, we await further clarification from UK Government on the role we will have in the working group.

#### Subsidies

- 5.40 With the exception of the removal of references to the European Union, the Subsidies Chapter of UK-Japan CEPA is largely identical to EU-Japan.
- 5.41 Although Devolved Governments are not within scope of the Chapter, Welsh Government considers subsidies to be a devolved matter, and as such has a particular interest in this Chapter. We are content that the provisions provide continuity of the existing subsidies arrangements with Japan.



**Ymadael â'r Undeb  
Ewropeaidd:  
Paratoadau yng Nghymru  
ar gyfer diwedd y cyfnod  
pontio**  
Ymatebion i'r Ymgynghoriad

**Exiting the European Union:  
Preparedness in Wales for  
the end of the transition  
period**  
Consultation Responses



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<b>Rhif   Number</b>	<b>Sefydliad</b>	<b>Organisation</b>
EUP01	Cruelty Free International*	Cruelty Free International*
EUP02	Cyngor Celfyddydau Cymru - Celfyddydau Rhyngwladol Cymru	Arts Council of Wales - Wales Arts International
EUP03	Colegau Cymru*	Colleges Wales*
EUP04	Cymorth i Ferched Cymru*	Welsh Women's Aid*
EUP05	Cymdeithas Milfeddygon Prydain*	British Veterinary Association*
EUP06	FSB Cymru*	FSB Wales*
EUP07	Cymdeithas Diwydiant Fferyllol Prydain*	The Association of the British Pharmaceutical Industry*
EUP08	Cytûn - Eglwysi ynghyd yng Nghymru	Cytûn - Churches together in Wales
EUP09	Rail Freight Group*	Rail Freight Group*
EUP10	Conffederasiwn GIG Cymru*	Welsh NHS Confederation*
EUP11	Hybu Cig Cymru*	Meat Promotion Wales*
EUP12	Cymdeithas Llywodraeth Leol Cymru	Welsh Local Government Association
EUP13	Coleg Nyrsio Brenhinol Cymru *	Royal College of Nursing Wales*
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EUP20	Cyngor Celfyddydau Cymru - Celfyddydau Rhyngwladol Cymru	Arts Council Wales - Wales Arts International

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Legislation Committee  
Exiting the European Union:  
Preparedness in Wales for the end of  
the transition period  
Evidence from Cruelty Free  
International

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## 1. Submission to the ongoing Senedd Cymru consultation: Exiting the European Union: Preparedness in Wales for the end of the transition period

1.1 CrueltyFreeInternational is a UK-based organisation working to end animal experiments worldwide. Our scientists have had stakeholder observer status at the European Chemicals Agency (ECHA) since its establishment, an expert seat at the Member State and Risk Assessment Committees since stakeholders were first permitted, and a seat on the Competent Authorities for REACH (Registration, Evaluation, Authorisation and Restrictions of Chemicals) and CLP (Classification, Labelling and Packaging) expert advisory group to the Commission since 2012. We have submitted complaints to the European Ombudsman and intervened in Board of Appeal cases; produced reports on alternative methods to assist registrants avoid animal testing and are in a strong position to comment on the animal testing implications of UK exit from EUREACH and ECHA. We are also a member of the UK Chemical Stakeholder Forum.

### Executive Summary

- If the UK was not to seek membership of the European Chemicals Agency (ECHA), it could - without a robust data-sharing agreement - lose access to the world's largest chemical database, in turn meaning that chemical companies in Wales would have to generate the data necessary to comply with a future UK chemical regulatory framework, potentially including duplication of animal tests.
- If the UK were to maintain its position of no associate membership of ECHA and non-alignment with EU REACH, it is essential that important principles currently contained in REACH are retained by the UK, particularly the principles of animal testing as a last resort and to promote alternatives to animal testing.
- However, any UK REACH system that might arise should seek to be better at replacing animal testing with a toolbox of alternatives.

## 2. Retaining membership of the European Chemicals Agency (ECHA)

2.1 In the document published by the Welsh government entitled *the Future UK relationship negotiating priorities for Wales*, it is stated that Britain should continue 'participation in EU bodies and agencies such as the European Chemicals Agency to support dynamic alignment'. We believe that it is important that Britain maintains as close as possible a relationship with ECHA and its database, the largest on chemicals in the world containing information in English on more than 16,500 chemicals - much of which is the result of animal tests. From January 1<sup>st</sup>, 2021, for continued access to the UK market, chemicals with a current EU REACH registration - will need to be registered under the new UK REACH equivalent.

2.2 According to the chemicals industry, registering a single chemical under UK REACH could cost up to £300,000 if companies are required to buy "letters of access" to existing data that supports the EU registration, as held by ECHA in Helsinki. This data is information that is expensive to produce and often owned by third parties. Worse still, if letters of access to ECHA-held data cannot be obtained then additional testing may be required to generate the data anew. This testing could include animal tests.

2.3 As things currently stand, within two years of the UK leaving the EU, chemical companies in Wales are to provide the UK Health and Safety Executive with the full data package that supported their original EU REACH chemical substance registrations. This will not only be costly for industry but could also mean duplicate testing on animals of substances for UK REACH already tested on animals for EU REACH.

2.4 We are convinced that neither the Welsh public nor the chemicals industry in Wales would countenance repeat animal tests for political and bureaucratic reasons nor, going forward, the potential of two chemicals safety regimes - one in the EU and one in the UK - requiring double the number of animal tests for new registrations.

2.5 If continued associate membership of the ECHA or alignment with EU REACH are not on the table, then a fundamental data-sharing agreement enabling mutual access to full registration dossiers - including the commercial information often held by third parties - will be essential.

## 3. New approach methods better for human health and the environment

3.1 The EU REACH legislation includes two key principles - the promotion of alternatives to animal testing and animal testing as a last resort. Whilst these are protected in the Environment Bill currently under consideration in the Westminster parliament, these principles, to be meaningful, must be directed at all relevant bodies and mechanisms to ensure that they are upheld. This is not currently evident.

3.2 We believe that if there is to be a divergent legislation for the safety of chemicals, then the UK should, from the start, set out to be more ambitious with regard to the replacement of animal testing, looking for example to the US Environmental Protection Agency which has set a deadline of 2035 for an end to eliminate all requests and funding for tests involving mammals.

3.3 We note the UK's 2020 Budget objective of increasing investment in R&D to 2.4% of GDP by 2027, with plan to increase public R&D investment to £22 billion per year in science and technologies, but it is essential that specific, well-funded programmes are put in place within that to deliver high quality, non-animal methods for assuring the safe use of chemicals.<sup>1</sup>

3.4 We have seen that the issue of the relevance of animal testing for protecting human health and the environment is rarely addressed directly; it has been assumed by default based on a system of testing developed 60 years ago. Unfortunately, animal tests have become accepted as the standard way of predicting human toxicity with very little confidence that their results are valid.

3.5 We see concerns being voiced that tests on animals are not fit-for-purpose for protecting human health or the environment because of species difference and differences between strains of the same species (e.g. laboratory-bred mice vs the natural population); effects of stress due to an artificial laboratory environment; and the widely different exposure pattern associated with an animal test compared to real-world exposure. As an example, Federica Madia, a biologist and scientific officer in the Chemical Safety and Alternative Methods Unit of the Commission's Joint Research Centre wrote recently: "We therefore highlight the need for new approaches for carcinogenicity assessment. We also call into question the standard testing procedures relying on animal studies. At the moment, we are testing chemical effects on mice and rats. But the results obtained are not totally reliable for humans."<sup>2</sup>

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<sup>1</sup> Alliance for Human Relevant Science, Accelerating the Growth of Human Relevant Life Sciences in the United Kingdom, (March 2020).

<sup>2</sup> F. Madia, Chemicals in our life, 'New Study shows how to better assess chemicals and prevent cancer', [https://chemicalsinourlife.echa.europa.eu/quest-corner/-/asset\\_publisher/vcrOSpl9lebF/blog/new-study-shows-how-to-better-assess-chemicals-and-help-preventing-cancer](https://chemicalsinourlife.echa.europa.eu/quest-corner/-/asset_publisher/vcrOSpl9lebF/blog/new-study-shows-how-to-better-assess-chemicals-and-help-preventing-cancer) (Accessed 18.03.202, Time: 09.21).

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# Diweddariad ar Frecsit a'r effaith bosibl ar gelfyddydau Cymru

## Cyflwyniad

1. Mae celfyddydau Cymru yn wynebu ergyd dwbl oherwydd yr effaith negyddol a'r ansicrwydd oherwydd y coronafeirws a brecsit.
2. Bydd angen cynllunio'n ofalus a phenderfynol i ailosod ein gwaith ar ôl yr argyfyngau. Mae ymgorffori darpariaethau Deddf Llesiant Cenedlaethau'r Dyfodol yn cynnig y map gorau inni allu mynd drwy risgiau cyfunol y coronafeirws a brecsit.
3. Gwnaed cyflwyniad yn 2019 i Bwyllgor Diwylliant, Cymraeg a Diwylliant y Senedd am yr effaith brecsit ar gelfyddydau Cymru<sup>1</sup>. Darparwyd tystiolaeth ddilynol gennym ar effaith y coronafeirws y mis diwethaf<sup>2</sup>. Rydym ni'n cynllunio ymateb llawn i'r Ymchwiliad i Faterion Ewropeaidd ac Allanol sydd ar y gweill yn yr hydref.

## Arian

4. Mae celfyddydau Cymru wedi cael budd sylweddol o raglenni ariannol Ewropeaidd.<sup>34</sup> Mae ein perthynas ag Ewrop hefyd wedi helpu i adeiladu rhwydweithiau a chysylltiadau, cyfnewid sgiliau a datblygu marchnadoedd

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<sup>1</sup> <https://busnes.senedd.cymru/documents/s79742/BREXIT11%20-%20Celfyddydau%20Rhyngwladol%20Cymru.pdf>

<sup>2</sup> <https://busnes.senedd.cymru/documents/s101532/COV03%20-%20Cyngor%20Celfyddydau%20Cymru%20Saesneg%20yn%20unig.pdf>

<sup>3</sup> <https://arts.wales/sites/default/files/2019->

<sup>4</sup> </Asesu%20cyfraniad%20yr%20Undeb%20Ewropeaidd%20at%20gelfyddydau%20Cymru%20er%202007.pdf>



newydd. Ein pryder yw na fydd yr arian amnewid yn y dyfodol yn gallu efelychu rhaglen gyda 27 o wledydd partner.

5. Rydym ni wedi ymateb i ymchwiliad diweddar Pwyllgor Materion Cymreig Senedd Prydain<sup>5</sup> ac i ymgynghoriad Llywodraeth Cymru ar y cynigion ar gyfer y gronfa ffyniant a rennir. Rydym ni hefyd yn cymryd rhan yn ymgynghoriadau'r Adran dros Ddiwylliant, y Cyfryngau a Chwaraeon am raglen amnewid arfaethedig Prydain ar gyfer Ewrop Greadigol.

6. Rydym ni'n parhau i gefnogi hawl datganoledig Llywodraeth Cymru a'r Alban i benderfynu ar gyfranogi o raglenni Ewropeaidd yn y dyfodol, os yw hynny'n opsiwn. Ond hoffem ni bwysleisio y byddai'n well gennym pe bai Prydain gyfan yn parhau i ymgysylltu'n gadarnhaol ag Ewrop Greadigol a rhaglenni trawswladol eraill.

7. Rydym ni'n cefnogi'n gyffredinol ymagwedd Llywodraeth Cymru tuag at y gronfa ffyniant a rennir, seiliedig ar Lesiant Cenedlaethau'r Dyfodol. Cytunwn fod cael rôl ganolog i'r sector diwylliannol mewn rhaglen ddatblygu ranbarthol yn y dyfodol yn bwysig. Rydym ni hefyd yn croesawu'n fawr y cynnig i alluogi cysylltiadau rhyngwladol i fod yn rhan o brosiectau dan raglenni'r dyfodol.

8. Rydym ni'n cefnogi'r cynnig y dylid rhoi'r dewis i Lywodraeth Cymru barhau i gymryd rhan yn rhaglenni'r Undeb Ewropeaidd, gan gynnwys Ewrop Greadigol, yn amodol ar y gwerth am arian (a ddylai fod yn unol â gwerthoedd Deddf Llesiant Cenedlaethau'r Dyfodol). Byddem yn dadlau'n gryf o blaid manteision parhau i gymryd rhan yn y rhaglen Ewrop Greadigol.

9. Dylai unrhyw raglen amnewid gan Brydain:

- Galluogi'r sector i ganfod a meithrin partneriaethau a rhwydweithiau hirsefydlog
- Bod yn rhaglen deg a chydweithiol gyda gwledydd sy'n bartneriaid
- Bod yn rhaglen hirdymor sy'n galluogi cysylltiadau hirsefydlog i dyfu a datblygu mewn marchnadoedd allweddol
- Blaenoriaethu a gwerthfawrogi amlieithrwydd
- Gwerthfawrogi partneriaethau trawswladol sy'n cynnwys rhagor o wledydd
- Canolbwyntio ar gyfranogiad mewn rhwydweithiau a ariennir drwy raglenni fel Ewrop Greadigol

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<sup>5</sup> <https://committees.parliament.uk/writtenevidence/5532/pdf/>

## Canfyddiadau rhyngwladol o Brydain

10. Rydym ni'n pryderu am ganfyddiadau rhyngwladol o Brydain ar hyn o bryd. Drwy'r celfyddydau a diwylliant, rydym ni'n credu y dylem fod yn meithrin diwylliant lles yng Nghymru ac yn magu enw da fel gwlad agored sy'n wynebu'r dyfodol yn unol â'r gwerthoedd sydd yn Neddf Llesiant Cenedlaethau'r Dyfodol.

11. Byddem ni'n dadlau y gellir defnyddio unrhyw raglenni ariannu yn y dyfodol (wedi'u datganoli a'u canoli) i ddatblygu partneriaethau a chydweithio diwylliannol rhyngwladol. Dyma'r ffordd orau o sicrhau y gall mentrau wedi'u brandio dan arweiniad Cymru gydfodoli ar y cyd â Phrydain Fyd-eang/Global Britain i gymryd lle'r rhaglen Ewrop Greadigol (fel yn wir roeddent yn gallu cael eu hariannu gan y cronfeydd strwythurol ac INTERREG ac ati).

12. Mae gennym bryderon y bydd strategaeth "pŵer meddal" Llywodraeth Prydain a brand "GREAT" yn pennu buddsoddiad rhyngwladol newydd. Mae diwylliant wedi'i ddatganoli ac felly hefyd agenda cysylltiadau diwylliannol rhyngwladol a buddsoddiadau Llywodraeth Cymru. Dylai'r rhain gael eu harwain gan Gymru a'u rhoi ar y lefel ryngwladol gan frand Cymru a'u llywio gan werthoedd lles. Gall brandiau Cymru/Global Britain gydfodoli, ond bydd angen sensitifrwydd a pharch diwylliannol ym Mhrydain ac yn rhyngwladol.

## Masnach, ffiniau a mewnfudo

13. Rydym ni wedi codi nifer o bryderon o'r blaen ynghylch y cynigion sy'n cael eu cyflwyno ar hyn o bryd drwy'r Bil mewnfudo newydd. Mae ei effaith ar allu'r sector celfyddydol hynod fregus i barhau i weithio mewn ffordd ystyryth a hyblyg mewn (a chyda) gwledydd yr Undeb Ewropeaidd ar ôl 31 Rhagfyr 2020 wedi cael ei daro'n ddifrifol gan y coronafeirws.

14. Mae'r effaith ar deithio rhyngwladol, ar allu lleoliadau i ailagor ar hyn o bryd, heb sôn am gynnal sioe ryngwladol a'r holl oblygiadau cysylltiedig o ran costau yn peri pryder mawr. Er bod hyn yn bryder byd-eang, a rennir gan y sector celfyddydol ledled y byd, bydd artistiaid, cwmnïau a lleoliadau Cymru dan ragor o anfantais oherwydd y costau ychwanegol a'r fiwrocratiaeth sydd eu hangen o ganlyniad i newidiadau i'r cyfreithiau mewnfudo a ddaw i rym ar ôl brexit.

15. Drwy ein haelodaeth o'r Ffederasiwn Diwydiannau Creadigol, rydym ni'n cefnogi eu gwaith eiriolaeth gydag Adran dros Fasnach Ryngwladol Llywodraeth Prydain am anghenion y sector diwydiannau creadigol ehangach mewn perthynas â'r cytundebau masnach rydd.

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# An update on Brexit and the potential impact on the arts in Wales

## Introduction

1. The arts in Wales are facing a “double whammy” because of the negative impact and uncertainty being caused by Covid-19 and Brexit.
2. Re-setting our work within the context of the climate and equalities emergencies will require careful and determined planning. Embracing the provisions of the Wellbeing of Future Generations Act offers us the best ‘roadmap’ to navigate our way through the combined risks of Covid and Brexit.
3. We made a submission to the Senedd’s Culture Welsh Language and Culture Committee on the impact of Brexit on the arts in Wales in 2018.<sup>1</sup> We provided subsequent evidence on the impact of COVID-19 last month.<sup>2</sup> We’re planning a full response to the pending European and External Affairs Inquiry in the autumn.

## Funding

4. The Arts in Wales have received substantial benefit from European funding programmes.<sup>3,4</sup> Our relationship with Europe has also helped to build networks

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<sup>1</sup> <https://business.senedd.wales/documents/s79742/BREXIT11%20-%20Wales%20Arts%20International.pdf>

<sup>2</sup> <https://business.senedd.wales/documents/s101532/COV03%20-%20Arts%20Council%20of%20Wales.pdf>

<sup>3</sup> <https://arts.wales/sites/default/files/2019->

<sup>4</sup> </Assessing%20the%20European%20Unions%20contribution%20to%20the%20arts%20in%20Wales%20since%202007.pdf>

and relationships, exchange skills and develop new markets. Our concern is that future replacement funds will not be able to replicate a programme with 27 partner nations.

5. We have responded to the UK Parliament's Welsh Affairs Committee's recent enquiry<sup>5</sup> as well as the Welsh Government's consultation on the proposals for the Shared Prosperity Fund. We are also taking part in the DCMS consultations around a proposed UK replacement programme for Creative Europe.

6. We continue to support Welsh and Scottish Governments' devolved legitimacy to decide on participation in future European programmes, if that is an option. However, we would stress our preference would be for the whole of the UK to continue to engage positively with Creative Europe and other transnational programmes.

7. We're broadly supportive of the Welsh Government's Wellbeing of Future Generations approach to the Shared Prosperity Fund. We agree that a central role for the cultural sector in a future regional development programme is important. We also strongly welcome the proposal to enable international connections to be a part of projects under future programmes.

8. We endorse the proposal that the Welsh Government should be given the option to continue to participate in EU programmes, including Creative Europe, subject to value for money (which should be in line with the values of the Wellbeing of Future Generations Act). We would strongly advocate the benefits of continued participation in the Creative Europe programme.

9. Any UK replacement programme should:

- Enable the sector to find and nurture longstanding partnerships and networks
- Be an equitable and collaborative programme with partner countries
- Be a long-term programme that enables long standing relationships to grow and develop in key markets
- Prioritize and value multilingualism
- Value transnational partnerships of more than countries.
- Focus on the participation in networks funded through programmes like Creative Europe.

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<sup>5</sup> <https://committees.parliament.uk/writtenevidence/5532/pdf/>

## International perceptions of the UK

10. We're concerned about the international perceptions of the UK at this current time. Through arts and culture we believe that we should be nurturing a wellbeing culture in Wales and building our reputation as an open and outward-facing country in line with the values enshrined in the Wellbeing of Future Generation Act.

11. We would argue that any future funding programmes (both devolved and centralised) are able to be used to grow international cultural partnerships and collaborations. This is the best way to ensure that Wales-led branded initiatives can co-exist alongside a Global Britain replacement to the Creative Europe programme (as indeed they were able to be funded by the structural funds and Interreg etc).

12. We have concerns that the UK Government's "Soft Power" strategy and "GREAT" brand will dictate new international investment. Culture is devolved and Welsh Government's international Cultural relations agenda and investments. These should be led by Wales and fronted internationally by the Cymru Wales brand and guided by wellbeing values. The Cymru Wales / Global Britain brands can co-exist, but cultural sensitivity and respect will be needed in the UK and internationally.

## Trade, Borders and Immigration

13. We've previously raised a number of concerns about the proposals currently being introduced through the new Immigration Bill. Its impact on the immensely fragile arts sector's ability to continue to work in an agile and flexible way in and with EU countries after 31 December 2020 has been severely hit by Covid-19.

14. The impact on international touring circuits; on venues' ability to re- open at this moment in time, let alone put on an international show; and all the associated cost implications of this is a major concern. Whilst this is a global concern, shared by the arts sector worldwide, artists, companies and venues in Wales will be further disadvantaged by additional costs and bureaucracy required as a result of changes to the immigration laws coming into effect post Brexit.

15. Through our membership of the Creative Industries Federation, we are supporting their advocacy work with the UK Government's DIT on the needs of the wider creative industries sector regarding the FTAs.

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Evidence from Colleges Wales

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## Introduction

ColegauCymru welcomes the opportunity to respond to Senedd Cymru's External Affairs and Additional Legislation Committee consultation on Exiting the EU: preparedness in Wales for the end of transition.

ColegauCymru is a post-compulsory education charity; we promote the public benefit of post compulsory education and learning. We also convene the further education (FE) Principals' Forum, which represents Further Education colleges and FE institutions (FEIs) in Wales. ColegauCymru also undertakes research, policy development and provides practical support to FE colleges in Wales, including on work-based learning (WBL) which is a key part of FE college activity.

## 1. Background and general observations

- 1.1. ColegauCymru has responded to a number of consultations related to this topic over the course of the current Senedd. These include:
  - Economy, Infrastructure & Skills Committee inquiry: Selling Wales to the World (2017)
  - Children, Young People and Education Committee: Inquiry on the Impact of Brexit on Higher and Further Education (2018)
  - Welsh Government, Regional Investment in Wales after Brexit (2018)
  - Finance Committee, Inquiry into preparations for replacing EU funding for Wales (2018)
  - Welsh Government, A Framework for Regional Investment in Wales (2020)
  - Welsh Affairs Committee, Wales and the Shared Prosperity Fund (2020).

In addition, in November 2017, ColegauCymru published a report on the impact of European funding on colleges in Wales - Involvement of Welsh Further Education

colleges and institutions in EU funding: An overview of the financial uptake<sup>1</sup>. Links to all the above documents can be found in Annex A at the end of this submission.

Many of the issues raised in that report and those responses remain relevant to the current consultation: the key point being that it is difficult to assess the extent to which Wales is prepared for the end of the transition period, without knowing what the end of the transition period will look like. Negotiations are ongoing between UK Government and the EU but without a complete picture of what a final agreement contains, assessments of preparedness are at best theoretical.

It is highly unlikely that an extension to the transition period could now be agreed, with a 'no trade deal' exit currently set as the default position. In this respect, the Further Education sector, like Wales more widely, is not well prepared for a 'no trade deal Brexit' as outlined in Professor Barnard's report.<sup>2</sup> This could, initially at least, stifle the UK and Wales in new, complicated legislative requirements to which it will take time to acclimatise.

For FE, this will have an impact on the economy and employers with whom the sector works. It is reasonable to assume that this will be a negative economic impact which will put colleges into a position where they are operating in uncertainty, at least for an initial period. This is also likely to reduce the propensity of businesses to employ new staff (namely, FE learners who have completed their courses, those seeking apprenticeships, those who have newly retrained or upskilled) or engage in training.

Alternatively, it might mean that there are new and urgent skills gaps that need addressing through both English and Welsh. We do not yet know specifics of what these are, which complicates effort to plan to address them. The sector is anticipating change as far as possible and seeking to factor this into planning and advice to learners on future employment pathways as far as possible. Nevertheless, it is difficult for FEIs to start to incorporate future scenarios into training and education for learners with any real certainty, potentially meaning that FE learners are not clear about or prepared for the world of work they are entering.

When considering awarding qualifications, it is also important to remember that any changes take time to be implemented. Awarding bodies can be slow to adapt and respond to changing skills and knowledge requirements. Currently, FEIs can only award qualifications accredited by awarding bodies so such delays could lead to a time lag of number of years before being properly equipped to address any new job requirements that result from the economic shift. This could be

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<sup>1</sup><http://www.collegeswales.ac.uk/documents/Resources/453/engb/involvement%20of%20welsh%20fe%20colleges%20and%20institutions%20in%20eu%20fundingjanuary%202017.pdf>

<sup>2</sup> Catherine Barnard,  
<https://business.senedd.wales/documents/s102205/Future%20scenarios%20post%20Brexit%20Professor%20Catherine%20Barnard%20-%202020%20April%202020.pdf>

addressed by creating new, innovative and quicker ways of developing, awarding and accrediting qualifications.

New industries may arise and labour demands in certain areas are likely to expand while others contract. An example could be for FE colleges that have ports in their areas - these may require a whole new workforce to deal with changes to trade conditions. Wales is a small country and, while improving, one that currently has a large, lower level skilled population. As of April 2020, 8.2% of working adults in Wales had no qualifications at all, while 12.7% had not reached a level 2 qualification<sup>3</sup> - factors such as these could have impacts on the wider labour market. If the economy thrives post-Brexit, learners and employers will depend on FE to provide many of the skills they need, in both English and Welsh. In this scenario, we still have no clear idea or measure of what that could mean or in what volume.

Ultimately, the Further Education sector is doing the best it can to be prepared for the end of the transition period but, in the absence of any real clarity of what the posttransition landscape will actually look like to date, the sector might not necessarily have the funding or the delivery infrastructure to respond as efficiently as it would like and is necessary.

## 2. Replacement European Funding – Shared Prosperity Fund

2.1 Colleges in Wales have greatly benefitted from European funding. This has been used to support and upskill the population of Wales through European programmes. These activities have made an important contribution to business and the economy, often in the most deprived areas of Wales. Over the past 10 years, FEIs in Wales have been involved in the delivery of EU funded projects to a total value of almost £600m, both as project lead or project partner<sup>4</sup>.

2.2 For this reason, it is a matter of overwhelming concern that there is still no detail or clarity on what the replacement for EU funding – the UK Government’s Shared Prosperity Fund – will look like. Without knowing the amount of funding, along with the necessary priorities and processes, it is impossible for the FE sector to prepare for the end of the transition period. The high degree of concern about the potential loss of this funding across the FE sector must not be underestimated.

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<sup>3</sup> <https://statswales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Data-For-Regions-of-Wales/highestqualificationlevelofworkingageadults-by-region-localauthority>

<sup>4</sup> <http://www.colegau.cymru/uploads/img/2020/Reports/Involvement%20of%20Welsh%20FE%20colleges%20and%20institutions%20in%20EU%20funding%20Nov%202017%20ENG.pdf>



2.3 Concerns are now increasing with regard to projects due to end in December 2022/January 2023: there is the potential for a 'cliff edge' scenario which must be avoided. It will take time to develop, plan, and approve new innovative projects to address the emerging skills challenges and priorities as a result of any Brexit outcome and the timescale is very compressed. Again, this could negatively impact post-16 learners in Wales.

2.4 ColegauCymru's preference is for funding for Wales from the Shared Prosperity Fund to be devolved to the Welsh Government, drawing on existing expertise and lessons built up from the WEFO period. WEFO, with its knowledge of previous programme implementation, is well placed to facilitate the collaborative work needed to ensure that the full benefits of future projects are delivered to the Welsh economy whilst delivering against targets. Change will be necessary to make the Shared Prosperity Fund work as effectively as possible but there seems little point building an entirely new administrative system and disregarding existing experience.

2.5 Administration and allocation of the Shared Prosperity Fund need to be coherent across the UK and within the devolved governments. This means that Welsh Government, Local Governments and the UK Government will need to work together, using existing skills, knowledge and expertise, so that no duplication or excessive bureaucracy is created. Skills, industrial, economic and other strategies need to work in harmony across the different levels of government, or at least avoid direct conflict. Situations which fragment different funding streams and their priorities should be avoided as far as practicable.

2.6 Consultation documents regarding the Shared Prosperity Fund were due to be published "in due course" as of January 2020. Our understanding is that further information about the fund will be part of or follow from the UK Government Comprehensive Spending Review, launched on 21 July 2020<sup>5</sup>. As yet, there does not appear to be a specific date for the end of the consultation or the Spending Review announcement (to be confirmed in 'due course') but ColegauCymru calls for this to be as early as possible in order for all sectors, including the FE sector, to be able to prepare for the new funding stream.

2.7 The Welsh Government must continue to press UK Government to publish its consultation on the Shared Prosperity Fund at the earliest opportunity to enable key stakeholders to comment on proposals for the replacement for European funds. This is a matter of urgency for skills and employability funding.

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<sup>5</sup> <https://www.gov.uk/government/news/chancellor-launches-comprehensive-spending-review>

### 3. Erasmus+

3.1 There is, as yet, no firm decision on whether the UK will continue to participate in the Erasmus+ scheme. Our understanding is that a potential UK replacement scheme is being explored but again, there is no clarity here to date. Further Education colleges have both benefitted from European funding and helped to support and upskill the population of Wales through European programmes, making important contributions to business and the economy, often in the most deprived areas of Wales<sup>6</sup>. Vocational mobilities have helped to change the horizons of learners, in particular those from disadvantaged backgrounds, and this opportunity must not be lost.

3.2 During the 2020 round of Erasmus+ applications, ColegauCymru was successful in securing funding of €2.2m for projects due to run until 2022. The next seven year cycle of Erasmus+ funding will run from 2021 until 2027. However, we do not know if the UK will participate in this cycle of funding and without an answer, it is not possible to prepare adequately. Welsh Government has maintained that the best scenario is that the UK remains a full member of Erasmus+ but the final decision lies with the UK Government.

3.3 ColegauCymru's preference is also for Wales, via the UK, to remain part of the full Erasmus+ scheme. However, if the UK is not a part of Erasmus+ post-Brexit, the UK Government will need to ensure there is no gap in funding for organisations while they develop a domestic alternative. Likewise, without greater detail on the UK Government's proposed Shared Prosperity Scheme, which is set to replace EU funding, it is difficult to plan such domestic alternative arrangements.

3.4 ColegauCymru is concerned that if the UK is no longer part of Erasmus+, relationships with reciprocal partners in the EU could be negatively impacted. Since leaving the EU in January 2020, the UK has already been excluded from some European Commission level networks such as the Advisory Group for the European Qualifications Framework (EQF) and the forum meetings of European Quality Assurance in Vocational Education and Training (EQAVET). ColegauCymru represented Wales in these network meetings and our understanding was that we would still be able to participate in these meetings during the transition period. These networking opportunities are crucial in ensuring that Wales' qualifications and quality assurance processes for VET are in line with those across Europe and provide a level playing field for workers and employers across the EU.

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<sup>6</sup><http://www.collegeswales.ac.uk/documents/Resources/453/engb/involvement%20of%20welsh%20fe%20colleges%20and%20institutions%20in%20eu%20fundingjanuary%202017.pdf>

## 4. Qualifications and portability

4.1 Ensuring that qualifications in Wales remain aligned to the European Qualifications Framework, which allows learners, learning providers and employers to compare qualifications between different national systems, is important for Wales' current and future citizens to play their part in the wider world. Portability of qualifications is key to employability both in terms of learners from Wales being able to work in other countries but also so that employers in Wales have confidence in qualifications of the workforce from across Europe and beyond. Without the guarantee of portable qualifications, there is the potential some FE provision could be undermined by lack of recognition in the wider European and global markets. Likewise, longer term, there is a potential impact on businesses in Wales being able to export goods and services to the EU if Wales' qualifications are not recognised as meeting the necessary standards.

4.2 ColegauCymru recently undertook a rereferencing exercise on behalf of the Welsh Government, ensuring that Wales' qualifications are accurately mapped to the European Qualifications Framework (EQF). This will ensure that employers, workers and learners from Wales will be able to compare Wales' qualifications with those across Europe and beyond. This up to date point of comparison of qualifications will support the continued mobility of workers and learners across Europe and is a positive level of preparedness for the years ahead. It will, however, be essential to ensure that this position is maintained in the future.

## 5. Priorities for investment

5.1 Future investment needs to focus on the development of human capital in its widest understanding (including creativity) in order to prepare for and address the changing circumstances Wales faces outside the European Union. Resilience and flexibility will be key. For this reason, investment in education and skills (in both English and Welsh) must be maintained or enhanced, including opportunities for those in work to retrain or upskill. Again, without knowing the terms of any trade deal with the European Union or details of the Shared Prosperity Fund, it is difficult if not impossible for the FE sector to undertake effectively the necessary planning for the end of the current transition period.

5.2 As a sector, FE is adaptable, flexible, and able to respond quickly to opportunities that may arise. One way to increase preparedness for the end of the transition period will be to continue or extend existing successful EU-funded skills and employability projects. FE colleges in Wales have a positive track record here and could undertake such activity with minimal disruption given sufficient continuity funding. For example, projects including Skills for Industry, Upskilling@Work and SEED which target workforce development could play a crucial role in supporting organisations during the Covid-19 management and

recovery period over the next 24-36 months<sup>7</sup>. Likewise, successful interventions for those young people most at risk of not being in employment, education or training, such as Inspire2Achieve<sup>8</sup>, could be extended and enhanced.

5.3 There has already been interest from other FE colleges in expanding successful employability projects, such as those run by Gower College Swansea. These could be organised on a regional basis or replicated across Wales in order to support the recovery of the economy in terms of recruitment, workforce planning, or assisting those who are underemployed or being made redundant.

5.4 Lastly, it is also important to bear in mind that certain projects have been running for several years and, should they not continue, it will be necessary to take into account the employment rights individuals have acquired over this period. This could include funding for any redundancy payments that may be necessary.

## 6. Conclusion

6.1 To reiterate, a key theme of this consultation response, it is almost impossible to accurately assess how prepared the Further Education sector, or Wales as a country, is for the end of the transition period without being clear about the new systems, funding and processes into which we will transition.

6.2 The Further Education sector is positive, flexible, adaptive and responsive but adequate planning and support requires more detail about the situation Wales and the UK will face as of 1 January 2021. This is on top of managing a constantly changing environment in relation to the ongoing management of and recovery from Covid-19. While the economic impact of the pandemic is yet to be fully realised, we must be aware of how individuals within society will be affected. Often, it is those who are already most disadvantaged who are most negatively impacted in times of economic difficulty. Taking both Brexit and the pandemic together, there is even greater uncertainty and challenge in the context of employment opportunities for disadvantaged young people.

6.3 FE will play a crucial role in Wales' economic recovery from Covid-19, and the replacement for European funding will be a significant part of that success. Any reduction to those Further Education funds which have usually been allocated from EU funding could have extreme adverse effects on the education of young people in Wales and the retraining and upskilling of adults. Following the

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<sup>7</sup> For further detail, see for example: <https://businesswales.gov.wales/skillsgateway/skills-and-trainingprogrammes/workplace-skills/skills-industry-2>

<https://businesswales.gov.wales/skillsgateway/skills-and-training-programmes/workplaceskills/upskillingwork>

<sup>8</sup> <http://www.sewales-ret.co.uk/inspire-2-achieve-east-wales/>

outbreak of Covid-19 and the negative repercussions this will inevitably have on the Welsh economy, the need for skills training or reskilling (including bilingual skills) has never been more important. The full impact of Covid-19 on the economy is not yet clear but there can be no effective response that does not look at skills as part of the recovery. The Further Education sector is well placed to develop, support and deliver this.

6.4 In summary, the Welsh Government should:

Continue to press the UK Government to agree a trading relationship with the EU that works for Wales, and end the uncertainty as to what this will look like at the earliest possible opportunity.

Establish the exact closing date of submissions to the UK Government's current Comprehensive Spending Review and the timetable for the announcement.

Encourage the UK Government to continue to develop outline plans for the Shared Prosperity Fund, releasing detail or drafts as soon as possible in order for the Further Education sector to adequately prepare.

Agree with the UK Government the principle that funds to be spent in Wales should be managed in Wales via the Welsh Government, drawing on experience from WEFO, and joining up with UK and local initiatives effectively.

In principle, and following the necessary further discussion, agree to extend successful (previously EU-funded) skills and employability projects operating in FE in order to support people and employers and minimise disruption.

ColegauCymru would be very happy to provide oral evidence to the Committee if required.

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# Annex A

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ColegauCymru's response to the following consultations can be found in the links:

Economy, Infrastructure & Skills Committee inquiry: Selling Wales to the World

(2017) <https://business.senedd.wales/documents/s65664/16%20Colleges%20Wales.pdf>

Children, Young People and Education Committee: Inquiry on the Impact of Brexit on Higher and Further Education (2018)

<https://business.senedd.wales/documents/s76685/1B%2001%20CollegesWales.pdf>

Welsh Government, Regional Investment in Wales after Brexit (2018)  
(ColegauCymru response in attachment)

Finance Committee, Inquiry into preparations for replacing EU funding for Wales (2018)

<https://business.senedd.wales/documents/s75747/EUF%2005%20Colleges%20Wales.pdf>

Welsh Government, A Framework for Regional Investment in Wales (2020)  
(ColegauCymru response in attachment)

Welsh Affairs Committee, Wales and the Shared Prosperity Fund (2020).

<https://committees.parliament.uk/writtenevidence/2222/html/>

# Welsh Government, Regional Investment in Wales after Brexit (2018)

## Introduction

ColegauCymru welcomes the opportunity to respond to the Welsh Government's consultation on a Framework for Regional Investment in Wales. ColegauCymru is a postcompulsory education charity; we promote the public benefit of post compulsory education and learning. We also convene the further education (FE) Principals' Forum, which represents further education colleges and FE institutions (FEIs) in Wales. ColegauCymru also undertakes research, policy development and provides practical support to FE colleges in Wales.

This response is based on discussions between principals and senior FE staff, including a meeting with the lead Welsh Government officials, as well as written comments and feedback received. Individual FEIs are also likely to submit their own responses.

## General observations

ColegauCymru is in agreement with the Welsh Government that Wales should not lose out as a result of the proposed UK Shared Prosperity Fund (UKSPF) which will replace European funds. Colleges in Wales are heavily reliant on EU funding, and any cuts could have extreme adverse effects to the education of young people in Wales and the retraining and upskilling of adults. Following the outbreak of Covid-19 and the negative repercussions this will inevitably have on the Welsh economy, the need for skills training or reskilling has never been more important. The full impact of Covid-19 on the economy is not yet clear but there can be no effective response that does not look at skills as part of the recovery. The Further Education sector is well placed to develop, support and deliver this.

## Question 1

What are your views on a model where:

- Strategic, pan-Wales initiatives are co-ordinated at a national level; and
- Designated regional bodies design and deliver their own programmes of investment aligned with national-level policy ColegauCymru agrees that strategic, pan-Wales initiatives should be co-ordinated at a national level.

- 1.1 ColegauCymru seeks further detail and discussion of the makeup of the regional bodies proposed in the model. Giving regional bodies the responsibility of designing and delivering their own programmes of investment may not be the best approach. The entities/vehicles best suited to delivery may not be the best to design interventions and vice versa. Many regional bodies are primarily made up of Local Authorities (LAs) in the key decision-making roles and, whereas LAs are important players, there are some areas where they are not the most appropriate, independent and expert bodies to undertake this function. The political boundaries that influence LA decision making and influence are barriers to genuine effective pan-regional interventions, e.g. large infrastructure, environmental or economy focussed.
- 1.2 Future funding, particularly in relation to skills and employability, should not be overly controlled and directed by Local Authorities via CJsCs but include wider partners, such as the further education sector - on an equal footing. It is worth noting that while the Welsh Government's Local Government and Elections (Wales) Bill seeks to encourage greater diversity, only around 28 per cent of elected councillors are female, for instance, with representation of other key equality groups also being relatively poor.<sup>1</sup> Handing too much power to local authorities risks insufficient diversity in planning and decision making.
- 1.3 There is no one size fits all approach as regions and communities across Wales are different, and overall, more detail is needed on the proposed Corporate Joint Committees (CJsCs). Commissioning (not procurement) by an appropriately independent and expert panWales body should be considered for some types of employability and skills interventions, or where there are gaps in provision/need.
- 1.4 Insufficient attention has been paid to Regional Skills Partnerships (RSPs) and how they fit in with suggestions regarding the new framework. For example, one suggestion was whether revised and enhanced RSPs with improved governance and transparency, combined with increased powers and legal abilities to manage and distribute funds, could provide an alternative to the creation of new CJsCs. Other contributors noted that this might not be possible and highlighted the difficulties which have followed where RSPs have played a stronger role in influencing Welsh Government funding recommendations. This has not always been helpful in developing the strategic relationship and advisory role to which RSPs now aspire.
- 1.5 It is also important not to lose sight of national initiatives by leaving too much open to regional priorities in terms of consideration and maintenance of national employment and skills interventions such as apprenticeships.

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<sup>1</sup> [ERS Cymru, \*New Voices: How Welsh politics can begin to reflect Wales\* \(2018\), p6. Available at: \[www.electoral-reform.org.uk/latest-news-and-research/publications/new-voices-how-welsh-politicscan-begin-to-reflect-wales/\]\(http://www.electoral-reform.org.uk/latest-news-and-research/publications/new-voices-how-welsh-politicscan-begin-to-reflect-wales/\)](http://www.electoral-reform.org.uk/latest-news-and-research/publications/new-voices-how-welsh-politicscan-begin-to-reflect-wales/)



1.6 There are concerns about unnecessary competition between local authorities and agencies. In the past, FEIs have worked collaboratively across regions on a number of projects and have delivered their desired outcomes, whereas collaboration on some projects such as the City Deals, have been less successful on occasion.

## Question 2

Do you support our proposals for some investments to be led by the community in which the activity takes place?

2.1 ColegauCymru is supportive of these proposals, particularly where there is a distinct and unique need that cannot be met by larger scale interventions. However, there should still be some form of regional oversight to ensure coordination, particularly from a skills perspective. In South East Wales, the Regional Engagement Team has provided this. These types of forums may be helpful in the future to ensure a joined up approach and strategic oversight/value for money.

2.2 The LEADER programme (which was funded through the Rural Development Plan for Wales 2014 – 2020) has been a successful programme previously and has enabled community led development to trial new and innovative ways of working. Good communication between communities will be key in this scenario, as lessons learned in one area could be adopted in another, whilst successful interventions can be replicated.

## Question 3

Do you agree that we should continue to increase our use of repayable finance where this is viable and, where it is not, that models of combined support that maximise the repayable element should be developed?

3.1 Repayable finance is not an appropriate model for skills interventions but may be appropriate in other contexts of the proposed Investment Framework. It is also important to question whether the current economic context in light of the Covid-19 pandemic has shifted the agenda around repayable finance options more widely. What may be possible under current circumstances may be drastically different to what was envisaged when the original consultation document was drawn up.

3.2 Repayable financing outside of skills funding may require different models in different areas, ranging from a fully repayable model in areas of high economic activity, to part repayable part grant funded in other areas (i.e. rural areas). This will encourage the spread of activity across the country and assist those areas of lower economic activity to be able to compete. This model would suit activities where

there is a genuine commercial opportunity, and not just attempts at making funding go further by requiring publicly funded organisations to engage with this sort of mechanism. This is especially the case where the investment has been made with organisations that then benefit (become profitable/more profitable) from the funding intervention.

#### Question 4

What are your views on our plan for the transition period?

4.1 While the proposal set out for the transition period seems sensible, plans are likely to have been disrupted by Covid-19. The failure of the UK Government to publish its consultation on the Shared Prosperity Fund, originally due by the end of 2018, is a matter of increasing concern as there is no clear proposal on how replacements for European funds will operate. It is vital that a seamless transition is in place following the end of existing projects, with as little disruption to learners as possible. Many existing projects through ESF and ERDF will undoubtedly continue into 2021/22 with some even going to 2023. The funding objectives, policy and application structure of the new funding however, need to be in place well before these dates. This will allow organisations and institutions time to get together, identify projects and obtain approval prior to existing funding ending. This is the only way to ensure a smooth transition period.

4.2 ColegauCymru calls on the Welsh Government to continue to press UK Government to publish its consultation on the Shared Prosperity Fund to enable key stakeholders to comment on proposals for the replacement for European funds. This is a matter of urgency for skills and employability funding.

#### Question 5

How best can we integrate the horizontal themes of equality, sustainable development, gender mainstreaming, and the Welsh language into investments delivered at national, regional and local levels?

5.1 The priorities of the Wellbeing of Future Generations Act need to be at the heart of plans to support sustainable and inclusive growth in all parts of Wales.

5.2 Consideration should be given to the adoption of a similar approach to the CrossCutting Themes requirements of current EU funded programmes. The idea of additional 'regional themes' is also a welcome idea. Regions that do not meet certain criteria in comparison to others can be targeted through funding agreements in order to address these criteria in their activity.

5.3 Equality and sustainable development are hugely impacted by access to high quality broadband. To raise GDP in Wales we need equal access to technology across the country. The Covid-19 pandemic has brought the issue of connectivity and digital exclusion to light.

Wales needs a stronger digital infrastructure to provide equality for all who need or want to continue learning during difficult times. Stronger broadband connectivity could lead to more innovative ways of teaching and learning in the future which are curtailed currently, especially in rural areas. The need to reduce income equality between Welsh regions will be important post-Covid19, and barriers will need to be removed in order for skills and training to be available for all.

### Question 6

How can we best increase the use of the Welsh language through our proposals for regional investment, and ensure it is treated no less favourably than the English language?

6.1 Many organisations are now aligned to the new Welsh Language Standards. A condition of funding under the Framework could be that organisations/institutions more closely align to these standards; however, we must remain realistic about what is possible and demonstrate an understanding of the geography and culture of this issue.

6.2 A funding condition could be, for example, that every operation must have some basic Welsh language standards, based on a marginally higher standard than legislation. Further incentives could increase the use of Welsh, e.g. provide additional funding for actions over and above this.

6.3 The Further Education sector is already encouraging and expanding the use of the Welsh language through successful projects such as Cymraeg Gwaith. The sector continues to support increasing bilingual and Welsh language provision in skills and education.

### Question 7

What are your views on the proposed delivery model for the strengthening of partnerships, co-operation and trade across borders, within the UK and with international partners?

7.1 ColegauCymru is broadly supportive of the proposed delivery model. There are many examples of cross-border projects that have been successful. The key driver for these though, must be a direct or indirect economic benefit to Wales. This could be jobs, skills, or the promotion of Welsh business globally. We can also look across borders and internationally for best practice and learn from our European partners. The 'Agile Seed Fund' could, for instance, be used to support a variety of opportunities across the skills sectors to enhance collaboration.

7.2 Many students within the FE sector have benefited from Erasmus+ opportunities whether this translates into job opportunities or partnership working or even bringing skills learned back to Wales. This should also form part of this element of the funding. The Erasmus+ scheme is essential to raising the

aspirations of vocational learners and apprentices at FE colleges in Wales. Some learners who take up the opportunity of a two-week work placement abroad have never owned a passport and would never have considered leaving the UK for work or training if it wasn't for the scheme.

7.3 Last year, ColegauCymru secured €1.57m of Erasmus+ funding for FE colleges in 2019/21. Subsequently impacted by Covid-19, this funding was due to enable over 640 vocational learners, apprentices and staff from colleges across Wales to undertake exciting training opportunities in 12 European countries. The colleges remain committed to supporting European mobility for their learners and staff despite the UK having left the European Union and the ongoing challenges of Covid-19. ColegauCymru urges the Welsh Government to support continuous participation in the programme, or the creation of a similar programme. It is vital that any replacement Erasmus+ scheme does not lose the vocational strand of funding which would result in learners missing out on life-changing opportunities.

7.4 There are opportunities here for FE institutions who are establishing an international presence beyond Europe. Welsh Government should provide support for FE to become more involved or develop similar initiatives to the HE-led Global Wales.

7.5 Since leaving the EU in January 2020, the UK has been excluded from some European Commission level networks such as the Advisory Group for the European Qualifications Framework (EQF) and the forum meetings of European Quality Assurance in Vocational Education and Training (EQAVET). ColegauCymru represented Wales in these network meetings and our understanding was that we would still be able to participate in these meetings during the transition period. These networking opportunities are crucial in ensuring that Wales' qualifications and quality assurance processes for VET are in line with those across Europe and provide a level playing field for workers and employers across the EU.

7.6 Future regional investment approaches around international and cross-border collaboration must take account of existing skills and employment networks and initiatives and seek to build on successful partnerships.

## Question 8

What do you think of the proposed strategic objectives across the four investment priority areas? Are there other objectives that should be considered?

8.1 Collectively the objectives offer broad coverage of the main areas needed to improve the prosperity and sustainable futures for people. They are strongly economic/prosperity focussed, which is to be expected but this should not be at the expense of other strategic objectives aligned with quality of life and assuring basic standards of living. It would be useful to see specific objectives associated with improving the lives and opportunities for young people in order to maximise their chances of securing and sustaining high quality employment, particularly

around fairness of education and extra support for those with disabilities, mental health problems or those with caring responsibilities.

8.2 Skills, training and employability are key to many of the strategic objectives, and when considering delivery of these objectives, it is vital that FEIs are involved as key partners and not marginalised in favour of bigger organisations like HE or LAs. FEIs are anchor institutions in communities, and provide more than just skills and training to learners.

8.3 Sustainability and inclusive business growth should be central to any exploration of future inward investment in Wales. Wales should set the direction of the types of business it would like to see in this arena, emphasising the tailored support on skills, training and employability available from the FE sector to ensure businesses grow and evolve.

8.4 In terms of comments on specific objectives, it is clear (and understandable) that the consultation reflects the world prior to Covid-19.

8.5 Regarding 'Productive and competitive business', while fair work and quality jobs are important, we should ensure that definitions and expectations of fair work are themselves fair to businesses of all sizes, and not biased in favour of larger, unionised employers. Worker voice and representation will take different, likely more informal, forms in microbusinesses, for instance, and it should not be assumed that these are automatically inferior or unfair or that formal processes in larger employers are automatically superior and valid. The Further Education sector has much to offer in terms of supporting workforces across Wales to further develop skills, training and employability, as well as inclusive growth. Research and innovation in the FE sector tends to be more applied and there are successful examples of FEIs working with SMEs to develop business solutions. The capacity of FE to support innovation should not be undervalued.

8.6 In terms of reducing income inequality, the Further Education sector has much to contribute to the proposed strategic objectives, and has a strong tradition, through its adult learning and employability work, of supporting people from disadvantaged groups to participate in the labour market. There needs to be a specific youth objective for income inequality given the importance and ongoing detrimental impact of not getting this right. The impact of Covid-19 is likely to be significant in requiring individuals to demonstrate increased mobility and adaptability (between and within sectors) within the labour market, and the FE sector will have a strong role to play in supporting this.

8.7 Likewise, in terms of physical geographical mobility and the transition to a zerocarbon economy, the crisis has demonstrated the greater range of jobs that can be done from home/close to home, with the right support. This links to the transition to a zerocarbon economy where much travel previously thought of as essential has been shown to be possible to replace with better use of virtual meeting platforms. Skills are also important for the zero-carbon areas and there needs to be investment in new qualifications/apprenticeships etc.

8.8 To support healthier, fairer, and more sustainable communities, again, the FE sector has much to contribute to the proposed objectives, given the social and civic missions of FEIs, their location in the community and willingness to act as community hubs to bring people together.

8.9 The final strategic objective of improving social and economic infrastructure is vital. This has to include access to high quality broadband, from the many rural areas, to addressing 'not-spots' in towns and cities.

## Question 9

Which indicators do you think should be used to measure progress towards achieving the proposed strategic objectives?

9.1 Indicators need to be firmly focused on outcomes and genuine improvements as opposed to outputs. Indicators are often balanced in favour of measuring outputs as this can be an easier task. We need to ensure that there is sufficient space for softer outcomes that are difficult to quantify but still useful. Naturally, there is a role for inclusion of certain harder targets such as qualifications and jobs as key outcomes but these cannot be the overriding focus.

9.2 Success cannot be measured by qualifications alone. Work should be undertaken to build on existing data and indicators used by ONS, for instance, about measuring wellbeing in conjunction with any data sources for measuring progress used by the Future Generations Commissioner. See, for instance, the Measures of National Well-being Dashboard and how this might be developed in a way to support measuring the Regional Investment Framework<sup>2</sup>. Data should be collected consistently and on a long-term basis to enable longitudinal impact assessments. This will enable us to better understand long-term impact of interventions.

9.3 Indicators need to avoid being purely economic statistics, as these are influenced by wider factors outside the control of Welsh Governments and key stakeholders, rather than solely a funding programme. Some measure of quality of life should be included. Skills indicators should be about the needs of the economy, e.g. there needs to be realism about the skill levels actually required in the workforce, and what is achievable.

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<sup>2</sup>[www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/articles/measuresofnationalwellbeingdashboard/2018-04-25](http://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/articles/measuresofnationalwellbeingdashboard/2018-04-25)

9.4 Access to high quality broadband must be a key indicator and priority.

### Question 10

What are your views on the approach to rules for investments and governance?

10.1 ColegauCymru supports the approach outlined but this will need further detail. Those who develop and deliver projects need to be consulted on what specific rules and governance will look like. Flat rates have been a positive innovation and should be retained. Further simplification of costs should be considered in a creative way, perhaps exploring the potential of systems paid when milestones are reached.

10.2 We need to move away from paper-based systems but access to good quality broadband and compatible IT systems is essential to this. The funding body (currently WEFO) needs to be more proactive in sharing good practice between operations and directing its use. There is still significant duplication of effort in some areas but improved governance can address these issues. The Five Case Model can be helpful, but is often quite technical. As it was principally designed for major public sector investments, it needs to be carefully adapted and made proportionate to the scale of projects, likely options, and level of risk. There is also the risk of it being a paper exercise as many organisations will already have a view on what outcome they want to present as the preferred option.

10.3 More recognition should be given to the fact that public sector funded organisations in Wales do not misappropriate funding and have well established and robust practices, policies, and procedures in place to spend money in reasonably efficient ways for the intended purposes. A proportionate, risk-based approach is essential to streamlining unnecessary bureaucracy and ensuring that funding scheme can operate sufficiently to deliver their objectives.

10.4 We welcome the removal of artificial geographical boundaries as this now creates an opportunity for parity of investment.

### Question 11

Should capacity to deliver the monitoring and evaluation proposals in the consultation document be prioritised?

11.1 Monitoring and evaluation processes need to be reviewed and improved in order to be of real value to their intended purpose. It would be useful to see what meaningful development of good practice has been shared across Wales and adopted for the benefit of others to date or an overview of changes made as the result of evaluation. As with funding for projects and interventions, the emphasis needs to be on outcomes rather than potentially funding an industry of evaluators. There is some good existing expertise in this area in Wales, which should be drawn on to help guide this.

## Question 12

Do you agree with the proposal outlined for development of monitoring and evaluation at the regional and local level?

12.1 ColegauCymru agrees with most of the proposal outlined but has some concerns about regional levels. The consultation document states that each region would have its own monitoring and evaluation team determining how monitoring and evaluations should be carried out. This creates concerns over the possibility of unnecessary duplication of resources across regions, and value for money. Similar regions could collaborate to create similar monitoring and evaluation frameworks, or share best practice. It is essential that there is strong oversight from national level to prevent duplication.

12.2 Monitoring and evaluation process must be flexible and able to adapt to changing circumstances and external developments. It should be possible to integrate new insights and sources of data.

## Any other comments or feedback

The essential nature of access to high quality broadband in every home and business in Wales does not stand out clearly enough and must be a Welsh Government priority, especially in light of Covid-19.

In addition, while we have made the recommendations above, it is important to remember that the Shared Prosperity Fund has not yet been confirmed by UK Government - consultation documents will be published "in due course" as of January 2020. The Welsh Affairs Committee recently held an inquiry into the UK Shared Prosperity Fund.

However, there are few details of how the fund will work and consequently questions remain unanswered which include what role the Welsh Government will play in

administrating the fund, and how much funding Wales will actually receive. Following the Covid-19 pandemic and the UK's exit from the EU, the social, economic and cultural landscape in Wales will be different. At present, we cannot anticipate all these potential changes. For this reason, funding and investment will need to be flexible and reactive in order to answer those unexpected needs.

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# Welsh Government, A Framework for Regional Investment in Wales (2020)

## Introduction

ColegauCymru welcomes the opportunity to respond to the Welsh Government's consultation on Regional Investment in Wales after Brexit. ColegauCymru represents the 13<sup>3</sup> further education (FE) colleges and FE institutions in Wales<sup>2</sup> and exists to promote the public benefit of post compulsory education and learning.

Colleges are major providers of general education provision in Wales, helping to produce some of the best learner outcomes. Colleges are the predominant providers of funded vocational and technical education in Wales, providing about 85% of the total provision.

## The Future of Regional Investment

### 1. What are your views on the overall approach set out in the paper?

ColegauCymru is generally supportive of the approach outlined, especially the focus on subsidiarity – policy and decision-making to be as close as possible to those upon whom it impacts. The overriding concern must be a replacement regional investment system that is devolved, integrated and need-based.

ColegauCymru has requested information on UK Government plans for regional assistance. However, little detail currently exists regarding the UK Government's "Shared Prosperity Fund" but such a fund should not be based on the Barnett formula. Current levels of funding and support to Wales must be maintained by the UK Government until the prosperity gap has narrowed sufficiently. Separate systems of funding – i.e. competing Welsh and UK Government schemes – should be avoided.

Further Education colleges have both benefitted from European funding and helped to support and upskill the population of Wales through European programmes, making important contributions to business and the economy, often in the most deprived areas of Wales.<sup>4</sup> Over the past 10 years, FEIs in Wales have been involved in the delivery of EU funded projects to a total value of almost

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<sup>3</sup> [The 13 include 9 FE corporations and two FE institutions, St David's Catholic College and Adult Learning Wales. The College Merthyr Tydfil and Coleg Sir Gâr are part of university groupings.](#) <sup>2</sup> [In this paper the terms 'FE college' and 'college' are used to cover FE colleges and FE institutions.](#)

<sup>4</sup> [See: http://www.collegeswales.ac.uk/documents/Resources/453/en/gb/involvement%20of%20welsh%20fe%20colleges%20and%20institutions%20in%20eu%20fundingjanuary%202017.pdf](http://www.collegeswales.ac.uk/documents/Resources/453/en/gb/involvement%20of%20welsh%20fe%20colleges%20and%20institutions%20in%20eu%20fundingjanuary%202017.pdf)

£600m, both as project lead or project partner. Over half of the funding has come from the Structural Funds programmes, especially from the European Social Fund (ESF) to support skills development policies. Another large part of the funding came from Welsh Government's Work Based Learning programme, part funded by the ESF. Finally, a small but significant share of the funding has come from the mobility funding programmes, which enable staff and learners to undertake work experience abroad in order to increase their skills and improve their employability. Opportunities to continue this vital work must be protected.

Moreover, the high degree of concern about the potential loss of this funding across the FE sector must not be underestimated

ColegauCymru also notes that there is an opportunity to review the effectiveness of current funding schemes and to understand how best to better achieve both economic as well as social outcomes for the people of Wales.

## 2. What are your views on the principles identified in the paper?

Again, ColegauCymru is broadly supportive of the principles contained within the paper. However, the principles must be highlighted more clearly and demonstrate how they will deliver real benefit via a specific approach to funds managed and delivered in Wales.

## 3. What are your views on the core priorities or objectives for investment that should be set by the Welsh Government?

In an uncertain world where Wales faces many new challenges, as well as the legacy of the past, future investment needs to focus on the development of human capital in its widest understanding (including creativity) in order to address the changing circumstances the country will face outside the European Union. Resilience and flexibility will be key. For this reason, investment in education and skills must be maintained or enhanced, including opportunities for those in work to retrain or upskill. This can be undertaken on a more adaptable and targeted basis where geographical groupings such as 'West Wales and the Valleys' are no longer a factor.

While innovative approaches and risk are to be encouraged, priority for private business investment should be given to Wales-owned and based companies where possible. Investment in foreign-owned companies should be able to demonstrate a real and tangible benefit to the people of Wales. If this is not the case, Welsh Government structural funding risks falling into the same 'credibility gap' that has afflicted EU funding.

A key area for consideration relates to 5G technology. While the recent UK Government announcement that Monmouthshire has been chosen as a 5G Testbed site to improve rural connectivity is welcome, the Welsh Government

should seriously consider making 5G free and available to people and businesses right across Wales. This would be innovative and, in combination with investment in skills, could give Wales a genuine competitive advantage.

4. In delivering a new approach to regional investment what do you think the most appropriate roles and responsibilities are for: (a) the Welsh Government; (b) regional partnerships; and (c) local partnerships?

Welsh Government should continue to set an overarching strategy against which regional and local partnerships should deliver. However, it should not become involved in actual delivery. Further Education colleges have a successful track record of working and delivering on a regional basis, working with partners such as employers and Regional Skills Partnerships (RSPs). A large number of stakeholders on RSPs are from local authorities and it will be important to ensure a balance of perspectives both now and in the future. Regional partnerships should be held accountable both for the effectiveness of funding and also 'up-stream' for the quality of their analysis and assessment of need. Whilst supportive of, and indeed advocates of, local decision making, ColegauCymru currently has serious concerns regarding the quality of data, analysis and application of priorities via the emerging planning bodies. There are representational deficits in these processes, for example, a consistent role for the private sector, that have impacted on the effectiveness of some investments to date.

It is vital that local decision making needs to take account of the views of the range of key local bodies, including FEIs. Any greater role for Regional Skills Partnerships, for instance, would need to be clarified and agreed.

Flexibility is key – regional boundaries should not be rigid and prevent innovative approaches to delivering on regional investment. The ability to operate across more than one region, however regions are defined in the future, must be possible and facilitated where this is desirable.

5. What are your ideas about ensuring the right mix of national (all-Wales), regional (e.g. North Wales), and local (e.g. community-led) investments?

Investment should be based on a mixture of need and opportunity, with flexibility as a key feature. To achieve this, regional skills planning should have a similar national priority and resourced structures in the same way as infrastructure planning. The emerging and current models of national and regional skills planning currently rely on the voluntary and unremunerated Wales Employment and Skills Board as the national group, whilst responsibility for the development of skills policy is a matter for the relevant Minister and Cabinet Secretary. The demise of the UK Commission for Employment and Skills (UKCES) into which had Wales input is regrettable.

There is a lack of structural capacity which risks skills policy being left to the individual whim of employers, providers, local partnerships or 'deals'. The loss of these structures is not a consequence of Brexit but there is a need to develop alternative delivery mechanisms for regional assistance. However, suboptimal regional delivery models and unhelpful local competition for diminishing resources due to inappropriate mechanisms could endanger national planning and delivery of Wales' future skills needs.

The West Wales and the Valleys/East Wales programme areas created a somewhat artificial divide that made delivery more complex. A regional structure should not create the same situation, where funding is confined to such artificial boundaries. There must be mechanisms to allow delivery wherever it proves beneficial. This means that targeting should be based on need, not geography. It is clear that some areas, for example, the most deprived or more rural, need specific support. This should target interventions at issues affecting those areas and communities, such as access to services.

#### 6. What are your views on the benefits that should be retained from our delivery of those programmes currently funded by the EU?

Experience built up over the period of EU funding to date should be recognised. However, circumstances mean that there is now a chance to revisit areas like monitoring and evaluation to ensure that these are simplified and streamlined. This should lead to greater and wider involvement and impact. The current programmes have benefitted from the introduction of simplified costs, which appear to have worked well.

#### 7. What opportunities are there for us to do things differently and with greater impact?

Removing geographic inflexibility should enable greater impact, especially as areas outside of East Wales, West Wales and the Valleys often contain pockets of severe deprivation. Opportunities to address skills needs in all parts of Wales targeted to the needs of local areas and employers, must be taken. Further Education colleges have a positive track record of delivering on this. Integration of funds was an aspiration of the current programmes that has not been achieved in the manner which was hoped. Meaningful integration of interventions that add value, e.g. capital/infrastructure and skills, still presents an opportunity.

Future budgets need to have more capacity for flexible management, including where there is an underspend. Where projects are on target but have been delivered under budget, there needs to be capacity to manage that underspend to enhance the project rather than worrying about penalties for having underspent.

## 8. What ideas do you have which may help create an entirely new or innovative approach to regional investment?

Attitudes to risk must be proportionate so as to encourage innovation and experiment but be balanced against the background of limited funds.

## 9. What EU programmes should Wales seek to retain access to and how?

Wales must retain access to existing EU funding programmes as far as possible and where this cannot be done, replacement funding must be delivered. Many colleges' core budgets are underpinned by ESF funding, in particular, their offer to employers. The impact of the loss of this funding must not be underestimated.

One programme where there has been speculation about the potential for continued involvement is Erasmus+. Wales must retain access to Erasmus+, in terms of Further Education as well as Higher Education. A Wales-only scheme which replicates the same benefits must be explored if this is not possible. Learners from vocational courses often have their horizons completely changed after undertaking a two week work placement in Europe and such opportunities are valued by staff as well as learners. Erasmus+ has allowed staff from Further Education colleges to observe best practice in other countries.

ColegauCymru has established a solid track record in applying for, and project managing, Erasmus+ funds on behalf of the FEIs in Wales. Since the launch of Erasmus+ in 2014, ColegauCymru has secured over €1.7 million of Erasmus+ funding through its pan Wales consortium applications for staff and learner mobility projects. In 2017, ColegauCymru was successful in securing over €1 million of European funding for its learner mobility project:-

All Wales Vocational Learner Mobility 2017/19

TOTALS

481 participants, 12 FE colleges, 1 employer, 17 subjects and 9 countries

= €1,044,441.00

ColegauCymru is currently waiting for funding notification following the round of Erasmus+ applications in February 2018. If successful, 560 learners and apprentices will be able to undertake short-term work placements in Europe with funding of just over €1.3m. In addition, ColegauCymru submitted an Erasmus+ application for a pan Wales staff mobility project to Helsinki, Finland to explore how the Centre for International Mobility (CIMO) has worked with vocational colleges in the city on the design and implementation of an internationalisation strategy for vocational education and training (VET).

Examples of staff mobility projects are:

- 2014-15: Senior leaders from FE colleges in Wales, Estyn and Welsh Government visit Finland to explore how literacy and numeracy are embedded in a vocational curriculum.

- 2015-16: A visit to Basque Country, Spain to explore innovation and VET. Tknika, a centre of innovation in San Sebastian hosted the visit. Since the staff visit, ColegauCymru's CEO and Alun Davies who was Minister for Welsh and Lifelong Learning returned to San Sebastian to look in more detail at the Basque Country's strategy for innovation in relation to VET.
- 2016-17: A visit to Catalonia, Spain to explore bilingualism and employer demand for language skills in that region. Representatives from ColegauCymru, the FE colleges, Welsh Government and Coleg Cymraeg Cenedlaethol also participated.
- 2017-18: A visit to Denmark is currently being organised with Erasmus+ funding to see what actions are in place to deliver higher-level skills in a vocational setting and how capacity building amongst teaching staff is undertaken to deliver these skills.

Further education colleges as well as other providers of education and skills can bid for Erasmus+ funding in order to help fund work and study placements abroad for vocational learners, apprentices and staff. As well as submitting its own funding applications, ColegauCymru also supports and advises colleges and other organisations on submitting their own applications.

ColegauCymru advises on the portability and transparency of qualifications across Europe. We are the Welsh National Contact Point for the European Qualifications Framework (EQF), the European Credit Transfer System for Vocational Education and Training (ECVET) and European Quality Assurance in VET (EQAVET). We also contribute to the UK National Agency's (UK NA) Erasmus+ Country Advisory Group (Wales), Sector Consultative Group (UK) and the Learning Networks (UK).

Access to these networks and opportunities, along with those such as Cedefop, must be maintained. Cedefop supports development of European vocational education and training (VET) policies and contributes to their implementation. The agency is helping the European Commission, EU Member States and the social partners to develop the right European VET policies. Recent policy areas examined include dealing with the issue of long-term unemployment.

#### 10. How would you like to be engaged in our development and delivery of a future regional investment model for Wales?

Further Education colleges are key partners in making a success of the future development and delivery of regional investment and are currently represented alongside HE and employers via the Programme Monitoring Committee. Similar social partnership inspired models should continue. ColegauCymru is happy to offer opportunities to engage the sector via meetings of its Principals' Forum, by arranging more specific sector or regionally grouped meetings or assisting with research.

Future engagement and decision making needs to take into account that Further Education is a major stakeholder in EU funded projects, and must be genuinely engaged in future strategies to have credibility. Colleges lead on pan Wales skills

operations and deal with huge numbers of learners who will be affected by the decisions taken. As noted above, over the past 10 years, FEIs in Wales have been involved in the delivery of EU funded projects to a total value of almost £600m, both as project lead or project partner. All colleges are involved in supporting young people at risk of not being in education, employment or training; ESF funded apprenticeships and Erasmus+.

The Further Education sector is a proactive and collaborative sector that is keen to get involved in conversations to help shape the future of regional investment in Wales.

# Welsh Women's Aid Briefing: Violence against Women, Domestic Abuse and Sexual Violence and Brexit

## Overview

There is still uncertainty surrounding how the UK will exit the European Union. One outcome which is highly likely regardless, unless steps are taken now to prevent it, is that women will be disproportionately and detrimentally impacted.

## Key concerns

Welsh Women's Aid is very concerned about the far-reaching impact of Brexit on survivors of Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) in Wales such as:

Increasing poverty rates for women, putting them further at risk if they are living with or moving on from violence and abuse

Financial hardship common for women post separation<sup>1</sup>

The threat to EU women's rights to public services if they are unable to apply for EU settled status

The threat of the loss of basic human rights that EU legislation has progressed and protected, as uncertainty remains over the future of the Human Rights Act.

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<sup>1</sup> The Economics of Abuse, S Davidge and L Magnusson, page 4 <https://www.womensaid.org.uk/wp-content/uploads/2019/03/Economics-of-Abuse-Report-2019.pdf>



It is vital that Welsh Government delivers a positive post-Brexit agenda for women and girls and commits to protecting and supporting all survivors of VAWDASV. Welsh Women's Aid will continue to ask for assurances around the protection of services and resources and making recommendations to secure the protection of Welsh and EU migrant women who rely on such services for safety, and often for lifesaving support.

## Human Rights Act

The Human Rights Act is a vital act in UK law, which incorporates the European Convention on Human Rights into UK domestic law. It includes:

- The right not to be treated in an inhuman and degrading way
- The right to respect for private and family life (including the right to physical and psychological integrity)
- The right to life.

### Why the Human Rights Act is important for protecting survivors of VAWDASV:

The Act has been used to hold police forces, for example, to account over failings relating to violence against women, such as domestic homicides, rape and so-called honour-based violence

The Act is currently the only piece of legislation available to allow agencies advocating for survivors to challenge the police and offer women a legal route to bring a claim in UK law.

While the UK Government has a policy intent to address all forms of violence against women, it has said its intention is to repeal the Human Rights Act in favour of a British Bill of Rights, uncertainty remains about what this will look like and whether this will further water down women's rights in the UK post-Brexit.

## Funding

Welsh Women's Aid has been calling for the Welsh Government to fulfil the commitment to secure and sustainable funding for the Welsh specialist VAWDASV sector, under the Violence Against Women Domestic Abuse and Sexual Violence (Wales) Act 2015.

Long before the COVID-19 pandemic we have demonstrated<sup>234</sup> these services are often unable to support all survivors, because of limited resources. The pandemic has magnified these issues and shone a light on existing gaps and failures in the system.

## The Impact

The security of the specialist sector in Wales will also be under threat when the country is no longer part of the EU. Between 2014-2020, the EU pledged £9.13 billion in Structural Funds to the UK. Wales receives approximately £370 million of this Fund annually and this sum has been vital for the maintenance of women's services. However, the Shared Prosperity Fund that will act as its' replacement is £730 million less. This is not only a concern for maintaining specialist VAWDASV services but also for wider community services. If these services are cut there will be less opportunities for survivors to disclose, leading to escalation of abuse, later access to support and greater complexity of cases. This in turn will put additional burden on specialist services that are already struggling to meet need. Promises were made during the EU referendum that Wales would 'not lose a penny' if the UK left the EU. These campaign statements must now be actualised with post-referendum guarantees that survivors will not be detrimentally affected by any potential Brexit outcome.

We are concerned about the cumulative impact, of both COVID-19 and the effects of exiting the EU, on an already stretched sector. Sustainable funding for the specialist VAWDASV sector will be vital to ensuring *all* survivors can be supported.

## Economic Impacts

Welsh Government analysis shared with the sector suggests possible increases in the cost of living, including increased cost for food and energy. This will have impacts on services as well as survivors during and post abuse.

### The impact

Increased pressure on resources is likely to enable and/or intensify economic abuse. We are likely to see increased economic abuse due to resources being limited, enabling further control, reduced financial capacity for survivors to leave an abusive partner as well as impacting on their ability to move on and build a life free from abuse.

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<sup>2</sup> <https://www.welshwomensaid.org.uk/wp-content/uploads/2018/02/State-of-the-sector-report-2016-FINAL.pdf>

<sup>3</sup> <https://www.welshwomensaid.org.uk/wp-content/uploads/2017/12/WWA-State-of-the-Sector-2017-ENG.pdf>

<sup>4</sup> <https://www.welshwomensaid.org.uk/wp-content/uploads/2019/01/State-of-the-Sector-2018-Eng.pdf>

Services that have had no increase in funding to reflect a rise in costs or have lost funding, could mean they will struggle to pay energy bills for their service properties. It will impact on staff as increased living costs on already low wages will leave them unable to maintain their current standard of living. This is likely to lead to a number of trained and experienced staff leaving the profession in order to obtain higher wages elsewhere. This is already a problem in the sector with the current lack of sustainable funding, the impact of further cost increases and cuts in funding and resources could be devastating to the retention of staff and the maintenance of current provision levels. This inevitably will have a knock-on impact on survivors as services will be limited in what they are able to provide, resulting in increased waiting lists and survivors being turned away from services due to lack of capacity or resources.

## EU Migrant Women

Welsh Women's Aid is concerned that EU migrant women may find their rights restricted and removed post-Brexit as well as facing restrictions on the application process for 'settled status' which will become compulsory for all non-Irish EU citizens. Women impacted by VAWDASV are at greater risk of failing to access their settled status in the context of coercive control, where perpetrators can further their oppression by preventing women from proving their residency and using their immigration status to further control and isolate their partners. This will exacerbate the concerns Welsh Women's Aid already has, about the status of women from outside the EU, who have no recourse to public funds and therefore are often face significant barriers to accessing specialist violence against women support.

We also have concerns surrounding access to existing financial support, and how restrictions may disadvantage women who find themselves without the right to public resources because they have been unable to access the EU Settlement Scheme. Survivors with NRPF can apply for a Domestic Violence Destitute Concession, which gives them the access to public funds for 3 months whilst they make visa applications and arrangements. However, a lack of eligibility prevents many survivors from accessing this concession.

Welsh Women's Aid membership data from 2017/18 and 2018/19 show that only a total of 11 survivors were eligible for the DV Destitute Concession; 6 in 2017/18 which was 30% of all survivors with NRTPF supported, and 5 in 2018/19 which accounted for only 17% of all NRTPF survivors.

### The impact

Women experiencing violence and abuse who have an insecure immigration status or whose status is dependent on their partner face additional barriers to help seeking when attempting to exit. This approach is being aided by the hostile environment that many migrant women have reported frequently experiencing in

immigration checks with healthcare, housing and education services.<sup>5</sup> This cohort of women also face barriers to accessing protection, support and specialist services, because of a lack of funding within the sector. Welsh Women's Aid are concerned that this situation will worsen post-Brexit, as potentially more women will face losing their rights to public resources.

The EU has been instrumental in progressing protections for women. We are concerned that leaving the EU will lead to a regression of those rights and protections and Welsh Women's Aid urges UK and Welsh Government to outline their plan to protect women against these negative implications.

## Recommendations

Welsh Women's Aid makes the following recommendations to the Welsh Government:

- Develop a fund that can be used to support survivors with No Recourse to Public Funds and insecure immigration status
- Ensure that all survivors of abuse will have access to funds in Wales to help them to safely access the support they need by creating a fund that survivors (or the specialist sector) can access to support all women with insecure immigration
- Urge UK Government to overturn plans to repeal the Human Rights Act, recognising it is a vital tool in the quest for justice for women impacted by violence and abuse
- Urge UK Government recognises women living with domestic abuse as a 'vulnerable' group in terms of accessing the EU Settled Status. We ask UK Government to clarify what support they will provide women who are living with abuse to apply for settled status
- Urge UK Government to abolish No Recourse to Public Funds.

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<sup>5</sup> <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/FINAL-living-in-a-hostile-environment-for-Web-and-sharing-.pdf>

Senedd Cymru  
Y Pwyllgor Materion Allanol a  
Deddfwriaeth Ychwanegol  
Ymadael â'r Undeb Ewropeaidd:  
Paratoadau yng Nghymru ar gyfer  
diwedd y cyfnod pontio  
EAAL(5) EUP05  
Ymateb gan Cymdeithas Milfeddygon  
Prydain

Welsh Parliament  
External Affairs and Additional  
Legislation Committee  
Exiting the European Union:  
Preparedness in Wales for the end of  
the transition period  
Evidence from British Veterinary  
Association

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## Who we are

1. The British Veterinary Association (BVA) is the national representative body for the veterinary profession in the United Kingdom. With 18,000 members, our primary aim is to represent, support and champion the interests of the United Kingdom's veterinary profession. We, therefore, take a keen interest in all issues affecting the profession, including animal health and welfare, public health, regulatory issues and employment matters.
2. BVA Welsh Branch represents members in Wales, bringing together representatives of specialist and territorial divisions, government, academic institutions and research organisations in Wales. The branch advises BVA on the consensus view of members in Wales on Welsh and UK issues.

## Introduction

3. The veterinary profession is relatively small, with around 23,220 UK-practising veterinary surgeons,<sup>1</sup> but its reach and impact are significant. The UK veterinary profession plays an essential role using science, experience and practical skills to further animal health, animal welfare, public health and productivity. Official statistics put the value of UK livestock outputs at £14.8bn, not a penny of which could be realised without the input of the veterinary workforce.<sup>2</sup>
4. The important economic, social and political contributions of the veterinary profession would be impossible without European Economic Area (EEA) vets. As the Government response to the House of Lords EU Energy and Environment Sub-Committee notes:

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<sup>1</sup> RCVS Facts 2017, 2018 RCVS Facts (2017)

<sup>2</sup> Defra, DAERA, Welsh Government, Scottish Government, Agriculture in the United Kingdom 2018, 2019  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/815303/AUK\\_2018\\_09jul19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815303/AUK_2018_09jul19.pdf)

5. “Many vets working in the UK are EU nationals...and the Prime Minister has made clear that securing the status of the veterinary workforce is a top priority.”<sup>3</sup>
6. The veterinary profession is diverse, with far-reaching influence and impact:
- production animal clinical practice, which provides preventive healthcare and treatment for livestock, as well as carrying out disease surveillance, promoting good biosecurity, boosting productivity and maintaining standards of animal welfare;
  - companion animal and equine practice looking after family pets, leisure and sport animals as part of the local community;
  - aquaculture, providing the UK sector with dedicated evidence-based veterinary services
  - abattoirs and throughout the food chain, where official controls and veterinary certification are key to securing public health, food safety, animal welfare and assurance for consumers in domestic and foreign markets;
  - veterinary schools and independent research laboratories, which advance our scientific understanding of veterinary medicine and animal production systems;
  - industry and technology ensuring the UK remains competitive and forward thinking in many areas; and
  - veterinary surgeons working in the civil service, who provide veterinary expertise to public policy making.

## Veterinary capacity

### Current capacity concerns

7. The Major Employers Group (MEG), which represents some of the largest UK veterinary businesses providing primary care, conducted a survey looking at vacancy rates amongst its members in November 2018. The results showed that there were 890 vacancies in member practices employing over 7,700 veterinary surgeons providing primary care directly to the public in the UK. This represented a veterinary workforce shortage of approximately 11.5%.

8. In the Migration Advisory Committee review of the Shortage Occupation List published in May 2019,<sup>4</sup> this shortage of vets was recognised:

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<sup>3</sup> Government Response to the House of Lords European Union Committee Report on Brexit: Farm Animal Welfare <http://www.parliament.uk/documents/lords-committees/eu-energy-environment-subcommittee/Brexit-farm-animal-welfare/Gov-Brexit-farm-anim.pdf>

<sup>4</sup> Full review of the shortage occupation list, May 2019 <https://www.gov.uk/government/publications/full-review-of-the-shortage-occupation-list-may-2019>

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*“It is clear from the stakeholder evidence that they [vets] are facing significant recruitment difficulties. Furthermore, the SOC code ranks 44th in the shortage indicators which indicates it is in relative shortage compared to other occupations. The vacancy rate has been increasing over recent years, apart from a dip in 2016/17, however, still above average.”*

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## Additional demands

9. Veterinary surgeons, both certify and supervise the import and export of animals and animal products to and from third countries. The vital role of veterinary surgeons in trade, protecting public health, food safety, animal health and animal welfare is recognised around the world. At the end of the current transition period, there will be increased demand for veterinary certification and supervision, and this will create additional demands on the limited capacity of the veterinary workforce. The UK needs enough vets in place to meet these additional demands. No detailed analysis has been undertaken by government to determine the numbers of vets that will be needed to undertake this work.

## Exports

10. From January 2021, exporters will require an Export Health Certificate (EHC) signed by an Official Veterinarian (OV) to transport animals, germplasm and products of animal origin (POAO) from Great Britain to the EU Single Market. This includes meat, milk and pet food as well as composite products like pizzas and quiches. Composite products are particularly complex and may require multiple EHCs. For example, a cheese and ham sandwich will require a certificate for both the cheese and ham to provide an audit trail of each individual ingredient.

11. It seems likely that the requirement for EHCs will be similar, whether or not the UK and EU reach a free trade agreement. However, there are material uncertainties and limitations that mean it is not possible to calculate what the exact increase in export health certification requirements will be. When preparing for a no-deal exit the then Chief Veterinary Office of the UK, suggested that the volume of products requiring veterinary export health certification could increase by as much as 325% in the case of no deal being reached between the EU and UK.<sup>5</sup>

## Imports

12. On 10 February 2020, the Chancellor of the Duchy of Lancaster announced that businesses should prepare for border checks for imports from the EU after

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<sup>5</sup> Speaking at Official Veterinarian Conference 2017, reported <https://www.vettimes.co.uk/news/non-uk-vets-essential-after-brexit-says-cvo/>

the transition period ends. Latest guidance<sup>6</sup> indicates these requirements will be phased in. From April 2021 all POAO will also require pre-notification and the relevant health documentation. From July 2021 there will be an increase in physical checks and the taking of samples. Checks for animals, plants and their products will now take place at GB Border Control Posts.

13. Under these requirements, live animals or POAO would need to be accompanied by an EHC and vets would be required to carry out certification checks for animal products being imported into Great Britain from the EU Single Market. This change means that despite mitigations that have previously been put in place to attempt to meet the increase in certification needed for export checks, it is unlikely, as it currently stands, that the UK will have sufficient veterinary capacity to meet those for imports as well.

14. Following the end of the transition period, the UK will hold the competence for designing its own Sanitary and Phytosanitary (SPS) control regime. It is essential that the veterinary profession is engaged in this process to ensure animal health, animal welfare and public health are upheld whilst using our workforce efficiently and effectively.

15. Furthermore, the final details of the UK's future relationship with the EU are unknown. A veterinary agreement could be reached between the UK and EU. This could form part of a comprehensive trade agreement or be standalone. Given the current symmetry in standards, an agreement like that between the EU and New Zealand could be reached. This could significantly reduce the level of physical checks on both sides. However, this would not eliminate all checks or the need for infrastructure.

### Northern Ireland Protocol

16. In our response to the Northern Ireland Affairs Committee inquiry we provide a detailed analysis of the import trade requirements needed for POAO moving between Northern Ireland and Great Britain.<sup>7</sup>

17. The Withdrawal Agreement sets out the arrangements to maintain an open border on the island of Ireland after the end of the transition period. Northern Ireland will remain aligned to a range of EU single market rules, including sanitary rules for veterinary controls. Consequently, the requirements for trade relating to Northern Ireland will have unique factors which will draw on veterinary capacity.

18. The European Commission's Q and A<sup>8</sup> says:

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<sup>6</sup> <https://www.gov.uk/government/news/government-accelerates-border-planning-for-the-end-of-the-transition-period>

<sup>7</sup> BVA written evidence to Northern Ireland Affairs Committee Unfettered Access: Northern Ireland and customs arrangements after Brexit inquiry <https://www.bva.co.uk/media/3456/bva-written-evidence-to-northern-ireland-affairs-committee-unfettered-access-northern-ireland-and-customs-arrangements-after-bre.pdf>

<sup>8</sup> [https://ec.europa.eu/commission/presscorner/detail/ro/QANDA\\_19\\_6122](https://ec.europa.eu/commission/presscorner/detail/ro/QANDA_19_6122)



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*The necessary checks and controls will take place on goods entering Northern Ireland from the rest of the UK, including, for example, Border Inspection Posts to ensure that the necessary sanitary and phytosanitary (“SPS”) controls are carried out.*

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19. A joint committee holds responsibility for determining the practical arrangements for EU supervision of UK implementation and enforcement of specific aspects of the Protocol. There is scope for the joint committee to consider approaches that may limit the need for EHC documents or veterinary checks for goods entering Northern Ireland from Great Britain. However, it would appear this scope is much narrower than that open to customs issues.

20. The final details of the UK’s future relationship with the EU, including the operation of the Northern Ireland Protocol, are unknown. However, it appears likely that the requirements for goods moving from Great Britain to the EU Single Market will apply to goods entering Northern Ireland. Therefore, EHCs would likely be required. Northern Ireland ports will also require border infrastructure and qualified official vets in place to perform checks on goods entering Northern Ireland. The requirement for border checks in Northern Ireland would come into effect on 1 January 2021, not the phased approach expected for ports in Great Britain.

21. Article 6(1) on “protection of the UK internal market” provides that the Protocol shall not prevent “unfettered market access for goods” moving from Northern Ireland to Great Britain. It sets out that there will be no restrictions of any kind on goods moving from Northern Ireland to the remainder of the United Kingdom.

### Equine Movements

22. The UK will likely be subject to EU third country rules relating to equine movements. Third countries apply to the European Commission to become listed to allow equine movements to the EU to take place. The listing is based on the health status of the country with requirements dependent on the perceived level of disease risk. During no deal Brexit preparations in 2019, the EU Commission agreed the UK’s listed status application after it met the animal health and biosecurity assurances required for a third country to export live animals and animal products including equines. The UK may need to reapply for this status ahead of the end of the transition period.

23. When the UK becomes listed, horses would need both an appropriate ID document and appropriate health documentation to travel to the EU. As the UK would be a third country, an Export Health Certificate (EHC) would be required to move equines, on a permanent or temporary basis, to the EU. This would require additional action from vets to confirm the absence of disease. This new process would require more planning from the equine owner and could involve increased cost if additional tests are required.

24. It is uncertain if these requirements will be applied to equine movements between Great Britain and Northern Ireland.

### Pet Travel

25. At present, The Pet Travel Scheme (PETS) is in operation. This means that with a Pet Passport companion animal (cats, dogs and ferrets) can re-enter the UK from the EU without having to be quarantined. In theory, this applies to movements of pets between Northern Ireland and the Republic of Ireland. In practice, the requirement for a Pet Passport to visit the Republic of Ireland has often not been enforced. This will be of particular interest to Wales due the number of animals that currently cross on the ferries between Wales and Ireland.

26. Official government guidance<sup>9</sup> notes that the UK will become a third country from 1 January 2021. Third countries can apply to the European Commission to be listed. Pet travel requirements will change depending on what category the UK becomes on 1 January 2021.

27. If the UK becomes an unlisted country from 1 January 2021, before someone can travel to the EU with their pet they will need to take the following steps:

- Owners must have their dog, cat or ferret microchipped and vaccinated against rabies.
- Their pet must have a blood sample taken at least 30 days after its last rabies vaccination. Their vet may recommend a booster rabies vaccination before this test.
- The pet's blood sample will be sent to a to an EU-approved blood testing laboratory.
- Wait 3 months from the date the successful blood sample was taken before they can travel.
- An OV must give the owner a copy of the test results and enter the day the blood sample was taken in an animal health certificate (AHC).
- Pet owners will not be able to travel with their pet if they have not completed these steps.
- If the blood test result is not successful, they will need a repeat vaccination and another blood test taken at least 30 days after the repeat vaccination.

28. If the UK becomes a Part 1 listed country, pet owners must have their pet microchipped and vaccinated against rabies at least 21 days before travel. They will need to make sure their pet's rabies vaccinations are kept up to date and ensure dogs receive tapeworm treatment if needed. They must also apply for a

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<sup>9</sup> <https://www.gov.uk/guidance/pet-travel-to-europe-after-brexite>

new document, the UK pet passport. They can use this for travel to the EU for their pet's lifetime (or until full) if the pet's rabies vaccinations are kept up to date.

29. If the UK becomes a Part 2 listed country, owners must have their pet microchipped and vaccinated against rabies at least 21 days before travel. They will need to make sure the pet's rabies vaccinations are kept up to date and make sure dogs receive tapeworm treatment if needed. Owners would be required to visit an OV no more than 10 days before you travel to get an AHC confirming that the pet is microchipped and vaccinated against rabies. The pet will need a new AHC for each trip to the EU if the UK becomes a Part 2 listed country.

30. In all cases, on arrival in the EU, pet owners travelling with pets will need to enter through a designated travellers' point of entry (TPE). At the TPE, pet owners may need to present proof of microchip, rabies vaccination and tapeworm treatment if required.

31. It is uncertain if these requirements will be applied to movements between Great Britain and Northern Ireland. Currently advice on the NI Direct website pet travel advice does not extend beyond the transition period.<sup>10</sup>

## Future trade deals

32. EU exit presents opportunities for the UK to negotiate new trade deals. To benefit from any new trade deals, the UK will need enough vets to meet the demand for export certification.

33. Additionally, new trade deals offer the potential for the UK to import animals and animal products that have been reared to lower animal health and animal welfare standards. The UK must safeguard its high reputation for animal health, animal welfare, and food safety. In all trade agreements it negotiates, the government must secure the inclusion of equally high standards of animal health, animal welfare, public health and food safety and responsible antibiotic use. This principle should be enshrined in legislation.

34. One high profile example is the issue of chlorine-washed chicken, which the BVA recommends should be excluded on animal welfare grounds. These chickens can be kept in poor conditions that are not in line with the Animal Welfare requirements delivered by UK farmers, with chemicals used to disinfect carcasses at the end of the production process. Furthermore, there are increasing public health concerns related to this process, with one study<sup>11</sup> finding that this process gives the false impression that the chlorine washing has been effective when, in reality, it has merely made it impossible to detect disease in the lab. We strongly oppose the import of US chicken meat and meat products to the UK on both

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<sup>10</sup> <https://www.nidirect.gov.uk/articles/taking-your-pets-abroad>

<sup>11</sup> Highmore et al. (2018) Viable-but-Nonculturable *Listeria monocytogenes* and *Salmonella enterica* Serovar Thompson Induced by Chlorine Stress Remain Infectious <https://mbio.asm.org/content/9/2/e00540-18.full.pdf>

animal welfare grounds and on the basis that public health should not be put at risk.

35. Allowing goods onto the UK market which fail to meet current UK standards of animal health, animal welfare and public health would increase the need for Sanitary and Phytosanitary (SPS) checks on all goods leaving the UK and entering the EU Single Market. The application of the Northern Ireland protocol of the Withdrawal Agreement would mean these same checks would potentially be required for goods moving from Great Britain to Northern Ireland. This would place an additional administrative and cost burden on producers and increase the potential for delays.

## Meeting future demand: immigration system

36. The RCVS Survey of the Profession 2019<sup>12</sup> provides data on vets currently registered in the UK:

- 63.9% UK Graduates
- 21.6% in an EEA/EU/EFTA country
- 4.7% Graduated in Republic of Ireland
- 9.8% Graduated elsewhere

37. According to RCVS data, in recent years over half of the veterinary surgeons who register in the UK each year qualified elsewhere in the EEA. This data illustrates our existing reliance on non-UK graduates within the veterinary profession. In the meat hygiene sector, this is particularly acute. The FSA estimates 95% of the veterinary workforce in abattoirs graduated overseas – with the clear majority of these coming from the EU. Losing Official Veterinarians (OVs) from slaughterhouses would increase the risk of food fraud, provide the potential for animal welfare breaches, and remove a level of public health reassurance to consumers at home and overseas that could jeopardise trade. RCVS data has also previously shown that around a quarter of all vets working in Wales are EU-graduates<sup>13</sup>.

38. Free movement of people has had an enormous impact on our veterinary workforce. Any additional barriers to the movement of EEA-qualified vets to the UK have significant consequences for animal health, animal welfare, public health, and trade.

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<sup>12</sup> The 2019 Survey of the Veterinary Profession <https://www.rcvs.org.uk/news-and-views/publications/the-2019-survey-of-the-veterinary-profession/>

<sup>13</sup> Figures of EU graduated vets currently practicing in Wales provided by the RCVS on 8 February 2017. RCVS, 2015. RCVS Facts. [Online] Available at: <file:///C:/Users/Amyw/Downloads/rcvsfacts2015.pdf> [Accessed 7 June 2017]

39. On 18 February 2020, the government set out its plans for a new immigration system.<sup>14</sup> Once free movement ends in January 2021, it will be replaced with an employer-led points-based system. This new immigration system leaves a big question about whether the profession will be able to fill the workforce gap created by the end of free movement, when we are already struggling to recruit and retain vets. A visa-based system will place significant administrative and financial burdens on veterinary businesses, who will be required to sponsor recruits from outside of the UK.

40. Furthermore, if the UK establishes additional barriers this could make other countries within the EEA more attractive for EEA vets. They will be able to provide certainty to EEA vets and frictionless access to residency and work. Progress has been made in the EU to hire vets to undertake additional veterinary checks on animals and products of animal origin from the UK. For example, the recent Irish Budget provided €7m for staff and IT costs arising from additional import control and export certification requirements arising as a result of Brexit.

41. According to the RCVS, across UK veterinary schools there were 5,295 veterinary undergraduate students in 2017 (over a five-year course). Of these, 129 were from the EU and 1,016 were from third countries.<sup>15</sup> Therefore, we welcome the proposal to allow international graduates a period of two years after graduating during which they can apply to switch their UK study visa to a UK work visa from outside the UK. This could permit some of these third-country graduates to remain in the UK, where they have gained their clinical skills.

## Education

42. The UK has taken steps in recent years to expand the number of veterinary undergraduate places.<sup>16</sup> This includes increases to the capacity in a number of existing veterinary schools and the establishment of new veterinary schools and partnerships: University of Surrey School of Veterinary Medicine (which produced its first graduates in 2019), Harper and Keele Veterinary School (first intake in 2020) and the University of Aberystwyth/Royal Veterinary College training hub.

43. There are concerns about how quickly the capacity of UK universities could be further expanded to meet a massively increased demand at short notice. Increasing capacity takes time, money (both initial capital and ongoing revenue), and personnel.

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<sup>14</sup> Policy paper The UK's points-based immigration system: policy statement Published 19 February 2020

<sup>15</sup> RCVS Facts 2017

<sup>16</sup> RCVS Facts 2017 demonstrates an increase in veterinary undergraduate student numbers from 804 in 2006-2007 to 1011 in 2016-2017.

44. The University of Surrey announced plans to open the school of veterinary medicine in October 2012; the first cohort of students will not graduate until 2019. The Surrey veterinary school cost £45 million to establish.

45. At present, it is estimated that the full of cost of veterinary education is well in excess of £20,000 per student, per year of study.<sup>17</sup> Despite existing funding mechanisms, the cost of providing undergraduate veterinary education exceeds current direct income streams.<sup>18</sup> Expanding the numbers of UK graduates must be supported by additional Government funding in order to safeguard existing quality and standards in veterinary education.

46. Further, UK students are currently subsidised by the high fees of overseas students; a re-balancing in favour of producing more domestic graduates would therefore jeopardise the funding model of some veterinary schools, requiring more additional funding per UK student place.

47. Furthermore, UK graduates do favour clinical practice over public health roles. A significant cultural change would be required to make public health roles more appealing to UK graduates and reduce the existing reliance on overseas-qualified veterinary surgeons in this area.

### Retention of existing workforce

48. Considerable efforts are underway to retain graduates within the profession. Erosion of the veterinary workforce has been an ongoing concern for BVA, RCVS and Government, which predates the decision of the UK to leave the EU.

49. Together, RCVS and BVA launched the report “Vet Futures – Taking charge of our future”<sup>19</sup> in November 2015. The Vet Futures project aims to improve retention of the existing veterinary workforce by ensuring veterinary professionals are confident, resilient, healthy and well supported, and benefit from exceptional leadership. In July 2016, the Vet Futures Action Plan,<sup>20</sup> was launched with a series of actions to make this vision a reality. These actions are ongoing, and a review of the project is underway.

### Paraprofessionals

50. Consideration is also being given to how the veterinary team can be reformed to allow paraprofessionals to take on additional tasks, freeing up veterinary time. In response to the expected increase in demand for EHCs, the

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<sup>17</sup> Veterinary Schools Council, 2017. Maintaining excellence and sustainability in UK veterinary education and research post-Brexit <https://www.vetschoolscouncil.ac.uk/wp-content/uploads/2017/05/Veterinary-education-research-post-Brexit-VSC.pdf>

<sup>18</sup> Ibid

<sup>19</sup>BVA, RCVS *Vet Futures – Taking charge of our future*, 2015 <https://www.vetfutures.org.uk/download/reports/Vet%20Futures%20report.pdf>

<sup>20</sup> BVA, RCVS *Vet Futures Action Plan 2016-2020*, 2016 [https://www.vetfutures.org.uk/download/publications/vet%20futures%20report%202016\(5\).pdf](https://www.vetfutures.org.uk/download/publications/vet%20futures%20report%202016(5).pdf)

Animal and Plant Health Agency (APHA) has introduced the new role of Certification Support Officers (CSOs). CSOs work under the direction of the Official Veterinarians responsible for signing export health certificates relating to POAO. The act of certification is still undertaken by a veterinary surgeon. Similarly, Official Auxiliaries work with FSA (and DAERA/FSS) OVs to assist with the delivering official controls in abattoirs.

51. Further reform needs to be undertaken in a measured way that prioritises animal health, animal welfare and public health and does not undermine the role of the veterinary surgeon in diagnosis or the integrity of the veterinary surgeon's signature. This work is being undertaken as part of the RCVS Legislation Review.

Senedd Cymru  
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Deddfwriaeth Ychwanegol  
Ymadael â'r Undeb Ewropeaidd:  
Paratodau yng Nghymru ar gyfer  
diwedd y cyfnod pontio  
EAAL(5) EUP06  
Ymateb gan FSB Cymru

Welsh Parliament  
External Affairs and Additional  
Legislation Committee  
Exiting the European Union:  
Preparedness in Wales for the end of  
the transition period

Evidence from FSB Wales

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## About FSB Wales

FSB Wales is the authoritative voice of businesses in Wales, with around 10,000 members. It campaigns for a better social, political and economic environment in which to work and do business. With a strong grassroots structure, a Wales Policy Unit and dedicated Welsh staff to deal with Welsh institutions, media and politicians, FSB Wales makes its members' voices heard at the heart of the decision-making process.

## Introduction

FSB Wales welcomes the opportunity to respond to the inquiry on preparedness in Wales for the end of the transition period. Like many others across the public, private and third sectors in Wales, our primary role over the last few months since March has been helping the small business sector adapt and recover from the enormous shock of Covid-19.

Understandably, businesses have had to prioritise Covid response and that this and uncertainty around Brexit means that very few businesses have had the available bandwidth to have undertaken any preparations or engage with FSB on this issue in depth. This difficulty in engagement at present is exacerbated by the continued lack of progress in negotiations talks and the uncertain picture of what the world will look like on Brexit from 1 January 2021 from experts in the field. A glaring uncertainty remains the continued deferral of the details of the Shared Prosperity Funding, which is of particular importance in Wales in replacing EU funding, and points to wider issues around inter-governmental policymaking and consensus building in the current UK set up.

It is therefore unclear how employers can respond meaningfully at present on the issue when the details remain uncertain.

As such, much of our new data from this year is based around the impact on Covid-19, which in many ways overlaps with vulnerable sectors for Brexit, and what risks and opportunities arise in the Brexit context from the experience of adapting to Covid-19. FSB have also responded on the internal market consultation by UK Government, and draws on that analysis here.



## Q1. Welsh Government action to prepare Wales for the end of the transition period;

We are sympathetic to the challenges to prepare Wales for the end of the transition period, which include:

- A lack of clarity from non-devolved matters such as the Brexit negotiations and to a lesser degree Free Trade Agreements;
- Historical lack of effective intergovernmental structures in the UK making this process of information sharing, cross national policy development difficult in some respects
- This in turn impacts on the engagement with Welsh SMEs as institutions such as Business Wales are limited in possible strategic preparedness beyond those of general risk assessments;
- Brexit fatigue is likely to have set in among SMEs, alongside issues such as the numerous changes in deadlines. For example, for those who prepared for Brexit

Covid-19 has also had a severe impact on the economy impact, exacerbating the following risks:

- SMEs – generally with little additional capacity and specialist department for such matters – have limited capacity available to deal with wider uncertainty caused by Brexit at present;
- Business Wales have been understandably overwhelmed by the need to respond to Covid-19 and to provide the necessary support for a crisis;
- Welsh Government has outlined its key priorities Covid-19 while continuing its Brexit work – nevertheless, it is likely that Covid-19 has shifted the focus away from Brexit to some degree;
- SMEs will be in a more vulnerable financial state with fewer reserves and greater debt (22% in our recent survey said they are in greater debt), with a likely impact on trade in the sectors most vulnerable to Brexit in the medium term (at least).

There are also possible opportunities arising from the adaptation and resilience of SMEs to Covid-19 crisis:

- Is likely to have increased the knowledge of and links between Business Wales and DBW and SMEs, as more SMEs have accessed support – this provides for useful networks of engagement for the future, and provides opportunity to be harnessed for business support in the development of Brexit.
- In the wider global economic effects of Brexit, it is likely that firms and governments will move to privileging diversification and security of supply chains rather than – or as well as – cost. This provides for clear opportunities

in making new relationships and Brexit provides an additional impetus for governmental support to do so;

- This builds institutional resilience for future shocks
- Many SMEs have shown themselves to be resilient, and many innovative in diversification their services and goods and changing their processes to adapt to Covid-19. These include matters such as providing PPE (filling a gap in complex needs in the supply chain), moving emphasis into digital trading and finding new local markets. This experience will help many SMEs with future adaptation.
- Conversations around the importance of business continuity planning are now a more common feature of business engagement.

Nevertheless, within this there are areas of work that Welsh Government does and can focus on to help, to provide effective support and preparedness within its own devolved competence and strategies:

### Export, Trade and Investment

Within the UK, Wales is particularly reliant on export. The European Union is by far the largest customer for Welsh goods exports, accounting for 60% of the total Welsh goods exports market (EIS April 2020).<sup>1</sup> Therefore, it is important that UK Government secure the easiest and least costly access to the EU single market for UK firms.

As such, it is important that flexibility and ease of EU trade is protected for the success of these firms in Wales, in particularly vulnerable sectors (such as tourism, food exports and manufacturing). This is a UK responsibility, but it is important that all parties in Wales emphasise the importance of certainty for business confidence in ongoing trade in the EU particularly following the shocks of Covid-19. They should join our call that both the UK and EU side look to conclude a deal as soon as possible, keeping trade as free as possible to the benefit of both parties in this difficult time. It has been very discouraging to see the lack of progress during the transition year.

Within Welsh Government responsibility, we have been encouraged by the further development of an International Strategy to soon include and export strategy. It is important that such strategy be in place to deal with the uncertainties ahead and so Welsh Government should progress on this agenda as soon as possible.

This will look at the opportunities post-Covid-19 to look anew at diversified supply chains and trade routes as particular opportunities.. The focus should also be on internationalising SME firms within wales to build capacity for Wales to be globally competitive and able to take advantage of new opportunities post Brexit

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<sup>1</sup> [https://developmentbank.wales/sites/default/files/2020-02/EIW%20Quarterly%20report\\_Q2\\_English\\_FINAL.pdf](https://developmentbank.wales/sites/default/files/2020-02/EIW%20Quarterly%20report_Q2_English_FINAL.pdf)

(see more in question 2), creating better alignment between domestic economic development and international trade and investment.

We will be publishing a paper on Trade and Investment policy soon, and will share this with the committee in due course.

We are concerned that the Export Strategy will not be able to be actioned, or that SMEs will be aware of it, in the time needed for January. Again, certainty for the future is a problem in particular for SMEs that often require longer lead in times to plan for changes.

There are key issues that International Strategy and Export Strategy needs to address, and after the Covid-19 crisis, Brexit can provide a catalyst and impetus to do so:

As the EIW of February 2020 notes, the net balance of UK exporters reporting growth in the value of exports fell by 1.3% to -7.1% in the quarter to 2019 Q3, which is a five year low. This indicates that there is a clear role to stimulate this area in the challenging times ahead, and to market the opportunities and support effectively to make a real impact.

Leading young export firms will be vital to the Welsh economy's development in the future, so identifying vulnerable areas to support and protect for the future is important. This would also build confidence for those looking to start-up businesses in the near future – a tranche of start-ups whose dynamism and innovation to build the Welsh economy in the longer term, that could be lost before they begin without confidence in recovery.

UKEF note that 60% of all potential exporters cite access to finance as a key factor in their export plans.

According to Economic Intelligence Wales, for SME exporters, barriers to increasing overseas trade included:

- transportation costs
- the levels of overseas competition
- poor knowledge of overseas markets
- foreign exchange risk
- Lack of finance to help with exporting.

The same source found that there was a significant knowledge gap about support available:

- Less than one quarter of exporting SMEs had sought export advice.
- Over 85% of SMEs that currently exported did not use any specific export finance products.
- Of those current exporters who had never used export finance products, almost three quarters did not know there was finance available to assist exporting activity.

- Of SMEs not currently using export finance, around 30% were interested in export finance products, including working capital loans, bond support for overseas contracts, insurances/guarantees to cover non-payment risks and foreign exchange support to guard against currency fluctuations.

This indicates the knowledge gaps, the current lack of awareness of export support and access to finance, and the needs of SMEs. These are areas that Welsh Government, Business Wales and Development Bank for Wales can have an influence. These areas of performance and resilience will be yet more important in the post-transition environment.

There is also room for WG to identify key emerging markets and areas in which to incentivise SMEs to take part. Our research indicate that most firms export on a reactive or opportunistic basis – seizing opportunities as they are approached with them on an ad-hoc basis. This indicates a role for Welsh Government to increase these opportunities and connections, by providing more of these contacts and opportunities, and in new key strategic markets. This should be aligned to the work of the International Strategy and Export Strategy. The role would be defensive – in terms of protecting access to EU markets, but also mitigating problems and actively seeing new global opportunities, by aggressively marketing and linking SME firms in key sectors to other markets.

Welsh and UK International trade policy, outreach, missions, and offices should place at the centre of their work:

- Secure the easiest and least costly access to the EU single market
- Prioritise easy non-EU markets for first-time and occasional traders
- Prioritise emerging markets for more ambitious and growth-orientated small firms
- Champion small business brands – in sectors and industries where Wales and/or the UK has a competitive advantage – to target markets abroad.
- Include a small business outlook in all work, and a small business impact assessment and SME proofing of all policy in order to capture the multiplier effects (or risk of perverse effects) of policy approaches.

### Protecting vulnerable sectors

The Covid-19 crisis has provided an opportunity to test new approaches to stimulate sectors of the economy and to protect key sectors from a short-term shape economic hit.

While the eventual cost to public finances will be substantial, and the toleration for further public finance may be limited, it is still important to look at interventions that have been successful during this period as economic levers to mitigate what could be a short-term shock to facilitate a better Brexit in the longer term. Keeping young innovative businesses running – and providing confidence for new start-ups in a new environment for opportunities - will prove to be vital to Wales and the UK's success in the new global relationships.

There should also be new levers available and used to experiment with to provide for new stimulus

#### Economic levers that could be of use include:

- Tourism Hibernation Scheme – including access to low interest loans that could also be a stimulus for post Brexit tourism, taking advantage also of possible ‘staycation’ incentives.
- Eat Out to Help Out
- Export Vouchers and tax breaks for business
- Explore how Freeport will be used to provide innovation centres, looking too at the role of agglomeration and regulation, rather than tax breaks alone, and ensuring SME proofing so that supply chains can be developed that help local economy, and not displace them.
- The possibility of looking to use variations of Furlough in some limited form, targeted at specific key sectors (such as hospitality and tourism), and aligned with a wider skills and employment agenda should be considered.

#### Q2. Preparedness of key economic sectors in Wales;

As has been widely noted, in economic terms, Wales is dependent on sectors that are dependent on the EU market, and employ larger numbers of EU-27 staff – for instance, in tourism and hospitality, agriculture and construction.<sup>2</sup>

In terms of business recovery, there is concern around Covid-19 and a No Trade Deal Brexit creating a perfect storm scenario for areas with a strong reliance on EU markets and access to migrant labour. These include the rural economy, food and agriculture, tourism and manufacturing.

There is a danger that all the areas affected by Covid-19 are also most vulnerable to a double whammy as they are also potentially the sectors that will be most affected by exiting the EU.

It is also likely to be the areas most affected by Covid-19 – including taking on greater debt, a loss of earnings and uncertainty on revenue in future, as it is – who are likely to have the least capacity available to address Brexit risks, especially given the uncertainty on the detail of what it entails.

Anecdotally, our experience of previous deadlines (March 31st 2019) is that they create an incentive to NOT use precious time and resource on Brexit preparedness. Those who had prepared at the time had the opportunity costs of doing so that others did not do. It is likely that this has itself bred fatalism and Brexit fatigue. Similarly, the political ‘smoke’ around Brexit and the on/off nature of the likelihood of a trade deal with the EU have meant that dedicating

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<sup>2</sup> A *Skilful Exit* (FSB:2017), p 18; J Portes & G Forte, *Migration in Wales: The impact of post-Brexit policy changes* (Wales Centre for Public Policy: 2019), p 17

significant resource to preparation for the unknown at a time of national crisis has proven a luxury few businesses have been able to afford.

As noted above, when it comes to export trade and supply chains, Covid may act as precursor and point to resilience building; or may exacerbate difficulties with added uncertainty on top of uncertainty. It is in fact the uncertainty that makes preparation difficult (and potentially futile) – as noted it is in everyone’s interest to conclude a deal to provide certainty – and this certainty is more important during Covid.

**Q3. The implications for preparedness arising from the negotiation of UK international agreements, including the UK-EU future relationship agreement (or agreements), other significant free trade agreements (e.g. UK-USA, UK-Japan, UK-Australia, UK-New Zealand etc.), and the Continuity Negotiations and Coordination programme (formerly referred to as the Trade Agreement Continuity Programme);**

As noted above, there are concerns on the progress in the exit negotiations, particularly in the light of Covid-19 and its impact on small businesses. Wales is particularly dependent on the EU market for exports and in sectors particularly hit by Covid-19. As such, it is vital that Welsh Government continue to prioritise influencing UK Government to come to a deal for open trade with the EU promptly, and allow SMEs some certainty and time to adapt as needed.

On the progress of Free Trade Agreements, the inclusion of specific devolved national needs in the FTAs is encouraging, and that Welsh Government has been vocal in for example stating its strategic preference for Japan trade deal to build on its recent work in that market. The Minister for International Relations and Welsh Language has stated that after the UK’s negotiations with the EU, a trade agreement with Japan is the Welsh Government’s main priority.

That the UK negotiating objective documents for the FTAs also provide some examples of where the UK Government believes there are specific benefits for sectors in Wales (such as lamb, and the automotive industry) is welcome.

Nevertheless, these add another layer of uncertainty on the current export and trade until the negotiations are concluded which allows little time for businesses to prepare or to ‘orientate’ themselves effectively to a new trading state. While there are obviously clear large markets identified that are vital to prioritise, this will likely impede access to emerging markets that may have a strategic benefit to Welsh companies and in diversifying trade routes and chains in the future. It is in all our interest that these deals are concluded quickly and with an eye to free access, and in protecting vital supply chains to small businesses.

Welsh Government Business Wales, DBW and academia should work together to spotlight Brexit’s hidden impact on importers and small firms in global supply chains, and a view to mitigating their effects, and target finance at SMEs moving toward export innovative sectors.

#### Q4. Intra-UK intergovernmental agreements relating to the end of the transition period, including the common frameworks programme.

The intragovernmental arrangements that will be required for the UK following leaving the EU's regulatory regime will require strong intergovernmental protocols, and mechanisms, that will seek to replicate the functions of the EU Commission in the context of a four national unitary state, and to provide mechanisms similar to those seen in federations such as Australia and Canada.<sup>3</sup>

There are challenges in bringing this into and keeping 'with the grain of the UK's constitution', and over the course of devolution intergovernmental mechanisms have often been found wanting. The numerous Supreme Court cases in Wales are a testament to this.

It is therefore incumbent on all four national governments to work together and foster the necessary mechanisms (including dispute mechanisms) for effective working and to keep standards. Our general understanding is that the common frameworks co-working has been positive and augers well. Some of the discussions around the overarching complement to the frameworks of an internal market discussion has been more concerning, with point scoring and positioning, which undermines the credibility of all that they are protecting all the UK nations' future prosperity. Not unreasonably, businesses expect a more collegiate approach and should not have to account for 'political wiring'

#### Mutual Recognition

FSB welcomes the introduction of mutual recognition as a general standard but would emphasise the need for some flexibility across all jurisdictions. Smaller businesses across the UK recognise the benefits of mutual recognition; it allows smaller business to access markets that would otherwise be impenetrable. However, it is important that its expansion does not lead to the distortion of market standards, lower market standards or anti-competitive behaviours that may result in smaller businesses being undercut. For instance, the principle of mutual recognition should not allow products that have been produced to different standards to be sold as if they were of identical quality. FSB also takes the view that the long-term stability of minimum standards helps to foster a conducive business environment and to establish a level playing field.

Smaller businesses recognise that the expansion of mutual recognition will result in reduced administrative burden and welcome the principle for that reason. However, businesses have suggested that the legislation should include exceptions to the rule of mutual recognition where its application might result in the application of lower market standards. As with the Swiss model, all countries within the UK Internal Market should be able to derogate from the mutual recognition principle under agreed exceptions such as public health should such

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<sup>3</sup> <https://www.gov.uk/government/publications/uk-internal-market>

a response meet the proportionality test. This is separate to and more nuanced than the existing exclusions discussed in the white paper.

### Non-discrimination

Small businesses across all UK jurisdictions are supportive of the need for legislative protection against direct discrimination, as they often feel disadvantaged by rules that favour larger, more established businesses. It is equally important that the new framework prohibit indirect discrimination, be that by legislation or by other standards, to allow for a level playing field between smaller and larger businesses. If non-discrimination is enshrined in legislation, businesses will be able to pursue legal action through the courts where a violation occurs. To minimise the burden upon the courts, the independent oversight body should have jurisdiction to arbitrate matters regarding both direct and indirect discrimination.

Smaller businesses seek some degree of flexibility in the application of both principles. As documented in the white paper, there may be instances where non-discrimination should be applied and mutual recognition not applied. Mutual recognition encourages administrations to accept regulatory standards, which may be inconsistent with their own, such as food safety or planning regulations, in such cases the doctrine should not apply, but authorities must act in accordance with the principle of non-discrimination.

Non-discrimination is intended to supplement mutual recognition and thus should be subject to greater flexibility. The principle should be applied on a case-by-case basis with enough latitude to allow for country specific diversions.

### Competition

Government must consider the implications of the internal market principles on competition across the UK. The Internal Market model has been successful in removing market barriers across several jurisdictions but it has also been found to unveil and exacerbate economic disparities between countries and market participants. Central and devolved governments should jointly appoint a regulator to oversee this. In other internal market jurisdictions, the existence of this disproportionality has helped shape the infrastructure around State Aid.

Although smaller businesses accept the benefit of State Aid policies for the entire business community, it is important that smaller businesses not be forgotten by a focus on larger businesses. Small businesses grant that the UK Internal Market should be subject to a single State Aid regime, therefore all four administrations should actively support its smaller businesses as these changes come into place to minimise any disparities.

Given the focus too on economic development as building SME capacity and capability to be competitive in the global economy with the benefits in local supply chains, upskilling that this brings, it is important that shaping markets and



creating competitive markets are also included in this view of competition (rather than the danger of locking out new players).

### Shared Prosperity Fund

An ongoing concern is the lack of clarity around the Shared Prosperity Fund. This is an issue of significant importance to FSB Wales members in Wales. The previous EU funding regime had an impact on many areas of policies that relate to SMEs include business support, infrastructure and skills funding, and it is necessary to understand the detail of what is to replace it.

Our organisation in Wales has not yet been involved with any substantive consultation with the UK Government on this subject about which we have previously stated our disappointment. This is a matter of significant concern for us and supposed publication dates for the consultation have come and gone and we now find ourselves with limited time for proper analysis. We know that many of the business support services provided in Wales operate with EU funding adding value to their activities. We are concerned that UK Government is yet to provide any clarity on the Shared Prosperity Fund despite the transition period towards EU exit effectively coming to an end this year. The crisis around Covid-19 is likely to exacerbate this situation further still.

We would urge UK Government to clarify its thinking urgently on this matter, particularly in relation to the quantum that will be available to Wales under the new regime and how the new regime will reflect the nature of devolved competencies. For instance, economic development is clearly a devolved competence and we have a long-standing relationship with well-developed business support infrastructure including existing providers Business Wales that has helped us to critique, inform and improve the service over time. Should the level of funding be reduced, or the control for funding rest with UK Government in Wales, or city regions, our concern is that duplication will prevail and precious resources will be wasted.

This would confuse businesses and could serve to undermine the reputation and regard for the effort. Furthermore, it is likely to lead to a far more complicated marketplace for public sector support services than currently exists (indeed this is to some extent also the case with the City Deals at present around business support).

By giving a clear statement as to the level of funding available to Wales and making clear what 'respecting devolution' means in practice with the Shared Prosperity Fund, we can avoid this potential outcome arising.

Senedd Cymru  
Y Pwyllgor Materion Allanol a  
Deddfwriaeth Ychwanegol  
Ymadael â'r Undeb Ewropeaidd:  
Paratoadau yng Nghymru ar gyfer  
diwedd y cyfnod pontio  
EAAL(5) EUP07  
Ymateb gan Cymdeithas Diwydiant  
Fferyllo Prydain

Welsh Parliament  
External Affairs and Additional  
Legislation Committee  
Exiting the European Union:  
Preparedness in Wales for the end of  
the transition period

Evidence from The Association of the  
British Pharmaceutical Industry

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## Introduction

1. The ABPI exists to make the UK the best place in the world to research, develop and use new medicines. We represent companies of all sizes who invest in discovering the medicines of the future. Our members supply cutting edge treatments that improve and save the lives of millions of people. We work in partnership with Governments and the NHS so patients can get new treatments faster and the NHS can plan how much it spends on medicines. Every day, we partner with organisations in the life sciences community and beyond to transform lives across the UK. Life sciences companies are critical for the health of our population, and the success of our economy. Operating across 860 sites in the UK, the pharmaceutical industry invests more than any other sector in R&D in the UK, to the value of £4.5 billion in 2018<sup>1</sup>.
2. The sector employs 63,000 people across the UK, with 24,000 dedicated to R&D<sup>1</sup>, and is six times more productive than the UK average manufacturers, at £330,000 GVA<sup>2</sup>. It is a critical stabilising sector in a recession hit economy and remains central to any long-term economic recovery centred on innovation, productivity and high-skilled, quality jobs.
3. The EU remains the UK's closest and largest trading partner for pharmaceutical products. In 2019, 40.3% of UK's pharmaceutical exports went to the EU at a value of £9.37bn and 80.9% of the UK's pharmaceutical imports were from the EU.<sup>3</sup>
4. The ABPI welcomes the opportunity to submit this evidence to the Welsh Parliament External Affairs and Additional Legislation Committee's inquiry on Exiting the European Union: Preparedness in Wales for the end of the transition period. We have focused our response on the questions most relevant to our members and life

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<sup>1</sup> ONS, Business enterprise research and development, UK: 2018 (21 November 2019) Available at:

<https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/researchanddevelopmentexpenditure/bulletins/business-enterpriseresearchanddevelopment/2018>

<sup>2</sup> ABPI, '2020 Manifesto for Medicine: Making the UK the best place in the world to research, develop and use the medicine of the future', 2019.

Available at: <https://www.abpi.org.uk/media/7695/abpi-2020-manifesto-for-medicine.pdf> <sup>3</sup> ABPI analysis of ONS UK trade in goods country-by-commodity data for 2019 (Released April 2020)

science sector, with particular focus on the role of Welsh Government and Welsh Parliament.

## Welsh Government action to prepare Wales for the end of the transition period - What the EU, UK and Welsh Governments do to ensure the uninterrupted supply of medicines at the end of the transition period?

5. Governments and pharmaceutical companies across Europe have rightly been focused on responding to COVID-19. This has been an especially challenging time for our members who have been working around the clock to ensure supply chains continue to be robust in the face of global disruption and unprecedented demands, under worldwide lockdown conditions.

6. Companies were already working at capacity before the pandemic hit and have done what they can to prepare for an unknown future UK-EU relationship. Yet, there remain several critical but unanswered questions hampering our members' ability to plan for January 1st, 2021. As the end of the transition approaches it is essential that the Welsh Government and, where appropriate, the Welsh Parliament work with all relevant Welsh and UK bodies to prepare businesses for the inevitable changes they face.

7. With little over four months until the end of the Transition Period, the forecast border disruption and uncertainty of the arrangements that will be in place from January 2021, means that threats to medicines supply are again on the horizon. This time, however, there are additional challenges due to COVID-19, normal winter pressures on the NHS and the added uncertainty about how the Northern Ireland Protocol will be interpreted and implemented.

8. We have asked that both sides in the negotiations agree and implement practical policy solutions as a matter of urgent priority, so our members can ensure continued, uninterrupted supply of their medicines. The ABPI recognises the challenge in securing an ambitious and comprehensive trade agreement in the very limited time left before the end of the Transition Period, but has urged both sides to conclude a deal that covers the essential areas of: medicine supply; patient safety; science, research, and people; and customs.

9. Should a holistic agreement not be possible in the remaining time we have called upon both sides to reach an agreement that will ensure uninterrupted supply of medicines to patients in the UK and the EU. Specifically, this will be achieved by:

- Agreeing a Mutual Recognition Agreement (MRA) on Good Manufacturing Practice, including batch testing
- Ensuring that companies from across the UK can provide a seamless supply of medicines to patients in Northern Ireland from the end of the Transition Period

## Ensuring the best future for research in Wales

10. Wales has a clinical research culture, which spans the NHS, academia and industry; with Health and Care Research Wales (HCW) reporting that in 2018-19, 212 commercially sponsored studies were undertaken across the country<sup>3</sup>. Some HCW initiatives have helped to streamline the processes for undertaking studies, helping Wales become an increasingly attractive proposition to industry<sup>4</sup>. Most recently, research in response to the COVID-19 pandemic has been undertaken in Wales, including the recruitment of patients into the Oxford University/AstraZeneca vaccine trial<sup>5,6</sup>. Whilst we have world-leading institutions<sup>7,8</sup>, at the heart of their success is participation in multi-centre, often initial studies.

11. The UK and EU have been discussing Union Programmes for research and science as part of their negotiations. It is encouraging that both sides have committed to the principle of UK participation.

12. In addition to funding, the EU framework programmes provide practical vehicles to foster collaboration in R&D, establishing international research consortia which share data, access to talent, access to patients and access to research and clinical trial databases. Participants in Horizon 2020 came from over 130 countries, with nearly 350,000 researchers supported across global institutes and 1 in 5 publications based on academia-private sector collaborations<sup>9</sup>.

13. For the past 40 years, the UK has played a crucial role in shaping the EU research and innovation framework programmes, driving world-leading research, supporting international collaboration, and sharing technical expertise. Furthermore, with the largest therapeutic pipeline in Europe, the UK has been a significant contributor to Europe's scientific output, conducting almost 20% of the total research work within EU health programmes between 2007 and 2016<sup>10</sup>. Ranked 1<sup>st</sup> out of 28 Member States on participation in Horizon 2020 (between 2014 and 2016)<sup>11</sup>, the UK has also been a huge beneficiary from EU framework programmes.

14. The EU research and innovation framework programmes (such as Horizon 2020) and various research consortia (such as European Reference Networks), have provided collaborative platforms, which have been key to the joint success of

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<sup>3</sup> Health and Care Research Wales Annual Report - <https://www.healthandcareresearch.gov.wales/news/annual-report/showcases-extensive-partnership-and-collaboration/>

<sup>4</sup> Health and Care Research Wales - [https://www.healthandcareresearch.gov.wales/uploads/industry/Research\\_in\\_Wales-ouroffer-to-the-life-sciences-sector.pdf](https://www.healthandcareresearch.gov.wales/uploads/industry/Research_in_Wales-ouroffer-to-the-life-sciences-sector.pdf)

<sup>5</sup> <https://www.healthandcareresearch.gov.wales/covid-19-research/>

<sup>6</sup> <https://abuhb.nhs.wales/news/news/wales-to-play-major-role-in-national-trial-for-covid-19-vaccine/> <sup>8</sup> <https://www.wwic.wales/>

<sup>7</sup> <http://brain.wales/>

<sup>8</sup> <https://www.walescancerresearchcentre.org/wcrc/>

<sup>9</sup> EU Commission. Key findings from the 2020 interim evaluation. 2017. Available from:

[https://ec.europa.eu/research/evaluations/pdf/brochure\\_interim\\_evaluation\\_horizon\\_2020\\_key\\_findings.pdf](https://ec.europa.eu/research/evaluations/pdf/brochure_interim_evaluation_horizon_2020_key_findings.pdf)

<sup>10</sup> Cancer Research UK. The impact of collaboration: the value of UK medical research to EU science and health [Internet]. 2017. Available from: [https://www.cancerresearchuk.org/sites/default/files/uk\\_and\\_eu\\_research\\_full\\_report\\_v6.pdf](https://www.cancerresearchuk.org/sites/default/files/uk_and_eu_research_full_report_v6.pdf)

<sup>11</sup> EU Commission. Horizon 2020 in full swing - Three years on [Internet]. Horizon 2020 -European Commission. 2018. Available from: <https://ec.europa.eu/programmes/horizon2020/en/news/horizon-2020-full-swing-three-years>

the UK and EU, in research and innovation – this has been one of the key non-financial benefits of participation in the EU research framework programmes. Continued collaboration is therefore essential in supporting both the UK and EU's research and innovation agendas.

15. The ABPI strongly supports the Government's commitment to consider participation in EU programmes such as Horizon Europe and believe it is the best way to ensure continued R&D in Wales. However, the ABPI believes that the UK should not only look to secure continued participation but also seek to secure influence in EU research programmes.

16. Involvement of a non-member state in the EU's strategic research agenda is not new. For example, Israel is an Associated Country participant in Horizon 2020 which means it can influence and contribute to the strategic research agenda, through joint committees, which evaluate and review implementation of Israel's association agreement and the implementation activities of Horizon 2020<sup>12</sup>. Although we would like the UK to have greater involvement in programmes such as Horizon 2020, the relationship with Israel does set a precedent for establishing a similar arrangement for the UK.

17. Earlier this year, the Wellcome Trust published a post-Brexit agreement for research and innovation, which proposes how an agreement between the UK and EU might be achieved:

- UK association to Horizon Europe as a core part of a research and innovation agreement
- A shift away from the historical GDP-based financial formula for the UK to agree terms
- Precedent to provide the UK with an appropriate degree of influence over the Horizon Europe programme
- The exchange of research workers and their direct families as an essential part of any research and innovation agreement
- An agreed backstop mechanism for the sharing of personal data

18. The ABPI welcomed this agreement and since has signed a letter from the Life Sciences sector, stating that Horizon Europe association should be a core part of the future relationship between the EU and the UK for research, underpinning valuable scientific partnerships that have been built up over many years. The sector calls on both sides to continue these negotiations with fresh energy, a spirit of compromise, and a focus on what is needed for the success of the programme. To that end, there are several solutions to some of the sticking points in Horizon Europe discussions:

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<sup>12</sup> Wellcome Trust. A post-Brexit agreement for research and innovation. 2020. Available from: <https://wellcome.ac.uk/sites/default/files/a-post-brexit-agreement-for-science-bruegel-wellcome-january-2020.pdf>

- Demonstrating commitment to the programme
- Ensuring a fair financial contribution through a 'two-way' correction mechanism
- Accepting EU oversight of the use of programme funds
- Agreeing to introduce reciprocal mobility arrangements to support the programme
- Clarifying that the results of research can be exploited beyond the EU

## Preparedness of key economic sectors in Wales - What the pharmaceutical sector in Wales must do to prepare for the end of transition?

19. The life sciences sector and Governments across the UK worked collaboratively to prepare for the potential of a no deal EU Exit in 2019, implementing a multi-layered approach, to achieve a high level of readiness for medicines and medical products. A similar collaborative approach is needed to prepare for a possible non-negotiated outcome.

20. Part of this guidance was received through a letter from the UK Government Department of Health and Social Care (DHSC)<sup>13</sup>. The letter outlined their plans for a similar multilayered approach and confirmed key aspects of UK Government and industry responsibilities for the end of the transition period. The letter confirmed that the multilayered model includes:

- the need for rerouting away from the 'short straights',
- a Government Secured Freight Capacity and Express freight service,
- DHSC engagement with companies to help prepare 'trader readiness', and
- encouragement for 6-week stockpiles on UK soil, not over normal business levels, where possible

21. Despite this guidance, several areas remain outstanding and are urgently sought by our industry. It is particularly important in regulations on licencing, clinical trials and pharmacovigilance. Previous guidance was issued in advance of the March and October 2019 deadlines and similar guidance from the DHSC is required.

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<sup>13</sup> <https://www.gov.uk/government/publications/letter-to-medicines-and-medical-products-suppliers-3-august-2020>

22. The MHRA has recently published information for pharmaceutical companies preparing for the end of the EU transition period. The guidance provides some information on how to operate from 1 January 2021, including on licensing of medicines and devices, clinical trials, exporting active substances for medicines, importing medicines and investigational medicinal products, pharmacovigilance procedures and new IT systems. Companies has welcomed the important detail included in this guidance which will support them in planning for the end of the transition period. Whilst the guidance is largely similar to the Brexit 'no deal' guidance published in 2019 (which was withdrawn as a deal was secured), there are some additions relating to the added complexity of the Northern Ireland protocol and a more time-restricted acceptance of EU batch testing and release.

23. The ABPI will continue to seek more engagement with the UK Government in these areas.

### The implications for preparedness arising from the negotiation of UK international agreements, including the UK-EU future relationship agreement (or agreements), other significant free trade agreements (e.g. UK-USA, UK-Japan, UK-Australia, UK-New Zealand etc.)

24. The trade negotiations between the UK and the EU, USA, Japan and others provides the opportunity to build on the mutual strengths of thriving life sciences sectors, and remove trade barriers, encouraging ABPI member companies to research, develop and manufacture medicines, in the UK.

25. The ABPI strongly believe that the UK's approach to the negotiations should be guided by three overarching objectives:

- Through its independent trade agenda, the UK cements itself as a global leader in life science innovation and increases its international influence in shaping life sciences policy and improving the lives of patients.
- The UK aims to promote and uphold high standards of IP rights by ensuring that trading partners afford UK life science innovators at least the same level of protection that all life science innovators receive in the UK
- The UK works with other countries which have leading medicine regulatory agencies to pioneer the thinking behind new regulatory pathways and standards that can evolve to account for new technologies

26. Negotiating multiple trade agreements in parallel can be complex and the pharmaceutical industry notes that the UK is currently attempting to negotiate multiple deals simultaneously and at a fast pace. There is therefore a risk that the

UK agrees to provisions with different trading partners that are in contradiction to each other and increase the requirement and complexity of compliance for businesses operating in and exporting from the UK.

27. To avoid this, our industry would appreciate greater clarity on how departments across governments are linked up to help ensure the UK has a single, coherent trade strategy and approach, which is co-produced by all countries of the UK.

28. Now that we have left the EU, the UK has an opportunity to capitalise on its strong domestic life sciences sector and enhance its pro-innovation policies, cementing itself as a global leader in this area by pursuing and agreeing gold standard IP provisions in deals with other partners. With respect to the EU negotiations, we have asked that the UK and the EU ensure that their current IP frameworks remain the minimum accepted standard.

29. Secondly, on medicine regulation, given the current complete alignment of regulatory standards between the UK and EU, the industry's main priority for the UK's trade agenda is for the EU-UK negotiations to seek to maintain their current high level of regulatory compatibility and to secure streamlined processes and procedures between the EU and the UK in the interest of patient safety. This still allows for the UK and other partners work together to develop thinking on the international standards for the medicines of the future, while still allowing for close regulatory compatibility with the EU.

## Working with you

30. ABPI Cymru Wales are keen to support this work, by use of virtual meetings and written briefings. We can establish bespoke briefing sessions on any aspect of this paper, expanding upon the content in this briefing, and addressing your questions for the sector.

31. If you would like to set up a virtual meeting briefing session, please email [jferris@abpi.org.uk](mailto:jferris@abpi.org.uk) or call 029 20 454297.



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Mae Cytûn (Eglwysi ynghyd yng Nghymru) yn cynrychioli'r prif enwadau Cristnogol yng Nghymru, yn cynnwys y traddodiadau Catholig, Anglicanaidd, Anghydfurfiol, Penetcostaidd, Uniongred, y Crynwyr a Byddin yr Iachawdwriaeth, ynghyd â nifer o fudiadau Cristnogol eraill yng Nghymru. Gellir gweld rhestr lawn o'n haelodau yma: A full list of members can be found at: <http://www.cytun.co.uk/hafan/pwy-ydym-ni/> Rhyngddynt, mae gan ein 19 aelod eglwys ryw 160,000 o oedolion sy'n gyflawn aelodau, a chyswllt sylweddol â llawer mwy o blant, pobl ifainc ac oedolion ymhob cymdogaeth ledled Cymru.

Ni fu i'r un o'n haelod eglwysi fynegi barn am barhad aelodaeth y DU o fewn yr Undeb Ewropeaidd cyn refferendwm 2016. Wedi'r refferendwm, fe sefydlwyd ganddynt dan nawdd Cytûn Weithgor ar Gymru ac Ewrop i ddatblygu ymateb Cristnogol Cymreig i ymadawiad y DU â'r UE a llunio perthynas newydd, a mae'r cyflwyniad hwn wedi ei gymeradwyo gan y Gweithgor hwnnw.

Rydym wedi trefnu ein sylwadau yn unol â'r penawdau ddarparwyd gan y Pwyllgor.

1. Yr hyn y mae Llywodraeth Cymru yn ei wneud i baratoi Cymru ar gyfer diwedd y cyfnod pontio

- Cydnabyddwn yr anawsterau wynebir gan Lywodraeth Cymru wrth gyflawni'r dasg hon tra hefyd yn mynd i'r afael â phandemig Covid-19, ac yng ngoleuni newidiadau mynych ym mholisiau Llywodraeth y DU.
- Yng nghyfnod cynnar pandemig Covid-19, fe fu eglwysi lleol yn ganolog wrth helpu pobl fregus a ddarganfu na allent brynu cyflenwadau hanfodol o fwyd a nwyddau hylendid a glanhau o ganlyniad i or-brynu gan eraill. Fe ragwelwyd patrwm tebyg pe byddem yn ymadael â'r Farchnad Sengl a'r Undeb tollau yn ddi-gytundeb. Tra bod cryn sylw i weithrediadau Llywodraeth Cymru i liniaru sefyllfa o'r fath ym Mawrth a Hydref 2019, clywsom lawer llai am baratodau ar gyfer Rhagfyr 2020. Gan wybod maint y gofid a grëir gan sefyllfa felly, yn enwedig ymhlith y sawl a effeithiwyd gan brinder ym Mawrth-Ebrill 2020, fe fyddem am weld pwyso ar Lywodraeth Cymru i gyd-weithio â Llywodraeth y DU i wneud cynlluniau wrth gefn addas a rhoi cyhoeddusrwydd iddynt er mwyn tawelu ofnau'r cyhoedd. Fel eglwysi, rydym yn ymwneud â darparu banciau bwyd, llochesi i'r digartref a gwasanaethau eraill y gallai fod eu hangen pe ceid diwedd anhrefnus i'r

cyfnod pontio. Rydym yn bryderus fod ymateb i'r argyfwng Covid-19, ac ymdrin â chymhlethdod y rheoliadau o ran ail-gychwyn addoli a gwasanaethau cymunedol dros yr hydref, wedi gadael adnoddau o ran arian, egni ac arbenigedd yn brin ymhlith cymunedau eglwysig lleol, ac y gall fod angen cymorth ychwanegol (trefniadol yn gymaint ag ariannol) os bydd angen i ni gefnogi ein cymunedau mewn ffordd debyg eto yn Ionawr 2021.

- Buom mewn cyswllt rheolaidd ag eglwysi yn yr Iwerddon (y Weriniaeth a'r Gogledd), a rydym yn rhannu eu pryderon ynghylch y broses heddwch ar eu hynys a'r perygl y ceir canlyniadau anfwriadol ar y cymodi a gafwyd yn y blynyddoedd diwethaf rhwng y gwahanol draddodiadau crefyddol a gwleidyddol. Gwyddom i Lywodraeth Cymru fod yn gweithio ar faterion ynghylch y ffin forol rhwng yr Iwerddon a Chymru, ond – fel gyda'r paratodau yn gyffredinol – credwn fod yr amser yn dod pan fo raid gwneud datganiadau mwy cyhoeddus am sut y gellir lliniaru'r trafferthion posibl ym mhorthladdoedd Cymru os ceir diwedd anhrefnus i'r cyfnod pontio, a sut y gellir helpu cymunedau'r porthladdoedd i ymdrin â chanlyniadau economaidd posibl trafferthion o'r fath, yn enwedig gan i'r porthladdoedd gael eu taro'n galed eleni gan argyfwng Covid-19.
- Buom yn falch o fod yn rhan o'r cyfarfodydd Bord Gron a drefnwyd gan Lywodraeth Cymru gyda'r Swyddfa Gartref ynghylch y cynllun Preswylion Sefydlog. Fe fu'r wybodaeth a gafwyd gan y cyfarfodydd hynny yn hynod ddefnyddiol wrth frifio ein haelod eglwysi a hybu cyfranogiad yn y cynllun. Cawsom ein brifio hefyd gan CAB am y cynllun cynghori ychwanegol a ariannwyd gan Lywodraeth Cymru, a hoffem gydnabod y budd ychwanegol gafwyd oherwydd i Lywodraeth Cymru weithredu fel hyn.
- Buom yn falch o gyfrannu at ystyried Cymru wedi'r cyfnod pontio trwy gynllun [Lles Cymru yn y Dyfodol](#), ariannwyd gan Lywodraeth Cymru ac a gydlynwyd gan CGGC. Mae'r rhaglen hon, yn rhychwantu amryfal sectorau, wedi dangos ffordd arloesol a gwerthfawr o fynd i'r afael ag argyfyngau mawr ar y cyd – nid dim ond Brexit, ond hefyd yr argyfwng hinsawdd.

## 2. Paratodau'r prif sectorau economaidd yng Nghymru

Nid 'sector economaidd' yw eglwysi a grwpiau ffydd fel y cyfryw, ond rydym wrth gwrs yn gweithredu o fewn economi Cymru ac yn cyfrannu tuag ati.

- Rydym wedi gallu cymryd rhai camau i baratoi at ddiwedd y cyfnod pontio, megis cymryd rhan mewn ymweliad y trydydd sector dan nawdd CGGC i Frwsel yn Chwefror 2020, ac annog ein haelod eglwysi i gryfhau eu hymwneud â mudiadau traws-Ewropeaidd megis Cynhadledd Eglwysi Ewrop, Comisiwn yr Eglwysi ar Fudwyr yn Ewrop ac Esgobaeth Ewrop Eglwys Loegr, nad yw ymwneud â nhw yn ddibynnol ar fod yn aelod o'r UE.
- Ond mae yna feysydd lle bu'n anodd ymbaratoi gymaint ag y dymunem, megis y diffyg eglurder o hyd am y drefn mewnffudo 'ar sail pwyntiau' a sut y

bydd yn effeithio ar ymweliadau gan aelodau ac arweinyddion eglwysi tramor, a'n gallu i recriwtio oddi tramor gan ddefnyddio fisas 'gweinidogion yr efengyl' (Tier 2), 'gweithwyr crefyddol' (Tier 5), myfyrwyr a gwirfoddolwyr tramor. Mae'r eglwys yn gorff sylfaenol fyd-eang a mae cadw cysylltiadau rhyngwladol trwy gyfnewid fel hyn medrau, arbenigedd a gweledigaeth yn hanfodol i ni. Mae ymestyn y gofynion fisa hyn i'r UE wedi arwain at leihad yn y cyfnewid rhyngwladol hwn, a gobeithiwn y gallwn, wedi'r pandemig, gallu adfer cysylltiadau o'r fath wyneb yn wyneb yn ogystal ag yn rhithiol.

3. Effaith y trafodaethau ynghylch cytundebau rhyngwladol y DU ar y paratodau, gan gynnwys y cytundeb (neu'r cytundebau) ar y berthynas rhwng y DU a'r UE yn y dyfodol, cytundebau masnach rydd arwyddocaol eraill a'r rhaglen Trafod a Chydgysylltu Parhad Masnach Masnach

- Yn ei gyfarfod ar 24 Awst 2020, derbyniodd y Gweithgor wybodaeth am Fil Marchnad Fewnol y DU, a gyhoeddwyd ar Fedi 9. Rydym yn poeni'n arw am effeithiau posibl y Bil hwn ar y setliad datganoli gan ei fod yn ceisio sicrhau cydnabyddiaeth gilyddol a gwahardd gwahaniaethu o ran nwyddau, gwasanaethau a chymwysterau proffesiynol – llawer ohonynt yn ymwneud â meysydd polisi datganoledig – heb ymrwymiad tebyg i egwyddorion megis sybsidiaredd a chymesuredd. Tra bod aelodau eglwysi yn arddel nifer o argyhoeddiadau ynghylch datganoli a'r rhychwant addas iddo, mae ein holl aelod eglwysi yn credu y dylid, wrth weithredu canlyniad refferendwm 2016 am aelodaeth yn yr UE, barchu hefyd canlyniad refferendwm 2011 y "bydd y Cynulliad yn ennill pwerau i ddeddfu ar bob pwnc yn y meysydd sydd wedi'u datganoli heb fod angen cytundeb Senedd y DU yn gyntaf". Rydym yn ysgrifennu am y materion hyn at aelodau Tŷ'r Arglwyddi sydd â chysylltiadau ag eglwysi yng Nghymru cyn i'r Arglwyddi ddechrau ystyried y Bil ar Hydref 19.
- Rydym yn pryderu hefyd am effeithiau posibl cytundebau masnach rhyngwladol ar faterion sydd o bwys i lawer o'n haelodau, megis lles anifeiliaid, safonau llafur, gwarchodaeth amgylcheddol, ayb. Mae llawer o'r meysydd hyn hefyd wedi eu datganoli i Gymru ar hyn o bryd ac fe fu eglwysi yn weithgar yn ceisio gwelliannau yn eu cylch. Rydym yn pryderu fod y Bil Masnach gerbron Senedd San Steffan ar hyn o bryd yn peryglu pwerau datganoledig yn y meysydd hyn, ac yn nodi gyda chryn bryder sylw'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad yn eu [hadroddiad ar y Memorandwm Cydsyniad Deddfwriaethol i'r Bil](#) fod cefnogaeth Llywodraeth Cymru i'r Bil wedi ei seilio ar "orddibyniaeth ar ymrwymadau anneddfwriaethol a geisir drwy gytundebau rhynglywodraethol nad ydynt yn rhwymo." (para 86). Nodwn i gwestiynau tebyg godi ynghylch Bil Pysgodfeydd y DU. Mae hon yn agwedd ar baratoi at ddiwedd y cyfnod pontio y gall Llywodraeth Cymru yn unig ei chyflawni – ni all cymdeithas sifil wneud hynny – a hyderwn y gellir cryfhau'r gwaith yn y maes hwn.

4. Cytundebau rhynglywodraethol o fewn y DU yn ymwneud â diwedd y cyfnod pontio, gan gynnwys y rhaglen fframweithiau cyffredin

- Gweler ein sylwadau ar Gn 3. Fe ymddengys fod Bil y Farchnad Fewnol yn gosod darpariaeth ddeddfwriaethol yn lle llawer o'r fframweithiau cyffredin arfaethedig, ac fel y Pwyllgor DCC rydym yn pryderu am "orddibyniaeth ar ymrwymadau anneddfwriaethol ... nad ydynt yn rhwymo".

Byddem yn falch o gynnig unrhyw gymorth pellach y dymunech tuag at ymchwiliad y Pwyllgor.

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Ymateb gan Cytûn - Eglwysi ynghyd  
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Evidence from Cytûn - Churches  
together in Wales

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Cytûn (Churches together in Wales) represents the main Christian denominations in Wales, including Catholic, Anglican, Nonconformist, Pentecostal, Orthodox, Salvation Army and Quaker traditions, and a number of other Christian organisations in Wales. A full list of members can be found at:

<http://www.cytun.co.uk/hafan/en/who-we-are/> Between them, our 19 member churches have some 160,000 active adult members, and meaningful contact with many more children, young people and adults in every community across Wales.

None of our member churches had a stated opinion on the UK's continued membership of the European Union prior to the 2016 referendum. Following the referendum, they established under the auspices of Cytûn a Wales & Europe Working Party to develop a Welsh Christian response to the UK's departure from the EU and the forging of a new relationship, and this submission has been endorsed by that Working Party.

We have grouped our comments under the headings provided by the Committee.

1. Welsh Government action to prepare Wales for the end of the transition period

- We acknowledge the difficulties faced by Welsh Government in carrying out this task while also tackling the Covid-19 epidemic, and in the light of frequent changes of UK Government policy.
- In the early phase of the Covid-19 epidemic, local churches were much involved in helping vulnerable people who found that they could not obtain essential supplies of food, toiletries and cleaning materials due to initial panic-buying. Such eventualities have been predicted should we leave the Single Market and Customs Union without a trade agreement. Whereas Welsh Government actions to mitigate such a scenario were prominent in March and October 2019, much less has been heard about such preparations for December 2020. Knowing the levels of anxiety that such a prospect will raise, especially amongst those who were badly affected by shortages in March-April 2020, we would urge Welsh Government to work with the UK Government to make appropriate contingency plans and to publicise them in order to reassure the public. As churches, we are involved in providing foodbanks, emergency shelter for the homeless and other services which might be needed in the context of a chaotic end to the

transition period. We are concerned that dealing with the Covid-19 crisis, and dealing with the complexity of regulations around re-opening worship and community services this autumn, has left resources of finance, energy and expertise amongst local church communities seriously depleted, and that extra support (logistical as much as financial) may be required if we are to support our communities in this way again in January 2021.

- We have been in regular contact with the churches in Ireland (Republic and Northern Ireland), and we share their concerns regarding the peace process in their island and the danger of unintended negative effects on the reconciliation achieved in recent years between different religious and political traditions. We know that the Welsh Government has been undertaking work regarding the sea border between Ireland and Wales, but as with preparations in general we believe that the time is approaching when more public statements need to be made about how potential difficulties at the Welsh ports may be mitigated in the event of a chaotic end to the transition period, and how the port communities may be helped to cope with the potential economic fallout of such difficulties, especially as ports have been very badly hit by the Covid-19 epidemic this year.
- We have been glad to be involved in the Welsh Government convened Roundtables with the Home Office regarding the Settled Status scheme. The information derived from those meetings has been extremely helpful in briefing our member churches and encouraging participation in the scheme. We have also been briefed by CAB on the Welsh Government funded additional advice service, and wish to acknowledge the value added by Welsh Government adopting this approach.
- We have been pleased to help contribute to thinking around Wales after the transition period through the [Future Wellbeing of Wales](#) programme, funded by Welsh Government and co-ordinated by WCVA. This cross-sectoral programme has shown an innovative and valuable approach to tackling major crises together – not just Brexit, but also the climate crisis.

## 2. Preparedness of key economic sectors in Wales

Churches and faith groups do not primarily constitute an ‘economic sector’, but we do of course operate within the Welsh economy and contribute to it.

- We have been able to take some steps to prepare for the end of the transition period such as participating in a WCVA organised third sector visit to Brussels in February 2020, and encouraging our member churches to strengthen their involvement with pan-European organisations such as the Conference of European Churches, the Churches’ Commission on Migrants in Europe and the Diocese in Europe of the Church of England, none of which are dependent on EU membership.
- There are, however, areas where it has been difficult to achieve the level of preparedness which we would wish, such as the continued lack of clarity

regarding the new 'points-based' immigration system and how it will impact on visits by members and leaders of churches overseas, and the ability to recruit from overseas using 'minister of religion' (Tier 2), 'religious worker' (Tier 5) visas, students and overseas volunteers. The church is an essentially worldwide body and the maintenance of international links through such exchanges of talent, expertise and insight are essential to us. The extension of these visa requirements to the EU has caused a reduction in such worldwide exchanges, and we hope that post pandemic we will be able to resume such links in person as well as virtually.

3. the implications for preparedness arising from the negotiation of UK international agreements, including the UK-EU future relationship agreement (or agreements), other significant free trade agreements and the Continuity Negotiations and Coordination programme

- At its meeting on 24 August 2020, the Working Party was briefed on the UK Internal Market Bill, published on September 9. We are deeply concerned at the potential effects on the devolved settlement of this Bill in seeking to ensure mutual recognition and non-discrimination with regard to goods, services and professional qualifications, many of which relate to devolved areas of policy, without a concomitant commitment to principles such as subsidiarity and proportionality. While members of churches hold a variety of views on devolution and its proper extent, all our member churches have been clear that in implementing the result of the 2016 referendum on EU membership, the result of the 2011 referendum that "the Assembly will be able to make laws on all matters in the 20 subject areas it has powers for, without needing the UK Parliament's agreement" needs also to be respected. We are writing about these matters to members of the House of Lords who have connections with churches in Wales prior to the Lords' consideration of this Bill commencing on October 19.
- We are concerned also at the potential effects of international trade agreements on matters which are of great concern to many of our members, such as animal welfare, labour standards, environmental protections, and so on. Many of these areas also are currently devolved to Wales and churches have been actively involved in seeking improvements in these areas. We are concerned that the Trade Bill currently before the UK Parliament threatens devolved powers in these areas, and note with great concern the comments by the Legislation, Constitution and Justice Committee in their [report on the Legislative Consent Memorandum](#) for this Bill that the Welsh Government's support for the Bill is based on an "the overdependency on non-legislative commitments being sought through non-binding intergovernmental agreements" (para 86). We note that similar issues have arisen also with regard to the UK Fisheries Bill. This is an aspect of the end of the transition period for which Welsh Government alone can adequately prepare - civil society is not in a position to do so - and we trust that work in this area can be strengthened.

4. intra-UK intergovernmental agreements relating to the end of the transition period, including the common frameworks programme.

- See our comments on Qn 3. It appears that the Internal Market Bill overwrites many of the proposed common frameworks with legislative provision, and like the LCJ Committee we are concerned at “the overdependency on ... non-binding intergovernmental agreements”.



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Following your telephone and e-mail invitations on 2 July to respond to this Inquiry, the matter has been discussed with relevant Rail Freight Group members to identify any particular issues they may be encountering regarding preparedness in Wales for the end of the transition period.

UK Government's recent update to the Border Operating Model included an Annex covering the rail requirements for international rail freight through the Channel Tunnel. Although there are a number of details still to be formally resolved, our members are broadly content that such services will be able to keep running from January.

More generally, the lack of clarity over the terms of trade with the EU from January remains of concern to businesses involved in importing and exporting, and for ports. However, we do not see these as specific to rail freight.

I am therefore now writing to confirm that no specific areas of concern have been identified within rail freight beyond those widely aired in respect of the preparedness of the United Kingdom as a whole.

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## Introduction

1. The Welsh NHS Confederation, which represents the seven Health Boards, three NHS Trusts in Wales and Health Education and Improvement Wales, welcomes the opportunity to comment further on Wales' preparedness for exiting the European Union.
2. With the EU and UK at a pinacol point in the negotiation process, developments continue to happen weekly between the EU and the UK Government, and the Welsh Government (WG), with engagement and information shared between the WG and NHS and social care organisations in Wales.
3. The Welsh NHS Confederation has previously provided detailed responses to the External Affairs and Additional Legislation (EAAL) Committee inquiries into Brexit, namely:
  - In November 2016 we provided a written response to the EAAL Committee consultation on the implications for Wales of Britain exiting the European Union.
  - In October 2017 we provided a written response and gave oral evidence to the EAAL Committee inquiry into resilience and preparedness: The WG's administrative and financial response to Brexit.
  - In January 2018 we attended and provided evidence to the EAAL Committee roundtable discussing the implications of Brexit for Wales.
  - In February 2018 we responded to EAAL Committee inquiry into Wales' future relationship with the European Union.
  - In September 2018 we responded to the EAAL Committee follow-up inquiry into how the WG is preparing for Brexit.
  - In September 2019 we responded to the EAAL Committee inquiry into the changes to free movement after Brexit and the implications for Wales.
  - In November 2019 we attended and provided evidence to the EAAL Committee oral evidence session for Brexit preparedness.

4. Our response on this occasion highlights the key developments following our last written response in September 2019 and provides an update on how the WG and the NHS in Wales are preparing for the end of the Transition Period. The major risks of leaving the Transition Period are the same as highlighted in our previous evidence to the Committee, with the additional context of COVID-19 and winter pressures.

5. The concurrent events of EU Transition, continued response to COVID-19, and winter pressures could have a large impact on both the staff and services of the Welsh NHS. There is immense pressure on the system which is impacting staff resilience and wellbeing for both the frontline response and emergency preparedness.

## Welsh Government action to prepare Wales for the end of the transition period

6. Since the referendum in June 2016, the WG has engaged with health and care bodies to identify areas that may be affected by leaving the EU. Leaving the EU has been discussed at a number of strategic meetings including in the NHS Executive Board, which is Chaired by the Director General for Health and Social Services and the NHS Wales Chief Executive, the WG Health and Social Care EU Transition Leadership Group and the Wales NHS Partnership Forum.

7. The Welsh NHS Confederation and our members have been working with WG officials to consider and assess the scale of the impact for Welsh health and social care services postEU exit, including contingency options. Since October 2017, the Welsh NHS Confederation has agreed, on behalf of our members, to be the main contact for coordinating specific Brexit actions across NHS organisations and working with the WG. This work is intended to support discussions on managing risks effectively within health and social care and supports the development of a shared work programme considering priority areas including; workforce, professional qualifications, reciprocal healthcare, regulatory issues, medicines, research and innovation, procurement and competition law, public health, disease prevention and employment rights. Other relevant areas will also be considered as they arise.

8. Since our previous written submission in September 2019, the WG Health and Social Care EU Transition Leadership Group has continued to meet regularly, of which the Welsh NHS Confederation is a member of. The Group usually meets monthly, but in the lead up to a potential no-deal situation at the end of 2019, the Group met fortnightly and fed back into a number of subgroups, including Senior Responsible Officers (SROs) to discuss operational readiness, the health securities group, and the communications group.

9. While subgroups met in November 2019 and were stood down once a Withdrawal Agreement was finalised, the Leadership Group continued to meet until March 2020. The Leadership Group did not meet in April, May, or June 2020 due to the beginning of the Coronavirus (COVID-19) pandemic. The Leadership

Group was reinstated in July 2020 and all other subgroups were stood up in September 2020. Since October 2020, all groups are meeting fortnightly to discuss preparations for the end of the Transition Period.

10. The Terms of Reference for all groups were updated in August/September 2020. The vision of the Leadership Group is to *“maintain strategic oversight of arrangements and preparations for EU Transition for Health & Social Care, including risks and mitigation actions, pre and post-EU Exit; maintain a watching brief on other policy areas, including through engagement in wider WG EU Transition governance structures; and be cognisant of the impacts of external factors and their relevance to EU transition issues (such as impacts of COVID-19)”*.

11. The purpose of the Leadership Group is to oversee and provide advice on: the challenges associated with EU transition for health and social care, including potential impacts of EU transition on services and outcomes for people and patients; the development of appropriate responses to address the challenges and potential impacts, and co-ordinated actions by service providers and partners; the status of contingency planning for different credible scenarios, including the scenario of no agreement on the future UK/EU relationship being reached by the end of the Transition Period; encouraging effective and co-ordinated communication by service providers and partners, with the public and other stakeholders; and the potential long-term impacts of EU transition on health and wellbeing in Wales, taking into account wider factors where relevant to EU transition.

12. WG also host a Contingency Group and Ministerial Advisory Group. The Contingency Group met in September 2020 and will meet again in October 2020. In this Group, stakeholders come together and discuss the preparations in place at a Wales and UK scale in areas such as risk assessments, medicines, medical devices and clinical consumables, social services, and organisational updates. The Ministerial Advisory Group, which last met in October 2020, is comprised of a wide variety of stakeholders across the health and social care sector and advises the Minister for Health and Social Services and Deputy Minister on key updates and concerns.

## UK Government action to prepare for the end of the transition period

13. On 3 August 2020<sup>1</sup>, the UK Government published a letter from the Department of Health and Social Care<sup>2</sup> (DHSC) to medicine suppliers setting out the UK Government’s plan, and requests of industry and the wider supply chain

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<sup>1</sup> Approaching the end of the Brexit transition: practical implications for the NHS. NHS Confederation. August 2020. <https://www.nhsconfed.org/resources/2020/08/approaching-the-end-of-brexit-transition-implications-for-the-nhs>

<sup>2</sup> Letter to medicines and medical products suppliers: 3 August 2020, UK Government. <https://www.gov.uk/government/publications/letter-to-medicines-and-medical-products-suppliers-3-august-2020>

ahead of the end of the Transition Period to help ensure the continuity of supply of medical goods into and out of the UK. The letter advised medicine suppliers to stockpile six weeks' worth of drugs to guard against disruption at the end of the Transition Period and to make boosting reserves a priority. It also reiterated that ministers will not be asking for an extension to the Transition Period past 31 December 2020, despite the COVID-19 pandemic, so suppliers should plan for all scenarios, including disruption to usual trading routes with the EU.

14. Also, on 3 August the UK Government published guidance on what healthcare services can do to prepare<sup>3</sup> for 1 January 2021 and is aimed at commissioners and healthcare providers, including hospitals, care homes, GP practices and community pharmacies. It covers advice, contacts and actions to help to plan for and manage potential service disruption around the supply of medical products, business continuity, workforce issues such as recognition of professional qualifications and EU settlement scheme applications, and EU funding through the Third Health Programme.

15. On 1 September 2020 the Medicines and Healthcare products Regulatory Agency (MHRA) published guidance<sup>4</sup> for the pharmaceutical industry and organisations on how to operate from 1 January 2021 (including on licensing of medicines and devices, clinical trials, importing and exporting medicinal products, pharmacovigilance procedures and new IT systems).

16. The scheme also includes separate arrangements for the air freight of medicines<sup>5</sup>. The UK Government is working closely with companies who provide medicines in the UK to ensure patients continue to get the medicines they need and are working with the WG to ensure appropriate measures are taken for Wales.

## Key issues for health and social care

17. As previously highlighted to the Committee, there are several issues for health and social care organisations as the UK prepares to end the Transition Period. Due to the issues being a concern for a range of health and social care organisations the Welsh NHS Confederation's Policy Forum published a briefing in June 2018, "The key issues for health and social care organisations as the UK prepares to leave the European Union"<sup>6</sup>, which was endorsed by 20 organisations

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<sup>3</sup> How healthcare providers can prepare for 1 January 2021. UK Government. (August 2020). <https://www.gov.uk/guidance/how-healthcare-providers-can-prepare-for-brexit>

<sup>4</sup> MHRA post-transition period information. UK Government. (October 2020). <https://www.gov.uk/government/collections/mhra-post-transition-period-information>

<sup>5</sup> Government secures critical freight flows as UK nears end of transition period. UK Government. October 2020. [https://www.gov.uk/government/news/government-secures-critical-freight-flows-as-uk-nears-end-of-transitionperiod?utm\\_source=Welsh+NHS+Confederation+Mailing+List&utm\\_campaign=f8bf4ccb2b-EMAIL\\_CAMPAIGN\\_2019\\_04\\_12\\_10\\_46\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_8d748bcca4-f8bf4ccb2b-52432535](https://www.gov.uk/government/news/government-secures-critical-freight-flows-as-uk-nears-end-of-transitionperiod?utm_source=Welsh+NHS+Confederation+Mailing+List&utm_campaign=f8bf4ccb2b-EMAIL_CAMPAIGN_2019_04_12_10_46_COPY_01&utm_medium=email&utm_term=0_8d748bcca4-f8bf4ccb2b-52432535)

<sup>6</sup> Welsh NHS Confederation Policy Forum, February 2020. The key issues for health and social care organisations as the UK prepares to leave the European Union. <https://www.nhsconfed.org/resources/2020/02/the-key-issues-for-health-and-social-care-organisations-as-the-uk-leaves-the-eu>

and updated in February 2020. The updated Policy Forum briefing is submitted with this written response because it puts forward the desired outcomes for the end of the Transition Period for health and social care organisations in Wales.

18. The outcomes highlighted with the briefing include:

- A continued domestic and international pipeline of high calibre professionals and trainees in health and social care to deliver sustainable NHS, social care, and independent health services to ensure the best care for our communities and people who use our services.
- Continued recognition of professional qualifications for people trained in the EU27 and mechanisms to alert each other of health and social care professionals who are prohibited or restricted to practice.
- Protection of workers' employment rights and patients' rights post-EU exit.
- Health and social care organisations across the UK continuing to participate in EU collaborative programmes, and lead and contribute positively to European Reference Networks and other collaborative EU networks, such as those which support medical research, post-EU exit.
- Patients continue to benefit from early access to the wide range of innovative health technologies available on the EU market and not miss out on participation in EU clinical trials.
- Regulatory alignment for the benefit of patients and the public's health, so that UK patients continue to have early access to the wide range of innovative health technologies available.
- Reciprocal healthcare arrangements preserved.
- Robust coordination mechanisms on public health and wellbeing with the same or higher level of safety guaranteed through domestic standards and regulations.
- A strong funding commitment to the healthcare sector, promoting solutions to minimise any additional pressures which may result from Brexit, as well as advocating for any loss of EU funds to be offset by alternative funding.
- Continued engagement between the WG and the UK Government to ensure the interests of the health and social care sector in Wales are safeguarded during the withdrawal process and beyond.

19. At the time of drafting, the recent statement<sup>7</sup> from the Prime Minister indicated the UK should 'get ready' for a no-deal or Australia-style trade deal if an agreement cannot be reached in the next few weeks with the EU. As will be detailed below, the NHS in Wales is well prepared and rehearsed if the UK leaves the Transition Period without an FTA with the EU. However, uncertainty will remain into the beginning of November if a 'light' deal could be reached.

20. As part of the letter in September 2020, the Director General for Health and Social Care Services and the NHS Wales Chief Executive wrote to NHS Wales organisations outlining what should be included in COVID-19 Operating Framework for Q3/Q4 2020-21, and the EU Transition was a cross-cutting theme. Work is ongoing to ensure response and management systems for COVID-19, EU Transition and winter planning are dovetailed as much as possible to reduce burdens and remove duplication for staff and the service.

21. In addition, leaving the Transition Period without an agreed FTA was re-added to all NHS organisations risk registers in July 2020 and internal planning processes within individual NHS organisations have been stood up. The WG NHS Executive Board continues to receive regular updates on EU Transition throughout the Transition Period.

22. At a Wales and UK level, many of the structures in place previously to manage a possible no-deal situation remain in place and relevant now. Since these management structures were in place pre-COVID and were tested throughout the COVID-19 response, groups across Wales and the UK have been able to incorporate any lessons learned in response to COVID-19 to ensure a robust response that avoids duplication and additional burdens.

23. Specifically concerning medicines, NHS Chief Pharmacists meet weekly and regularly liaise with the WG and NHS Wales Shared Service Partnership to manage supply issues and are actively linked into planning groups. Work is ongoing with the UK Government to identify if there are any at-risk medicines at a supplier level, determine if there are any consequences for medicines planning in Wales, and ensure prescribing behaviour is consistent with the latest recommendations and communications from the WG.

## Brexit, winter planning, and COVID-19

24. This year, the NHS is dealing with the concurrent events of normal winter pressures while continuing to respond to COVID-19 and preparing for the uncertainties of the end of the Transition Period. These concurrent events have impacted on staff resilience, both in terms of frontline response and emergency preparedness. The same staff across health and social care who are responsible for planning for the end of the Transition Period are managing COVID-19 and winter

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<sup>7</sup> PM statement on negotiations with the EU: 16 October 2020. UK Government.  
<https://www.gov.uk/government/speeches/pm-statement-on-brexit-negotiations-16-october-2020>

preparedness, including vaccine readiness. There is immense pressure on the system, and our members are concerned about the impact this may have on staff resilience, burnout, and the need for additional wellbeing support.

25. Since the last time we responded to the Committee, the most significant impact in the process of negotiating an FTA with the EU has been the international response to the COVID-19 pandemic. Since March 2020, the UK, WG and the NHS have been responding to a level of unprecedented demand due to COVID-19. In May 2020 we responded to the Health, Social Care and Sport Committee's [inquiry](#) into the COVID-19 response.

26. From March 2020, the majority of people and economic resources and attention at a political and service level have been focused on responding to the pandemic. This has meant that the negotiations between the two sides were paused to respond to COVID-19.

27. The deadline for the UK Government to request an extension to the Transition Period was 30 June 2020. Organisations such as the British Medical Association (BMA) voiced<sup>8</sup> concerns that the COVID-19 response had contributed to a lack of progress in the negotiations, and that the UK Government should seek to extend the Transition Period. Despite these calls, the Transition Period was not extended.

28. Since health is not an outright pillar of the negotiations and instead is weaved into other areas, such as reciprocal healthcare rights within social security arrangements, major obstacles in areas such as governance arrangement and fisheries have limited the overall progress of the negotiations. The EU does not want 'mini deals' and instead wants one arrangement to cover all areas and want to agree the principles of agreements before deciding on the detail of legal texts.

29. The Welsh NHS must manage a three-tier situation: preparations for the end of the Transition Period, seasonal winter planning and flu vaccinations, as well as the continued response to COVID-19 and local outbreaks. From considering the Health Impact Assessments that Public Health Wales NHS Trust have undertaken on Brexit<sup>9</sup> and COVID19<sup>10</sup>, the population health areas that could be impacted by Brexit, winter planning and COVID-19 include:

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<sup>8</sup> Demand to protect NHS in event of no-deal. British Medical Association. June 2020. <https://www.bma.org.uk/news-andopinion/demand-to-protect-nhs-in-event-of-no-deal>

<sup>9</sup> The Public Health Implications of Brexit in Wales: A Health Impact Assessment Approach - A rapid review and update. Public Health Wales. September 2019. <https://phw.nhs.wales/news/the-health-impacts-of-brexitrisks-of-harmful-impacts-increase-whilest-chances-of-positive-impacts-remain-unchanged/the-public-healthimplications-of-brex-it-in-wales-a-health-impact-assessment-approach-a-rapid-review-and-update/>

<sup>10</sup> A Health Impact Assessment of the 'Staying at Home and Social Distancing Policy' in Wales in response to the COVID-19 pandemic. Public Health Wales. June 2020. <https://phw.nhs.wales/news/staying-at-home-policyhas-reduced-spread-of-coronavirus-but-has-also-had-other-positive-and-negative-impacts-on-the-well-beingof-welsh-society/a-health-impact-assessment-of-the-staying-at-home-and-social-distancing-policy-in-wales-inresponse-to-th/>



- Economic recession, mass unemployment, the long-term impact on children, young people and vulnerable populations;
- Mental health issues such as uncertainty, loneliness and social isolation, or anxiety;
- Wider determinates of health such as healthy behaviours, housing, and air quality;
- Supply of essential products which may be impacted by FTAs or stockpiling behaviours; and
- Service delivery and resources (supplies and workforce) of the health and social care sector in Wales.

30. The impacts of COVID-19, winter, and Brexit cannot be managed separately. One key area of concern, given the impacts of concurrent events and command resilience, is avoiding duplication in response management. Since the same staff are responsible to manage the three scenarios, as identified above, work is underway across the sector and with WG to ensure the management frameworks are dovetailed to remove as much duplication as possible.

31. Communication to the public about processes in place, emphasising the need to not stockpile supplies such as food and medicine locally, encouraging applications to the EU Settlement Scheme, and the importance of receiving a flu vaccine will be key areas to communicate in the coming weeks and months.

## Impact of FTAs with the EU and other countries

32. In January 2020 we published a briefing<sup>11</sup> that starts to examine how FTAs negotiated at a UK level could impact the NHS in Wales and how the key asks may differ between national and devolved administrations.

33. Health issues are often not high on the agenda (or on the agenda at all) in trade negotiations. However, FTAs with countries including the EU, US, Japan, and Australia should not result in lowering standards or increasing costs for patients and the health and social care system. This is also an opportunity to promote the core principles of the Welsh NHS, including equality, prevention, and the wellbeing of future generations

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<sup>11</sup> The NHS and Future Free Trade Agreements: Implications for Devolved Nations. Welsh NHS Confederation. (January 2020). <https://www.nhsconfed.org/resources/2020/01/trade-agreements-and-devolved-nations>

## Intra-governmental agreements and common frameworks

34. The UK Government released an updated frameworks analysis<sup>12</sup> policy paper on 24 September 2020 that shows a breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales, and Northern Ireland. In Wales, there are a total of 66 devolved policies areas that interact with EU law (35 require no further action, 13 nonlegislative mechanisms, and 18 legislative mechanisms).

35. The health policy areas that require a non-legislative common framework include air quality, nutrition labelling/composition and standards, blood safety and quality, organs tissues and cells and public health, while areas such as mutual recognition of professional qualifications (MRPQ), food composition standards and labelling, and reciprocal and cross-border healthcare would require primary legislation. We have published briefings detailing how MRPQs<sup>13</sup> and reciprocal healthcare<sup>14</sup> could be impacted in a no-deal situation.

36. The overall landscape relating to EU Transition has also been further complicated by the UK Government's recently published UK Internal Market Bill. The proposals currently included in the Bill have significant implications for devolved powers and for implementation of parts of the Withdrawal Agreement agreed with the EU. The importance of delivering the common frameworks is now considerably heightened in the context of the UK Internal Market Bill.

## Brexit Health Alliance and Cavendish Coalition

37. As an active member of the Brexit Health Alliance<sup>15</sup> and Cavendish Coalition<sup>16</sup> we have ensured that any briefings produced or any submissions to the UK Government, House of Lords or Westminster Committees reflect the issues impacting on the health and care system in Wales.

38. Since our previous submission to the Committee in September 2019 the Brexit Health Alliance has published:

- A briefing in October 2020 on How we can protect patients as we approach the end of the Brexit transition.<sup>17</sup>

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<sup>12</sup> Framework analysis. UK Government. (September 2020).

[https://www.gov.uk/government/publications/frameworksanalysis?utm\\_source=3e9994a9-036f-4064-81e0-32f66289fa96&utm\\_medium=email&utm\\_campaign=govuknotifications&utm\\_content=immediate](https://www.gov.uk/government/publications/frameworksanalysis?utm_source=3e9994a9-036f-4064-81e0-32f66289fa96&utm_medium=email&utm_campaign=govuknotifications&utm_content=immediate)

<sup>13</sup> Mutually Recognised Professional Qualifications. Welsh NHS Confederation. (July 2019).

<https://www.nhsconfed.org/resources/2019/07/mutually-recognised-professional-qualifications>

<sup>14</sup> Reciprocal Healthcare Arrangement in a No Deal Brexit Scenario. Welsh NHS Confederation. (October 2019).

<https://www.nhsconfed.org/resources/2019/10/reciprocal-healthcare-in-a-no-deal-brexite>

<sup>15</sup> Brexit Health Alliance, [nhsconfed.org/BrexitHealthAlliance](https://www.nhsconfed.org/BrexitHealthAlliance)

<sup>16</sup> Cavendish Coalition, [nhsconfed.org/your-workforce/need-to-know/brexit-and-the-nhs-eu-workforce/the-cavendishcoalition](https://www.nhsconfed.org/your-workforce/need-to-know/brexit-and-the-nhs-eu-workforce/the-cavendishcoalition)

<sup>17</sup> How we can protect patients as we approach the end of Brexit transition. Brexit Health Alliance. (October 2020).

<https://www.nhsconfed.org/resources/2020/10/bha-briefing-how-we-protect-patients-after-brexit-transition>

- A briefing<sup>18</sup> and infographic<sup>19</sup> in August 2020 on Healthcare rights for patients after Brexit.
- A briefing<sup>20</sup> and infographic<sup>21</sup> in June 2020 entitled Pandemic ready? Charting a future relationship with the EU to help manage another coronavirus.
- A briefing in June 2020 on Negotiating a new relationship with the EU that safeguards patient access to medicines and medical technologies.<sup>22</sup>
- A briefing in February 2020 on Prioritising health in our future relationship with the EU.<sup>23</sup>
- A briefing in December 2019 on Protecting the health of citizens and patients across the UK and EU: Priorities for a future relationship.<sup>24</sup>

39. The Cavendish Coalition has produced several resources that focus on the importance of maintaining a strong immigration system that supports recruitment into the health and social care sector. The published a response<sup>25</sup> to the proposed points-based immigration system, submission<sup>26</sup> and response<sup>27</sup> to the Migration Advisory Committee on their review into the Shortage Occupation

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<sup>18</sup> Healthcare rights for patients: what's at stake after Brexit? Brexit Health Alliance. (August 2020). <https://www.nhsconfed.org/resources/2020/08/healthcare-rights-for-patients-whats-at-stake-after-brexit>

<sup>19</sup> Healthcare rights for patients after Brexit – infographic. Brexit Health Alliance. (August 2020). <https://www.nhsconfed.org/resources/2020/08/healthcare-rights-for-patients-after-brexit-infographic>

<sup>20</sup> Pandemic ready? How post-Brexit negotiations could affect our ability to manage another coronavirus. Brexit Health Alliance. (June 2020). <https://www.nhsconfed.org/resources/2020/06/bha-briefing-pandemic-ready-managing-anothercoronavirus>

<sup>21</sup> Pandemic ready? Charting a future relationship with the EU to help manage another coronavirus. Brexit Health Alliance. (June 2020). <https://www.nhsconfed.org/resources/2020/06/bha-infographic-charting-a-future-relationship-with-the-eu>

<sup>22</sup> Negotiating a new relationship with the EU that safeguards patient access to medicines and medical technologies. Brexit Health Alliance. (June 2020). <https://www.nhsconfed.org/resources/2020/06/brexit-impact-patient-medicines-medicaltechnologies>

<sup>23</sup> Prioritising health in our future relationship with the EU: a Brexit Health Alliance briefing. Brexit Health Alliance. (February 2020). <https://www.nhsconfed.org/resources/2020/02/uk-eu-negotiation-mandate>

<sup>24</sup> Protecting the health of citizens and patients across the UK and EU: Priorities for a future relationship. Brexit Health Alliance. (December 2019). <https://www.nhsconfed.org/resources/2019/12/protecting-the-health-of-citizens-andpatients-across-the-uk-and-eu>

<sup>25</sup> UK's future immigration system: priorities for social care and health. Cavendish Coalition. (December 2019). <https://www.nhsemployers.org/-/media/Employers/Documents/Cavendish-Coalition/Cavendish-Coalition-Futureimmigration-system.pdf?la=en&hash=B9A8D9D66200B5C9B1A064665B739BA2EA14C6A7>

<sup>26</sup> Cavendish Coalition submission to Migration Advisory Committee on shortage occupation list. Cavendish Coalition. (July 2020). <https://www.nhsemployers.org/case-studies-and-resources/2020/07/cavendish-coalition-submission-to-migrationadvisory-committee-on-shortage-occupation-list>

<sup>27</sup> MAC recommendations for shortage occupation list still fall short for social care workers. Cavendish Coalition. (September 2020). <https://www.nhsconfed.org/news/2020/09/mac-recommendations-for-shortage-occupation-list-stillfall-short-for-social-care-workers>

List, as well as a letter<sup>28</sup> to the Prime Minister with warnings<sup>29</sup> of what the new immigration system would mean for social care.

## Welsh NHS Workforce update

40. As part of the EU Transition Support Fund Grant received from the WG, the Welsh NHS Confederation commissioned the Wales Centre for Public Policy to analyse the likely effects of changes to UK migration policy on the health and social care workforce, which staff groups might be most affected, and the implications for the long-term workforce strategy for health and social care, including future retention and recruitment.

41. The report<sup>30</sup> found that due to changes to UK migration policy some EU nationals would be ineligible to work in the NHS in Wales (approx. 1% of the current workforce), suggesting that a small but not insignificant impact on future recruitment is likely for roles such as ambulance drivers, dental surgery assistants, social care support workers, health care support workers/ healthcare assistants, patient care assistants, emergency care assistants, and pharmacy assistants.

42. The implications for social care are more severe. Fewer roles will qualify for the HCV or Skilled Worker visa because they have been labelled 'low skilled', and the greater turnover of staff in the sector presents particular challenges, with likely knock-on impacts for the NHS. These roles are essential and should not be forgotten when considering the new rules and their coverage. While the immigration proposals are more favourable for recruitment into the NHS, consideration also needs to be given to the social care sector.

43. The impact of future immigration policies on the Welsh NHS workforce is a medium-term issue which are working closely with our members, social care, and external stakeholders to support and influence.

44. The Welsh NHS appears well placed to support current EU staff to apply to the EU Settled Status Scheme and to support future migrant workers through the new system. However, ensuring that as many eligible staff as possible apply to the EU Settled Status Scheme before the deadline of 30 June 2021 is a major concern for our members.

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<sup>28</sup> Cavendish Coalition letter: New points-based immigration system and social care. Cavendish Coalition. (July 2020). <https://www.nhsconfed.org/resources/2020/07/cavendish-coalition-pm-letter>

<sup>29</sup> Immigration proposals could create workforce cliff edge for social care, warn national bodies. Cavendish Coalition. (July 2020). <https://www.nhsconfed.org/news/2020/07/cavendish-coalition-pm-letter>

<sup>30</sup> UK migration policy and the Welsh NHS and social care workforce. Wales Centre for Public Policy. (September 2020). <https://www.wcpp.org.uk/publication/uk-migration-policy-and-the-welsh-nhs-and-social-care-workforce/>

## Conclusion

45. The Welsh NHS Confederation, on behalf of our members, will continue to highlight the possible implications of Brexit on NHS Wales with the WG, Members of the Senedd and our stakeholders. In addition, as a member of the Cavendish Coalition and the Brexit Health Alliance, we will ensure that the impact for Wales is being made clear at a UK level by highlighting the likely effects on Welsh policy and legislation.

# The key issues for health and social care organisations as the UK leaves the European Union

## Summary

In June 2018, the Welsh NHS Confederation's Policy Forum released a [publication](#) summarising the ten key issues for health and social care organisations in Wales as the UK left the EU. Now that we are in the Transition Period, this briefing will reiterate the key issues for the sector in Wales. Our desired outcomes for the transition period and beyond are to see:

- **Recruitment of high calibre professionals and trainees from the UK and abroad to work across the health and social care sector...** Any future immigration rules must recognise health and social care as priority sectors for international recruitment.
- **Continue to recognise the professional qualifications for people trained in the EU27...** We want continued recognition of professional qualifications of nurses, doctors, dentists, pharmacists, midwives and Allied Health Professionals trained in the EU27 and the UK.
- **Protection of workers' employment rights and the rights of patients and people who use care and support post-Brexit...** We will continue to campaign through the Cavendish Coalition to ensure workers' rights are protected.
- **UK health and social care organisations continue to participate in EU networks and programmes...** Without access to EU funding and collaborative projects, Welsh science excellence risks falling behind and organisations including the NHS will become less attractive to professionals wanting to undertake research.
- **Patients continue to benefit from early access to innovative technologies on the EU market and participate in clinical trials...** Delay and expense in accessing treatments could be caused by separating the Medicines and Healthcare products Regulatory Agency (MHRA) from the close working relationship it maintains with the European Medicines Agency (EMA). NHS patients must not miss out on opportunities to participate in EU clinical trials.
- **Regulatory alignment for the benefit of patients, people who use care and support, and public health to ensure early access to innovative health and care technologies...** Continue cooperation is needed for frictionless trade of health products across UK/EU borders. Any future trade deals should support population health and wellbeing by improving the wider determinants of

mental and physical health such as employment, good housing and nutrition.

- **Reciprocal healthcare arrangements preserved...** As part of the Brexit Health Alliance, we are campaigning for continued access to reciprocal healthcare to ensure simple and safe access to treatment when working, living or travelling into the EU, at local, affordable cost.
- **Robust coordination mechanisms on public health and wellbeing standards to guarantee equal or higher safety...** Continued close coordination between the UK and EU on public health and wellbeing through sharing data and alerts about cross-border threats.
- **A strong funding commitment for the health and social care sectors...** A key priority for Wales is to understand the rules of engagement for accessing any replacement funding after Brexit, such as the UK Shared Prosperity Fund.
- **Engagement between Welsh Government and the UK Government protecting the interests of health and social organisations in Wales...** We will continue to highlight the possible implications for the NHS in Wales of the UK exiting the EU with the UK Government, Welsh Government and Assembly Members.

## Desired outcome: Recruitment of high calibre professionals and trainees from the UK and abroad to work across the health and social care sector.

### The number of international citizens working across health and social care.

A total exit from the single market, as put forward by the UK Government, will leave the UK free to determine its policies on immigration with implications for health and social care. We still believe it is crucial to ensure any future UK immigration rules recognise health and social care as priority sectors for overseas recruitment, from both inside and outside the EU.

According to the latest figures (December 2019), 1,741 individuals directly employed by the NHS in Wales identify as European Union (EU) or European Economic Area (EEA) nationals. This equates to 1.85% of the total workforce on the Electronic Staff Record. This includes a significant number of trained, qualified and dedicated staff who could not be replaced in the short term, including 6% of medical and dental professionals and 2% of Allied Health Professionals and healthcare scientists. This is in addition to the 2,742 members of the workforce (2.9%) that identify as Rest of World (i.e. nonUK and non-EEA), including 19% of medical and dental professionals.

Doctors from Europe make a vital contribution to UK health services. Currently, there are 101 GPs (4% of total) on the General Medical Council (GMC) register in

Wales who gained their primary medical qualification from another EEA country, and this has remained unchanged since June 2018.

In relation to social care, research by Ipsos MORI [on the Implications of Brexit on Social Care and Childcare Workforce in Wales](#) published in March 2019 estimates 6.4% (2,900) of the 45,450 staff employed by registered social care settings in Wales are non-UK EU nationals. This estimate ranges from just over 4% for domiciliary care and registered homes for children, to 8.3% in residential care. If migrant workers are not able to be part of the social care workforce in the future the outlook is worrying for the sector and for the elderly, the vulnerable, the disabled, carers to enable capacity across the health and the social care workforce.

### Settled Status Scheme

We value all EU/EEA nationals working in the health service, not just as professionals, but to the communities they live in. We want to encourage and support EU national staff to apply for the free [Settled Status Scheme](#). For complex cases the EU Citizens Immigration Advice Service, [www.eusswales.com](http://www.eusswales.com), details a range of third sector organisations that can provide free assistance. The Welsh NHS Confederation's [Preparing for Settled Status Line Manager Toolkit](#) is designed to help managers working in the NHS, but can be used across public and private sectors, provide support to European citizens working within their organisations.

### Future immigration proposals

We want an immigration policy which retains and attracts talented individuals worldwide to work in our health and social care services. As members of the [Cavendish Coalition](#), a group of 36 health and social care organisations committed to providing the best care to communities, patients and residents while leaving the European Union, we have provided information to the UK Government to ensure that the [UK's future immigration system address the priorities for health and social care](#). We also engaged with the National Assembly's External Affairs and Additional Legislation Committee in November 2019 on their examination into the [implications of ending free movement](#).

In December 2018, the Immigration White Paper outlined principles of a skills-based immigration system for all non-UK citizens. We have continually engaged with the Home Office on what future immigration policies could mean for our workforce. As well as representing our members views on the Home Office National Advisory Group, we responded to the Immigration White Paper on behalf of our [members](#) and through our [Policy Forum](#), which was endorsed by 17 organisations.

Following the General Election in December 2019, the new UK Government's policy direction shifted to a points-based immigration system with a fast-track visa for NHS workforce. In January 2020, the Migration Advisory Committee (MAC) released its [report](#) on the salary threshold and the potential for a points-based immigration system (where we responded to the Call for Evidence).



According to details of the [points-based immigration policy](#), to enter the UK individuals will need at least 70 points by meeting: a skills level of RQF3+ (A level equivalent); a salary threshold of £25,600; the English language requirement; and have a job offer. There will be some tradable points available if the salary is below £25,600 (but not less than £20,480): if the job is on the [Shortage Occupation List](#) or if they have a PhD relevant to the position, they can acquire additional points. There will be no general low-skilled or temporary work route, and applicants would be subject to pay the Immigration Health Surcharge.

We welcome the recommendation to lower the salary threshold to £25,600. However, we are still concerned that this does not go far enough to address the workforce challenges in social care despite recognition of the problem in the MAC report. These are the thousands of people who provide personal care to vulnerable people, and there is a particular reliance on workers from outside the UK to help provide this service. Currently, the system focused on skills, qualifications and especially on salary doesn't recognise the current and future needs of social care and the demographics in Wales. Wales' population is more reliant on net migration and is ageing, with more people aged over 65 years that make up a larger share of the population. At the same time, there are fewer young people and working aged people who can take care of the growing ageing population in the future.

### **Desired outcome: Continue to recognise the professional qualifications for people trained in the EU27.**

We still want to ensure that the EU27 and UK health and social care professionals, and the wider system, continue to benefit from training and education opportunities and automatic recognition of qualifications. We want continued recognition of professional qualifications of nurses, doctors, dentists, pharmacists, midwives and Allied Health Professionals trained in the EU27 and the UK before the transition period ends. In July 2019, we published a [briefing](#) on how mutually recognised professional qualifications (MRPQs) would be impacted by Brexit.

Since the UK left the EU with a deal, healthcare professionals whose qualification has been recognised and who were registered before 31 January 2020 will continue to be registered afterwards. The Mutual Recognition of Professional Qualification Directive will continue until 31 December 2020. UK regulators, including the [General Medical Council \(GMC\)](#), engage with the UK Government's Department of Health and Social Care to review arrangements for the processing of applications to the register from individuals who have gained their health professional qualification outside of the UK. Any qualifications that are not entitled to automatic recognition will be assessed by the relevant regulator as it is currently.

The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) 2019 makes similar provision for social care professionals in Wales. This ensures that a common framework for the recognition of social care professionals within the UK continues to exist post-EU exit. If those EU or Swiss

national qualifications are comparable to those in the UK, then the qualification will be recognised without additional tests other than on language skills. Social Care Wales, the workforce regulator, will have discretion to decide how to treat noncomparable EEA or Swiss qualifications.

The GMC led the campaign for the introduction of a legal duty at European level to share fitness to practise alerts using the European Commission's Internal Market Information (IMI) system, which came into force in January 2016 and has a strong role with public-private partnership and clinical research. Participation in this system is contingent on single market membership – the UK is still part of the IMI throughout the transition period, but a 'hard' Brexit will result in the UK's removal from the system. If this happens, the GMC will need to decide how to share information with European regulators and how they obtain similar information in return. This is particularly important as European regulators will continue to have access to the IMI system and may be unwilling to establish a separate system solely for UK health professional regulators.

### Desired outcome: Protection of workers' employment rights and the rights of patients and people who use care and support post-Brexit.

A substantial proportion of UK employment law originates from the EU and provides important protections for social care and health staff, including European Working Time Directive (which outlines the number of hours an employee can work before taking a break and how many hours can be worked in a week) and the Prevention from Sharp Injuries in the Hospital and Healthcare Sector Directive (which regulates the prevention of sharps injuries and especially prevalent in healthcare settings and are a major hazard and cause of sickness absence in the sector worldwide).

Changes to workers' rights could result in health and social care staff working longer hours, exacerbating the pressures they are under, and could lead to increased sickness and potentially pose risks to patient safety. In addition, already vulnerable people could be at increased risk without specific legal protection for patients and service users.

Under the [European Union \(Withdrawal Agreement\) Act 2020](#), many of the provisions protecting workers' rights were removed from previous versions. These would have provided additional procedural protections for workers' rights currently part of EU law. However, under current arrangements, they are not protected against modification, repeal or revocation in domestic law once the transition period has ended. This presents a significant risk and we will continue to campaign through the [Cavendish Coalition](#) to ensure workers' rights are protected.

## Desired outcome: UK health and social care organisations continue to participate in EU networks and programmes.

European nations have created a world-leading location for research, innovation, and a world-class funding agency. Clinical research and innovation are key components of health and social care activity across Wales and the UK and healthcare organisations have a long tradition of EU collaborative research. The EU enables medical research collaboration by supporting the sharing of research staff and expertise, cross-border trials, funding and the development of research facilities.

In August 2019, we published a [briefing](#) which describes how Wales and the UK could be impacted by the loss of EU funding. Without access to EU funding and collaborative projects, Welsh science excellence risks falling behind, and organisations including the NHS could become less attractive to professionals wanting to undertake research. In January 2020, the Wellcome Trust published [a report on what a simulated negotiation process for research and innovation](#) could look like and concluded that a EU-UK science deal is possible and that full UK association to Horizon Europe, with as few restrictions on access as possible, must be at the heart of any EU-UK science deal.

Continued participation in a Europe-wide system that encourages cooperation, innovation and research to continually improve patients' options for treatment is a priority. The UK has a very strong science base but working together with the EU, our capacity is greater than the sum of the parts and enables researchers to deliver game-changing breakthroughs. In the face of global competition, continued close UK-EU collaboration is vital to retain Europe's reputation as an attractive destination for cutting-edge research.

## Desired outcome: Patients continue to benefit from early access to innovative technologies on the EU market and participate in clinical trials.

The UK will follow the rules of the European Medicines Agency (EMA) throughout the transition period. The EMA ensures that medicines are safe, effective and high quality, supports cross-border collaboration, provides a common framework for assessing and monitoring drug safety and efficacy, and allows timely access to new therapies and technologies.

The EMA represents 25% of the global pharmaceutical sales market, compared to the UK's 3% share in isolation. If the UK leaves the EMA arrangements and develops its drug approval system, it may lose its 'tier 1' status, which would lead to delayed access by up to 12 to 24 months to new medicines and medical devices, weakened post-approval regulation and pharmacovigilance or a loss of expertise. The UK's Medicines and Healthcare products Regulatory Agency (MHRA), which regulates medicines, medical devices and blood components for

transfusion in the UK, is a significant contributor to EU regulatory systems and processes, both for medicines and medical technologies.

NHS patients must not miss out on opportunities to participate in EU clinical trials. Multi-country clinical trials must continue post-EU withdrawal, particularly for rare diseases and personalised medicine, as these trials provide researchers with access to the large population base required.

The UK is leading the rest of Europe for early-stage clinical research into new medicines and vaccines, with more than 600 commercial clinical trials taking place in the NHS, [according to a report](#) by ABPI in November 2019.

Over the transition period, it will be essential to establish how the future relationship will impact clinical trials for new drugs. The [EU Clinical Trial Regulation](#) was due to take effect in 2019 but has yet to come into force. This Regulation will harmonise the assessment and supervision processes for clinical trials throughout the EU to create a single-entry point for companies that wish to carry out trials of new drugs on participants in different countries. The pharmaceutical industry continues to express concerns that leaving the EU without an agreement of what the future relationship will look like could result in the UK losing out on some trials that might otherwise benefit patients.

Clarity must be provided before the end of the transition period if there is to be regulatory alignment or divergence with the EU. For example, one of the intentions of the recently introduced [Medicines and Medical Devices Bill](#) is to ensure that UK legislation relating to medical devices, medicines, and clinical trials can be updated in response to patient safety concerns and the future global relationship of the UK.

**Desired outcome: Regulatory alignment for the benefit of patients, people who use care and support, and public health to ensure early access to innovative health and care technologies.**

Over 2,600 medicinal products have some stage of manufacture based in the UK. This equates to 45 million patient packs of medicines supplied from the UK to other EU27 and EEA countries every month. Over 37 million patient packs of medicines come the other way, supplied from the EU27 and EEA to the UK. Ensuring continued cooperation in import and export of medicines and medical technologies for frictionless trade of health products across UK/EU borders should be a priority outcome of the Brexit negotiations.

Shared regulatory frameworks should continue for medicines and medical technologies across the UK and the EU so that patients are guaranteed a high level of safety, rapid access to new treatments, and public health and wellbeing are protected. This is particularly true for smaller patient groups, such as children and rare disease patients, where a critical mass across several countries is required.

If the UK establishes a separate regulatory framework to continue to trade with the EU block of countries, the UK would still need to abide by its principles. This would impact all those involved in innovative health technologies, the pharmaceutical industry, medical devices and medical technology manufacturers, distributors, suppliers, researchers, NHS Wales, and most importantly, patients.

As outlined in our [trade briefing](#), published in January 2020, we call for any future trade deals to create an economic climate that will support population health and wellbeing, by improving the wider determinants of mental and physical health such as employment, good housing, education and nutrition.

Trade agreements between the UK and third countries should protect patients and the public from provisions that could increase healthcare costs, lower standards, or place additional burdens on services and budgets in health and social care. Nor should such provisions inhibit the ability of future UK Governments to promote population health and wellbeing, for example through regulation. The interests of patients should not be compromised in exchange for short-term commercial advantages and the long-term impact on public health and population wellbeing should always be considered during future trade negotiations.

There is concern that the UK Government has expressed divergence from EU regulations post-EU withdrawal, so that the UK would be able to make its own rules on certain sectors. This would impact regulatory alignment as well as future trading relationships. One of our major goals as members of the [Brexit Health Alliance](#) is to ensure aligned regulatory frameworks continue for medicines and medical technologies across the UK and the EU so that patients are guaranteed a high level of safety and rapid access to new treatments. Particularly for smaller patient groups, such as children and rare disease patients, where a critical mass across several countries is required.

### Desired outcome: Reciprocal healthcare arrangements preserved.

Under current EU law, EU citizens benefit from rights to reciprocal healthcare when they are in any of the European Union's Member States and apply whether they are travelling temporarily, residing permanently or receive pre-arranged medical treatment in a EU Member State. Until the end of the transition period there will be no changes to the European Health Insurance Card (EHIC) scheme and EHIC holders can continue using their cards. We welcome this arrangement as it gives peace of mind to travellers who know that if they carry an EHIC they will be covered for urgent treatment, regardless of any pre-existing conditions, and to expatriates who can access healthcare in their country of residence.

Many UK citizens currently rely on the EHIC exclusively, even though it may not cover all costs (for example repatriation). Loss of access to the card at the end of the transition period would mean all citizens travelling across the UK/EU border

would have to take out private medical insurance, as they do now when visiting the USA. Some people with long-term conditions, poor health, or disabilities may be unable to afford the cost of private insurance. Those who travel uninsured and need urgent or emergency care could be faced with large bills.

Current schemes also enable UK or EU citizens who need planned treatment in another EU country because, for example, the relevant expertise or equipment is not available in the country in which they reside. This provision is especially valuable for patients with rare diseases as there may be only a few centres of excellence in the EU where specialist treatment can be provided or in border situations where the nearest suitable facilities may be in a different Member State.

Pensioners residing abroad who currently benefit from “S1” arrangements, if allowed to stay in the host country after the transition period, would have to take out healthcare insurance to access local services. More British pensioners are living in the EU27 countries than vice-versa who have the right to receive healthcare on the same terms as the local population thanks to EU reciprocal healthcare arrangements. If these arrangements were to be discontinued, it is reasonable to assume that a proportion of these pensioners would return to the UK. Planning and funding provisions would have to be made for them in the UK’s health and care system.

As part of the [Brexit Health Alliance](#), we are campaigning for continued access to reciprocal healthcare rights after the end of the transition period. UK and EU citizens to continue to benefit from rights to healthcare in any of the EU member states ensuring simple and safe access to treatment when working, living or travelling, at local, affordable cost.

New non-reciprocal arrangements would also increase the administrative and resource burden in the UK when providing health services to EU citizens. Currently, managing access to health services by non-EU citizens is more complex than managing access for EU nationals.

**Desired outcome: Robust co-ordination mechanisms on public health and wellbeing standards to guarantee equal or higher safety.**

The EU has a significant impact on health and wellbeing in Wales, both directly and indirectly. The health of citizens across Europe, including the UK, needs to be protected from pan-European disease outbreaks. Tackling these health risks effectively requires joined-up policies and action, and the UK and EU need to reach an agreement on the best way of collaborating to fight these public health risks after the UK leaves the EU.

The EU has several agencies that are directly relevant to health and wellbeing, such as the European Centre for Disease Prevention and Control (ECDC), the European Food Safety Authority (EFSA), and the European Medicines Agency (EMA). These agencies undertake monitoring, surveillance, trend analysis and risk

assessments, as well as providing alerts to UK Government and stakeholders. They also support shared learning across borders and provide a platform for coordinated responses to global threats.

A significant proportion of the domestic legislation in public health and consumer protection originates from the EU, including environmental protection, food standards, health and nutrition, tobacco and alcohol, as well as cost and availability of fresh food.

Continued close coordination between the UK and EU on public health and wellbeing through sharing data and alerts about cross-border threats is needed (such as the Early Warning and Response System) for timely sharing of information about health threats and ensuring maximum preparedness to tackle them. Participation in key EU data-sharing platforms and alert systems, such as the Early Warning and Response System, for timely sharing of information about health threats and ensuring maximum preparedness to tackle them. The UK must also seek the highest possible level of coordination on health promotion and disease prevention programmes.

Any reduced level of collaboration with the ECDC could lead to delays in reporting and disease tracking, hampering outbreak response. It would also reduce the effectiveness of pandemic preparedness planning and co-ordinating appropriate responses.

We recommend that the UK Government negotiate an agreement to continue to share information, evidence and planning for pandemic preparedness with the ECDC. Maintaining the fullest possible access to the ECDC's emergency preparedness systems would enable the UK to continue sharing data and evidence with the EU, and vice-versa, to protect its citizens and ensure preparedness coordination.

### **Desired outcome: A strong funding commitment for the health and social care sectors.**

Under the Withdrawal Agreement, the UK will continue to participate in the programmes financed by the current EU Budget until their closure – the UK currently receives EU funding amounting to around £680 million per year in EU funding. This means that all EU funded programmes will be fully funded under the current 2014 - 2020 Multiannual Financial Framework. We welcome the UK Government's commitment to underwrite Horizon 2020 funding beyond the date the UK leaves the EU for projects approved while the UK was a EU member. However, the future beyond 2020 is uncertain, including the connections to Horizon Europe.

In addition to the impact on the economy, EU Structural Funds have supported initiatives to reduce inequalities in health, tackle poverty and contribute to the promotion of the wellbeing of the Welsh people. Wales is home to some of the poorest regions in the EU and so receives a disproportionately larger amount of EU funding compared with other parts of the UK. Unlike other areas of the UK,

Wales is a net beneficiary of the EU, receiving £245 million more from the EU than it pays in. Any loss of funding could negatively impact on wellbeing and inequalities in Wales.

Wales receives about £295 million of European Structural and Investment Fund a year. To replace this funding, the UK Government has pledged to set up a Shared Prosperity Fund (SPF) to “reduce inequalities between communities”. The UK is a net contributor to the EU budget; therefore, it could be possible to reallocate some of the money that currently goes to the EU into the SPF with no further impact on the public budget. The Welsh Government has raised concerns about the governance of a Shared Prosperity Fund, because of the potential impact of regional funding being directed from Westminster and the general lack of clarity concerning the Fund.

Local Government has been a key partner in delivering EU Funding in Wales over several programming periods. It is important in the delivery of EU-funded activity within regions through the direct delivery of capital and revenue schemes that support getting people back into employment is provided. Local Authorities also play a strategic role in the delivery of these programmes on a local level. A key priority for Wales is to understand the rules of engagement for accessing any replacement funding after Brexit. Plans for a Welsh regional development fund is currently being developed by specialist technical groups and the initial proposals are expected to be published in March 2020. The new system is expected to be up and running sometime in 2021.

As mentioned by Public Health Wales NHS Trust in their Health Impact Assessment, the period of uncertainty related to Brexit could impact the mental health and wellbeing of the population and may disproportionately affect specific groups, such as [farming communities](#), lower socio-economic groups and people with disabilities. We believe it is important to understand the impacts on health and wellbeing during the negotiation and transition period. The [Health Impact Assessment](#) into the consequences of Brexit by Public Health Wales NHS Trust is the only study of its kind to look into the type and scale of potential impacts on the communities of Wales.

### **Desired outcome: Engagement between Welsh Government and the UK Government protecting the interests of health and social organisations in Wales.**

The Welsh NHS Confederation and its Policy Forum members will continue to highlight the possible implications for the NHS in Wales of the UK exiting the EU with the Welsh Government, Assembly Members and with the UK Government. As members of the Brexit Health Alliance and [Cavendish Coalition](#), we have ensured that any briefings produced or any submissions to the UK Government, House of Lords or Westminster Committees reflect the issues impacting on the health and care system in Wales.



The [Protecting the health of citizens and patients across the UK and EU: Priorities for a future relationship](#) briefing from the Brexit Health Alliance sets out the priority areas for negotiations on the future relationship between the UK and the EU. The Cavendish [Coalition's UK's future immigration system: priorities for social care and health](#) asks for a points-based system which allocates points for public value roles in social care and health along with a minimum three-year visa.

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Hybu Cig Cymru - Meat Promotion Wales (HCC) is the statutory industry-led levy organisation responsible for the development, promotion and marketing of Welsh lamb, beef and pork. It undertakes promotional campaigns at home and abroad, is involved in research and development which benefits the efficiency and sustainability of the whole red meat supply chain, as well as collating and analysing market intelligence.

HCC has been asked to comment on the preparedness in Wales for the end of the transition period (31 December 2020).

With only five percent of the red meat produced in Wales consumed in the home (Wales) market, Wales is heavily dependent on domestic markets (particularly England) and global export markets.

Brexit poses a serious risk to the UK sheep industry, probably more so than any other domestic agricultural sector and this presents a significant risk for Wales as it has more than 30 percent of the GB flock. More than a third of lamb produced in Wales is exported outside the UK, predominantly to the EU.

Tariffs and trade are the foremost concerns relating to the UK's future relationship with the EU. Anything other than unfettered access to the EU market is likely to result in severe disruption, representing an existential threat to Welsh agriculture and processing as currently constituted. Issues of farm payments, regulation, brand protection, labelling and labour are also significant.

Agriculture is vital for Wales. The role of agriculture (particularly red meat production) has a wide macro-economic reach well beyond its own sphere, impacting on economic resilience of both the rural Welsh economy and the wider national economy. Farm businesses and the wider Welsh agricultural supply chain are important employers and the agricultural sector in Wales supports rural community cohesion and provides additional cultural and well-being benefits. Agriculture also has a key role in maintaining the landscape of Wales, supporting tourism, preserving the Welsh language and can contribute to delivering against all seven goals in the Well-being of Future Generations (Wales) Act 2015.

Failure to agree a trade deal with the EU before 31 December could result in supply and demand issues, loss of markets and ultimately could result in the closure of many businesses operating within the Welsh red meat supply chain.

A No Deal scenario would cause significant upheaval for beef and sheepmeat as trade would default to WTO terms which for red meat would mean tariffs of between 40 percent - 90 percent. Modelling work has indicated that trade, under these terms, with the EU27 would plummet - combined beef and sheepmeat exports to the EU would decline by 93 percent - with sheepmeat export trade almost completely wiped out. A severe producer price decline is also anticipated under a No Deal scenario. Sheepmeat is particularly exposed, with projections suggesting a 24 percent decline (*source: AHDB, HCC & QMS*).

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HCC has the following comments to make on the areas of work the Committee will be considering.

## 1. Welsh Government action to prepare Wales for the end of the transition period

1.1 Given HCC's status as an executive agency of Welsh Government and a statutory body wholly-owned by Welsh Ministers, we are not in a position to give an objective view.

## 2. Preparedness of key economic sectors in Wales

2.1 HCC have been working with Welsh abattoirs and processors to prepare them for anticipated changes in the rules on labelling, health certificates and other requirements, to ensure businesses are as informed as possible ahead of the end of the transition period.

2.2 In September 2020, HCC undertook a survey of Welsh red meat exporting businesses, including large, medium and small abattoirs and further processors, to gauge Brexit readiness amongst businesses.

2.3 The unknowns around tariffs and ability to source and employ EU nationals were reported as the greatest concerns. Businesses reported they were prepared as much as possible (given the uncertainties) in terms of new paperwork and administration for the end of the transition period; and they would look to respond quickly to adapt their systems once the type of deal was confirmed.

2.4 Small businesses who currently do not export to EU reported the uncertainties over Brexit meant they had no plans to export outside the UK in the foreseeable future. Some reported that if they were to develop their export business it would be to third countries only (i.e. outside the EU27).

### 3. The implications for preparedness arising from the negotiation of UK international agreements, including the UK-EU future relationship agreement (or agreements), other significant free trade agreements (e.g. UK-USA, UK-Japan, UK-Australia, UK-New Zealand etc.), and the Continuity Negotiations and Coordination programme (formerly referred to as the Trade Agreement Continuity Programme)

3.1 Opportunities to trade around the World are important to the Welsh red meat industry, as currently Welsh red meat exports are worth £200 million a year. Achieving market access with minimal barriers (both tariffs and non-tariff measures) is therefore important, however these countries are not key target markets for Welsh red meat. Many of the countries identified (such as Australia, NZ and the USA) are largely seeking greater access to the UK market for their agri-food products. This, if achieved, will provide a potential threat to the Welsh, and UK, agricultural sector through a disparity in standards and therefore producer cost base.

3.2 There is a need to ensure that trade negotiations do not disadvantage UK red meat businesses in the home market and to ensure that any imported meat into the UK adheres to the same standards (or above) as UK production, specifically in terms of animal welfare, environmental standards, food safety and food hygiene. Welsh red meat is currently produced to world-leading standards of welfare and environmental management, underpinned by the PGI scheme for lamb and beef which is administered by HCC. The industry would be opposed to any reduction in standards for UK consumers through free trade agreements.

#### UK-EU

3.3. It is crucial that Wales retains relationships with existing, geographically close customers in the EU and seeks to develop relationships and expand trade opportunities in developing premium EU markets.

#### UK-USA

3.4. If access for Welsh Lamb could be achieved then the American market could be a lucrative export destination. Currently the TSE rule prevents exports of Welsh Lamb to the US market.

3.5 A key concern in relation to a trade agreement is the possible barriers (both tariffs and non-tariff measures) that might be applied, restricting achievable market access for Welsh red meat businesses.

3.6. The reciprocal market access agreements for meat trade into the UK from the US needs careful consideration. Increasing the opportunities for US meat in the UK market would disadvantage UK red meat businesses in their home market

(at a time when there is also likely to be oversupply in the UK as EU market access could be affected).

3.7. The worst possible scenario for the Welsh red meat industry would be a lack of access to EU export markets (where a large proportion of Welsh Lamb and Welsh Beef is currently sold) combined with trade agreements between the UK and the US which would allow increased volume of supply into a saturated domestic market.

### UK-Japan

3.8. Access to a range of markets outside the EU is imperative to the Welsh red meat industry, both to support trade and spread economic risk. The Japanese market conditions combined with a growing demand for high quality and good value products create an opportunity for Welsh Lamb and Welsh Beef.

### UK-Australia and UK-New Zealand

3.9. In red meat, trade between the UK and Australia/ New Zealand is almost entirely one-way, namely produce being imported into the UK. The division of the current Tariff Rate Quota (TRQ) – particularly for sheepmeat – poses a challenge for the future of livestock agriculture in the UK, as does the prospect of future trade deals in which Australia and New Zealand may be expected to negotiate for greater access for its red meat products into the UK market.

3.10. Although the current quota is not met, if anything was to happen to the current New Zealand trade to China, it is anticipated that additional product from New Zealand would be re-directed to the UK market, creating supply pressures in the domestic market.

3.11. The worst possible scenario for the Welsh sheep industry would be a lack of access to EU export markets combined with trade liberalisation between the UK and Australia/ New Zealand which may allow increased competition in the domestic market from countries with a competitive advantage to their potential lower regulatory (environmental/ animal health) baselines.

### Continuity Negotiations and Coordination programme

3.12. Market access to countries across the World supports trade opportunities and spreads economic risk. Continuity negotiations, alongside trade deals are therefore important to the Welsh red meat industry.

## 4. Intra-UK intergovernmental agreements relating to the end of the transition period, including the common frameworks programme

4.1. The common framework programme, specific to the needs of individual policy areas, is essential for fairness in the UK market. However, close working

between the Devolved Administrations and the UK Government is essential to ensure the frameworks are developed in a transparent way.

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## Cyflwyniad

1. Mae Cymdeithas Llywodraeth Leol Cymru (CLILC) yn cynrychioli'r 22 awdurdod lleol yng Nghymru, ac mae'r tri awdurdod parc cenedlaethol a'r tri awdurdod tân ac achub yn aelodau cyswllt.
2. Ei nod yw cynrychioli awdurdodau lleol o fewn fframwaith polisi datblygol sy'n cyflawni blaenoriaethau allweddol ein haelodau ac yn darparu amrywiaeth eang o wasanaethau sy'n ychwanegu gwerth at Lywodraeth Leol Cymru a'r cymunedau y maent yn eu gwasanaethu.
3. Rydym yn croesawu'r cyfle i ymateb i ymgynghoriad Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol y Senedd ar barodrwydd yng Nghymru ar gyfer diwedd cyfnod pontio'r UE.

## Ymateb i gwestiynau

4. Mae ymatebion i'r pedwar prif bwnc a restrir ar gyfer yr ymgynghoriad wedi eu nodi isod. Yn gyffredinol, mae awdurdodau lleol mor barod ag y gallant fod, o ystyried yr amodau heriol maent yn eu wynebu ar hyn o bryd, a'r ansicrwydd parhaol ynglŷn â pha gytundebau masnach a chytundebau eraill fydd yn eu lle o 1 Ionawr 2021. Mae awdurdodau lleol wedi bod yn adnewyddu'r asesiadau risg a'r cynlluniau wrth gefn y bu iddynt eu paratoi y llynedd ar gyfer 'Brexit heb gytundeb', fel eu bod yn addas os bydd cyfnod pontio'r UE yn dod i ben heb unrhyw gytundeb masnach neu gytundeb gwan yn unig.

## Camau Gweithredu gan Lywodraeth Cymru i baratoi Cymru ar gyfer diwedd y cyfnod pontio

5. O safbwynt llywodraeth leol, mae Llywodraeth Cymru (LIC) wedi ymgysylltu'n adeiladol gyda CLILC ac awdurdodau lleol er mwyn cynorthwyo gyda pharodrwydd mewn amrywiol ffyrdd, fel a ganlyn:

- i. **Grŵp Cyngori ar Ewrop** – Mae'r Cyngorydd Rob Stewart<sup>1</sup> yn aelod o'r Grŵp lefel uchel Cyngori ar Ewrop a sefydlwyd gan Lywodraeth Cymru. Mae'r grŵp hwn yn dwyn ynghyd fudd-ddeiliaid o amrywiaeth o safbwyntiau i dderbyn y newyddion diweddaraf a rhannu barn gyda'r Cwnsler Cyffredinol a Gweinidogion eraill.
- ii. **Panel Parodrwydd (UE) Llywodraeth Leol** – mae panel o uwch swyddogion llywodraeth ar lefel Prif Weithredwyr a Chyfarwyddwyr wedi bod yn cyfarfod gydag amrywiaeth o swyddogion LIC, fel bo'n briodol, yn fisol er mwyn derbyn y wybodaeth ddiweddaraf a chynghor strategol ynglŷn a sut i ymdopi ag unrhyw faterion sy'n dod i'r amlwg. Mae cynrychiolwyr yr Awdurdodau Lleol wedi eu dewis ar sail rhanbarthol ac maent yn gweithio gyda chymheiriaid yn eu rhanbarthau er mwyn rhannu gwybodaeth.
- iii. **Grwpiau gwasanaethau penodol** – mae amrywiol grwpiau yn cyfarfod ar lefel gwleidyddol a swyddogion gan edrych ar y materion pontio UE sy'n wynebu meysydd gwasanaeth penodol gan gynnwys iechyd a gofal cymdeithasol, economi a busnes, canol trefi, amaeth a materion gwledig, egwyddorion amgylcheddol.
- iv. **Cyfarfodydd gwleidyddol** – Mae Arweinyddion CLILC wedi bod yn cwrdd Gweinidogion Llywodraeth Cymru yn rheolaidd er mwyn derbyn y newyddion diweddaraf a thrafod pryderon. Yn benodol, mae'r Cyngorydd Rob Stewart a'r Cwnsler Cyffredinol yn cael cyfarfodydd dwyochrog misol. Mae Gweinidogion eraill yn ymuno â'r cyfarfodydd hynny, yn dibynnu ar y pynciau sy'n cael eu trafod. Mae Gweinidogion hefyd wedi darparu diweddariadau i gyfarfodydd gwleidyddol a drefnir gan neu gyda CLILC, fel y Cyngor Partneriaeth, Aelodau Cabinet Datblygu Economaidd a Fforwm Gwledig CLILC.
- v. **Cyfarfodydd rheolaidd swyddogion LIC / CLILC** – mae swyddogion CLILC a LIC sydd yn gweithio ar gyfnod pontio'r UE wedi bod yn cwrdd yn rheolaidd er mwyn cynnal trosolwg a chytuno ar ddulliau a chymau gweithredu y teimlir eu bod yn angenrheidiol. Mae'r cyfarfodydd hyn wedi eu cynnal mewn dull agored a chadarnhaol, gan weithio'n effeithiol gyda'i gilydd, fel un tîm.
- vi. **Cyllid ar gyfer cydgysylltwyr awdurdodau lleol** – dros y ddwy flynedd ddiwethaf, mae LIC wedi darparu cyllid drwy CLILC i alluogi pob Awdurdod Lleol i sefydlu swydd cydgysylltydd. Mae'r swyddi hyn wedi chwarae rôl allweddol mewn cyfathrebu dwy ffordd – rhaeadru gwybodaeth ar draws Awdurdodau Lleol a bwydo yn ôl ar barodrwydd lleol a phroblemau sy'n ymddangos. Mae'r cydgysylltwyr

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<sup>1</sup> Y Cyng Stewart yw Is Arweinydd CLILC a'r Llefarydd ar Ddatblygu Economaidd, Ewrop, ac Ynni.



wedi bod yn gyfrifol am gynnal asesiadau risg a datblygu cynlluniau wrth gefn

- vii. **Cyllid ar gyfer rhaglen gefnogi CLILC** – Mae CLILC wedi derbyn cyllid gan LIC er mwyn darparu cefnogaeth i Awdurdodau Lleol. Golyga hyn ei bod wedi bod yn bosib gwneud gwaith a'i gomisiynu unwaith ac yna ei rannu gyda'r holl Awdurdodau Lleol, yn hytrach na bod y 22 yn cynnal astudiaethau tebyg yn annibynnol. Yn ystod blwyddyn gyntaf y rhaglen gymorth, trefnwyd nifer o gyfarfodydd, yn amlygu materion allweddol sy'n wynebu meysydd gwasanaeth a chanolbwynt corfforaethol yr Awdurdodau Lleol. Darparwyd dadansoddiad data a phhecyn gwaith hefyd i Awdurdodau Lleol i'w cynorthwyo yn eu paratodau. Eleni, oherwydd cyfyngiadau Covid, mae cyfarfodydd wedi bod ar-lein ac wedi canolbwyntio ar gyfarfodydd 'dal i fyny' rheolaidd gyda chydgyssylltwyr yr Awdurdodau Lleol, er mwyn hwyluso rhannu arferion da a gwybodaeth. Er mwyn cefnogi'r rhaglen, comisiynodd CLILC ymgynghorwyr i gynhyrchu deunyddiau ac astudiaethau ar gyfer Awdurdodau Lleol. Dyfarnwyd y contract i Grant Thornton ac maent wedi cynhyrchu deunyddiau hynod ddefnyddiol, sydd i gyd ar gael drwy wefan CLILC: <https://www.wlga.cymru/brexit-transition-support-programme-for-welsh-local-authorities>
- viii. **Cefnogaeth gyllidol arall** – Mae Llywodraeth Cymru wedi darparu cymorth cyllidol ar lefel isel i Awdurdodau Lleol er mwyn cynorthwyo eu gwaith o safbwynt hyrwyddo Cynllun Preswlydd Sefydlog yr UE i ddinasyddion yr UE o'r tu allan i'r DU, paratoi ar gyfer y cynnydd disgwylidig mewn galw ar gyfer Tystysgrifau Iechyd Allforio, a sefydlu llwybrau cymorth ar gyfer y bobl sy'n wynebu tlodi bwyd.
- ix. **Cyfarfodydd gydag Awdurdodau Lleol unigol** – mae LIC wedi cynnal cyfarfodydd gydag Awdurdodau Lleol unigol ble bo'n briodol. Yr enghraifft orau o hyn yw'r gwaith sy'n cael ei wneud gydag Ynys Môn a Sir Benfro o ran gwaith paratoi yn y porthladdoedd yn yr ardaloedd hynny.
- x. **Gwefan a chyhoeddiadau LIC** – mae LIC wedi cynhyrchu cyfres o adroddiadau ac eitemau gwybodaeth a dogfennau canllawiau sydd ar gael ar y wefan <https://llyw.cymru/ue-cyfnod-pontio-brexit>

Mae effaith yr holl gamau gweithredu uchod gan LIC wedi bod yn sylweddol. Mae wedi sicrhau fod gwybodaeth dda yn llifo a galluogi amrediad o gamau gweithredu sy'n hanfodol o safbwynt paratoi ar gyfer ac ymateb i ddiwedd y cyfnod pontio.

### Parodrwydd sectorau economaidd allweddol yng Nghymru

6. Mae pryderon gan CLILC ynglŷn â pha mor barod yw busnesau ar draws yr holl sectorau ar gyfer y newidiadau sydd ar ddod. Mae peth newid yn anorfod, waeth beth fydd canlyniadau'r trafodaethau cyfredol rhwng Llywodraeth y DU a'r

UE. Mae busnesau eisoes yn wynebu cyfnod heriol iawn o ganlyniad i bandemig Coronafeirws. Mae sawl cwmni, yn enwedig Cwmnïau Bach a Chanolig, yn annhebygol o fod wedi gallu ymrwymo amser ac adnoddau i baratoi ar gyfer newidiadau yn deillio o gyfnod pontio'r UE.

7. I fod yn deg, mae'n anodd i gwmnïau baratoi yn fanwl tra bod ansicrwydd yn parhau dros ganlyniadau'r trafodaethau cyfredol dros fasnach a'r berthynas gyda'r UE yn y dyfodol. Fodd bynnag, nid yw'n ymddangos fod rhai busnesau wedi cymryd y camau elfennol sydd angen eu cymryd o ran mewnfurio ac allforio hyd yn oed (fel caffael rhif Cofrestru ac Adnabod Gweithredwyr Economaidd (EORI) <sup>2</sup>). Yn yr un modd mae'n ymddangos fod llawer o gwmnïau, sydd yn masnachu'n uniongyrchol o fewn y DU yn unig, yn credu na fyddant yn cael eu heffeithio. Mewn gwirionedd, gallai eu llinellau cyflenwi gael eu heffeithio mewn rhai llefydd, mae'n bosib y bydd prisiau yn newid, gallai eu marchnadoedd cyfredol gael eu heffeithio (neu eu colli yn llwyr) ac mae'n bosib y gallent ddiweddef problemau yn eu cyflenwad llafur, o ganlyniad i broblemau oherwydd diwedd cyfnod pontio'r UE.

8. Mae CLILC wedi comisiynu adroddiad gan Grant Thornton ar effaith dim cytundeb masnach neu gytundeb masnach gwan<sup>3</sup>. Mae'r adborth maent wedi ei dderbyn gan gwmnïau a'r sefydliadau sy'n eu cynrychioli fel rhan o'r gwaith hwn wedi atgyfnerthu'r pryderon uchod ynglŷn â diffyg parodrwydd. Mae'r rhan fwyaf o adrannau datblygu economaidd awdurdodau lleol wedi eu lleihau dros y blynyddoedd diwethaf o ganlyniad i doriadau, ac adnoddau cyfyngedig iawn, neu ddim adnoddau, sydd ganddynt i gynnal cymorth busnes wyneb yn wyneb. Mae ansicrwydd parhaol o safbwynt sawl mater yn ei gwneud yn anodd ac yn beryglus i'r Awdurdodau Lleol gynnig cyngor. Yn y rhan fwyaf o achosion, yr oll mae'n bosib iddynt ei wneud yw cyfeirio busnesau at ffynonellau cymorth a'r wybodaeth ddiweddaraf, fel Busnes Cymru, gwefan Paratoi Cymru Llywodraeth Cymru, ac UK.GOV.

9. Mae rhai sectorau yn fregus mewn dwy ffordd, a hynny oherwydd effaith Covid, ac effeithiau trosglwyddiad yr UE. Mae **Twristiaeth** yn enghraifft o hynny. Mae Covid wedi tanseilio hanfod y sector yn llwyr, a hynny drwy gyfyngu ar symudiadau pobl. Roedd eisoes yn sector a ystyriwyd mewn peryg o ganlyniad i'r ffaith fod y DU yn gadael yr UE, gan fod y sector yn dibynnu'n helaeth ar lafur o'r UE a'r tu allan i'r DU. Os bydd niferoedd sylweddol o'r gweithlu hwnnw yn penderfynu dychwelyd i'r UE ac / neu os bydd rheolau mewnfudo newydd yn

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<sup>2</sup> Mae'r Rhif Cofrestru ac Adnabod Gweithredwyr Economaidd (EORI) eisoes yn ofyniad at ddibenion tollau i fusnesau sydd yn dymuno symud nwyddau rhwng y DU a gwledydd nad ydynt yn rhan o'r UE. O 1 Ionawr 2021 bydd angen rhif EORI i symud nwyddau rhwng Prydain Fawr (a Cogledd Iwerddon o bosib) a'r UE. Os na all CThEM glirio'r nwyddau, mae'n bosib y bydd yn rhaid i gwmnïau dalu ffioedd storio.

<sup>3</sup> Mae'r gwaith hwn yn dal i fynd rhagddo a disgwylir y bydd yr adroddiad yn barod yn gynnar fis Tachwedd.

cyfyngu ar y niferoedd sy'n cael dod i weithio i'r DU, gallai'r sector ei chael hi'n anodd recriwtio yn y cyfnod adfer y dyheir amdano ar ôl Covid.

10. Mae'r sector **awyrofod** wedi dioddef yn fawr o'r lleihad mewn teithio awyr o ganlyniad i Covid. Mae hefyd yn un o'r sectorau lle bydd goblygiadau mawr yn codi yn ddibynnol a yw cytundeb masnach yn cael ei gytuno gyda'r UE. Byddai gosod tariff ac / neu rwystrau nad yw'n ar gynnyrch fydd yn symud rhwng y DU a'r UE yn golygu cynnydd mewn costau a gallai hynny ddylanwadu ar benderfyniadau buddsoddi yn y dyfodol. Byddai unrhyw newid dros amser tuag at grynhoed o gynhyrchu o fewn yr UE er mwyn osgoi'r costau hyn yn cael effaith niweidiol iawn ar rai economïau yng Nghymru. Byddai'r effeithiau hyn yn uniongyrchol, ond hefyd yn anuniongyrchol, o ystyried yr effaith lluosydd negyddol ar wariant lleol ac ar gwmnïau gwasanaeth a chyflenwi sydd ar hyn o bryd yn elwa o'u presenoldeb a'u gweithrediad.

11. Fel gyda'r maes awyrofod, mae'r sector **cerbydau modur** â heriau ychwanegol yn gysylltiedig â newid hinsawdd a'r angen i ddatgarboneiddio. Gyda'r newid oddi wrth gerbydau petrol a disel a thuag at gerbydau trydan, a hydrogen o bosib, bydd angen ail-fuddsoddi. Bydd hyn yn effeithio ar gadwyni cyflenwi, gyda newidiadau yn yr amrywiaeth o gydrannau angenrheidiol. Fel y nodir uchod, gallai penderfyniadau ar y don nesaf o fuddsoddiad gael eu dylanwadu gan natur (neu ddiffyg) unrhyw gytundeb masnach. Gallai effeithiau penderfyniadau gan gwmnïau amlwg yn y diwydiant atseinio drwy'r sector. Mae'r pryderon hyn dros gynlluniau buddsoddi yn y dyfodol yr un mor berthnasol i amrywiaeth o weithrediadau **gweithgynhyrchu** eraill yng Nghymru.

12. Mae **Amaethyddiaeth** yn sector arall sydd mewn perygl mawr os bydd tariffau mawr yn cael eu gosod ar allforion i'r UE, fyddai'n golygu na allai cynnyrch y DU fod yn gystadleuol. Er bod llawer o waith wedi ei wneud i nodi effeithiau posib amrywiol senarios, mae'r dewisiadau i ffermwyr Cymru yn gyfyngedig, yn enwedig i ffermwyr defaid mynydd. Yn yr un modd, mae pryderon ynglŷn â'r posibilrwydd o gytundebau masnach gyda gwledydd eraill sydd â safonau lles anifeiliaid is ac / neu gostau llafur is, fyddai'n golygu mewnforion bwyd a fyddai'n rhatach na chynnyrch cynhyrchwyr domestig. Mewn cyfnod pan mae disgwyl i ddiweithdra ac anweithgarwch economaidd gynyddu yn sylweddol, bydd pris nwyddau yn ffactor penderfynu o safbwynt dewis cwsmeriaid. Mae'n bosib mai marchnad gyfyngedig fydd i gynnyrch bwyd o safon uchel a gynhyrchir yn ddomestig.

Mae **Pysgodfeydd** hefyd, yn wynebu heriau sylweddol. Mae eu hallforion (pysgod cregyn yn benodol i Gymru) yn ddarfodus ac felly mae'n rhaid cyflenwi o fewn amser penodol. Byddai oedi mewn porthladdoedd yn lleihau atyniad y cynnyrch a gallai hynny olygu colli marchnadoedd wrth i gyflenwyr eraill gael eu darganfod.

13. Yn gyffredinol mae llai o sylw wedi ei roi i effaith diwedd y cyfnod pontio ar y **sector gwasanaethau**. Fodd bynnag, gallai rhai o'r goblygiadau fod yr un mor ddifrifol mewn nifer o feysydd fel **gwasanaethau ariannol** a **rheoli data**. Os na fydd gofynion 'digonolrwydd' yr UE yn cael eu bodloni, gallai hyn olygu colli

marchnadoedd ac / neu fynediad at wybodaeth pan na fydd y DU yn rhan o'r UE bellach.

Y goblygiadau ar gyfer parodrwydd yn codi o'r trafodaethau ynglŷn â chytundebau rhyngwladol y DU, gan gynnwys gan gynnwys y cytundeb (neu gytundebau) ar gyfer y berthynas rhwng y DU - UE yn y dyfodol, cytundebau masnach rydd nodedig eraill (e.e. DU - UDA, DU - Japan, DU - Awstralia, DU - Seland Newydd ac ati), a'r Rhaglen Trafod a Chydgysylltu Parhad (a elwid yn flaenorol yn Raglen y Cytundeb Parhad Masnach)

14. Prif oblygiadau'r trafodaethau uchod yw'r ansicrwydd sy'n bodoli cyn gwybod y canlyniadau, ac felly'n ei gwneud yn anodd paratoi. Gobeithir y bydd yr ymchwil gan Grant Thornton y cyfeirir ato uchod yn darparu mwy o syniad o'r materion ynghylch diffyg cytundeb masnach neu gytundeb masnach gwan gyda'r UE.

15. Er bod y ffocws ar hyn o bryd ar y posibilrwydd o gytundeb masnach rhydd, mae sawl agwedd ar wahân i fasnach sy'n berthnasol i berthynas rhwng y DU a'r UE yn y dyfodol. Mae rhain yn cynnwys cwestiynau dros gydweithio ar ynni, y diwydiant awyrennau, telegyfathrebu, cydweithio ar ymchwil, rhannu data, gorfodi'r gyfraith, cydgysylltu diogelwch cymdeithasol a phresenoldeb mewn rhaglenni UE yn y dyfodol ac ati. Bydd canlyniadau trafodaethau ar yr holl feysydd hyn yn bendant o achosi goblygiadau. Fodd bynnag, ar hyn o bryd mae'n aneglur beth fydd y goblygiadau hynny. Mae'n anodd paratoi heb wybodaeth o'r fath. Mae angen mwy o wybodaeth ar ganlyniadau posib a beth fyddent yn ei olygu yn ymarferol, i alluogi mewnbwn deallus i drafodaethau ble bo'r angen yn y man cyntaf, ac yna er mwyn gwneud gwaith paratoi. O safbwynt llywodraeth leol, *mae'n bosib* mai cyfyngedig fydd goblygiadau uniongyrchol yr agweddau eraill hyn o gysylltiadau yn y dyfodol, ond nid yw'n bosib dweud yn bendant ar hyn o bryd. Er enghraifft, gallai unrhyw gyfyngiadau ar lif a chyfnwid data yn rhydd achosi niwed sylweddol i rai gwasanaethau.

16. Mewn perthynas â chytundebau masnach eraill o dan drafodaeth neu i'w 'symud drosodd' o gytundebau masnach rhydd presennol yr UE mae dau brif bwynt i'w gwneud. Yn gyntaf, mae'r rhain yn llai yn gyffredinol o ran maint a gwerth na'r cytundeb masnach posib gyda'r UE. Yn ail, mae'n bosib fodd bynnag y gallai elfennau penodol o'r cytundebau hyn gael effaith sylweddol ar fusnesau yng Nghymru. Fel yr amlinellir uchod, er enghraifft, gallai cytundebau masnach rydd gyda gwledydd sy'n caniatáu mewnfario cynnyrch bwyd cost isel danseilio cynhyrchwyr bwyd yng Nghymru.

Cytundebau rhynglywodraethol o fewn y DU yn ymwneud â diwedd y cyfnod pontio, gan gynnwys y rhaglen fframweithiau cyffredin.

17. Ymatebodd CLILC i ymgynghoriad Llywodraeth y DU ar Fil Marchnad Fewnol y DU. Roedd yr ymateb hwnnw yn egluro mai cytundebau llywodraethol gwirfoddol o fewn y DU drwy'r rhaglen fframweithiau cyffredin yw'r dewis a ffefrir o safbwynt sefydlu marchnad fewnol y DU. Byddai egwyddorion y Bil o

gydnabyddiaeth gyffredin a dim gwahaniaethu yn tanseilio gallu Llywodraeth Cymru i wneud penderfyniadau ar faterion sydd wedi eu datganoli. Mae pryderon eraill yn ymwneud â'r pwerau arfaethedig i Lywodraeth y DU wario mewn meysydd datganoledig eraill drwy'r DU, gan fethu parchu'r setliad datganoli.

18. Sefydlodd marchnad fewnol yr UE lawr, oedd yn caniatáu Aelod-wladwriaethau a gweinyddiaethau datganoledig i fynd y tu hwnt i'r safonau a osodwyd. Y risg gyda'r egwyddorion yn y Bil yw y byddent yn galluogi un rhan o'r DU i dderbyn safonau is, a byddai'n rhaid i weddill y DU gydnabod hynny wedyn.

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Deddfwriaeth Ychwanegol

Ymadael â'r Undeb Ewropeaidd:  
Paratodau yng Nghymru ar gyfer  
diwedd y cyfnod pontio  
EAAL(5) EUP12

Ymateb gan Gymdeithas Llywodraeth  
Lleol Cymru (CLILC)

Welsh Parliament  
External Affairs and Additional  
Legislation Committee

Exiting the European Union:  
Preparedness in Wales for the end of  
the transition period

Evidence from Welsh Local  
Government Association (WLGA)

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## Introduction

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities and the three fire and rescue authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. We welcome the opportunity to respond to Senedd's External Affairs and Additional Legislation Committee's consultation on preparedness in Wales for the end of the EU transition period.

## Response to questions

4. Responses to the four main issues listed for the consultation are set out below. Overall, local authorities are as prepared as they can be, given the challenging conditions they face at present and the ongoing uncertainty regarding what trade and other arrangements will be in place from 1<sup>st</sup> January 2021. Local authorities have been refreshing the risk assessments and contingency plans they prepared in case of a 'no deal' Brexit last year so they are fit for purpose in the event of the EU transition period ending with no trade deal or only a slim deal.

## Welsh Government action to prepare Wales for the end of the transition period

5. From a local government perspective, Welsh Government (WG) has engaged constructively with WLGA and local authorities to assist with preparedness in numerous ways, as follows:

- i. **European Advisory Group** – Cllr Rob Stewart<sup>1</sup> is a member of the high level European Advisory Group established by WG. This group brings together stakeholders from a variety of perspectives to receive updates and share views with the Counsel General and other Minister.
- ii. **Local Government (EU) Preparedness Panel** – a panel of senior local government officers at Chief Executive and Director level has been meeting with a range of WG officials, as appropriate, on a monthly basis to receive updates and offer strategic advice on how to deal with emerging issues. The LA representatives have been drawn on a regional basis and work with counterparts in their respective regions to share intelligence
- iii. **Service specific groups** – there are various groups meeting at a political and officer level looking at EU transition issues facing specific service areas including health and social care, economy and business, town centres, agriculture and rural matters, environmental principles.
- iv. **Political meetings** – WLGA Leaders have been meeting with WG Ministers on a regular basis to receive updates and discuss concerns. In particular, Cllr Rob Stewart and the Counsel General have monthly bilateral meetings. Other Ministers join those meetings depending on the subjects being discussed. Ministers have also provided updates to political meetings organised by or with WLGA, such as the Partnership Council, Economic Development Cabinet Members and the WLGA Rural Forum
- v. **Regular WG/WLGA officer meetings** – WLGA and WG officers working on EU transition have been meeting on an ongoing basis to maintain an overview and agree approaches and actions that are felt necessary. These meetings have been conducted in an open and positive manner, effectively working together as a single team.
- vi. **Funding for local authority (LA) co-ordinators** – over the last two years, WG has provided funding via WLGA to enable every LA to establish a co-ordinator post. These posts have played a key role in two-way communications – disseminating information across LAs and feeding back on local preparedness and issues being encountered. The co-ordinators have been responsible for undertaking risk assessments and developing contingency plans
- vii. **Funding for WLGA support programme** – WLGA has received funding from WG to provide support to LAs. This has enabled work to be conducted and commissioned once and then shared with all LAs,

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<sup>1</sup> Cllr Stewart is the WLGA Deputy Leader and Spokesperson on Economic Development, Europe and Energy.

instead of all 22 undertaking similar studies independently. In the first year of the support programme, numerous meetings were organised, highlighting key issues facing individual service areas and the corporate centre of LAs. Data analysis and a toolkit were also provided to LAs to assist them in their preparations. This year, in light of Covid restrictions, meetings have been virtual and have focused on regular catch-ups with the LA co-ordinators, to facilitate sharing of good practice and intelligence. To support the programme, WLGA commissioned consultants to produce materials and studies for LAs. Grant Thornton were awarded the contract and have generated highly useful materials, all of which have been made freely available via the WLGA's website: <https://www.wlga.wales/brexit-transition-support-programme-for-welsh-local-authorities>

- viii. **Other funding support** – WG has provided small scale financial assistance to LAs to assist their work in relation to promotion of the EU Settlement Scheme to non-UK EU citizens, preparing for the expected increase in demand for Export Health Certificates, and establishing channels of support for those facing food poverty.
- ix. **Meetings with individual LAs** – WG has held meetings with individual LAs where appropriate. The best example of this is the work being undertaken with the Isle of Anglesey and Pembrokeshire in relation to preparedness work at the ports in their areas.
- x. **WG website and publications** – WG has produced a series of that reports and other information items and guidance documents that are available on its website (<https://gov.wales/eu-transition-period-brexit>).

The collective impact of all of the above WG action has been significant. It has helped ensure good information flows and enabled a range of actions that are critical in terms of preparing for and responding to the imminent ending of the transition period.

### Preparedness of key economic sectors in Wales

6. WLGA has concerns over the level of preparedness of businesses across all sectors for forthcoming changes. Some change is inevitable, regardless of the outcome of current negotiations between the UK Government and the EU. Businesses are already facing an extremely challenging period as a result to the Covid pandemic. Many companies, especially SMEs, are unlikely to have been able to put much time and resource into preparing for changes arising from EU transition.

7. In fairness, it is difficult for companies to prepare in detail whilst uncertainty remains over the outcome of current negotiations over trade and future relations with the EU. However, even some of the basic steps required by those engaged in



importing and exporting (such as acquisition of an EORI number<sup>2</sup>) do not appear to be being taken in many cases. Equally many companies, whose direct trade takes place within the UK only, appear to believe that they will be unaffected. In reality, their supply lines could be disrupted at some points, prices may change, their current markets may be impacted (or lost altogether) and there may be issues affecting their labour supply arising from the ending of the EU transition period.

8. WLGA has commissioned a report from Grant Thornton on the impact of no trade deal or a slim trade deal<sup>3</sup>. The feedback they have received from companies and their representative organisations in the course of this work has reinforced the above fears over lack of preparedness. Most local authority economic development sections have been down-sized over recent years of cuts and have no, or limited, resource to undertake face-to-face business support. In any case, ongoing uncertainty in relation to many issues makes it difficult and risky for LAs to be offering advice. In most cases they can do little more than signpost businesses to sources of support and latest information, such as Business Wales, Welsh Government's Preparing Wales website and UK.GOV.

9. Some sectors are doubly exposed, to both Covid and EU transition impacts. **Tourism** is an acute example. Covid has undermined the very basis of the sector's operations by restricting the movement of people. It was already a sector seen to be at risk as a result of the UK leaving the EU due to its heavy reliance on non-UK EU labour. If significant numbers from within that labour force decide to return to the EU and/or if new immigration rules restrict the numbers able to come to work in the UK, the sector could struggle to recruit in the hoped-for post Covid recovery period.

10. The **aerospace** sector has suffered significantly from the decline in air travel resulting from Covid. It is also one of the sectors where there will be major implications arising from whether a trade deal is agreed with the EU. Imposition of tariffs and/or non-tariff barriers on products moving between the UK and the EU will increase costs and could influence future investment decisions. Any shift over time towards a concentration of production within the EU to avoid these costs could have a devastating effect on some local economies in Wales. These effects would be not only direct but also indirect, in light of the negative multiplier impact on local spending and on service and supply companies who currently benefit from their presence and operation.

11. As with aerospace, the **automotive** sector has additional challenges associated with climate change and the need to decarbonise. With the shift from

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<sup>2</sup> The Economic Operators Registration and Identification Number is already a requirement for customs purposes for businesses wishing to move goods between the UK and non-EU countries. From 1<sup>st</sup> January 2021 an EORI number will be needed to move goods between GB (and possibly N. Ireland) and the EU. If HMRC cannot clear goods, companies may incur storage fees.

<sup>3</sup> This work is still underway and the report is expected to be ready in early November.

petrol and diesel towards electric and possibly hydrogen vehicles, there will be a need for re-investment. This will impact on supply chains, with changes in the range of components required. As above, decisions on the next wave of investment could be influenced by the nature (or absence) of any trade deal. Knock-on effects of decisions by large players in the industry could reverberate throughout the sector. These concerns over future investment plans apply equally to a range of other **manufacturing** operations in Wales.

12. **Agriculture** is another sector at major risk if large tariffs are imposed on exports to the EU, rendering UK products uncompetitive. Whilst much work has been done to identify the potential impact of different scenarios, the options for Welsh farmers are limited, especially for hill sheep farmers. Equally, there are concerns over the possibility of trade deals with other countries with lower animal welfare standards and/or cheaper labour costs resulting in cheaper food imports that undercut domestic producers. At a time when unemployment and economic inactivity are expected to rise substantially, the price of goods will be a determining factor in consumer choice. High quality, domestically produced food products could have a limited market.

**Fisheries**, too, face major challenges. Their exports (shellfish in particular for Wales) are perishable and therefore delivery is time-critical. Delays at ports will reduce the attractiveness of these products and could result in lost markets as alternative suppliers are identified.

13. There has generally been less attention given to the impact of the ending of the transition period on the **service sector**. However, some of the implications could be equally serious in a number of areas such as **financial services** and **data management**. If 'adequacy' requirements of the EU are not met, this could result in loss of markets and/or access to information once the UK becomes a 'third country'.

The implications for preparedness arising from the negotiation of UK international agreements, including the UK-EU future relationship agreement (or agreements), other significant free trade agreements (e.g. UK-USA, UK-Japan, UK-Australia, UK-New Zealand etc.), and the Continuity Negotiations and Coordination programme (formerly referred to as the Trade Agreement Continuity Programme)

14. The main implication of all the above negotiations is the uncertainty that exists pending the outcomes, making preparation difficult. The Grant Thornton research referred to above will hopefully provide some more insight into the issues surrounding no trade deal or a slim trade deal with the EU.

15. Although the focus at present is on the possibility of a free trade deal there are, of course, many aspects other than trade that relate to the future relationship between the UK and the EU. These include questions over co-operation on energy, aviation, telecommunications, research collaboration, data sharing, law enforcement, social security co-ordination and future participation in EU

programmes and so on. The outcome of negotiations on all these areas undoubtedly will have implications. However, these are presently unclear, as is where impacts will be felt. It is difficult to prepare in the absence of such information. More detail is needed on potential outcomes and what they would mean in practice, to enable, first, informed input to debates where necessary and, then, necessary preparatory work to be undertaken. From a local government perspective, the direct implications of these other aspects of future relations *may* be limited, but it is not possible to say definitively at present. For example, any restrictions on the free flow and exchange of data could have significant ramifications for some services.

16. In relation to other trade deals either under discussion or to be 'rolled over' from existing EU FTAs there are two main points to make. First, these are generally less significant in volume and value terms than the potential trade deal with the EU. Second, there nevertheless may be specific elements of these deals which could have a major impact on businesses in Wales. As outlined above, for example, FTAs with countries that permit the import of low cost food products could undermine food producers in Wales.

#### Intra-UK intergovernmental agreements relating to the end of the transition period, including the common frameworks programme.

17. WLGA responded to the UK Government's consultation on the UK Internal Market Bill. That response made it clear that voluntary intra-UK governmental agreements via the common frameworks programme are the preferred route to establishing a UK internal market. The Bill's principles of mutual recognition and non-discrimination would undermine the ability of Welsh Government to take decisions on devolved matters. Other concerns relate to the proposed powers for UKG to spend in devolved areas throughout the UK, again failing to respect the devolution settlement.

18. The internal market of the EU established a floor, permitting Member States and devolved administrations to exceed the standards set. The risk with the principles in the Bill is that they would enable one part of the UK to accept a lowering of standards which would then have to be recognised throughout the UK.

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Evidence from Royal College of  
Nursing Wales

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There are three important topics that the Royal College of Nursing (RCN) Wales would like to raise.

## Shared Prosperity Fund

Wales received about £295 million from the European Structural and Investment Fund. Wales was the biggest benefactor from this fund in the UK. To replace these funds post Brexit the UK Government committed to establishing a Shared Prosperity Fund (SPF).

Despite the UK government first announcing that it would replace the European Structural and Investment Fund with the SPF in 2017 there are currently no definitive plans surrounding the SPF.

The absence of detailed plans by the UK Government to replace this funding and lack of priority shown to the SPF is deeply troubling - especially with the added burden of COVID-19.

The UK Welsh Affairs Committee published a report on the SPF in early October 2020. The report comments that the 'UK Government has made negligible progress in developing its replacement for EU economic development funding in Wales'. MPs have called on the UK Government to offer urgent reassurance and to guarantee that there will be no cliff-edge end to EU funds from January 2021.

The Welsh Government has also raised similar concerns with the UK Government. I encourage the External Affairs and Additional Legislation Committee and Welsh Government to continue to do so to avoid unnecessary and damaging delays to crucial funding for Wales.

## Mutual recognition of professional qualifications (MRPQ)

RCN Wales is concerned by the lack of arrangements regarding the mutual recognition of professional qualifications (MRPQ).

The MRPQ requires UK regulators to recognise EEA and Swiss qualifications which are of an equivalent standard to UK qualifications. However there is no longer certain obligations on UK regulators, such as offering compensation measures and partial access in circumstances where EEA/Swiss qualifications are not of an equivalent standard to UK qualifications.

The MRPQ will have an impact on the health and social care workforce in Wales, especially in a no-deal scenario. I would welcome an update on these arrangements and the interaction of the Welsh and UK Governments.

## Settlement Status

RCN Wales values all EU/EEA nationals working in the health and social care sector in Wales. Furthermore RCN recognises that it is not just about the professionals, but also their families and the communities they live in.

EU/EEA staff should be able to apply for the free Settled Status Scheme and should be supported by the Welsh Government.

After the 31<sup>st</sup> December, the UK Government state that, 'EU citizens living in the UK must have registered and obtained settled or pre-settled status in order to be able to continue to live in the UK and access NHS services free of charge.' The Welsh Government should ensure that its package of free support is readily available to help EU citizens to work and live in Wales.

The three matters raised in this letter highlight the importance of cross nation communication and stakeholder engagement. With only a few months left of 2020, it is important that there are clear plans in place across the UK relating to these matters to avoid unnecessary delays and hardship.

Senedd Cymru  
Y Pwyllgor Materion Allanol a  
Deddfwriaeth Ychwanegol  
Ymadael â'r Undeb Ewropeaidd:  
Paratodau yng Nghymru ar gyfer  
diwedd y cyfnod pontio  
EAAL(5) EUP14  
Ymateb gan Cyfoeth Naturiol Cymru

Welsh Parliament  
External Affairs and Additional  
Legislation Committee  
Exiting the European Union:  
Preparedness in Wales for the end of  
the transition period  
Evidence from Natural Resources  
Wales

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## Camau gweithredu Llywodraeth Cymru i baratoi Cymru ar gyfer diwedd y cyfnod pontio

### 1.1 Trosolwg

Mae parodrwydd Llywodraeth Cymru (LIC), a negeseuon a chyfathrebu cysylltiedig ag asiantaethau a rhanddeiliaid, yn ddibynnol iawn ar ganlyniadau negodiadau masnach y DU a phrosesau deddfwriaethol a llywodraethu cysylltiedig a arweinir gan y DU (megis y Mesur Marchnad Fewnol). Mae'r ansicrwydd parhaus hwn yn cael sgil-ffeithiau ar barodrwydd sectoraidd a pharodrwydd busnes ledled Cymru a'r DU.

Mae ein hymateb wedi'i rannu'n adrannau yn erbyn pob cwestiwn ac mae'n cwmpasu'r materion allweddol canlynol:

- Deddfwriaeth
- Llywodraethu amgylcheddol
- Adnoddau a seilwaith ar y ffin
- Cyllid ac adnoddau
- Cyfathrebu
- Covid-19 a digwyddiadau eraill
- Parodrwydd sectoraidd

Nodwn fod LIC yn gweithio'n galed i ddarparu sicrwydd a datblygu mesurau lliniaru ar gyfer risgiau sectoraidd penodol. Er enghraifft, cysylltu â Defra ynghylch cronfa wrth gefn i gefnogi'r sector ffermio defaid ar ôl Ymadael â'r UE ac ynghylch y risg i gadwyni cyflenwi cemegol ar gyfer y diwydiant dŵr, sy'n hanfodol ar gyfer cyflenwad dŵr yfed (mae Covid19 wedi gwaethygu'r risg hon).

Mae LIC wedi nodi o'r blaen na fydd newid yn lefel y diogelwch ar gyfer yr amgylchedd, nac i safonau amgylcheddol yng Nghymru. Mae Llywodraeth y DU (UKG) wedi rhoi ymrwymiad tebyg o'r blaen. Fodd bynnag, rydym yn debygol o weld newidiadau trwy ddeddfwriaeth LIC a'r DU dros amser. Mae UKG bellach yn

cynnig newidiadau i agweddau ar gyfraith yr UE a ddargedwir sy'n ymwneud ag Asesiadau o Effaith Amgylcheddol. Gallai unrhyw "ddargyfeirio rheoleiddiol", er enghraifft o ganlyniad i fargeinion masnach a wneir â gwledydd eraill, effeithio ar gylch gwaith CNC. Gallai ansicrwydd ynghylch newidiadau llywodraethu posibl gan gynnwys Trosglwyddo Swyddogaethau (ToF) arwain at oblygiadau sylweddol i rôl a chylch gwaith CNC.

Mae Covid-19 wedi galluogi LIC a CNC i 'brofi straen' rhywfaint o ran lliniaru senario Brexit heb Gytundeb. Fodd bynnag, mae delio ag effeithiau Covid-19 hefyd wedi effeithio ar barodrwydd LIC a rhanddeiliaid ac wedi effeithio ar wytnwch sectoraidd. Os yw effeithiau cydamserol Covid-19 yn gweithredu fel 'effaith lluosydd', er enghraifft os yw ail don yn cydddigwydd â chanlyniad Dim Cytundeb Masnach, gallai waethygu'r risgiau i gynllunio parodrwydd ac aflonyddwch cysylltiedig.

Mae cyfathrebu cyflym ac effeithiol rhwng UKG a LIC yn allweddol i sicrhau parodrwydd ledled y DU. Mae'n ofynnol i gyfathrebu clir ac amserol rhwng LIC, rhanddeiliaid sectoraidd gan gynnwys CNC a'r cyhoedd, gyfeirio at newidiadau perthnasol i brosesau. Bydd hefyd yn hanfodol tynnu sylw at ble mae parhad er mwyn cynnal cydymffurfedd, er enghraifft perthnasedd parhaus amddiffyniadau amgylcheddol cynefinoedd statudol a chyfrifoldebau cysylltiedig â rhanddeiliaid. Trafodir y materion hyn ymhellach yn **adran 2**.

Mae CNC yn gweithio'n agos gyda LIC i baratoi ar gyfer Ymadael â'r UE ar draws ystod o feysydd polisi, a gydlynir trwy Raglen Newid UE CNC. Er enghraifft, mae CNC yn gweithio gyda'r is-adran Ynni, Cynllunio a Materion Gwledig (EPRA) i ddatblygu senarios ymadael â'r UE wedi'u diweddarau i barhau i ystyried goblygiadau posibl. Yn ogystal, mae LIC yn parhau i gysylltu â CNC ynghylch cyllid yn y dyfodol i gefnogi rhoi mesurau amddiffyn parhaus tymor hwy ar waith ar gyfer safleoedd a nodweddion Natura 2000 ar ôl Ymadael â'r UE.

Darperir manylion pellach yn yr isadrannau canlynol ac yn **adrannau 2-4**.

## 1.2 Deddfwriaeth Llywodraeth Cymru

Mae amserlen heriol i gyflawni'r rhaglen ddeddfwriaethol i sicrhau bod cyfraith yr UE a ddargedwir yn weithredol o 31 Rhagfyr 2020. Mae rhaglen ddeddfwriaethol LIC yn gyfrifol am ddarparu Offerynnau Statudol (OS) yr UE yng Nghymru yn amserol a chysylltu ag UKG ar OSau y DU. Mae CNC yn adolygu datblygiad y gwaith o gywiro OSau i asesu unrhyw oblygiadau i'n cylch gwaith. Mae LIC yn datblygu deddfwriaeth sylfaenol ar gyfer amaethyddiaeth, pysgodfeydd a llywodraethu ac egwyddorion amgylcheddol. Mae CNC yn ymgysylltu â LIC ar ddatblygu deddfwriaeth Cymru a chefnogi mewnbwn i ddeddfwriaeth berthnasol y DU.

Cyda UKG a Gweinyddiaethau Datganoledig eraill, mae LIC wedi diwygio deddfwriaeth ar gyfer cynefinoedd a rhywogaethau sy'n barod ar gyfer diwedd y cyfnod pontio. Mae hyn yn sicrhau y bydd deddfwriaeth y DU a'r UE sy'n ymwneud â'r amgylcheddau daearol a morol yn parhau i fod yn weithredol ar ôl i'r DU adael

yr UE. Mae hyn yn cynnwys [Rheoliadau Gwarchod Cynefinoedd a Rhywogaethau \(Diwygio\) \(Ymadael â'r UE\) 2019](#) a [Rheoliadau'r Amgylchedd Morol \(Diwygio\) \(UE\) 2018](#).

Mae deddfwriaeth newydd UKG ar gyfer Ymadael â'r UE ar gyfer diwydiant ar waith i raddau helaeth ar gyfer diwedd y cyfnod pontio ac mae deddfwriaeth ddiwygio yn parhau. Fodd bynnag, mae'n rhaid i rai sectorau weithio'n gyflym i sicrhau bod deddfwriaeth ar waith ar gyfer diwedd y flwyddyn, gan gynnwys y sector nwyon tŷ gwydr a Chynllun Masnachu Allyriadau (ETS) arfaethedig y DU.

Mae'r broses o newid deddfwriaethol yn cael ei rheoli gan UKG fel rhan o'r broses drafod. Mae hyn yn ffactor yn y tebygolrwydd o drosglwyddo'n llyfn. Er enghraifft, mae amser i CNC roi mewnbwn cynhwysfawr i ddatblygu Papur Gwyn Bil Amaethyddiaeth Drafft (Cymru) LIC wedi'i gwtogi. Bydd y Bil Amaethyddiaeth (Cymru) yn darparu'r fframwaith, y strwythur a'r cyd-destun polisi cyffredinol ar gyfer cyflawni Cynllun Ffermio Cynaliadwy (SFS) arfaethedig LIC, yn ogystal â chyd-destun rheoleiddiol Rheoli Tir yn Gynaliadwy (SLM) a Rheoli Adnoddau Naturiol yn Gynaliadwy (SMNR) yn y dyfodol. Mae risg, fodd bynnag, y gallai amcanion Bil Amaethyddiaeth Fewnol y DU ac unrhyw fframweithiau cyffredin y cytunwyd arnynt effeithio'n andwyol ar amcanion Bil Amaethyddiaeth Cymru (Cymru) ar gyfer y SFS a chanlyniadau SLM / SMNR cysylltiedig (gweler **adrannau 3 a 4**).

Mae risg o fylchau deddfwriaethol ac ansicrwydd ynghylch sut y bydd Cymru yn llywodraethu ac yn rheoli'r bylchau hyn ar ôl y cyfnod pontio, yn enwedig o ran deddfwriaeth amgylcheddol. Oherwydd trafodaethau parhaus, ar hyn o bryd nid yw'n eglur beth fydd y bylchau a'r effaith y gallai'r rhain eu cael ar yr amgylchedd a gallu CNC i reoleiddio a gweithredu mewn perthynas â'i ddyletswyddau statudol.

Mae enghraifft o fwllch deddfwriaethol posibl yn ymwneud ag ymrwymiad parhaus UKG a LIC i Gonfensiwn Bern. Gan na fydd y DU bellach yn aelod o'r UE, mae angen i ni fodloni cydymffurfiad Confensiwn Bern fel aelod y tu allan i'r UE er mwyn i safleoedd gwarchodedig ddod yn rhan o'r Rhwydwaith Emrallt, nid o dan 'ymbarél' yr UE fel y mae ar hyn o bryd.

### 1.3 Llywodraethu Amgylcheddol a dyletswyddau newydd

#### 1.3.1 Egwyddorion a Llywodraethu Amgylcheddol

Mae CNC yn gweithio'n agos gyda Llywodraeth Cymru (LIC) ar y Grŵp Gorchwyl a Gorffen Egwyddorion a Llywodraethu Amgylcheddol i baratoi ar gyfer fframwaith llywodraethu amgylcheddol newydd ar gyfer Cymru, yn dilyn diwedd y cyfnod pontio. Mae LIC wedi cadarnhau na fydd y corff goruchwyllo amgylcheddol newydd wedi'i sefydlu erbyn diwedd y cyfnod pontio a bydd cyfres o fesurau dros dro mewn grym. Argymhellwyd y mesurau dros dro hyn i ddechrau i gwmpasu cyfnod o 3-6 mis i ddarparu mecanwaith dros dro cymesur nes y gellir datblygu datrysiad tymor hwy. Maent yn cynnwys mecanwaith i ddinasyddion godi cwynion mewn perthynas â chyfraith amgylcheddol, a ffordd briodol o nodi a chofnodi materion eraill wrth iddynt gael eu codi.



Ar hyn o bryd mae LIC yn ceisio penodi asesydd dros dro annibynnol. Mae'n bwysig bod proses briodol i ymchwilio i gwynion a'u trin yn effeithiol yn ystod y cyfnod interim. Byddai hyn yn lleihau'r risg y bydd materion amgylcheddol sylweddol yn parhau heb eu datrys yn ystod y cyfnod interim. Yn ogystal, mae'n hanfodol bod ymgysylltiad effeithiol rhwng corff llywodraethu amgylcheddol Cymru a Swyddfa Diogelu'r Amgylchedd (OEP) UKG a chyrrff DA eraill.

Mae risg o ostyngiad mewn atebolrwydd i gynnal safonau a mesurau amddiffyn yr amgylchedd. Mae goblygiadau o ran adrodd (fel Nitradau a'r Gyfarwyddeb Fframwaith Dŵr), sef y risg o golli'r mecanwaith y mae Cymru'n ei ddefnyddio i gasglu data a thystiolaeth am yr amgylchedd sy'n gyrru gwelliannau a pholisi amgylcheddol.

Mae angen gwaith pellach ar ddatblygu'r ddeddfwriaeth a'r corff goruchwyllo parhaol yng Nghymru. Mae'n hanfodol nad oes unrhyw orgyffwrdd mewn swyddogaethau rhwng y corff goruchwyllo newydd ac asiantaethau presennol fel CNC. Yn benodol mae angen eglurder pellach ar ddarparu cyngor a sut mae hyn yn cyd-fynd â rôl a chylch gwaith y corff newydd, rôl arwain CNC ar Reoli Adnoddau Naturiol yn Gynaliadwy a'n pwerau, swyddogaethau a dyletswyddau rheoleiddio statudol. Mae potensial hefyd ar gyfer effeithiau ehangach cylch gwaith y corff newydd ar agweddau eraill ar ein rôl gan gynnwys adrodd a monitro, polisi a chanllawiau. Mae'n hanfodol bod y dulliau dros dro a pharhaol yn sicrhau nad oes bylchau llywodraethu.

### 1.3.2 Trosglwyddo Swyddogaethau (ToF)

Mae Trosglwyddo Swyddogaethau (ToF) o'r UE i'r DU yn debygol o arwain at waith ac atebolrwydd ychwanegol ar gyfer LIC a CNC. Mae union raddfa a natur ToF o'r UE i LIC ac o bosibl i CNC yn ansicr. Prin yw'r amser i ddeall a chyflawni gofynion newydd (monitro, adrodd, ac ati) a'r pwysau cysylltiedig o ran gallu ac adnoddau. Rydym yn cymryd rhan mewn trafodaethau parhaus gyda LIC ynghylch newidiadau posibl i gylch gwaith a chyfrifoldebau CNC yn y dyfodol o ran ToF.

Mae gan ToF effeithiau pellgyrhaeddol ac mae angen ei ddatblygu ymhellach gan gynnwys, er enghraifft, egluro rolau rhwng LIC, y Cyd-bwyllgor Cadwraeth Natur (JNCC) a CNC. Gwnaed peth cynnydd fel gweithdrefnau arfaethedig ar gyfer ystyried Rhesymau Hanfodol sef er Budd Cyhoeddus Tra Phwysig (IROPI) fel rhan o asesiad amgylcheddol.

Mae hwn yn rhanddirymiad o dan y Gyfarwyddeb Cynefinoedd a fyddai'n caniatáu i gynllun neu brosiect gael ei gymeradwyo mewn amgylchiadau cyfyngedig.

### 1.4 Adnoddau a seilwaith ar y ffin

Bydd angen cyfleusterau ar y ffin a seilwaith porthladdoedd newydd yng Nghymru i ddelio â gofynion newydd o ganlyniad i Ymadael â'r UE gan gynnwys telerau Protocol Gogledd Iwerddon (y Protocol). Mae'r rhain yn cynnwys newidiadau i'r seilwaith sy'n deillio o ddynodi Dinbych-y-pysgod a Chaergybi yn Safleoedd Rheoli Ffiniau (BCP). Mae angen negeseuon clir gan UKG a LIC i randdeiliaid sectoraidd allweddol i roi sicrwydd a chyfeiriadau ar brosesau

mewnforio / allforio (e.e. gofynion nwyddau Glanweithiol a Ffytoiechydol), yr adnoddau sydd ar gael, a datblygu seilwaith y ffin i sicrhau parodrwydd sectoraidd.

Crynoir materion allweddol yn yr is-adrannau isod. Rhoddir mwy o fanylion am effeithiau a pharodrwydd sectoraidd mewn perthynas â risgiau parodrwydd ar y ffin yn **adran 2**.

#### 1.4.1 Seilwaith Porthladdoedd

Mae'r gofynion ar gyfer BCPau ac ar gyfer gwiriadau mewnforio ac allforio ar y ffin yn cael eu datblygu oherwydd trafodaethau parhaus. Mae LIC yn gweithio o fewn amserlen dynn i weithredu newidiadau yng Nghymru. Nid yw seilwaith y ffin ar waith ar hyn o bryd ac mae adnoddau ac amserlenni yn ansicr. Mae'n debygol y bydd gwiriadau ar y ffin yn cael eu cynnal i ddechrau mewn lleoliadau dros dro (nad ydynt wedi'u cadarnhau) ger porthladdoedd. Mae'n hanfodol bod yr amgylchedd yn cael ei amddiffyn rhag risgiau sy'n gysylltiedig â mwy o storio dros dro ger porthladdoedd ac unrhyw gymhlethdodau posibl.

Bydd datblygu seilwaith mwy parhaol ar gyfer rheoli ffiniau yn gofyn am allu ychwanegol gan Awdurdodau Lleol (ALLau) a rheoleiddwyr i ddarparu goruchwyliaeth briodol. Bydd rhoi rheolaethau mewnforio ar y ffin ar waith yn wasgarog (Ionawr, Ebrill a Gorffennaf 2021) yn gofyn am wylidwriaeth wrth weithredu a diweddarau'r canllawiau yn amserol i randdeiliaid.

#### 1.4.2 Ansicrwydd ynghylch prosesau mewnforio / allforio a chymorth / adnoddau

Mae gan brosesau cymhleth newydd ar gyfer mewnforion ac allforion a diffyg eglurder ynghylch yr adnoddau sydd ar gael i gefnogi'r prosesau hyn y potensial i darfu'n sylweddol ar sectorau a'r gadwyn gyflenwi yng Nghymru. Er enghraifft, mae ansicrwydd ynghylch argaeledd Milfeddygon Swyddogol (OV) yng Nghymru i brosesu Tystysgrifau Iechyd Allforio (EHCau) ar gyfer allforio nwyddau perthnasol i Ewrop (naill ai trwy Gymrulwerddon neu drwy borthladdoedd Lloegr i'r cyfandir). Mae'n debygol y bydd parodrwydd busnes yn cael ei effeithio os oes diffyg adnoddau fel gallu OVau i brosesu EHCau, neu'n syml o ganlyniad i gymhlethdod prosesau newydd.

Trafodir y materion hyn a'u heffeithiau ar sectorau penodol ymhellach yn **adran 2**.

#### 1.5 Cyllid ac adnoddau

Mae CNC yn gefnogol i safbwynt Llywodraeth Cymru y dylai Cymru, yn dilyn Brexit, dderbyn "nid ceiniog yn llai, na cholli unrhyw bŵer".

Mae UKG wedi ymrwmo i ddisodli Cronfeydd Strwythurol yr UE yn y DU gyda Chronfa Ffyniant a Rennir. Ar hyn o bryd nid yw UKG wedi nodi eto sut y bydd y gronfa hon yn gweithio, felly o ganlyniad mae nifer o gwestiynau ac agweddau heb eu hateb a allai newid. Mae LIC wedi datblygu cynigion sy'n cynnwys arwain ar gyflawni'r buddsoddiad hwn yng Nghymru ac wedi cynnal ymgynghoriad ar eu dull, y mae CNC wedi ymateb iddo. Rydym yn croesawu ymagwedd ragweithiol

LIC tuag at hyn, ond mae'r diffyg eglurder gan Lywodraeth y DU yn peri pryder cynyddol wrth i'r dyddiad cau agosáu. Hyd yn oed os yw Llywodraeth y DU yn cytuno â dull LIC mae yna fanylion sylweddol a heriol y bydd angen eu datrys cyn y byddai unrhyw gynllun yn weithredol, yn enwedig mewn perthynas â'r strwythurau arfaethedig newydd i gyflawni hyn yn rhanbarthol.

Mae ansicrwydd sylweddol o hyd hefyd ynghylch ffrydiau cyllido eraill, yn enwedig LIFE y mae ymgeiswyr yn cyflwyno cynigion yn uniongyrchol i'r UE amdani, a allai o bosibl gael effaith fwy ar y sector amgylcheddol a chadwraeth natur. Mae'r ffenestr olaf bosibl ar gyfer cael gafael ar gyllid Natur a Bioamrywiaeth LIFE bellach wedi cau, felly o hyn ymlaen mae amhariad sylweddol ar brosiectau posib gwerth miliynau o bunnoedd sy'n mynd i'r afael â gweithredu ar ran yr amgylcheddol a'r hinsawdd. Mae angen cynllunio a pharatoi'n drylwyr ar gyfer y prosiectau mawr hyn. Mae angen penderfyniad brys i sicrhau nad yw prosiectau'n colli momentwm nac arian cyfatebol ac nad yw'r sector amgylchedd yn cael ei roi dan anfantais sylweddol.

Cododd Grŵp Llywio Buddsoddi Rhanbarthol yng Nghymru (RIWSG, grŵp rhanddeiliaid dan arweiniad LIC) bryderon ynghylch yr angen i gael dull cydweithredol yng Nghymru i sicrhau na chollid cyfleoedd o ran cyllid Ymchwil ac Arloesi ar lefel y DU.

Fel Gweinyddiaeth Ddatganoledig, darperir cyllid LIC trwy fecanwaith 'grant bloc' UKG ac mae ansicrwydd sylweddol o ran ariannu, yn enwedig i'r sector amaeth-amgylchedd. Mae Llywodraeth y DU wedi addo ymrwymo'r un cyfanswm arian parod mewn cronfeydd i gefnogi ffermwyr tan ddiwedd y Senedd bresennol, a ddisgwylir yn 2022. Mae Llywodraeth y DU hefyd wedi gwarantu y bydd unrhyw brosiectau Colofn 2 CAP lle cytunwyd ar gyllid cyn diwedd 2020 yn cael eu hariannu am eu hoes lawn. Os na chaiff lefelau cyllido ar ôl y Polisi Amaethyddol Cyffredin (PAC) eu cynnal ar ôl 2022 yna bydd hyn yn effeithio ar raddfa a natur cyflawni uchelgeisiau LIC ar gyfer y Mesur Amaethyddiaeth (Cymru). Byddai gan hyn hefyd oblygiadau i gylch gwaith CNC wrth gyflawni SMNR.

## 1.6. Cyfathrebu

Erys lefel uchel o ansicrwydd a newid ynghylch Ymadael â'r UE a'r cyfnod pontio i lawer o randdeiliaid. Mae cyfathrebu â'n cwsmeriaid, staff a'r cyhoedd yn ffactor allweddol ar gyfer ein gwaith cyfathrebu. Bydd cysylltiadau clir a sefydledig, ynghyd â negeseuon cydgysylltiedig lle bo angen, yn hanfodol i ddarparu cyfathrebu da i'n rhanddeiliaid a'r cyhoedd.

Cynrychiolir CNC ar Ford Gron Gweinidogion LIC ar Brexit ac mae ein staff Cyfathrebu wedi'u cynnwys yng nghyfarfodydd cyfathrebu rhanddeiliaid LIC. Mae llawer o ffocws y cyfathrebu presennol â sectorau ar lefel Cymru a'r DU wedi'i anelu at sectorau allweddol, megis ffermio, pysgodfeydd a chludiant. Mae'n hanfodol bod gan bob unigolyn a busnes y mae Ymadael â'r UE yn effeithio arnynt fynediad priodol at wybodaeth sydd wedi'i theilwra i'w hanghenion. Rhaid i hyn gydnabod bod gan fusnesau mawr adnoddau gwell ac y gallant ymateb i ofynion cymhleth a gwybodaeth sy'n newid. Mae sectorau a busnesau llai, gwahanedig yn

debygol o fod angen canllawiau cliriach ar ffurf gwybodaeth allweddol ar sut i baratoi ar gyfer Ymadael â'r UE.

Mae LIC wedi datblygu cyngor ac arweiniad cynhwysfawr ar gyfer rhanddeiliaid sectoraidd a'r cyhoedd ar ei thudalennau [Paratoi Cymru](#).

### 1.7 Effeithiau Covid-19 ar barodrwydd LIC i Ymadael â'r UE

Mae Covid-19 wedi cyflwyno her sylweddol i LIC a CNC ar gyfer rheoli gofynion adnoddau i ddarparu paratoad amserol gogyfer ag Ymadael â'r UE, gan gynnwys deddfwriaeth a seilwaith. Mae ymateb i Covid-19 hefyd wedi effeithio ar allu rhanddeiliaid a busnesau i baratoi ar gyfer Ymadael â'r UE ac wedi effeithio ar wytnwch sectoraidd. Mae mwy o fusnesau yng Nghymru wedi gweld cwmp mwy mewn trosiant nag mewn manau eraill yn y DU ([Sefydliad Bevan](#) 2020).

#### 1.7.1 Sioc economaidd ac aflonyddwch yn y gadwyn gyflenwi

Mae ein hymateb ar y cyd yng Nghymru yn dangos y gallwn weithredu'n gyflym yn yr amgylchiadau mwyaf heriol. Mae ymateb LIC, CNC a rhanddeiliaid eraill i Covid-19 wedi 'profi straen' rhai agweddau allweddol ar barodrwydd LIC i Ymadael â'r UE. Mae hyn wedi meithrin gallu a dealltwriaeth, yn enwedig o ran straen ar y gadwyn gyflenwi a'r mesurau lliniaru sydd ar gael (megis gwaredu llaeth dros ben trwy'r hierarchaeth wastraff).

Mae risg uwch o sioc economaidd ac aflonyddwch yn y gadwyn gyflenwi os oes digwyddiadau'n gysylltiedig â Covid-19 ac unrhyw naid mewn achosion, ar yr un pryd ag y byddwn yn Ymadael â'r UE ddiwedd y cyfnod pontio ar 1 Ionawr 2021. Bydd yn anodd paratoi ar gyfer cyd-ddigwyddiadau o'r fath ac nid yw graddfa'r effeithiau'n hysbys. Gallai digwyddiadau tymhorol fel llifogydd greu straen ychwanegol ar gyfer systemau sydd eisoes dan bwysau.

- Gallai fod goblygiadau sylweddol i adnoddau ar gyfer LIC, CNC a'r holl rhanddeiliaid allweddol os yw'r staff yn sâl neu'n ynysu, gyda heriau cysylltiedig o ran y gallu adnoddau dynol sydd ar gael.
- Mae'n bosibl nad yw busnesau wedi paratoi'n ddigonol neu nad ydynt yn ddigon gwydn i reoli "effeithiau lluosydd" cydamserol Covid-19 ynghyd ag effeithiau Ymadael â'r UE ac unrhyw ddigwyddiadau tymhorol ychwanegol.
- Mae'r amhariad ar gadwyni cyflenwi o ganlyniad i Covid-19 ac Ymadael â'r UE yn debygol o gynyddu'r risg o ddigwyddiadau llygredd (gweler **adran 2**). Gall hyn arwain at amllder a nifer cynyddol o ddigwyddiadau yn y tymor byr.

#### 1.7.2 Adferiad Gwyrdd

Mae cefnogi gwytnwch sectoraidd a chyhoeddus i'r risgiau hyn trwy raglen Adferiad

Gwyrdd LIC yn hanfodol. Nodwyd, yn ein hymateb i ymgynghoriad y Pwyllgor Newid Hinsawdd, yr Amgylchedd a Materion Gwledig (CCERA) [ar effaith pandemig Covid-19](#), wrth inni symud i'r cam adfer, bod yn rhaid inni gynnal y

momentwm a sicrhau bod yr adferiad yn wirioneddol wyrdd. Rhaid i unrhyw ysgogiad adferiad economaidd beidio ag achosi:

- allyriadau carbon uchel neu risg i'r hinsawdd
- dirywiad bioamrywiaeth
- patrymau defnydd neu gynhyrchu anghynnaladwy

Rhaid i adferiad Covid-19 gyflymu ein hynt ar y llwybr i ddelio ag argyfyngau'r hinsawdd a natur, gan yrru newidiadau tymor hir mewn ymddygiadau ar lefel unigolion, sectorau, busnes, cymunedau a sefydliadau. Rhaid i ymateb Cymru i Adferiad Covid-19 gael ei yrru gan yr hyn rydyn ni wedi'i ddysgu fel unigolion, diwydiannau, busnesau, sefydliadau cyhoeddus a thrydydd sector ynghylch gwytnwch ein modelau gweithredu a'n ffyrdd o weithio. Mae angen i ni ymrwymo'n hegni ar y cyd i'r pethau hynny rydyn ni wedi'u dysgu ac rydyn ni am wneud mwy ohonyn nhw.

Yn ein hymateb CCERA gwnaethom nodi nifer o feysydd cyfle sy'n ganolog i'n gweledigaeth o Adferiad Gwyrdd. Y pedwar cam allweddol yw: Adeiladu sgiliau gweithlu Cymru; Ailgyssylltu pobl a natur; Rheoleiddio; Caffael gwyrdd a lleol; Cyllid amgylcheddol; Adnewyddu ein model gweithredu - cefnogi ffyrdd newydd o weithio; Cefnogi creu lleoedd.

# Parodrwydd sectorau economaidd allweddol yng Nghymru

## 2.1 Trosolwg: parodrwydd sectoraidd

Bydd canlyniadau negodiadau masnach a datblygu deddfwriaeth y DU a Chymru, fel y Bil Amaethyddiaeth (Cymru) a bil pysgodfeydd Cymru yn creu newid sylweddol ac yn arwain at oblygiadau pellgyrhaeddol, tymor hir. Mae'r diffyg mynediad cyfredol at ragdybiaethau modelu masnach cadarn yn gwaethygu parodrwydd sectoraidd gan gynnwys Sefydliadau anllywodraethol amgylcheddol (eNGOau). Gall ansicrwydd parhaus effeithio ar lawer o bartneriaid CNC sy'n ymwneud â'n gwaith o ddydd i ddydd. Gallai hyn effeithio ar eu gallu i ymgysylltu â'n gwaith.

Nid yw'n bosibl rhagweld effeithiau a pharodrwydd cysylltiedig i bob sector oherwydd ansicrwydd sylweddol yn ymwneud â chanlyniad trafodaethau masnach. Mae hyn yn cynnwys risgiau uniongyrchol i dymor byr yr amhariad ar y gadwyn gyflenwi, a drafodir yn adran **2.3** isod. Mae'r amgylchedd deddfwriaethol hefyd yn effeithio ar barodrwydd y sector

(gweler **adran 1**). Byddwn yn parhau i weithio gyda LIC a'r holl randdeiliaid ac asiantaethau perthnasol i liniaru risgiau perthnasol.

Yr her i LIC a CNC yw cyfleu effeithiau a chyfrifoldebau, rheoliadau a phrosesau newydd, a pharodrwydd / mesurau lliniaru LIC i ystod o sectorau heterogenaidd a gwahanedig. Gallai ansicrwydd a negeseuon cymysg greu syrthni ymysg rhanddeiliaid, camddehongli bwriadol neu gyfeiliornus, a diffyg parodrwydd. Gallai hyn arwain at ganlyniadau negyddol i ddeilliannau SMNR yng Nghymru yn y tymor byr, canolig a hir. Rhaid gwneud yr holl randdeiliaid a sectorau amgylcheddol yn ymwybodol y bydd effeithiau o dan unrhyw senario Ymadael â'r UE sy'n debygol o achosi newidiadau i arferion cyfredol. Er enghraifft:

- Mae'n bwysig cyfleu i'r sector amaeth-amgylchedd y bydd materion sy'n debygol o achosi newid mewn defnydd tir dros y tymor canolig i'r tymor hir gydag effeithiau amgylcheddol, economaidd-gymdeithasol cymhleth, niweidiol. Cyflwynir yr effeithiau hyn yn fanwl yn [adroddiadau is-grŵp Tystiolaeth a Senarios LIC](#) sy'n modelu'r newid a ragwelir o ran defnydd tir. Amlinellir effeithiau uniongyrchol i dymor byr i'r sector amaeth-amgylchedd a achosir gan risg yr amhariad ar y gadwyn gyflenwi a sioc economaidd yn yr isadrannau isod.
- Yng Nghymru mae'r sector dŵr cyhoeddus (DCWW a Hafren Dyfrdwy) yn ymwybodol o'r risg i'w gweithrediadau. Maent wedi cymryd mesurau i baratoi a gweithio ar lefel y DU gyda'u cymheiriaid.
- Mae diwydiant yn gyffredinol wedi'i baratoi'n dda ar gyfer diwedd y cyfnod pontio yn bennaf mewn ymateb i'r risg 'Brexit Heb Gytundeb' sydd wedi ysgogi cwmnïau i weithredu nifer o fesurau diogelu gan gynnwys pentyrru stoc ac amddiffyn cadwyni cyflenwi. Er enghraifft, mae rhywfaint o ddibyniaeth ar symud radio-isotopau yn barhaus at ddibenion diagnostig a

thriniaeth mewn ysbytai arbenigol. Mae'r rhai yr effeithiwyd arnynt wedi rhoi adnoddau wrth gefn i amddiffyn y cadwyni cyflenwi hanfodol hyn. Mae'r adnoddau wrth gefn hyn yn anfwriadol wedi darparu gwytnwch yn erbyn y pandemig Covid-19 presennol ac mae'r sefyllfa'n cael ei hadolygu'n gyson fel rhan o drefn arolygu CNC.

- Mae angen llawer iawn o ganllawiau ar gyfer y mwyafrif o gyfundrefnau diwydiannol er mwyn sicrhau parodrwydd sectoraidd, er enghraifft y Cynllun Masnachu Allyriadau. Mae angen cyfathrebu clir ac amserol gyda gweithredwyr a'r cyhoedd ar newidiadau diwydiannol sy'n gysylltiedig â'r Ymadawiad â'r UE oherwydd diwedd y cyfnod pontio. Mae'n rhaid i LIC a DAau ddatblygu polisi cadarn i gefnogi'r ffyrdd newydd hyn o weithio. Mae ansicrwydd ar hyn o bryd yn golygu bod diffyg polisi ac arweiniad addas ar gyfer rhanddeiliaid.
- Er mwyn cynorthwyo'r sector gwastraff i gyd i fod yn barod, mae CNC yn dal i weithio ochr yn ochr â Llywodraeth Cymru a Llywodraeth y Deyrnas Gyfunol, asiantaethau eraill ac Awdurdodau Lleol wrth feithrin cyswllt a rhoi cyngor i nifer o grwpiau rhanddeiliaid yn y diwydiant gwastraff a chyfundrefnau cyfrifoldeb cynhyrchwyr.

Mae ansicrwydd parhaus ynghylch 'cyfeiriad y teithio' ei hun yn cael effeithiau sectoraidd. Mae graddfa a chyflymder y newid dros amser yn debygol o gael effaith andwyol ar sectorau allweddol ac ar gynnal gweithrediad gweithdrefnau diwygiedig neu geisiadau am drwyddedau rhanddirymiad, er enghraifft.

Fel y nodir yn **adran 1.7**, mae Covid-19 yn gwaethygu'r risgiau sy'n gysylltiedig ag amharodrwydd sectoraidd a diffyg gwytnwch sectoraidd i ddelio â straen. Gallai hyn arwain at effaith economaidd gydag effeithiau canlyniadol ar yr amgylchedd a lles. Mae cyfathrebu cyflym, effeithiol, clir ac amserol yn allweddol i liniaru hyn.

Nodir risgiau a materion penodol yn yr isadrannau canlynol.

## 2.2 Diffyg argaeledd neu golli mynediad at nwyddau a gwasanaethau hanfodol

Gallai anallu i gael cyflenwadau yn eu meintiau, mathau neu fanylebau arferol gan gynnwys cemegolion, offer, cyfarpar a deunyddiau crai arwain at effaith economaidd neu weithredol ar fusnesau, a thrwy hynny arwain at effeithiau amgylcheddol. Gallai hyn arwain at ddiffyg cydymffurfio, methiant mewn gweithrediadau, defnyddio eitemau amhriodol yn lle'r rhai safonol (defnydd answyddogol) neu fethu â chynnal yr un safonau. Gwaethygir hyn lle mae cadwyni cyflenwi yn gymhleth ac yn ddibynnol ar sectorau eraill.

Mae ansicrwydd ar gyfer y gofynion deddfwriaethol yn y tymor hwy yn cwtogi ar fuddsoddiad ac arloesedd, gan gynyddu'r pwysau ar feysydd y mae Ymadael â'r UE yn effeithio arnynt gan gynnwys cadwyni cyflenwi cemegol.

## 2.3 Materion mewnforio ac allforio gan gynnwys rheolaethau ffiniau

### 2.3.1 Rheolaethau ffiniau

Mae gan brosesau mewnforio ac allforio gan gynnwys gofynion gwirio ffiniau y potensial i achosi oedi ac aflonyddwch uniongyrchol a sylweddol ym mhorthladdoedd Prydain Fawr, gan gynnwys porthladdoedd Cymru. Er enghraifft, mae rheolaethau mewnforio newydd ar gyfer ffiniau, a gyflwynwyd o fis Ionawr 2021 yn gofyn am reolaethau Glanweithiol a Ffytoiechydol (SPS) ar gyfer nwyddau sy'n dod i mewn i Ogledd Iwerddon o drydedd wlad neu Brydain Fawr. Bydd cyflwyno gwiriadau newydd yn digwydd yn gyfnodol mewn tri cham ar: (1) 1 Ionawr 2021, (2) Ebrill 2021, a; (3) Gorffennaf 2021 a allai achosi aflonyddwch ym mhorthladdoedd Cymru os nad yw'r seilwaith a'r busnes wedi'u paratoi'n ddigonol.

Mae gofynion mewnforio ac allforio newydd ar gyfer nwyddau penodol, er enghraifft gofynion gwirio Glanweithiol a Ffytoiechydol (SPS) yn gymhleth iawn. Mae gan brosesau cymhleth newydd ar gyfer mewnforian ac allforion a diffyg eglurder ynghylch yr adnoddau sydd ar gael i gefnogi'r prosesau hyn y potensial i darfu'n sylweddol ar sectorau a'r gadwyn gyflenwi yng Nghymru. Mae negeseuon ac arweiniad clir, yn enwedig ond nid yn unig ar gyfer y sector amaeth-amgylchedd, yn hanfodol i gefnogi parodrwydd busnes i gyfyngu ar aflonyddwch.

Gallai aflonyddwch achosi digwyddiadau ar bob cam o'r gadwyn gyflenwi. Gallai unrhyw oedi yng ngweithdrefnau mewnforio ac allforio olygu bod nwyddau'n troi'n wastraff, ac felly bod nwyddau darfodus 'mewn union bryd' yn cael eu gwaredu a'u taflu, gan arwain at fwy o berygl o ddigwyddiadau sy'n gysylltiedig â gwastraff a llygredd. Mae Covid-19 wedi dangos i ni nad yw'r mwyafrif o sectorau wedi'u paratoi'n llwyr ar gyfer effeithiau aflonyddwch sylweddol yn y gadwyn gyflenwi sy'n risg allweddol sy'n gysylltiedig â diwedd y cyfnod pontio. Mae CNC wedi ystyried y risgiau hyn o safbwynt gwastraff ac mae mesurau lliniaru ar waith ar gyfer yr effeithiau a ragwelir. Mae'r digwyddiadau'n cynnwys:

- Mae risg y bydd llaeth yn cael ei waredu ar ffermydd; fodd bynnag, mae gan CNC strategaeth liniaru glir o ran defnyddio'r "hierarchaeth wastraff" ar gyfer y risg hon.
- Mae'r risgiau sy'n gysylltiedig â gwaredu gwastraff amaethyddol yn anghywir i dir fel gwaredu carcasau anifeiliaid yn cael ei reoli gan yr Asiantaeth Iechyd Anifeiliaid a Phlanhigion (APHA). Dim ond o dan rannirymiad y'i caniateir.
- Mae gan gyrff rheoleiddio yn y Deyrnas Gyfunol, gan gynnwys CNC, gytundeb â Llu'r Ffiniau i ddarparu cymorth, cyfarwyddyd a data tuag at eu cynlluniau wrth gefn ar gyfer dulliau priodol o waredu unrhyw nwyddau sy'n difetha a throi'n wastraff.
- Gallai toriad yn y gadwyn gyflenwi ac oedi mewn porthladdoedd arwain at fwy o ddefnydd o storfeydd dros dro a pharciau loriau, a fyddai'n creu mwy



o berygl o lygru'r amgylchedd. Gwaith anodd a drud fyddai mynd i'r afael ag unrhyw lygredd mewn dŵr daear o ganlyniad i hyn, a gallai arwain at fwy o halogi tir ymhellach yn y dyfodol.

- Gallai ansicrwydd ynghylch rheolaethau ffiniau arwain at ddiffyg camau ar sail tystiolaeth ac wedi'u targedu mewn perthynas â Rhywogaethau Goresgynnol Estron (INNS) yng Nghymru a'i moroedd. Bydd colli mynediad i rwydweithiau a systemau rhybuddio'r UE yn lleihau ein gallu i sganio'r gorwel a pharatoi.

### 2.3.2 Cyfleusterau storio dros dro ym mhorthladdoedd Cymru neu'n agos atynt

Mae canllawiau gan Lywodraeth y DU ar sut i weithredu cyfleuster storio dros dro os bydd oedi mewn porthladdoedd yn awgrymu y bydd rheoliadau'r DU yn cynnal y gofynion presennol ar gyfer capasiti storio a chofrestru eiddo. Mae angen eglurder pellach ar sut y bydd hyn yn cael ei weithredu yng Nghymru. Y prif bryder i CNC gyda storio dros dro mewn porthladdoedd neu'n gysylltiedig â phorthladdoedd, yw llygredd yr amgylchedd ehangach. Mae cyfleusterau annigonol neu amhriodol yn cynyddu'r risg hon, megis darpariaethau draenio amhriodol, arwynebau athraidd, gollyngiadau ac arllwysladau tanwydd. Ar hyn o bryd mae diffyg arweiniad neu gyfeirio at ganllawiau presennol i atal llygredd dŵr a dŵr daear ar dudalennau gwe storio dros dro Llywodraeth y DU.

### 2.3.3 Symud Gwastraff

O 1 Ionawr 2021, bydd Prydain Fawr a Gogledd Iwerddon yn ymwahanu yn eu dull o reoli llwythi gwastraff. Gan fod hwn yn fater a gedwir yn ôl, mae Defra a Llywodraeth y Deyrnas Gyfunol yn dal i drafod yr union ddull o reoleiddio hyn, ac mae CNC a LIC yn cyfrannu at y trafodaethau hynny. Safbwynt Defra ar hyn o bryd yw na ddylid rhoi hysbysiad ond ar gyfer symudiadau rhwng Prydain Fawr a Gogledd Iwerddon. Y cynigion presennol yw:

- Bydd yn rhaid hysbysu wrth symud gwastraff a mathau penodol o wastraff nad yw'n beryglus o Brydain Fawr i Ogledd Iwerddon
- Bydd yn rhaid cwblhau ffurflenni Atodiad VII ar gyfer symud Gwastraff Rhestr Werdd o Brydain Fawr i Ogledd Iwerddon
- Gwaherddir allforion er gwaredu o Brydain Fawr i Ogledd Iwerddon

Ymhlith y materion allweddol mae:

- Allforion gwastraff Prydain Fawr (Cymru) i Ogledd Iwerddon. Dros y 5 mlynedd diwethaf mae allforion gwastraff Cymru i Ogledd Iwerddon wedi bod oddeutu 15k tonnall ar gyfartaledd o <20 o gyfleusterau gwastraff a ganiateir.
- Baich cost i fusnesau Cymru sydd angen hysbysiadau Llwythi Trawsffiniol (TFS) i CNC.

- Bellach mae'n ofynnol i CNC edrych ar ddata mewnforio o Ogledd Iwerddon i ystyried symiau i gefnogi parodrwydd sectoraidd Cymru.
- Gallai'r newidiadau hyn fod yn ddadleuol o safbwynt gwleidyddol gan y gellid eu dehongli fel rhwystr i fasnach rhwng Prydain Fawr a Gogledd Iwerddon

Gall Cludo Gwastraff ar Draws Ffiniau ddod yn broblem, yn enwedig o ystyried diwygiadau ychwanegol i Confensiwn BASEL i ddsbarthiad plastigau. Mae'r newidiadau'n golygu, ar ôl 1 Ionawr 2021, mai dim ond fel gwastraff rhestr werdd (B3011) y gellir allforio plastigau gwastraff nad ydynt yn beryglus, os ydynt i fod i gael eu hailgylchu mewn modd sy'n amgylcheddol fuddiol a bron yn rhydd o halogiad a mathau eraill o wastraff. Bydd hyn yn cynyddu nifer yr hysbysiadau y mae CNC yn eu derbyn a bydd yn arwain at gostau gweinyddol i CNC.

## 2.4 sioc economaidd: risgiau ac effeithiau sectoraidd

Mae gan effeithiau rhwystrau tariff a di-dariff ar fasnach ac aflonyddwch cysylltiedig yn y gadwyn gyflenwi'r potensial i achosi aflonyddwch sectoraidd sylweddol gan fod sectorau penodol yn destun sioc economaidd. O ganlyniad i'r aflonyddwch hwn mae'n debygol y bydd mwy o ddigwyddiadau, ac y byddant yn cymryd mwy o amser i'w datrys, gan gynnwys diffyg cydymffurfio, gweithgarwch anghyfreithlon neu heb ei ganiatáu.

Gallai'r risgiau hyn gael effaith amgylcheddol sylweddol gyda goblygiadau i adnoddau CNC. Mae'n debygol y bydd galw cynyddol am swyddogaethau trwyddedu, caniatáu, rheoleiddio a gorfodi CNC yn ogystal â galw cynyddol ar gyfer ymateb i ddigwyddiadau llygredd. Mae CNC wedi ystyried y risgiau hyn o safbwynt gwastraff ac mae mesurau lliniaru ar waith ar gyfer yr effeithiau a ragwelir.

Mae'r sector amaeth-amgylchedd yn arbennig o agored i 'sioc economaidd' sy'n gysylltiedig â masnach, yn enwedig mewn senario Dim Cytundeb Masnach, er enghraifft effeithiau ar y farchnad allforio cig oen o ganlyniad i dariffau. Mae'r rhwystrau hyn i fasnach yn gymhleth ac yn anodd eu rhagweld, gan ei gwneud hi'n anodd i'r sector baratoi'n effeithiol. Mae sioc economaidd yn debygol o gynyddu'r risg o ddigwyddiadau tymor byr (diffyg cydymffurfio, dympio) â risgiau llygredd posibl. Ar y tir ac ar y môr gallwn weld achosion o ddympio stoc neu ddefnyddio cemegolion amhriodol, gan achosi niwed uniongyrchol neu wasgaredig i gynefinoedd a rhywogaethau ac ecosystemau. Mae risgiau tymor hir yn gysylltiedig â newid anghynladwy i ddefnydd tir a allai arwain at golli cynefinoedd a rhywogaethau. Mae yna hefyd risgiau'n gysylltiedig â chydymffurfio ag amodau trwyddedau a chynlluniau a'r gostyngiad posibl yn y nifer sy'n manteisio ar gyfleoedd mewn cynlluniau grant presennol ac yn y dyfodol.

Mae digwyddiadau tymor byr a newid tir tymor hwy o ran defnydd tir yn peri'r risg o effeithiau negyddol ar fioddioelwch, safonau iechyd a lles anifeiliaid, safonau amgylcheddol, a risgiau i wead cymdeithasol cymunedau gwledig gan gynnwys iechyd a lles ffermwyr. Byddai effeithiau o'r fath hefyd â goblygiadau sylweddol i

ddyletswydd statudol CNC i gyflawni SMNR. Byddai colli unrhyw gyllid yn y maes arian amaethamgylchedd yn gwaethygu'r sioc economaidd i'r sector hwn.

Mae'r sector pysgodfeydd morol yn paratoi ar gyfer y senario waethaf; h.y. dim cytundeb masnach a rhwystrau tariff a di-dariff. Mae'n debygol y bydd hyn yn arwain at faterion tymor byr i ganolig o ran symud cynhyrchion byw trwy borthladdoedd, tarfu ar farchnadoedd yr UE a gostyngiad mewn gweithgarwch economaidd (pysgota) oherwydd effeithiau ar y galw a chludeant. Gellir cymharu effeithiau Covid-19 ar y diwydiant pysgota â diwedd y cyfnod gweithredu heb gytundeb masnach; effeithiwyd ar farchnadoedd a gostyngodd y galw. Darparodd LIC gynllun caledi yn ystod Covid-19. Efallai y bydd angen ymyrraeth bellach os bydd senario Dim Cytundeb Masnach. Mae Corff y Diwydiant Pysgod Môr wedi darparu sawl canllaw defnyddiol ar gyfer y sector mewn perthynas â [diwedd y cyfnod pontio](#).

## 2.5 Gorfodi cyfraith amgylcheddol

Un o'r bylchau allweddol i'r sector amgylcheddol yn sgil yr ymadawiad â'r UE yw gorfodi cyfraith amgylcheddol a mecanwaith i ddinasyddion godi materion mewn perthynas â chyfraith amgylcheddol. Bydd rôl allweddol yn hyn i'r corff goruchwyllo amgylcheddol newydd, ac i'r asesydd dros dro nes bydd y corff parhaol yn ei le. Fodd bynnag, mae angen o hyd i egluro perthynas sefydliadau presennol â'r asesydd a'r corff newydd, er mwyn sicrhau na fydd unrhyw orgyffwrdd mewn swyddogaethau yn ogystal â phroses brysbennu gyffredin ac effeithiol ar gyfer cwynion amgylcheddol strategol.

Mae angen i LIC a CNC sicrhau bod digon o adnoddau priodol ar waith i asesu'r nifer disgwylidig o gwynion a reolwyd yn flaenorol ar ein rhan gan yr UE. Mae'n debygol hefyd y bydd cynnydd mewn cwynion ar ôl sefydlu a chyhoeddi proses cwynion amgylcheddol newydd yng Nghymru. Felly mae'n hanfodol bod LIC yn sicrhau bod y sefydliad cywir a phobl sydd â'r sgiliau a'r wybodaeth briodol yn mynd i'r afael â'r cwynion amgylcheddol strategol hyn. Oherwydd natur ein cylch gwaith, mae CNC yn disgwyl y bydd angen adnoddau ac arbenigedd CNC ar gyfer nifer sylweddol o'r cwynion hyn.

Mae angen eglurder pellach hefyd ar rôl y corff goruchwyllo amgylcheddol arfaethedig mewn perthynas ag adolygu a gosod safonau a chraffu ar berfformiad yn erbyn y safonau hynny. Mae hon yn swyddogaeth bwysig y dylid ei chefnogi gan baneli cyfeirio arbenigol diduedd ag adnoddau addas gan gynnwys arbenigedd mewn polisi, rheoleiddio a'r byd academiaidd. Os na chaiff ei gefnogi'n ddigonol neu ei ddiffinio'n glir, gallai hyn arwain at fwlch sylweddol mewn atebolrwydd, gydag effeithiau canlyniadol ar yr amgylchedd ac ar draws y sector.

Mae cadarnhad ar y dull gweithredu ar gyfer y fframwaith llywodraethu amgylcheddol newydd, yn ogystal â swyddogaethau a fformat y corff goruchwyllo amgylcheddol newydd yn allweddol ar gyfer paratoi'n effeithiol. Bydd eglurder ynghylch manylion unrhyw ddeddfwriaeth sydd ar ddod i ymgorffori'r dull yn cefnogi CNC a'r sector amgylcheddol ehangach yn eu parodrwydd ar gyfer y cyfnod ôl-drosglwyddo.

Mae Ymadael â'r UE yn achosi ansicrwydd gydag effeithiau canlyniadol ar barodrwydd sectoraidd a pharodrwydd busnes. Er enghraifft, rhanddeiliaid yn manteisio ar gontractau ar gyfer gwelliant ecolegol a phrosiectau. Mae'n hanfodol bwysig darparu cyfathrebiadau clir i bwysleisio y bydd ymrwymïadau a rhwymedigaethau bioamrywiaeth blaenorol yr UE wedi'u hymgorffori yng nghyfraith y DU ar y tir ac ar y môr, felly maent yn dal yn berthnasol i bobl nodi ac ymateb iddynt yn briodol.

Mae angen cyfathrebu cydgysylltiedig clir a diamwys gan LIC a CNC ar amddiffyn safleoedd, cynefinoedd a rhywogaethau gwarchoddedig yn barhaus er mwyn atal camddealltwriaeth posibl ynghylch gweithdrefnau (cyfeiliornus neu fwriadol) gan arwain at gollu neu ddifrodi ecosystemau. Mae'r cyfathrebu hwn yn hanfodol gan fod y pandemig Covid-19 presennol eisoes wedi gweld cynnydd mewn digwyddiadau, megis carthu afonydd heb ganiatâd. Gall hyn gyfuno â'r Ymadawïad â'r UE i arwain at gynnydd parhaus os na chymerir camau rhagataliol.

## Y goblygiadau ar gyfer parodrwydd sy'n deillio o drafod cytundebau rhyngwladol y DU

### 3.1 Trosolwg

Erys ansicrwydd sylweddol ynghylch negodi cytundebau masnach rhyngwladol y DU gyda'r UE a chenhedloedd eraill. Mae hyn yn cael effaith ar allu CNC a'r sector amgylcheddol i baratoi ar gyfer heriau a chyfleoedd yn y dyfodol, eu blaenoriaethu a sicrhau adnoddau ar eu cyfer. Fel y nodwyd yn **adrannau 1 a 2**, mae ansicrwydd parhaus yn effeithio ar barodrwydd Cymru ymysg LIC, asiantaethau a rhanddeiliaid sectoraidd.

Ar hyn o bryd mae UKG yn trafod gyda nifer o bartneriaid rhyngwladol ar yr un pryd. Mae yna faterion cymhleth sy'n aml yn gysylltiedig â'i gilydd sy'n parhau i fod heb eu datrys ac sy'n cael effaith ar gylch gwaith statudol Cymru a CNC. Er enghraifft, mae Bil Pysgodfeydd y DU yn darparu'r fframwaith ar gyfer llunio cytundebau pysgodfeydd ac mae'n dibynnu ar ganlyniad trafodaethau masnach yr UE.

Bydd canlyniad trafodaethau masnach a newidiadau deddfwriaethol yn arwain at heriau a chyfleoedd yng Nghymru. Waeth beth fo'r canlyniadau, bydd gofynion proses ychwanegol fel gwiriadau ar y ffin yn cael sgil-ffaith ar risg economaidd ac amgylcheddol (gweler **adran 2**). Gallai dargyfeirio rheoleiddiol o ganlyniad i ddeilliannau negodiadau masnach arwain at ostyngiad mewn safonau amgylcheddol. Byddai hyn yn cael effaith sylweddol ar ddyletswydd statudol CNC i gyflawni SMNR. Mae CNC yn monitro ac yn asesu risgiau ac effeithiau unrhyw ddiweddariadau ar y trafodaethau i'n gweithgareddau a'n blaenoriaethau yn barhaus.

Rhoddir mwy o fanylion yn yr isadrannau canlynol:

### 3.2 Peryglon gostyngiad mewn safonau amgylcheddol a safonau eraill yng Nghymru

Mae risg y gallai canlyniadau negodiadau masnach UKG effeithio'n negyddol ar amcanion LIC i gynnal safonau amgylcheddol a lles anifeiliaid uchel. Effeithir ar hyn hefyd gan ofynion o ran cydraddoldeb o fewn y DU trwy'r Bil Marchnad Fewnol ac unrhyw ddefnydd o Fframweithiau Cyffredin (gweler **adran 4**). Gallai hyn effeithio ar safonau yng Nghymru a'i dyfroedd tiriogaethol (dargyfeiriad rheoleiddiol). Os yw safonau amgylcheddol sy'n dirywio yn arwain at arferion gwael ar dir, gall hyn hefyd fod â goblygiadau i'r amgylchedd daearol a morol ehangach trwy effeithiau lleol fel llygredd dŵr a sbwriel morol, ac effeithiau bydeang, megis newid yn yr hinsawdd.

### 3.3 Peryglon effeithiau a bylchau mewn deddfwriaeth a llywodraethu

Mae yna nifer o fylchau deddfwriaethol a llywodraethu posib gan gynnwys o ganlyniad i gytundebau masnach, sefydlu fframweithiau cyffredin, trawsosod cyfarwyddebau, a chywiro OSau. Gall y rhain gyfyngu ar allu CNC i gyflawni

dyletswyddau statudol. Trafodir y risgiau hyn yn adrannau **1.2**, **1.3** a **2.5** o'r ymateb hwn.

### 3.3.1 Perthnasau a chytundebau rhyngwladol

Bydd canlyniad trafodaethau masnach yn cael effaith i CNC ar ein gwaith rhyngwladol a'r gwledydd a'r sefydliadau allweddol y byddwn yn ceisio meithrin perthnasoedd â nhw yn y dyfodol. Ar hyn o bryd rydym yn datblygu strategaeth ymgysylltu rhyngwladol ffurfiol. Mae hefyd angen parhau i ddatblygu ein hymagwedd tuag at gytundebau rhyngwladol ar ôl Ymadael â'r UE, er enghraifft, targedau ac ymrwymïadau'r Fframwaith Bioamrywiaeth Bydeang sydd ar ddod.

### 3.3.2 Colli mynediad i gronfeydd data a rhwydweithiau'r UE

Gallai'r DU a Chymru golli aelodaeth i nifer o rwydweithiau ac asiantaethau rhannu gwybodaeth yr UE sy'n hanfodol ar gyfer rhybuddion cyflym, cyfnewid gwybodaeth, arferion da, blaenoriaethau ymchwil a rennir, a datblygu dulliau cyffredin. Ymhlith yr enghreifftiau mae ECHA, EUROPHYT, EURATOM, ADNS a'r AEE.

Byddai hyn yn cael effaith ar drosglwyddo gwybodaeth, llywodraethu amgylcheddol a chynnal arferion da o ran diogelu'r diwydiant a'r amgylchedd. Byddai colli mynediad i gronfeydd data a rhwydweithiau'r UE hefyd yn lleihau ein gallu i fynd i'r afael â materion trawsffiniol allweddol fel newid yn yr hinsawdd, iechyd planhigion ac anifeiliaid a bioddiogelwch. Byddai ganddo hefyd oblygiadau o ran bodloni gofynion statudol ar gyfer adrodd a rhannu tystiolaeth.

Mae'r rhwydweithiau a'r asiantaethau hyn yn cynorthwyo'r aelodau i gyflawni eu rhwymedigaethau dan gyfraith rhyngwladol a deddfwriaeth yr Undeb Ewropeaidd, fel y'u troswyd i gyfraith wladol ac yn hyrwyddo cysondeb mewn prosesau rheoleiddio amgylcheddol. Bydd colli aelodaeth i'r rhwydweithiau hyn yn cael effaith ar allu holl Reoleiddwyr Amgylcheddol y DU i gynnal cydymffurfiad â'r ddeddfwriaeth bresennol ac yn lleihau ein mynediad at arloesedd ac arferion da.

### 3.3.3 Dargadw cyfraith achosion

Mae'r mwyafrif o ddeddfwriaeth amgylcheddol y DU yn deillio o gyfraith yr UE sydd wedi'i throsi i gyfraith y DU. Mae ansicrwydd ynghylch trosglwyddo cyfraith achosion Llys Cyfiawnder Ewrop i'r DU yn dilyn Ymadael â'r UE. Gall hyn, dros amser, ei gwneud yn ofynnol i gynseiliau cyfreithiol presennol gael eu hailsefydlu a gallai unrhyw newid i gynsail cyfreithiol gael effaith negyddol ar safonau amgylcheddol.

### 3.3.4 Trosglwyddo Swyddogaethau (ToF) a chyrrff llywodraethu

Mae gennym bryderon ynghylch bylchau llywodraethu a diffyg eglurder ar ToF o ganlyniad i ansicrwydd negodiadau masnach. Trafodir y materion hyn yn fanwl yn **1.3** a **2.5**.

### 3.4 Peryglon aflonyddwch sectoraidd a sioc economaidd

Mae gan ansicrwydd parhaus ynghylch canlyniad trafodaethau masnach ac unrhyw newid sylweddol i reoliadau ac arferion cyfredol y gallu i arwain at aflonyddwch sectoraidd sylweddol a sioc economaidd. Gweler **adran 2** i gael mwy o fanylion am effeithiau sectoraidd.

## Cytundebau rhynglywodraethol o fewn y DU sy'n ymwneud â diwedd y cyfnod pontio, gan gynnwys y rhaglen fframweithiau cyffredin

### 4.1 Trosolwg

Fel aelod o'r UE, mae cywerthedd rheoliadol ledled y DU wedi'i yrru gan gymhwysu rheoliadau a safonau'r UE. Oherwydd ein Hymadawriad â'r UE, mae ansicrwydd ar hyn o bryd ynghylch sefydlu a llywodraethu marchnad fewnol y DU. Cynigiwyd fframweithiau cyffredin ar sail rynglywodraethol (e.e. ar gyfer mewnfurion planhigion a hadau) i danategu safonau rheoleiddio wedi'u cysoni ledled y DU. Byddai cynnydd ac eglurhad ar gyfer uchelgeisiau a rennir yn rhoi sicrwydd i lunwyr polisi, rheoleiddwyr, busnesau a'r cyhoedd.

Mae Bil Marchnad Fewnol UKG yn dal i fod yn destun newid, ond mae eglurder ar sut mae agweddau ar Brotocol Gogledd Iwerddon a chymhwysedd datganoledig yn cael eu defnyddio yn hanfodol ar gyfer paratoi ar gyfer Ymadael â'r UE yng Nghymru gan LIC, CNC ac asiantaethau eraill. Oherwydd yr ansicrwydd ynghylch Bil Marchnad Fewnol y DU a chanlyniadau negodiadau masnach, mae risg y gallai amcanion LIC i gynnal safonau amgylcheddol uchel a lles anifeiliaid gael eu heffeithio'n negyddol. Gall hyn hefyd gael effaith ar ba mor gystadleuol yw busnesau Cymru. Mae Llywodraeth y DU wedi nodi o'r blaen y bydd safonau amgylcheddol yn cael eu cynnal, ond byddai cadarnhad o ymrwymadau, mesurau a thargedau deddfwriaethol penodol yn rhoi sicrwydd. Mae pryder eang ymhlith rhanddeiliaid gan gynnwys eNGOau ynghylch y risg barhaus y bydd safonau amgylcheddol yn gostwng ar ôl Ymadael â'r UE. Dylai'r gwaith rhagorol sy'n weddill ar fframweithiau cyffredin geisio cau'r bylchau a'r risgiau hyn a datrys unrhyw faterion trawsffiniol posibl.

### 4.2 Fframweithiau cyffredin

Byddai fframwaith ar gyfer llywodraethu amgylcheddol wedi'i danategu gan amcan, egwyddorion a safonau cyffredin yn helpu i osgoi bylchau wrth weithredu polisi amgylcheddol ledled y DU. Byddai'r dull hwn hefyd yn egluro rôl a chylch gwaith cyrff goruchwyllo a chyrff cyhoeddus rheoleiddiedig lle mae cylchoedd gwaith datganoledig a heb eu datganoli yn cyd-daro.

Byddai fframwaith ac egwyddorion amgylcheddol cyffredin ar lefel y DU hefyd yn lleihau'r risg o ddargyfeirio rheoleiddiol ac yn darparu llinell sylfaen gyffredin i dirfeddianwyr a diwydiant, waeth beth yw eu lleoliad. Byddai hyn yn lleihau'r risg y byddai 'ras i'r gwaelod' neu faterion trawsffiniol eraill fel difrod amgylcheddol trawsffiniol yn ddarostyngedig i wahanol safonau rheoleiddio. Byddai hefyd yn helpu i egluro sut mae rheoleiddwyr a gweinyddiaethau yn gweithio gyda'i gilydd ledled y DU i reoli materion trawsffiniol, megis newid yn yr hinsawdd, ansawdd dŵr neu lygredd aer lle mae dull cydweithredol yn hanfodol. Byddai fframwaith cyffredin yn dilyn ddull tebyg i fframwaith cyffredol yr UE yn cydnabod ac yn parhau gwahanol fframweithiau cyfreithiol a deddfwriaeth ddatganoledig ledled y DU.



Byddai eglurder ar fanylion a chyfeiriad y dull ar gyfer nifer o fframweithiau a chytundebau cyffredin y DU rhwng UKG, LIC a'r DAau eraill yn cael eu croesawu. Byddai hyn yn cefnogi ein parodrwydd ar gyfer diwedd y cyfnod pontio a'r newidiadau posibl y gallai hyn eu hachosi i'r safonau a'r mesurau a gymhwysir gan Weinyddiaethau'r DU. Byddai hyn hefyd yn helpu i ddiogelu safonau ac egwyddorion amgylcheddol LIC.

### 4.3 Marchnadoedd mewnol a chytundebau rhynglywodraethol

Mae ansicrwydd ynghylch rôl ffurfiol DAau wrth bennu siâp safonau marchnad fewnol newydd yn y dyfodol (e.e. trwy Swyddfa'r Farchnad Fewnol). Ymhlith yr enghreifftiau perthnasol mae:

- Dylai Bil Pysgodfeydd y DU a'r Memorandwm Cyd-ddealltwriaeth Pysgodfeydd ddarparu'r fframwaith ar gyfer cytundebau rhynglywodraethol y DU gan gynnwys Mecanwaith Datrys Anghydfod ac ystyriaeth o'r Concordat.
- Mae cytundebau rhynglywodraethol yn cael eu hadolygu a'u cytuno fel y Memorandwm Cyd-ddealltwriaeth diweddar ar gyfer Cynllun Masnachu Allyriadau'r DU (ETS).
- Sefydlu systemau dogfennau Cyfeirio (BREF) Technegau Gorau sydd ar Gael (BAT) yn y DU.
- Er nad oes gennym lawer o gysylltiad uniongyrchol â'r Fframwaith Cyffredin ar gyfer Cemegion, rydym yn ymwybodol ei fod yn dod yn ei flaen yn foddhaol. Rydym yn cwblhau'r Memorandwm Cyd-ddealltwriaeth rhwng CNC ac Asiantaeth yr Amgylchedd, gan nodi'r trefniadau i gyflawni ein priod ddyletswyddau o dan Cofrestru, Gwerthuso, Awdurdodi a Chyfyngu ar Gemegau (REACH) - y DU.

Mae risg na fydd cymwyseddau datganoledig DA yn cael eu diogelu'n ddigonol, ac y bydd Cymru'n colli'r gallu i osod safonau amgylcheddol yn annibynnol. Gallai hyn fod yn niweidiol i'r amgylchedd yng Nghymru. Mae CNC yn awyddus i gefnogi Llywodraeth Cymru trwy ganllawiau ar sail tystiolaeth i gynnal a gwella safonau amgylcheddol, i amddiffyn cyflwr ein hamgylchedd a chyflawni SMNR. Er enghraifft, nid yw'n eglur pa effaith y bydd Bil Marchnad Fewnol UKG yn ei chael ar rheoleiddio cyflenwad dŵr y dyfodol o Gymru i Loegr.

Dylai'r dull hwn ddarparu eglurhad ar sut mae rheoleiddwyr a gweinyddiaethau'n gweithio gyda'i gilydd ledled y DU i reoli materion trawsffiniol lle mae dull cydweithredol yn hanfodol. Mae risg o ymwahanu rhwng DAau ac UKG o ran egwyddorion amgylcheddol a llywodraethu. Mae materion fel newid yn yr hinsawdd, ansawdd dŵr, ansawdd aer a llygredd yn dibynnu ar ddull cydweithredol ar lefel genedlaethol a rhyngwladol. Bydd hyn hefyd yn cefnogi cynnal safonau diwydiannol ac amgylcheddol ledled y DU a Chymru.

#### 4.4 Goblygiadau Protocol Gogledd Iwerddon (y Protocol)

Mae Protocol Gogledd Iwerddon yn rhan o Ddeddf Undeb Ewropeaidd (Cytundeb Tynnu'n Ôl) 2020 Llywodraeth y DU 2020. Mae'r Protocol yn sicrhau na fydd ffin galed ar ynys Iwerddon os bydd Brexit heb gytundeb neu gytundeb sy'n gul ei chwmpas. Bydd Gogledd Iwerddon yn parhau i orfodi rheolau tollau'r UE ac yn dilyn ei reolau ar safonau cynnyrch (y farchnad sengl ar nwyddau). Gallai telerau'r Protocol effeithio o bosibl ar weithrediad marchnad fewnol y DU ac unrhyw fframweithiau cyffredin cysylltiedig.

#### 4.5 Deddfwriaeth Sylfaenol: fframweithiau ac amserlenni cyffredin

Mae pryderon y bydd Bil Amaethyddiaeth, Bil yr Amgylchedd a Bil Pysgodfeydd UKG yn arwain at ymwahaniad rheoleiddiol rhwng Gogledd Iwerddon a gweddill y DU yn yr ardaloedd hyn. Mae Gwasanaeth Ymchwil a Gwybodaeth Cynulliad Gogledd Iwerddon wedi cyhoeddi papurau briffio ar bob un o'r biliau hyn, gan nodi'r angen am eglurder ynghylch a ydynt yn ystyried telerau'r Protocol ac yn cydymffurfio â hwy. Maent hefyd wedi codi ymholiadau ynghylch y potensial i deddfwriaeth o'r fath arwain at ymwahaniad rhwng Gogledd Iwerddon a gweddill y DU, o ystyried gofynion y Protocol ynghylch cymhwyso cyfraith yr UE yn y meysydd hyn. Gallai dargyfeiriad o'r fath fod â goblygiadau sylweddol i farchnadoedd mewnol y DU a fframweithiau cyffredin a gallai gael effaith ar Gymru.

Fel yr amlygwyd mewn adrannau blaenorol, mae graddfa a chyflymder y newid ar gyfer parodrwydd polisi, deddfwriaeth, rheoliadau a seilwaith yn heriol iawn i LIC, CNC, asiantaethau eraill ac aelodau o'r cyhoedd. Mae Covid-19 yn creu haen ychwanegol o gymhlethdod o amgylch gweithrediadau o ddydd i ddydd a risgiau digwyddiadau cydamserol, er enghraifft os bydd brig Covid-19 yn digwydd yn ystod yr Ymadawiad â'r UE a chyda chyfnod o lifogydd. Gallai Covid-19 effeithio ar y cyllid sydd ar gael, gyda'r posibilrwydd y bydd cyllidebau'r dyfodol yn cael eu cyfyngu neu eu lleihau ymhellach.

Bydd yr amgylchedd polisi a deddfwriaethol yng Nghymru a'r DU yn destun newid digynsail dros yr ychydig flynyddoedd nesaf oherwydd yr Ymadawiad â'r UE, Covid-19 a newid yn yr hinsawdd. Mae'n hanfodol ein bod yn gallu ymateb i'r heriau lluosog hyn i amddiffyn amgylchedd Cymru. Fel yr ydym wedi'i nodi yn ein hymateb, mae'r amserlenni ar gyfer gweithredu deddfwriaeth, prosesau llywodraethu, seilwaith ffiniau, prosesau mewnforio ac allforio a gofynion tollau newydd yn heriol i deddfwyr, rheoleiddwyr a busnesau. Er enghraifft:

- Mae amserlenni'n dynn wrth weithredu Cynllun Masnachu Allyriadau (ETS) newydd y DU.
- Mae'n bosibl y bydd angen gweithredu'r OS Dim Cytundeb ar gyfer cludo gwastraff fel mesur tymor byr oherwydd cyfyngiadau amser. Ar hyn o bryd mae CNC yn drafftio negeseuon cyfathrebu wedi'u diweddarau i'r sector.

Mae'r effeithiau hyn a'r amserlenni cysylltiedig yn arbennig o heriol i sectorau llai a llai agoredig fel yr amlygir yn **adran 2**.

## Gwybodaeth ategol ychwanegol

### 5.1 Trosolwg

Cyfoeth Naturiol Cymru yw'r Corff mwyaf a Noddir gan Lywodraeth Cymru, sy'n cyflogi 1,900 o staff ledled Cymru gyda chyllideb o £180 miliwn. Ein rolau a'n cyfrifoldebau yw:

- **Cynghorydd:** prif gynghorydd i Lywodraeth Cymru, a chynghorydd i ddiwydiant a'r sector cyhoeddus a gwirfoddol ehangach, a chyfathrebwr ynghylch materion sy'n ymwneud â'r amgylchedd a'i adnoddau naturiol.
- **Rheoleiddiwr:** yn amddiffyn pobl a'r amgylchedd gan gynnwys diwydiannau morol, coedwig a gwastraff, ac yn erlyn y rhai sy'n torri'r rheoliadau yr ydym yn gyfrifol amdanynt.
- **Dynodwr:** ar gyfer Safleoedd o Ddiddordeb Gwyddonol Arbennig - ardaloedd o werth arbennig am eu bywyd gwylt neu ddaeareg, Ardaloedd o Harddwch Naturiol Eithriadol (AHNE), a Pharciau Cenedlaethol, yn ogystal â chyhoeddi Gwarchodfeydd Natur Cenedlaethol.
- **Ymatebydd:** i oddeutu 9,000 o ddigwyddiadau amgylcheddol yr adroddir amdanynt bob blwyddyn, fel ymatebydd brys Categori 1.
- **Ymgynghorydd statudol:** i oddeutu 9,000 o geisiadau cynllunio'r flwyddyn.
- **Rheolwr / Gweithredwr:** yn rheoli saith y cant o arwynebedd tir Cymru gan gynnwys coetiroedd, Gwarchodfeydd Natur Cenedlaethol, amddiffynfeydd dŵr a llifogydd, ac yn rhedeg ein canolfannau ymwelwyr, cyfleusterau hamdden, deorfeydd a labordy.
- **Partner, Addysgwr a Hwylusydd:** cydweithredwr allweddol gyda'r sectorau cyhoeddus, preifat a gwirfoddol, yn darparu cymorth grant, ac yn helpu ystod eang o bobl i ddefnyddio'r amgylchedd fel adnodd dysgu; yn gweithredu fel catalydd i waith eraill.
- **Casglwr tystiolaeth:** yn monitro ein hamgylchedd, yn comisiynu ac yn ymgymryd ag ymchwil, yn datblygu ein gwybodaeth, ac yn bod yn gorff cofnodion cyhoeddus.
- **Cyflogwr:** bron i 1,900 o staff, yn ogystal â chefnogi cyflogaeth arall trwy waith contract.

Mae Rhaglen Ymateb UE CNC wedi sefydlu ffrwd waith trawsraglen i gwmpasu a datblygu cynlluniau lliniaru ar gyfer goblygiadau tymor byr, canolig a hir dymor gadael yr UE, gyda phwyslais penodol ar bolisiau a rheoliadau. Mae rolau polisi swyddogaethol Brexit wedi'u recriwtio i gefnogi ein Rhaglen Ymateb yr UE a CNC, i ymateb i newidiadau mewn deddfwriaeth a pholisi ar lefel Cymru a'r DU o ganlyniad i ymadael â'r UE.

Yn ogystal, mae Rhaglen Dim Cytundeb CNC, dan arweiniad y Cyfarwyddiaethau Rheoli Digwyddiadau a Gweithrediadau, yn paratoi CNC ar gyfer senario posibl lle mae'r DU yn gadael yr UE ar 31 Rhagfyr 2020 heb gytundeb masnach a'r goblygiadau i ni yn y tymor byr (y risgiau tebygol o ran rheoli adnoddau a digwyddiadau).

Mae Rhaglen Ymateb yr UE yn gweithio'n agos gyda staff Digwyddiadau a Gweithrediadau i sicrhau ein bod yn barod i reoli effeithiau Ymadael â'r UE o dan unrhyw senario. Rydym yn monitro datblygiadau, yn darparu cyngor ac arweiniad ac yn sicrhau bod CNC yn barod ar gyfer newid.

Yn CNC rydym wedi gweithio ar draws swyddogaethau a chyfarwyddiaethau i nodi lle mae risgiau a chyfleoedd yn bodoli a'r gwaith sy'n ofynnol i liniaru'r risgiau hyn. Rydym yn ymgysylltu â LIC a'r holl asiantaethau a rhanddeiliaid perthnasol i gynllunio ar gyfer a rheoli effeithiau'r newidiadau a ddaw yn sgil Ymadael â'r UE o dan unrhyw senario. Mae mwy o fanylion o'n Rhaglen Dim Cytundeb i'w gweld isod.

## 5.2 Rhaglen Digwyddiad Dim Cytundeb Digwyddiadau a Gweithrediadau

Mae Rhaglen Dim Cytundeb CNC, dan arweiniad y Cyfarwyddiaethau Rheoli

Digwyddiadau a Gweithrediadau, yn paratoi CNC ar gyfer senario posibl lle mae'r DU yn gadael yr UE ar 31 Rhagfyr 2020 heb gytundeb masnach a'r goblygiadau i ni yn y tymor byr (y risgiau tebygol o ran rheoli adnoddau a digwyddiadau). Mae'r gwaith hwn yn cynnwys y canlynol:

- Rydym wedi cynyddu Rotâu Digwyddiadau trwy ddyrannu dros 100 o aelodau staff ychwanegol ar gyfer hyfforddiant i gyflawni rolau dyletswydd digwyddiadau.
- Rydym yn parhau i adolygu ein cynlluniau parhad busnes gan ystyried yr adolygiad o'n gwaith Ymadael â'r UE blaenorol ac ôl-drafodaeth o'n hymateb Covid-19 ac rydym wedi gwella ein gallu TGCh i gefnogi'r gwaith hwn.
- Rydym wedi datblygu cofrestr o 75 o sgiliau rheoli digwyddiadau allweddol ynghyd â lleoliadau staff sy'n meddu arnynt, i baratoi ar gyfer unrhyw ofyniad cynyddol i ymateb i ddigwyddiadau.
- Rydym yn adolygu cynlluniau porthladdoedd ac yn ystyried effeithiau digwyddiadau lluosog yn ystod cyfnod y Gaeaf.
- Rydym wedi ymgymryd ag Ymarfer Trident, ymarfer parodrwydd ac aflonyddwch parhad busnes CNC sy'n canolbwyntio ar ymateb i'r pandemig.
- Rydym wedi cyflwyno cynllun cyfathrebu polisi ac ymateb cysylltiedig.

Senedd Cymru  
Y Pwyllgor Materion Allanol a  
Deddfwriaeth Ychwanegol  
Ymadael â'r Undeb Ewropeaidd:  
Paratodau yng Nghymru ar gyfer  
diwedd y cyfnod pontio  
EAAL(5) EUP14  
Ymateb gan Cyfoeth Naturiol Cymru

Welsh Parliament  
External Affairs and Additional  
Legislation Committee  
Exiting the European Union:  
Preparedness in Wales for the end of  
the transition period  
Evidence from Natural Resources  
Wales

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## Welsh Government action to prepare Wales for the end of the transition period

### 1.1 Overview

Welsh Government's (WG) preparedness, and associated agency and stakeholder messaging and communication, is heavily contingent on UK trade negotiation outcomes and associated UK-led legislative and governance processes (such as the Internal Market Bill). This ongoing uncertainty is having knock-on impacts on sectoral preparedness and business readiness across Wales and the UK.

Our response is broken into sections against each question and covers the following key issues:

- Legislation

- Environmental governance
- Border infrastructure and resourcing
- Funding and resources
- Communications
- Concurrence of Covid-19 and other incidents
- Sectoral readiness

We note that WG are working hard to provide certainty and develop mitigation for specific sectoral risks. For example, liaising with Defra regarding a sheep contingency fund to support the sheep farming sector post EU Exit and regarding the risk to chemical supply chains for water industry, critical for drinking water supply (Covid-19 has exacerbated this risk).

WG has previously stated that there will be no change to the level of environmental protection, nor to environmental standards in Wales. UK Government (UKG) has previously given a similar commitment. However, we are likely to see changes through WG and UK legislation over time. UKG are now proposing changes to aspects of retained EU law relating to Environmental Impact Assessments. Any "regulatory divergence", for example resulting from trade deals struck with other countries, could impact on NRW's remit. Uncertainty

regarding potential governance changes including the Transfer of Functions (ToF) could have significant implications for NRW's role and remit.

Covid-19 has enabled some WG and NRW 'stress testing' of No Deal scenario mitigation. However, dealing with Covid-19 impacts has also affected WG and stakeholder preparedness and impacted on sectoral resilience. The concurrent impacts of Covid-19 as a 'multiplier effect', for example if a second wave combines with a No Trade Deal outcome, could exacerbate risks to planning preparedness and associated disruption.

Rapid and effective communication between UKG and WG are key to ensuring preparedness across the UK. Clear and timely communication between WG, sectoral stakeholders including NRW and the general public is required to signpost to relevant changes to processes. It will also be essential to highlight where there is continuity to maintain compliance, for example the continuing relevance of statutory habitat environmental protections and associated stakeholder responsibilities. These issues are discussed further in **section 2**.

NRW is working closely with WG to prepare for EU Exit across a range of policy areas, coordinated through NRW's EU Change Programme. For example, NRW is working with the Energy, Planning and Rural Affairs (EPRA) division to develop updated EU Exit scenarios to continue to scope potential implications. Additionally, WG are continuing to liaise with NRW regarding future funding to support the longer-term implementation of continued protection for Natura 2000 sites and features post EU Exit.

Further specifics are provided in the following subsections and in **sections 2-4**.

## 1.2 Welsh Government Legislation

There is a challenging timeframe to deliver the legislative programme to ensure retained EU law is operable from 31 December 2020. WG's legislative programme is responsible for the timely delivery of the EU correcting Statutory Instruments (SIs) in Wales and liaising with UKG on UK SIs. NRW is reviewing the development of correcting SIs to assess any implications for our remit. WG is developing primary legislation for agriculture, fisheries and environmental governance and principles. NRW is engaging with WG on the development of Welsh legislation and supporting input to relevant UK legislation.

With UKG and other Devolved Administrations (DAs), WG have revised legislation for habitats and species which is ready for the end of the transition period. This ensures that UK and EU legislation relating to the terrestrial and marine environments will continue to be operable after the UK leaves the EU. This includes the [Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019](#) and the [Marine Environment \(Amendment\) \(EU\) Regulations 2018](#).

Replacement UKG EU Exit legislation for industry is largely in place for the end of transition and amending legislation is continuing. However, some sectors are having to work at pace to ensure legislation is in place for the end of the year,

including the greenhouse gas sector and the proposed UK Emissions Trading Scheme (ETS).

The process of legislative change is being driven by UKG as part of the negotiation process. This is a factor in the likelihood of a smooth transition. For example, time for NRW to input comprehensively to developing WG's Draft Agriculture (Wales) Bill White Paper has been compressed. The Agriculture (Wales) Bill will provide the framework, structure and overall policy context for the delivery of WG's proposed Sustainable Farming Scheme (SFS), as well as the future regulatory context for Sustainable Land Management (SLM) and the Sustainable Management of Natural Resources (SMNR). There is a risk, however, that WG's Agriculture (Wales) Bill objectives for the SFS and associated SLM/SMNR outcomes may be adversely affected by the requirements of the UK Internal Market Bill and any agreed common frameworks (see **sections 3 and 4**).

There is a risk of legislative gaps and uncertainty regarding how Wales will govern and manage these gaps post transition, particularly regarding environmental legislation. Due to ongoing negotiations, it is currently unclear what the gaps will be and the effect these may have on the environment and the ability of NRW to regulate and operate in relation to its statutory duties.

An example of a potential legislative gap relates to UKG and WG's ongoing commitment to the Bern Convention. As the UK will no longer be a member of the EU, we need to meet Bern Convention compliance as a non-EU member for protected sites to become part of the Emerald Network, not under the EU 'umbrella' as currently.

### 1.3 Environmental Governance and new duties

#### 1.3.1 Environmental Principles and Governance

NRW is working closely with WG on the Environmental Principles and Governance Task and Finish (T&F) Group to prepare for a new environmental governance framework for Wales, following the end of the transition period. WG have confirmed that the new environmental oversight body will not be in place by the end of the transition period and a period of interim measures will apply. These interim measures were initially recommended to cover a period for 3-6 months to provide a proportionate stop gap mechanism until a longer-term solution can be developed. They include a mechanism for citizens to raise complaints in relation to environmental law, and an appropriate way to identify and record other issues as they are being raised.

WG are currently seeking to appoint an independent interim assessor. It is important that there is an appropriate process to investigate and escalate complaints effectively during the interim period. This would reduce the risk of significant environmental issues remaining unresolved during the interim period. In addition, it is essential that there is effective engagement between Wales's environmental governance body and the UKG's Office for Environmental Protection (OEP) and other DA bodies.

There is a risk of a reduction in accountability to uphold environmental protection and standards. There are implications for reporting (such as the Nitrates and the Water Framework Directive), namely the risk of losing the mechanism by which Wales gathers data and evidence about the environment that drives environmental improvements and policy.

Further work on the development of the legislation and permanent oversight body in Wales are required. It is essential that there is no overlap in functions between the new oversight body and existing agencies such as NRW. In particular there is a need for further clarity on provision of advice and how this fits with the role and remit of the new body, NRW's leadership role on SMNR and our statutory regulatory powers, functions and duties. There is also the potential for wider impacts of the new body's remit on other aspects of our role including reporting and monitoring, policy and guidance. It is essential that the interim and permanent approaches ensure there are no governance gaps.

### 1.3.2 Transfer of Functions (ToF)

The Transfer of Functions (ToF) from the EU to UK is likely to lead to additional work and accountabilities for WG and NRW. The precise scale and nature of ToF from EU to WG and potentially to NRW is uncertain. There is limited time to understand and deliver new requirements (monitoring, reporting, etc.) and associated capacity and resourcing pressures. We are engaged in ongoing discussions with WG regarding potential future changes to NRW's remit and responsibilities regarding ToF.

ToF has wide ranging impacts and requires further development including, for example, clarification of roles between WG, the Joint Nature Conservation Council (JNCC) and NRW. Some progress has been made such as proposed procedures for consideration of Imperative Reasons of Over-riding Public Interest (IROPI) as part of an environmental assessment. This is a derogation under the Habitats Directive which would allow a plan or project to be approved in limited circumstances.

### 1.4 Borders infrastructure and resourcing

Border facilities and new port infrastructure in Wales will be needed to deal with new requirements as a result of EU Exit including the terms of the Northern Ireland Protocol (the Protocol). These include infrastructure changes resulting from the designation of Fishguard and Holyhead as Border Control Posts (BCPs). Clear messaging is required from UKG and WG to key sectoral stakeholders to provide assurance and signposting on import/export processes (e.g. Sanitary and Phytosanitary (SPS) goods requirements), available resources, and border infrastructure development to ensure sectoral readiness.

Key issues are summarised in the sub-sections below. Further detail on sectoral impacts and preparedness relating to border readiness risks is provided in **section 2**.



### 1.4.1 Port Infrastructure

The requirements for BCPs and for import and export border checks are in development due to ongoing negotiations. WG are working within a tight timeframe to implement changes in Wales. Border infrastructure is currently not in place and resourcing and timescales are uncertain. It is likely that border checks will initially be taking place in temporary locations (that have not been confirmed) near ports. It is essential that the environment is protected from risks associated with increased temporary storage near ports and any potential complications.

The development of more permanent infrastructure for border controls will require additional capacity from Local Authorities (LAs) and regulators to provide appropriate oversight. Staggered implementation of import border controls (Jan, April and July 2021) will require vigilance in implementation and timely updating of guidance to stakeholders.

### 1.4.2 Uncertainty over import/export processes and support/ resources

Complex new processes for both imports and exports and lack of clarity regarding available resourcing to support these processes have the potential to cause significant sectoral and supply chain disruption in Wales. For example, there is uncertainty regarding the availability of Official Veterinarians (OVs) in Wales to process Export Health Certificates (EHCs) for exporting relevant goods to Europe (either via Wales-Ireland or through English ports to the continent). Business readiness will likely be impacted if there are a lack of resources such as OV capacity to process EHCs, or simply as a result of the complexity of new processes.

These issues and their impacts on specific sectors are discussed further in **section 2**.

## 1.5 Funding and resources

NRW is supportive of WG's position that, following Brexit, Wales should receive "not a penny less, not a power lost".

UKG is committed to replacing EU Structural Funds in the UK with a Shared Prosperity Fund. Currently UKG has not yet set out the details of how this fund will work, so as a result there are a number of unanswered questions and aspects that may be subject to change. WG have developed proposals that include leading on delivering this investment in Wales and has undertaken a consultation on their approach, which NRW has responded to. We welcome WG's proactive approach to this, however the lack of clarity from UKG is increasingly concerning as the deadline approaches. Even if UKG agrees with WG's approach there is significant and challenging detail that will need to be resolved before any scheme would be operational, particularly around the new proposed structures to deliver this regionally.

There is also still significant uncertainty around other funding streams, particularly LIFE which applicants submit bids direct to EU for, that potentially have a larger impact on the environmental and nature conservation sector. The last possible

window for accessing LIFE Nature & Biodiversity funding has now closed, so from now there is significant disruption to potential multi-million-pound projects addressing environmental and climate action. These large projects require significant planning and preparation. Urgent resolution is needed to ensure that projects do not lose momentum or match funding and that the environment sector is not put at a significant disadvantage.

The Regional Investment in Wales Steering Group (RIWSG, a stakeholder group led by WG) raised concerns over the need to have a collaborative Wales approach to ensure opportunities were not missed around Research and Innovation funding at a UK level.

As a DA, WG funding is delivered through UKG's 'block grant' mechanism and there is significant funding uncertainty, particularly for the agri-environment sector. The UK Government has pledged to commit the same cash total in funds to support farmers until the end of the current Parliament, expected in 2022. The UK Government has also guaranteed that any Common Agricultural Policy (CAP) Pillar 2 projects where funding has been agreed before the end of 2020 will be funded for their full lifetime. If post CAP funding levels are not upheld post 2022 then this will impact the scale and nature of delivery of WG ambitions for the Agriculture (Wales) Bill. This would additionally have implications for NRW's remit to deliver SMNR.

## 1.6. Communications

There remains a high level of uncertainty and change around EU Exit and the transition period for many stakeholders. Communications with our customers, staff and the wider public is a key factor for our communications work. Clear and established links, as well as joined-up messaging where needed, will be vital to providing good communications to our stakeholders and the public.

NRW is represented on WG's Ministerial Brexit Roundtable and our Communications staff are included in WG stakeholder communications meetings. Much of the focus of existing communications with sectors at a Wales and UK level has been aimed at key sectors, such as farming, fisheries and haulage. It is essential that all individuals and businesses impacted by EU Exit have appropriate access to information that is tailored to their needs. This must recognise that large businesses are better resourced and able to respond to complex requirements and changing information. Smaller, more disaggregated sectors and businesses are likely to need clearer signposting of key information on how to prepare for EU Exit.

WG has developed comprehensive advice and guidance for sectoral stakeholders and the public on its [Preparing Wales pages](#).

## 1.7 Impacts of Covid-19 on WG EU Exit preparedness

Covid-19 has presented a significant challenge to WG and NRW for managing resource requirements to deliver timely EU Exit related preparation, including legislation and infrastructure. Responding to Covid-19 has also impacted on

stakeholder and business capacity to prepare for EU Exit and impacted on sectoral resilience. More businesses in Wales have seen a greater fall in turnover than elsewhere in the UK ([Bevan Foundation](#) 2020).

### 1.7.1 Economic shock and supply chain disruption

Our collective response in Wales demonstrates that we can act quickly in the most challenging of circumstances. WG, NRW and other stakeholders' response to Covid-19 has 'stress-tested' some key aspects of WG EU Exit preparedness. This has built capacity and understanding, particularly around supply chain stresses and available mitigation (such as the disposal of surplus milk through the waste hierarchy).

There is an increased risk of economic shock and supply chain disruption if there are incidents associated with Covid-19 and any spike in cases, concurrent with EU Exit at the end of the transition period on 1<sup>st</sup> January 2021. Such a concurrence of events will be difficult to prepare for and the scale of impacts are unknown. Seasonal incidents such as flooding could create additional strain for already stretched systems.

- There could be significant resource implications for WG, NRW and all key stakeholders if staff are ill or isolating, with associated challenges regarding available human resource capacity.
- Businesses may be under prepared or not resilient enough to manage the impacts of the "multiplier effects" of concurrent Covid-19 impacts together with impacts of EU Exit and any additional seasonal events.
- Disruption to supply chains as a result of Covid-19 and EU Exit is likely to increase the risk of pollution incidents (see **section 2**). This may result in an increased frequency and number of incidents in the short-term.

### 1.7.2 Green Recovery

Supporting sectoral and public resilience to these risks through WG's Green Recovery programme is essential. In our response to the Climate Change, Environment and Rural Affairs Committee (CCERA)'s [consultation on the impact of the Covid-19](#) pandemic, we noted that as we move into the recovery phase, we must maintain the momentum and ensure that the recovery is genuinely green. Any economic recovery stimulus must not lock in:

- high carbon emissions or climate risk
- decline of biodiversity
- unsustainable patterns of consumption or production

The Covid-19 recovery must accelerate us on the pathway to dealing with the climate and nature emergencies, driving long term changes in behaviours at an individual, sector, business, community and organisation level. Wales' response to the Covid-19 Recovery must be driven by what we've learnt as individuals,

industries, businesses, public and third sector organisations about the resilience of our operating models and ways of working. We need to collectively commit the energy to those things we've learnt we want to do more of.

In our CCERA response we set out a number of areas of opportunity central to our vision of a Green Recovery. These are: Building the skills of Wales' workforce; Reconnecting people and nature; Regulation; Green and local procurement; Environmental finance; Renewing our operating model – supporting new ways of working; Supporting place making.

## Preparedness of key economic sectors in Wales

### 2.1 Overview: sectoral preparedness

Trade negotiation outcomes and developing UK and Welsh legislation, such as the Agriculture (Wales) Bill and Welsh fisheries bill will create significant change and have far-reaching, long term implications. Current lack of access to robust trade modelling assumptions is exacerbating sectoral unpreparedness including that of environmental Non- Governmental Organisations (eNGOs). Ongoing uncertainty may impact on many of NRW's partners involved with our day to day work. This could impact their ability to engage with our work.

The anticipation of impacts and associated preparedness is not possible for all sectors due to significant uncertainty relating to the outcome of trade negotiations. This includes the immediate to short term risks of supply chain disruption, discussed in section **2.3** below. The legislative environment also impacts on sector readiness (see **section 1**). We will continue to work with WG and all relevant stakeholders and agencies to mitigate relevant risks.

The challenge for WG and NRW is to clearly communicate impacts and responsibilities, new regulations and processes, and WG preparedness/mitigation to a range of heterogeneous and disaggregated sectors. Uncertainty and mixed messaging could prompt stakeholder inertia, deliberate or mis-guided misinterpretation, and a lack of preparedness. This could result in negative consequences for SMNR outcomes in Wales in the short, medium and long term. All environmental stakeholders and sectors must be made aware that there will be impacts under any EU Exit scenario which are likely to cause changes to current practices. For example:

- It is important to communicate to the agri-environment sector that there will be issues which are likely to catalyse land use change over the medium to long-term with complex, adverse environmental and socio-economic impacts. These impacts are presented in detail in [WG's Evidence and Scenario sub-group reports](#) which model predicted land use change. Immediate to short -term impacts to the agri-environment sector caused by the risks of supply chain disruption and economic shock are outlined in the sub-sections below.
- In Wales the public water sector (DCWW and Hafren Dyfrdwy) are aware of the risk to their operations. They have taken measures to prepare and work at a UK level with their counterparts.
- Industry in general is well prepared for the end of the transition period mainly in response to the risk of 'No Deal' that has prompted companies to implement numerous contingencies including stockpiling and protecting supply chains. For example, there is some reliance on continuous movement of radioisotopes for diagnostic and treatment purposes in specialist hospitals. Those affected have put in place suitable contingencies to protect these critical supply chains. These contingencies have

inadvertently provided resilience to the current Covid-19 pandemic and the situation is under constant review as part of the NRW's inspection regime.

- A large amount of guidance is required for most industrial regimes to ensure sectoral readiness, for example the Emissions Trading Scheme (ETS). There is a need for clear and timely communications with operators and the public on EU Exit related industrial changes due to end of transition. Both WG and DAs are having to develop robust policy to support these new ways of working. Uncertainty at this time means that there is a lack of suitable policy and guidance for stakeholders.
- To support preparedness across the waste sector, NRW continues to work alongside WG and UKG, other agencies, and Local Authorities, to engage with and advise a number of industry stakeholder groups for waste and producer responsibility regimes.

Continuing uncertainty over the 'direction of travel' itself is having sectoral impacts. The scale and pace of change over time is likely to have an adverse impact on key sectors and on maintaining implementation e.g. of revised procedures or applications for derogation licences.

As set out in **section 1.7**, Covid-19 is exacerbating the risks of sectoral unpreparedness and lack of sectoral resilience to stresses. This could result in an economic impact with knock-on effects on the environment and well-being. Rapid, effective, clear and timely communication is key to mitigate this.

Specific risks and issues are set out in the following sub-sections.

## 2.2 Lack of availability or loss of access to essential goods and services

Inability to obtain normal quantities, types or specifications of supplies including chemicals, tools, equipment and raw materials could result in an economic or operational impact on businesses, thereby leading to environmental impacts. This could lead to permit noncompliance, operations failure, inappropriate substitutes being used (off-label use) or failure to maintain the same standards. This is exacerbated where supply chains are complicated and reliant on other sectors.

Uncertainty for the legislative requirements longer term is curtailing investment and innovation, enhancing pressures on areas impacted by EU Exit including chemical supply chains.

## 2.3 Import and export issues including border controls

### 2.3.1 Border controls

Import and export processes including border check requirements have the potential to cause immediate and significant delays and disruption at GB ports, including Welsh ports. For example, new import border controls introduced from January 2021 require SPS controls for goods entering Northern Ireland from a third country or Great Britain. The introduction of new checks will be staggered in three

stages from: (1) 1 January 2021, (2) April 2021, and; (3) July 2021 which may cause disruption at Welsh ports if infrastructure and business is not sufficiently prepared.

New import and export requirements for specific goods, for example SPS check requirements are highly complex. Any lack of clarity regarding available resourcing to support these processes has the potential to cause significant sectoral and supply chain disruption in Wales. Clear messaging and guidance, particularly but not exclusively for the agri-environment sector, is essential to support business readiness to limit disruption.

Disruption could cause incidents for all stages of the supply chain. Any delays to import and export processes could lead to goods becoming waste, leading to the disposal and dumping of 'just in time' perishable goods, with an increased risk of incidents associated with waste and pollution. Covid-19 has shown us that most sectors are not completely prepared for the effects of significant supply chain disruption which is a key risk associated with the end of transition. NRW has scoped these risks from a waste perspective and mitigation measures are in place for predicted impacts. Examples include:

- There is a risk of on farm disposal of milk; however, NRW has a clear mitigation strategy regarding the use of the "waste hierarchy" for this risk.
- Risks associated with the incorrect disposal of agricultural waste to land such as disposal of animal carcasses is controlled by the Animal and Plant Health Agency (APHA). It is only allowed under a derogation.
- UK regulators including NRW have an agreement with Border Force to provide support, guidance and data to support contingency planning relating to the correct disposal of any spoiled goods becoming waste.
- Supply chain disruption and delays at ports could increase the use of temporary storage and lorry parks with an increased risk of environmental pollution. Any resultant groundwater pollution would be very difficult and costly to remedy and could result in an increase in land contamination in the longer term.
- Uncertainty over border controls could lead to a lack of evidence-based and targeted action on Invasive Non-Native Species (INNS) in Wales and its seas. Loss of access to EU networks and alert systems will reduce our capacity to horizon scan and prepare.

### 2.3.2 Temporary storage facilities at or near Welsh ports

Guidance from the UK Government on how to operate a temporary storage facility in the event of delays at ports suggests that UK regulations will maintain existing requirements for storage capacity and premises registration. There is a need for further clarity on how this will be implemented in Wales. The main concern for NRW with temporary storage at ports or associated with ports, is pollution of the wider environment. Inadequate or inappropriate facilities increase this risk, such as inappropriate drainage provisions, permeable surfaces, leaks and spills of fuel.

There is currently a lack of guidance or referral to existing guidance to prevent pollution of water and groundwater within the UK Government temporary storage web pages.

### 2.3.3 Movement of Waste

From the 1<sup>st</sup> January 2021, Great Britain (GB) and Northern Ireland (NI) will diverge in their approach to managing waste shipments. As this is a reserved matter, the exact regulatory approach is still being agreed by Defra / UKG with input from NRW and WC. Defra's current position is that only movements between GB to NI should be notified. The current proposals are:

- Hazardous waste and specified non-hazardous wastes moving from GB to NI must be notified
- Annex VII forms must be completed for Green List Wastes moving from GB to NI
- Exports for disposal from GB to NI are prohibited

Key issues include:

- Exports of waste GB (Wales) to NI. Over the past 5 years Welsh waste exports to Northern Ireland have averaged 15k tonnes from <20 waste permitted facilities.
- Cost burden to Welsh businesses requiring Trans Frontier Shipment (TFS) notifications to NRW.
- NRW is now required to look at import data from NI to scope volumes to support Welsh sectoral readiness.
- These changes have the potential to be politically sensitive given they could be interpreted as a trade barrier between GB and NI.

TFS of waste may become an issue, particularly in light of the additional BASEL Convention amendments to the classification of plastics. The changes mean that after the 1<sup>st</sup> January 2021 non-hazardous waste plastics can only be exported as green list waste (B3011), if they are destined for recycling in an environmentally sound manner and are almost free from contamination and other types of waste. This will increase the number of notifications that NRW receives and will incur administrative costs to NRW.

### 2.4 economic shock: sectoral risks and impacts

The impacts of tariff and non-tariff barriers to trade and associated supply chain disruption have the potential to cause significant sectoral disruption as specific sectors are subject to economic shock. As a result of this disruption there is likely to be a greater frequency of incidents, taking a longer time to resolve, involving non-compliance, illegal, or unpermitted activity.



These risks could have a significant environmental impact with implications for NRW resources. There is likely to be increased demand on NRW permitting, licensing, regulation and enforcement functions as well as increased demand on incident response for pollution events. NRW has scoped the risk from a waste perspective and mitigation measures are in place for predicted impacts.

The agri-environment sector is particularly vulnerable to trade-related 'economic shock', especially in a No Trade Deal scenario, for example impacts to the lamb export market as a result of tariffs. These barriers to trade are complex and hard to predict, making it difficult for the sector to prepare effectively. Economic shock is likely to increase the risks of short-term incidents (non-compliance, dumping) with potential pollution risks. On land and at sea there may be dumping of stock or use of inappropriate chemicals, causing direct or diffuse harm to habitats and species and ecosystems. There are long-term risks of unsustainable land use change which may lead to loss of habitats and species. There are additionally risks associated with compliance with conditions of licences and schemes and the potential reduction in uptake of opportunities in existing and future grant schemes.

Both short-term incidents and longer-term land use change risk negative impacts on biosecurity, animal health and welfare standards, environmental standards, and risks to the social fabric of rural communities including farmer health and wellbeing. Such impacts would additionally have significant implications for NRW's statutory duty to deliver SMNR. Any loss of agri-environment funding would exacerbate the economic shock to this sector.

The marine fisheries sector is preparing for the worst case scenario; i.e. no trade deal with tariff and non-tariff barriers. This will likely translate into short to medium term issues with moving live products through ports, disruption to EU markets and reduction in economic activity (fishing) due to impacts on demand and transportation. The impacts of Covid-19 on the fishing industry is comparable to the end of implementation period without a trade deal; markets were affected and demand was reduced. WG provided a hardship scheme during Covid-19. Further intervention may be required in the event of a No Trade Deal scenario. The Seafish Industry Body has provided several useful [end-of-transition period guides](#) for the sector.

## 2.5 Enforcement of environmental law

One of the key gaps for the environmental sector that is left by EU Exit is the enforcement of environmental law and a mechanism for citizens to raise issues in relation to environmental law. There will be a key role in this for the new environmental oversight body, and for the interim assessor until the permanent body is in place. However there remains the need to clarify the relationship of existing organisations with the assessor and the new body, to ensure no overlap in functions as well as a common and effective triage process for strategic environmental complaints.

WG and NRW need to ensure sufficient appropriate resource is in place to assess the anticipated number of complaints previously managed on our behalf by the EU. There is also likely to be an increase in complaints following the establishment and publication of a new Welsh environmental complaints process. It is therefore essential that WG ensure that these strategic environmental complaints are addressed by the right organisation and people with the appropriate skills and knowledge. Due to the nature of our remit, NRW expects that a significant number of these complaints may require NRW resource and expertise to resolve.

Further clarity is also needed on the role of the proposed environmental oversight body in relation to the review and setting of standards and scrutiny of performance against those standards. This is an important function that should be supported by suitably resourced and impartial expert reference panels including expertise from policy, regulation and academia. If not sufficiently supported or clearly defined this could result in a significant gap in accountability, with knock on effects on the environment and across the sector.

Confirmation on the approach for the new environmental governance framework, the functions and format of the new environmental oversight body is key for effective preparation. Clarity on the detail of any forthcoming legislation to embed the approach will support NRW and the wider environmental sector in their preparedness for the post-transition phase.

EU Exit is causing uncertainty with knock-on impacts on sectoral preparedness and business readiness. For example, the take-up of contracts for ecological improvement and projects by stakeholders. It is critically important to provide clear communications to emphasise that previous EU biodiversity commitments and obligations will be enshrined in UK law both onshore and offshore so are still relevant to people to note and respond to accordingly.

Clear and unequivocal joined up communication is required from WG and NRW on the continued protection of protected sites, habitats and species in order to prevent potential misunderstanding of procedures (misguided or deliberate) leading to loss of or damage to ecosystems. This communication is vital as the current Covid-19 pandemic has already seen a rise in incidents, such as unconsented in-river dredging. This may combine with EU Exit to lead to a continued increase if pre-emptive action is not taken.

## The implications for preparedness arising from the negotiation of UK international agreements

### 3.1 Overview

There remains significant uncertainty around the negotiation of UK international trade agreements with the EU and other nations. This is having an impact on the ability of NRW and the environmental sector to prepare for, prioritise and resource upcoming challenges and opportunities. As set out in **sections 1 and 2**, ongoing uncertainty is affecting preparedness in Wales for WG, agencies, and sectoral stakeholders.

UKG is currently negotiating with a number of international partners concurrently. There are complex and often interrelated issues that remain unresolved and have an impact on Wales and NRW's statutory remit. For example, the UK Fisheries Bill provides the framework for fisheries agreements to be made and is dependent on the outcome of EU trade negotiations.

The outcome of trade negotiations and legislative changes will lead to challenges and opportunities in Wales. Regardless of outcomes, additional process requirements such as border checks will have a knock-on effect on economic and environmental risk levels (see **section 2**). Regulatory divergence as a result of trade negotiation outcomes could result in a reduction in environmental standards. This would have a significant impact on NRW's statutory duty to deliver SMNR. NRW is continuously monitoring and assessing the risks and impacts of any updates on the negotiations to our activities and priorities.

Further detail is provided in the following sub-sections:

### 3.2 Risks of a reduction in environmental and other standards in Wales

There is a risk that WG objectives to maintain high environmental and animal welfare standards could be negatively affected by UKG trade negotiation outcomes. This is also affected by the requirements of an inter-UK 'level playing field' through the Internal Market Bill and any application of Common Frameworks (see **section 4**). This could affect standards in Wales and its territorial waters (regulatory divergence). If declining environmental standards result in poor practices on land, this can also have implications for the wider terrestrial and marine environment both through local impacts such as water pollution and marine litter, and global impacts, such as climate change.

### 3.3 Risks of legislative and governance impacts and gaps

There are a number of potential legislative and governance gaps including as a result of trade deals, the establishment of common frameworks, the transposition of directives, and correcting SIs. These may limit NRW's capacity to deliver statutory duties. These risks are discussed in sections **1.2, 1.3** and **2.5** of this response.

### 3.3.1 International relationships and agreements

The outcome of trade negotiations will have an impact for NRW on our international work and the key countries and organisations that we will seek to build future relationships with. We are currently developing a formal international engagement strategy. There is also a need to continue to develop our approach to international agreements post EU Exit, for example, the forthcoming post 2020 Global Biodiversity Framework targets and commitments.

### 3.3.2 Loss of access to EU databases and networks

The UK and Wales could lose membership to numerous EU information sharing networks and agencies essential for rapid alerts, exchange of information, good practice, shared research priorities, and development of common approaches. Examples include ECHA, EUROPHYT, EURATOM, ADNS and EEA.

This would have an impact on knowledge transfer, environmental governance and maintaining good practice regarding industrial and environmental protection. Loss of access to EU databases and networks would also reduce our capacity to tackle key cross border issues such as climate change, plant and animal health and biosecurity. It would also have implications for meeting statutory requirements for reporting and sharing evidence.

These networks and agencies support members to meet international and EU obligations transposed into national law and promote consistency in environmental regulation. Loss of membership to these networks will have an impact on the capacity of all UK Environmental Regulators to maintain compliance with existing legislation and reduces our access to innovation and good practice.

### 3.3.3 Retention of case law

The majority of UK environmental legislation is derived from EU law that is transposed into UK law. There is uncertainty regarding the transfer of the European Court of Justice's case law to the UK following EU Exit. This may, over time, require existing legal precedents to be re-established and any change to legal precedent may have a negative impact on environmental standards.

### 3.3.4 Transfer of Functions (ToF) and governance bodies

We have concerns regarding governance gaps and lack of clarity on ToF as a result of trade negotiation uncertainty. These issues are discussed in detail at **1.3** and **2.5**.

## 3.4 Risks of sectoral disruption and economic shock

Ongoing uncertainty regarding the outcome of trade negotiations and any significant change to current regulations and practice has the capacity to result in significant sectoral disruption and economic shock. See **section 2** for further details on sectoral impacts.

## Intra-UK intergovernmental agreements relating to the end of the transition period, including the common frameworks programme

### 4.1 Overview

As a member of the EU, regulatory equivalence across the UK has been driven by the application of EU regulations and standards. Due to EU Exit, there is currently uncertainty regarding the establishment and governance of a UK internal market. Common frameworks have been proposed on an inter-governmental basis (e.g. for plant and seed imports) to underpin harmonised regulatory standards across the UK. Progress and clarification on shared ambitions would provide assurance for policy makers, regulators, businesses and the public.

UKG's Internal Market Bill is still subject to change, however clarity on how aspects of the Northern Ireland Protocol and devolved competence are applied is essential for preparation for EU Exit in Wales by WG, NRW and other agencies. Due to the uncertainty around the UK Internal Market Bill and trade negotiation outcomes, there is a risk that WG objectives to maintain high environmental and animal welfare standards could be negatively affected. This may also have an impact on the competitiveness of Welsh businesses. UKG has previously stated that environmental standards will be maintained, however confirmation of specific commitments, measures and legislative targets would provide certainty. There is widespread concern amongst stakeholders including eNGOs about the continuing risk that environmental standards will drop post EU Exit. The outstanding work that remains on common frameworks should seek to close these gaps and risks and resolve any potential cross-boundary issues.

### 4.2 Common frameworks

A framework for environmental governance underpinned by a common objective, principles and standards would help to avoid gaps in the implementation of environmental policy across the UK. This approach would also clarify the role and remit of oversight bodies and regulated public bodies where devolved and non-devolved remits coincide.

A common environmental framework and principles at a UK level would also reduce the risk of regulatory divergence and provide a common baseline to landowners and industry, regardless of location. This would reduce the risk of a 'race to the bottom' or other crossborder issues such as transboundary environmental damage being subject to different regulatory standards. It would also help to clarify how regulators and administrations work together across the UK to manage transboundary issues, such as climate change, water quality or air pollution where a collaborative approach is essential. A common framework that followed a similar approach to the current EU framework would fully recognise and respect the different legal frameworks and devolved legislation across the UK.

Clarity on the detail and direction of approach for a number of UK common frameworks and agreements between UKG, WG and the other DAs would be welcomed. This would support our preparedness for the end of the transition period and the potential changes this may bring to the standards and measures applied by the UK Administrations. This would also help to protect WG environmental standards and principles.

#### 4.3 Internal markets and intergovernmental agreements

There is uncertainty regarding the formal role of DAs in determining the future shape of new internal market standards (e.g. through the Office for the Internal Market). Relevant examples include:

- The UK Fisheries Bill and the Fisheries MoU should provide the framework for UK intergovernmental agreements including the Dispute Resolution Mechanism and consideration of the Concordat.
- Intergovernmental agreements are being revised and agreed such as the recent MoU for a UK Emissions Trading Scheme (ETS).
- The establishment of UK Best Available Techniques (BAT) Reference documents (BREF) systems.
- Whilst we have little direct involvement with the Common Framework for Chemicals, we are aware that it is progressing satisfactorily. We are finalising the MOU between NRW and the Environment Agency, setting out the arrangements to deliver our respective duties under UK Registration, Evaluation, Authorisation & restriction of CHEMicals (REACH).

There is a risk that DA devolved competencies are not sufficiently protected, and that Wales will lose the ability to independently set environmental standards. This could be detrimental to the environment in Wales. NRW is eager to support Welsh Government through evidence-based guidance to maintain and enhance environmental standards, to protect the state of our environment and deliver SMNR. For example, it is unclear what impact the UKG Internal Market Bill will have on the regulation of future water supply from Wales to England.

The approach should provide clarification on how regulators and administrations work together across the UK to manage transboundary issues where a collaborative approach is essential. There is a risk of divergence between DAs and UKG regarding environmental principles and governance. Issues such as climate change, water quality, air quality and pollution are dependent on a collaborative approach at a national and international level. This will also support the maintenance of industrial and environmental standards across the UK and Wales.

#### 4.4 Implications of the Northern Ireland Protocol (the Protocol)

The Protocol is part of UKG's European Union (Withdrawal Agreement) Act 2020. The Protocol ensures there will be no hard border on the island of Ireland if there is a no-deal Brexit or a deal which is narrow in its scope. Northern Ireland will

continue to enforce the EU's customs rules and follow its rules on product standards (the single market on goods). The terms of the Protocol could potentially impact the functioning of the UK internal market and any associated common frameworks.

#### 4.5 Primary Legislation: common frameworks and timescales

There are concerns that the UKG's Agriculture Bill, Environment Bill and Fisheries Bill will lead to regulatory divergence between Northern Ireland and the rest of the UK in these areas. The Northern Ireland Assembly Research and Information Service has published briefing papers on each of these bills, setting out the need for clarity on whether, and if so how, they take account of and are compliant with the terms of the Protocol. They have also raised queries concerning the potential for such legislation to lead to divergence between Northern Ireland and the rest of the UK, given the requirements of the Protocol regarding the application of EU law in these fields. Such divergence could have significant implications for UK internal markets and common frameworks and an impact on Wales.

As highlighted in previous sections, the scale and pace of change for policy, legislation, regulations and infrastructure preparedness is very challenging for WG, NRW, other agencies and members of the public. Covid-19 creates an additional layer of complexity around day to day operations and the risks of concurrent incidents, for example if a Covid19 peak occurs during EU Exit and with a period of flooding. Covid-19 could impact on available funding, with the possibility that future budgets will be further constrained or reduced.

The policy and legislative environment in Wales and the UK will be subject to an unprecedented level of change over the next few years due to EU Exit, Covid-19 and climate change. It is essential that we are able to respond to these multiple challenges to protect the Welsh environment. As we have highlighted through our response, the timescales for the implementation of new legislation, governance, borders infrastructure, import and export processes and customs requirements are challenging for legislators, regulators and businesses. For example:

- Timescales are tight with implementing a new UK ETS.
- It is possible that the No Deal SI for waste shipments will require implementation as a short-term measure due to time constraints. NRW are currently drafting updated communications messages to the sector.

These impacts and associated timescales are particularly challenging for smaller and less aggregated sectors as highlighted in **section 2**.

## Additional supporting information

### 5.1 Overview

Natural Resources Wales is the largest Welsh Government Sponsored Body, employing 1,900 staff across Wales with a budget of £180 million. Our roles and responsibilities are:

- **Adviser:** principal adviser to Welsh Government, and adviser to industry and the wider public and voluntary sector, and communicator about issues relating to the environment and its natural resources
- **Regulator:** protecting people and the environment including marine, forest and waste industries, and prosecuting those who breach the regulations that we are responsible for
- **Designator:** for Sites of Special Scientific Interest – areas of particular value for their wildlife or geology, Areas of Outstanding Natural Beauty (AONBs), and National Parks, as well as declaring National Nature Reserves
- **Responder:** to some 9,000 reported environmental incidents a year as a Category 1 emergency responder
- **Statutory consultee:** to some 9,000 planning applications a year
- **Manager/Operator:** managing seven per cent of Wales' land area including woodlands, National Nature Reserves, water and flood defences, and operating our visitor centres, recreation facilities, hatcheries and a laboratory
- **Partner, Educator and Enabler:** key collaborator with the public, private and voluntary sectors, providing grant aid, and helping a wide range of people use the environment as a learning resource; acting as a catalyst for others' work
- **Evidence gatherer:** monitoring our environment, commissioning and undertaking research, developing our knowledge, and being a public records body
- **Employer:** of almost 1,900 staff, as well as supporting other employment through contract work

NRW's EU Response Programme has established a cross-programme workstream to scope and develop mitigation plans for the short, medium, and long-term implications of exiting the EU, with a particular emphasis on policies and regulations. Brexit functional policy roles have been recruited to support our EU Response Programme and NRW, to respond to changes in legislation and policy at a Wales and UK level as a result of withdrawal from the EU.

Additionally, NRW's No Deal Programme, led by the Incident Management and the Operations Directorates, is preparing NRW for the potential scenario of the UK



leaving the EU on 31 December 2020 without a trade deal and its implications for us in the short term (the likely resource and incident management risks).

The EU Response Programme is working closely with Incident and Operations staff to ensure we are prepared to manage the impacts of EU Exit under any scenario. We are monitoring developments, providing advice and guidance and ensuring NRW is ready for change.

Within NRW we have worked across functions and directorates to identify where risks and opportunities exist, and the work required to mitigate these risks. We are engaging with WG and all relevant agencies and stakeholders to plan for and manage the impacts of the changes that EU Exit will bring under any scenario. Further detail from our No Deal Programme is provided below.

## 5.2 Incident and Operations No Deal Incident Programme

NRW's No Deal Incident Programme led by the Incident Management and Operations Directorates is preparing NRW for the potential scenario of the UK leaving the EU on 31 December 2020 without a trade deal and its implications for us in the short term. This work includes the following:

- We have increased Incident Rotas by allocating over 100 additional staff members for training to undertake incident duty roles.
- We continue to review our business continuity plans in light of the review of our previous EU Exit work and a debrief of our Covid-19 response and have enhanced our ICT capacity to support this work.
- We have developed a register of 75 key incident management skills along with the locations of staff who possess them, to prepare for any increased requirement to respond to incidents.
- We are reviewing port plans and considering the impacts of multiple incidents during the Winter period.
- We have undertaken Exercise Trident, an Internal NRW business continuity preparedness and disruption exercise focused on pandemic response.
- We have introduced a linked policy and response communications plan.

Senedd Cymru  
Y Pwyllgor Materion Allanol a  
Deddfwriaeth Ychwanegol  
Ymadael â'r Undeb Ewropeaidd:  
Paratoadau  
yng Nghymru ar gyfer diwedd y cyfnod  
pontio  
EAAL(5) EUP15  
Ymateb gan Undeb Amaethwyr Cymru

Welsh Parliament  
External Affairs and Additional  
Legislation Committee  
Exiting the European Union:  
Preparedness in  
Wales for the end of the transition  
period  
Evidence from Farmers' Union of Wales

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## Farmers' Union of Wales response to a Senedd External Affairs and Additional Legislation Committee inquiry into preparedness in Wales for the end of the transition period

### About the Farmers' Union of Wales

1. The Farmers' Union of Wales (FUW) was established in 1955 to exclusively represent the interests of farmers in Wales, and since 1978 has been formally recognised by the UK Government, and subsequently by the Welsh Government, as independently representing those interests.
2. The FUW's Vision is *thriving, sustainable, family farms in Wales*, while the Mission of the Union is *To advance and protect Wales' family farms, both nationally and individually, in order to fulfil the Union's vision.*
3. In addition to its Head Office, which has thirty full-time members of staff, the FUW Group has around 80 members of staff based in twelve regional offices around Wales providing a broad range of services for members.
4. The FUW is a democratic organisation, with policies being formulated following consultation with its twelve County Executive Committees and eleven Standing Committees.

### Welsh Government action to prepare Wales for the end of the transition period

5. The Farmers' Union of Wales has been engaged in Welsh Government planning for post-Brexit scenarios since shortly after the EU Referendum held on 23rd June 2016, and in particular ahead of what were possible Brexit dates of 29 March 2019, 22 May 2019, 31 October 2019 and 31st January 2020.
6. Given that these marked potential dates for the UK's departure from the EU without a trade deal with the EU, the focus of various Welsh Government stakeholder groups and meetings was:
  - a. The assessment of immediate and longer term impacts of such a worst case scenario for different agricultural sectors, based on expert knowledge and analyses produced by bodies such as the Agricultural

and Horticultural Levy Board (AHDB) and Hybu Cig Cymru (HCC)<sup>1</sup>, and the Agri-Food and Biosciences Institute (AFBI)<sup>2</sup> and

- b. Planning for how the acute immediate impacts of such a worst case scenario might be reduced
7. It must be noted that the UK Government's preparations for such a no-deal scenario fell well short of what was needed to minimise adverse impacts, as highlighted, for example, by the National Audit Office, who concluded in September 2018 that Defra not yet understood the scale of work it would have to complete ahead of Brexit and had failed to complete a large number of tasks necessary to prepare for Brexit<sup>3</sup>.
8. As such, the scope for thorough preparation by either Welsh Government or businesses was severely limited.
9. Such analyses and planning through Welsh Government stakeholder groups has effectively continued in relation to the far more certain 'full' departure date of 31st December 2020, while emerging information regarding trade negotiations has further allowed different scenarios to be analysed. However, UK Government preparations in particular continue to leave much to be desired.
10. From an agricultural perspective, amongst the most important work undertaken in this area is that of the Welsh Government's Environment and Agriculture Roundtable Evidence and Scenarios sub group, which has continued to collate data and evidence in order to assess the possible impacts of different combinations of trade deals on issues such as agricultural prices and land use.
11. Notwithstanding this, the FUW has consistently expressed concern at the minimal amount of investment and work commissioned by the Welsh Government to look at economic impacts of different scenarios, such as on rural employment, compared with the substantial investment in modelling work focussing on possible environmental and land use changes.
12. While the FUW fully supports the latter, it maintains that economic and social impacts for Welsh families should have attracted equal attention and investment in terms of modelling different scenarios, and that such work should be carried out posthaste and attract significant investment.
13. Whilst the work carried out by the Evidence and Scenarios sub group has been essential in identifying potential impacts that, once published, should help inform businesses and others of likely effects, other Welsh Government

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<sup>1</sup> <https://ahdb.org.uk/knowledge-library/exploring-the-implications-of-brex-it-for-agriculture-and-horticulture-in-wales28-june-2018>

<sup>2</sup> <https://www.afbini.gov.uk/news/afbi-releases-report-post-brex-it-trade-agreements-uk-agriculture>

<sup>3</sup> <https://www.nao.org.uk/report/department-for-environment-food-and-rural-affairs-progress-in-implementing-eu-exi-t/>

stakeholder groups have focussed on other aspects of the post-withdrawal period, most notably the practical preparations needed to minimise adverse impacts of different UK-EU Trading Scenarios. Such groups include the Welsh Government's EU Transition Agri-food Supply Chain Stakeholder Group, the Farmed Animal Health and Welfare Agricultural Resilience Group and the Sheep stakeholder focus group.

14. The work of such groups continues to be severely hampered by uncertainty regarding post-withdrawal trading arrangements with the EU, and a lack of progress in terms of preparation, primarily by the UK Government, for different scenarios.

15. For example:

- a. The Veterinary Public Health Association (VPHA) and British Veterinary Association (BVA)'s document *Export Certification and the challenges facing the meat and livestock sector post-transition* concludes that
  - i. If the EU discontinues recognition of the UK's health status, sub clauses may apply for meat exports requiring a 40 day standstill on the last holding before slaughter, a negative TB test within 3 months of slaughter, systematic trichinella testing of pigs and the segregation of EU and non-EU destined products.
  - ii. Existing Harmonised European Health Certificate (EHC) conditions will impose a severe limitation on and in some cases prohibit the export of certain categories of products such as fresh mince and meat preparations, 5th quarter products and certain categories of offal and by-products.
  - iii. Shortages of Veterinarians may be a major problem, since meeting export requirements does not only require vets to sign EHCs at the point of departure, but also to verify and certify information and processes throughout the supply chain, including on farm, in slaughterhouses, co-located and standalone cutting plants and retail packing sites, cold stores and at borders. While the UK's Animal and Plant Health Agency (APHA) has estimated the number of additional vets needed for EHC certification work to be around 200, businesses involved in export certification work have put the number at at least 350.
  - iv. While a great deal of progress has been made to automate the system to apply for EHCs, the expected 500% increase in the requirement for these will be coupled with a different and in essence new form of export trade; the bulk of current Products of Animal Origin exports to non-EU countries is of frozen product with long lead times, whereas current trade with the EU is largely of fresh product often with very short lead times

and tight delivery windows. As such, any delays will adversely affect shelf life and be commercially damaging, and concern therefore exists regarding the speed at which EHCs will be processable.

- v. Operators dealing with movements of agricultural goods between Northern Ireland and Britain do not yet know how this trade will be managed, what Sanitary and Phytosanitary (SPS) rules will apply and what the legal requirements will be for the placing of British products on the Northern Irish market, and the placing of Northern Irish product on the British and EU markets after the withdrawal period.
  - vi. There is no clarity regarding imported Products of Animal Origin materials which are further processed in the UK for re-export to the EU market.
  - vii. The uncertainty and lack of information on these key issues is undermining confidence among operators and making it difficult for these businesses to organise and plan their post withdrawal period trade with the EU, and unless they are resolved exports to EU markets will either be impractical or impossible.
- b. Academics in the Republic of Ireland and Wales working under the *Ireland Wales Cooperation Programme* have noted the failure of the UK to prepare Welsh ports for post-withdrawal arrangements<sup>4</sup>, highlighting:
- i. The Internal Market Bill could significantly affect UK ports like Liverpool, Holyhead, Fishguard, Pembroke Dock and Milford Haven, and the Irish ports of Dublin and Rosslare.
  - ii. Welsh and Irish ports are facing profound and unprecedented challenges as the transition period draws to an end, and efforts to address these have been more far-reaching and sustained in the Republic of Ireland than in Wales.
  - iii. The Republic of Ireland has made considerable investments in new customs infrastructure - for instance, an investment €30 million and re-purposing of 10 hectares of land, including building new customs posts and associated facilities at Dublin Port - while there are to date no comparable developments in Welsh ports - despite Holyhead being the second busiest port in the UK (Border Inspection Posts are not expected to be in place in Welsh ports until July 2021).

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<sup>4</sup> <https://theconversation.com/uk-is-not-doing-enough-to-get-irish-facing-ports-ready-for-brexite-148063>

- iv. With around 40% of total Irish trade facilitated through Holyhead, equating to some 150,000 lorries crossing to the European mainland via UK ports, the lack of infrastructure in Welsh ports threatens to increase the current 20 hour duration of such journeys in such a way as to make such crossings far less practical, leading ports at Dublin and Rosslare to develop new direct ferry routes to continental Europe.
  - v. The UK must address practical challenges in its Irish-facing ports if Brexit is to work economically and politically
- c. The British Meat Processors Association (BMPA) maintains a log of issues and progress<sup>5</sup> in relation to key matters that need to be resolved in order to facilitate exports and minimise friction and costs.

As at 30th October 2020, of the ten key issues identified in their log, five were 'in progress' while five were 'unresolved'. Issues unresolved include:

- i. The fact that the UK has yet to be given Third Country approval, which must take place before meat processing plants that currently export can be officially listed by the EU as eligible to continue doing this. Third Country approval must be voted on by the EU Standing Committee on Plant, Food and Feed and it is understood that this may not take place before December 2020, introducing a high degree of uncertainty for UK exporters and EU importers in terms of the ability of the UK to continue trade with the EU.
- ii. With guidance on what health marks need to be applied to Products of Animal Origin after December 2020 having finally been issued on 15th October 2020, the Chief Veterinary Officer of the UK must now write to non-EU countries to advise them of the changes such that buyers in importing markets understand the new health marks and that they guarantee the same standards as the previous EU health marks.
- iii. That the system developed by Defra for the export certification of grouped consignments (the Groupage Export Facilitation Scheme) specifically excludes fresh and frozen meat, and only covers products packaged for sale to the final consumer, meaning there is no provision for grouped consignments of fresh meat in any format. If the system is not developed to

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<sup>5</sup> [https://bmpa-my.sharepoint.com/:x:/g/personal/anna\\_proffitt\\_britishmeatindustry\\_org/EbY59FPP-Z9Ni-FHilbL2T8BqtEqQdTkLxQuhDR4pceZYQ?rttime=np0fANJ82Eg](https://bmpa-my.sharepoint.com/:x:/g/personal/anna_proffitt_britishmeatindustry_org/EbY59FPP-Z9Ni-FHilbL2T8BqtEqQdTkLxQuhDR4pceZYQ?rttime=np0fANJ82Eg)

accommodate such consignments, this type of trade with the EU will have to cease.

- iv. The Draft Harmonised Export Health Certificates (already referred to under 15a, above) have been circulated which suggest significant differences between current and future requirements, including *Trichinella* testing (which the UK is currently exempt from), TB testing requirements, and a 40 day residency requirement on the last holding before slaughter. Such requirements would mark a significant change compared to current practices and place major restrictions on farmers and exporters which would start to take effect in the coming weeks.
- v. Defra has to date only provided a broad outline of the processes involved in relation to certification requirements for movements of products between Britain and Northern Ireland, and while there is some detail on health and identification marks there is still significant ambiguity in terms of the practical implementations for companies.

- 16. Committee will note that while farming businesses are not generally involved directly in exporting, most, if not all of the above examples relate to issues which are of direct relevance to farm businesses, including some which seem likely to start to have an impact in the coming weeks.
- 17. Concerns such as those listed have been discussed in regular meetings of the Welsh Government's EU Transition Agri-food Supply Chain Stakeholder Group and other groups, which provide invaluable forums for the dissemination of information in relation to all aspects of Wales' agri-food supply chain, including in relation to work undertaken to change or implement new Welsh legislation necessary for the post-withdrawal period.
- 18. Whilst many of the issues of concern for farmers and food producers are beyond the control of the Welsh Government, and some are beyond the control of the UK Government (and rely on EU decisions which are tied to the current political negotiations), there is concern that Welsh Government may have been slow to prepare with regard to certain areas which *do* fall within its powers, or exert influence in other ways, for example in relation to decisions relevant to infrastructure near ports.
- 19. For example, the Border Operating Model document<sup>6</sup> published by the UK Government on 8th October 2020 states that "*HMG are working with Welsh and Scottish government to confirm the infrastructure requirements for Wales and Scotland*", while it is notable that Border Inspection Posts at Welsh Ports are not expected to be operational until July 2021.

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<sup>6</sup> <https://www.gov.uk/government/publications/the-border-operating-model>

20. The 8th October 2020 Border Operating Model document lists the roles of the UK and Devolved Administrations, Government agencies and others in relation to UK ports, stating that the Welsh Government is responsible in Welsh ports, partly or fully, for:
- a. Imports and exports of live animals and animal products
  - b. Imports and exports of fruit and vegetables, plants and wood
  - c. Protecting the environment
  - d. Control of imports and exports of chemicals and nuclear materials (in association with the HSE)
21. However, given that exports to mainland Europe via English ports and the Channel Tunnel is the prime concern for Welsh agriculture, the FUW had had little involvement in discussions with Welsh Government relating to Welsh ports until recent months.

### Preparedness of key economic sectors in Wales

22. Welsh farm businesses are reliant to varying degrees on exports to the EU (as well as imports in some contexts), with reliance in the sheep and hill sheep sector particularly acute, given that around a third of Welsh lamb is exported to mainland Europe. Moreover, agriculture is amongst those industries most at risk from the impacts of tariff and non-tariff barriers under most of the likely post-withdrawal scenarios, given the UK Government's position on membership of the Single Market.
23. Whilst some farmers are involved directly in the importation and exportation of live animals for breeding, the majority are not - although it should be noted such trade is important for the industry as a whole in terms of indirect benefits, such as improved genetics, and that the trade in semen, ova and embryos is also important for many individual businesses and the industry as a whole.
24. As such, there has been relatively little that the vast majority of farmers have been able to do to directly prepare for the post-withdrawal period, other than taking limited actions such as stockpiling medicines and other items in anticipation of shortages - not least given that there is still no certainty as to what the future trading relationship with the EU, or Third Countries and other trading blocs, will look like.
25. Moreover, farmers are well aware that a specific change in their business model made in anticipation of one post-withdrawal agreement would be wholly inappropriate in other post-withdrawal scenarios.
26. As such, since 2016 the FUW has advised farmers to better understand where their main financial strengths and weaknesses are such that changes to a business can be made rapidly to suit different Brexit scenarios once they are agreed and understood.



27. As the 31st December 2020 approaches it seems likely that more specific advice as to how farm businesses should prepare may become appropriate, and be given by Governments, trade bodies or buyers with specific needs in terms of meeting export requirements (for example, the 40 day residency rule, if made a requirement for Export Health Certification - something that would have an immediate and likely retrospective impact on farm businesses).

The implications for preparedness arising from the negotiation of UK international agreements, including the UK-EU future relationship agreement (or agreements), other significant free trade agreements (e.g. UK-USA, UK-Japan, UK-Australia, UK-New Zealand etc.), and the Continuity Negotiations and Coordination programme (formerly referred to as the Trade Agreement Continuity Programme)

28. Compared with the immediate and dire consequences of the UK's departure from the Single Market after 31st December 2020, the implications and opportunities presented by new UK international agreements are unlikely to manifest themselves immediately.

29. This means it is likely there will be time for Governments and businesses to consider the detailed practical implications of such international agreements.

30. However, it is essential that analyses are undertaken to consider the longer term implications of such international trade deals, and such work has been undertaken with regard to Welsh agriculture and fisheries by the Welsh Government's Environment and Agriculture Roundtable Evidence and Scenarios sub group - work already referred to at paragraph 10, above.

31. It is understood that the conclusions of this work will soon be presented to the Environment and Agriculture Roundtable before being made available publicly.

Intra-UK intergovernmental agreements relating to the end of the transition period, including the common frameworks programme

32. The need for frameworks in relation to agriculture cannot be underestimated, given that there is scope for major divergence between the four nations not only in terms of rules and production methods, but also agricultural support.

33. All agricultural policies currently operating in the UK were developed within the EU's CAP policy and financial framework, but there is arguably now more freedom for spending and policies to diverge within the UK than since the Acts of Union of the 1700s.

34. There is therefore a clear rationale for the UK's four nations to agree on a successor to the CAP which recognises common objectives, challenges and interests across the UK, while simultaneously respecting devolution.
35. While reaching agreement on the broad objectives which should underpin a UK policy framework is essential, without associated spending thresholds for actions within each objective there is a risk of significant divergence between national spending which results in disruption, market distortion and unfair competition.
36. As such, spending thresholds need to be agreed which provide flexibility which reflects devolved powers and varying national priorities, while also ensuring relative uniformity, to the extent that market distortion and other adverse effects are minimised.
37. Examples of how such spending thresholds might work while respecting devolution are presented in the FUV's July 2018 *Filling the Void-Steps towards a post-Brexit UK policy* discussion paper<sup>7</sup>, which states *"Reaching agreement on such thresholds will not be easy given current political differences, meaning there is a temptation to ignore the issue; such an abdication of responsibility by national governments should be avoided at all costs, given the danger that gross divergences between national policies and spending represent to our nations."*
38. In early October 2020, Defra, DAERA and the Welsh and Scottish Governments sought the views of stakeholders from across the UK on a UK Agricultural Support Framework.
39. Ministers of the United Kingdom's four Governments have agreed that this UK Agricultural Support Framework should be non-legislative and be based on collaboration, coordination and cooperation on agricultural support post withdrawal period.
40. The draft framework covers:
- a. Agricultural and rural support spending
  - b. Enforcement and marketing standards
  - c. Crisis measures
  - d. Public Intervention (PI)
  - e. Private Storage Aid (PSA)
  - f. Cross-border holdings
  - g. Data collection and sharing

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<sup>7</sup> [https://www.fuv.org.uk/images/pdf/Filling\\_the\\_void-English.pdf](https://www.fuv.org.uk/images/pdf/Filling_the_void-English.pdf)

41. The final framework will be agreed by Ministers from the four governments and be subject to scrutiny from the legislatures of the UK.
42. The FUW welcomes the creation of such a framework, but is concerned that it is being formalised months after the UK's departure from the EU and at a time when all UK administrations have effectively been developing different agricultural policies independently and in the absence of any kind of framework for four years.
43. Whilst the FUW has not seen the draft UK Agricultural Support Framework, there is every indication that its adoption will mark a move from a framework defined in EU Regulations which are hundreds of pages long, which is flexible but only within strictly defined boundaries, including financial thresholds, to one which is non-legislative, generic and more akin to a memorandum of understanding - a move which may in effect facilitate divergence and is therefore a grave concern.
44. Where disputes arise between Governments, for example where one administration objects on grounds set out in the UK Agricultural Support Framework to another's plans to introduce a particular support scheme, it is understood that the issue may be escalated first to the Senior Officials Programme Board, then to Ministers at the Inter-ministerial Group for the Environment, Food and Rural Affairs, then to existing inter-administration mechanisms culminating in the Joint Ministerial Committee.
45. While the existence of any dispute resolution mechanism is welcome, its use will be more likely if the framework document itself is vague, open to interpretation and non-binding, while such flaws, coupled with the highly political nature of the dispute resolution mechanism proposed by UK administrations (involving Ministers from different administrations and ultimately the Prime Minister and First Ministers) seem likely to escalate disputes, possibly turning them into constitutional matters.
46. By comparison, the FUW's 2018 *Filling the Void* paper states "Good governance must also be underpinned by an independent body or bodies with sufficient powers and resources to assess and monitor national schemes and interventions, ensure compliance with framework rules, and act and arbitrate in the event of complaints by national governments."

Senedd Cymru  
Y Pwyllgor Materion Allanol a  
Deddfwriaeth Ychwanegol  
Ymadael â'r Undeb Ewropeaidd:  
Paratoadauyng Nghymru ar gyfer  
diwedd y cyfnod pontio  
EAAL(5) EUP16  
Ymateb gan NFU Cymru

Welsh Parliament  
External Affairs and Additional  
Legislation Committee  
Exiting the European Union:  
Preparedness inWales for the end of  
the transition period  
Evidence from NFU Cymru

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## Inquiry - Exiting the European Union: Preparedness in Wales for the end of the transition period

1. NFU Cymru is the voice of Welsh farming, championing, and representing farmers throughout Wales and across all agricultural sectors. Our vision is for a productive, profitable, and progressive Welsh agricultural industry, capitalising on global opportunities, contributing to the national economy, and supporting thriving rural communities.
2. On behalf of its members, NFU Cymru welcomes the opportunity to comment on the preparedness in Wales for the end of the Brexit transition period on 31<sup>st</sup> December 2020. Brexit represents one of the most significant challenges our sector and our country has ever faced. At the same time as seeking to deal with and prepare for the implications of Brexit, we have also had to respond and adapt to the very significant shock caused by the coronavirus pandemic.
3. The need to respond to the very immediate issues posed by the coronavirus situation has diverted significant resource away from Brexit preparations, whilst the lack of progress in talks between the EU and UK on a future trading relationship continues to be a source of considerable frustration and anxiety amongst NFU Cymru's membership.
4. Turning to address those areas which the Committee has identified as being of particular interest, NFU Cymru would offer the following commentary.

### Welsh Government action to prepare Wales for the end of the transition period

5. NFU Cymru appreciates the difficult position in which the Welsh Government finds itself with regard to the Brexit negotiations and the end of the transition period. The steps and actions which the Welsh Government can take to prepare for the end of the transition period are limited by the fact that we do not know what sort of future trading relationship we will have with the EU27 after 31<sup>st</sup> December.
6. Without knowing what sort of future trading relationship we will have with the EU, any steps taken by Welsh Government at this stage could mean the

unnecessary and wasteful diversion of resources in preparation for an outcome which may not be realised.

7. Anecdotally, and from statements made by Welsh Ministers it would appear that engagement between Welsh Government and the UK Government has been good in some areas, such as the engagement between Welsh Government and the Department for International Trade and Defra. With other arms of UK Government, such as the Cabinet Office (which is of course at the heart of the Brexit negotiations), it would appear that engagement has been much poorer, and this is concerning.
8. As stakeholders we do feel that we have had and continue to have good engagement and communication with all the relevant departments of Welsh Government on the issue of Brexit and the end of the transition period.
9. In relation to Welsh Agriculture, NFU Cymru is concerned at the way in which Welsh Government appears to be intent on pressing ahead with the development of future agricultural support policy for Wales. Since the Brexit referendum we have had two consultations on future policy, and a third is expected before the end of 2020.
10. Outside of the Common Agricultural Policy, Welsh Government has the ability to devise and operate its own arrangements for agricultural support, however this does not mean that we have to rush towards devising a Welsh policy, particularly when there are so many unknowns which could have a very profound impact on Welsh agriculture.
11. At the present time, we do not know whether we will be trading with the EU, or nearest and most valuable export market on a WTO basis, or whether a trade deal will be agreed. Similarly, we do not know what trade deals the UK Government may reach with economies with significant offensive agri-food interests, and what impact this could have on Wales' farmers.
12. With so much of our future prosperity bound up in the sort of future trading relationships we have with the EU as well as third countries, we are urging Welsh Government not to press ahead with policy development until a much clearer picture has emerged of the trading environment which will pertain in future.
13. In the event of a no-deal Brexit, we would ask that the Welsh Government be prepared to lobby and work with the UK Treasury to secure the deployment of support packages which are tailored to the sectors of the Welsh farming industry adversely impacted by market disruption.

### The preparedness of key economic sectors in Wales

14. January 31<sup>st</sup> 2020 saw the UK's departure from the EU in legal and political terms, whilst December 31<sup>st</sup> 2020 will essentially see our departure from the EU in economic terms as we leave the single market and customs union.

15. Although we now have the certainty that we will completely exit the EU's structures at the end of year, and trade with the EU27 on an entirely different basis, it has to be remembered that our departure from the EU, with or without a deal has been in prospect on two previous occasions. The possibility of Brexit in March 2019 and then again in October 2019 undoubtedly led to the nugatory deployment of money and resources. These false starts, coupled with Brexit negotiations which have so far proved unsuccessful in terms of reaching a deal, means that a strong feeling of Brexit fatigue appears to have set in amongst both business and the public.
16. Overlaid with Brexit fatigue is the fact that since March, so much business and government resource has been re-directed into dealing with the fallout of the coronavirus pandemic. The co-incidence of the unprecedented upheaval of Brexit and a once in a generation pandemic has created 'the perfect storm' where business are at the third time of asking reluctant and/or unable to divert significant resource into preparing for the unknown, when many are already battling for survival in light of the coronavirus situation.
17. In common with all sectors of the economy, the scope of agriculture to prepare for Brexit is limited by the simple fact that we have no idea what sort of trading relationship we will have with the EU27 after 1<sup>st</sup> January 2021.
18. The long and complex production cycles involved in livestock and crop agriculture mean that our sector will always face a challenge in terms of responding quickly to market signals. This is no less true of Brexit and trying to anticipate the changing demand for our product which may arise under different scenarios. Most of the lambs which are to be born in 2021 have already been conceived and cropping plans for next year are well advanced. For dairy and beef cattle, production cycles can span a number of years, and as living organisms, their output and productivity cannot be stopped or slowed down easily.
19. The practical steps that farmers can take to prepare for Brexit are limited. In 2019, farmers were urged to take steps such as ensuring that they had adequate amounts of commonly used veterinary medicines and vaccines as these products overwhelmingly originate in the EU. The shelf-life of these products is often quite short, and in addition they are often expensive and so would mean tying up working capital.
20. With the ending for free movement from the EU now imminent, there are some real questions about the likely availability of the labour force which is needed in the agricultural and allied industries after Brexit. This includes not only labour on farm, but also labour the food processing and horticulture sectors. In particular, we are incredibly reliant on EU nationals working as official veterinarians in abattoirs.
21. Wales' organic sector also faces considerable uncertainty. At present the UK is seeking "equivalence" for UK organic certification bodies so they are able

to continue to market organic product in EU markets, and to continue using the EU organic logo on packaging. The situation around organic produce is still unresolved, and if a way forward is not found then our organic producers will face the prospect of having to sell their product into the conventional market and will receive a much lower return for it.

22. Ultimately, how Welsh agriculture fares when we leave the EU's single market and customs union will depend on others in the agri-food supply chain. Whilst we have emphasised the importance of being able to access export markets, there are few if any farmers who are themselves involved with supplying directly into export markets. Typically what farmers produce is aggregated by a processor or intermediary and sent for export, if these other actors in the supply chain are unprepared for the new way in which we will have to deal with the EU27 after 1<sup>st</sup> January, then this will be felt very keenly by primary producers.

The implications for preparedness arising from the negotiation of UK international agreements, including the UK-EU future relationship agreement (or agreements), other significant free trade agreements (e.g. UK-USA, UK-Japan, UK-Australia, UK-New Zealand etc.), and the Continuity Negotiations and Coordination programme (formerly referred to as the Trade Agreement Continuity Programme)

23. The EU27 remains our nearest and most valuable export market. Preserving as much as we can of this market, on the best possible terms is vital for Welsh agriculture. If we fail to agree a trade deal with the EU, then this will mean the loss of an export market which is home to around £200m worth of red meat exports annually, something which could result in the failure of many businesses operating across the Welsh red meat supply chain.
24. Even if our access to this market is lost briefly, it will mean that our customers in the EU27 will look for alternative suppliers which will in turn make it very difficult for us to reclaim these markets at a later date
25. At such a late stage in the Brexit process, we still have no idea what sort of future trading relationship we will have with the EU27, and this is deeply frustrating and highly regrettable.
26. Despite the UK Government's exhortations to business to get ready for the new trading relationship with the EU, it was only earlier this month that a critical piece of information, the UK Border Operating Model, was finally published.
27. Our farmers, and exporters of agri-food produce need to be able to respond quickly to market signals by being able to move swiftly in order to meet demand. We are also very well aware of the perishable nature of our produce (such as red meat and dairy products) which needs to reach its destination in pristine condition. Any delay at an international border will lead to the devaluing of our products as their quality deteriorates and their

available shelf-life diminishes, and this will frustrate the efforts of the UK agri-food supply chain to respond to market signals. We need the UK Government to ensure that produce with a limited shelf life is prioritised and able to reach its end destination quickly.

28. NFU Cymru very much wants to see a deal between the UK and EU which is based on zero tariffs and zero quotas. It is of course very well known that tariffs in agri-food products are incredibly high (48% on lamb, 84% on beef, cheddar 57%) and if these tariffs are not eliminated through a comprehensive free-trade agreement, they will effectively price us out of key export markets.
29. Whilst the impact of tariff barriers on our competitive position are readily understood, we must not overlook the corrosive effects that non-tariff barriers such as Export Health Certification, customs checks, and sanitary and phytosanitary controls can have. The fact is that any such trade facilitation cost is almost certain to make our product less competitive in our export markets and can also constrain our ability to respond rapidly to market signals. We therefore also need the UK government to work towards reducing these barriers to trade as far as possible, and for those which cannot be removed or reduced, ensure that the infrastructure and personnel are available to mitigate their effects.
30. In particular, because the issue of an Export Health Certificate, completed and signed by an Official Veterinarian, is needed for the movement of animal products, the ready and timely availability of sufficient veterinarian to issue EHCs will be critical to keeping exports of agri-food products flowing.
31. Even with a deal with the EU, labelling requirements on UK agri-food produce will also change. The use of the term 'EU' in origin labelling would no longer be correct for food or ingredients from the UK. Additionally, products sold in the UK will need to include the name and a UK address of the food business operator. Similarly, a UK address alone would no longer be valid for the EU market. Businesses will need an EU address to export to the EU which has the potential to create additional cost and delay
32. It is also worth touching briefly on the inbound flow of goods to the UK in the event of a no-deal situation. In such a situation, the UK Government's stated position is that it will waive UK HMRC customs declarations and payment of any applicable duties on imported EU goods for a period up to 6 months. It is not difficult to see how a country which has declared to the world that it is poised to stand down some of the usual controls on agri-food imports could suddenly become a very attractive target for those intent on committing 'food fraud' or finding a home for food of dubious provenance, quality and safety.
33. NFU Cymru broadly welcomed the publication of the UK Global Tariff schedule published back in May 2020, with the UK Government looking to



largely maintain tariffs on imports of agri-food products, not covered by an existing trade agreement. We believe that it attains a reasonable accommodation between helping safeguard primary production and consumer interests.

34. The kind of tariff regime operated by the UK after 1<sup>st</sup> January will have a significant bearing on the prospects for Welsh agriculture, and we have pressed UK Government ministers on a number of occasions as to whether the tariff regime published in May will still pertain in the event of a no-deal Brexit. On each occasion, we have been assured by the UK Government that the May 2020 tariff schedule would be adhered to, however we cannot be certain that in the event of a no-deal with the EU, the UK Government would not simply deploy an alternative tariff schedule which would see tariff barriers relating to agri-food products fully or partially dismantled.
35. We continue to press the UK Government on the publication of the statutory instrument relating to tariffs, which would provide some assurance as to the government's intention in this area.
36. The worst of all worlds scenario as far as tariffs is concerned is that the UK Government fully or partly dismantles tariffs on inbound agri-food products, whilst the EU maintains its common external tariff on UK exports (as it is bound to do under WTO rules). This would mean products from all over the world would enter the UK at low or zero tariffs, whilst we would be priced out of EU export markets.
37. A significant threat to the competitiveness of Welsh agriculture is the prospect that the Government could agree to comprehensive FTAs with countries that have significant offensive interests in agriculture, countries whose standards of animal welfare, environmental protection and labour laws do not meet our own. These lower standards mean that these countries are able to significantly undercut farmers across the UK, who pride themselves on producing food to world leading standards.
38. We would also ask the UK Government to be mindful of the piecemeal and cumulative effect that trade deals struck with third countries may have on UK primary production as well. Whilst individual trade deals considered in isolation may not have a huge impact, there is the potential for them to have a pronounced cumulative effect. Extensive and ongoing modelling, analysis and impact assessment are required.
39. The nightmare scenario for Welsh agriculture is the loss of EU markets, coupled with trade liberalisations with markets such as New Zealand, the US and Australia.
40. NFU Cymru welcomed the signing of a UK-Japan trade deal earlier this month, this represents a significant development in the UK's pursuit of an independent trade policy. Although a number of EU bilateral trade agreements have been rolled over to date, a significant portion of our agri-

food exports face non-preferential terms from 1<sup>st</sup> January 2021, and the government must prioritise rolling over trade deals with partners such as Canada, Singapore, Norway and Mexico.

### Intra-UK intergovernmental agreements relating to the end of the transition period, including the common frameworks programme

41. NFU Cymru has supported the development of common frameworks as an important component of ensuring we have a functioning internal market after 31<sup>st</sup> December 2020. This support has always been and remains predicated on such frameworks being arrived at by mutual agreement between the UK and Devolved Governments, and not by imposition from the centre.
42. NFU Cymru fully accepts that upon our departure from the European Union's single market, and the regulatory convergence it imposes, there is genuine potential for new barriers to intra-UK trade to arise as a result of diverging regulation in each of the UK's home nations, as areas previously occupied by Community law revert to the competence of London, Cardiff, Edinburgh and Belfast. One of the natural corollaries of being outside the EU's single market therefore is the need to take steps to preserve the integrity of the UK's internal market
43. Faced with following different regulatory standards, every farm and food business that depends on trade within the UK internal market would be affected should different standards for production methods, labelling or product standard become barriers to trade.
44. We would for example point to the fact that around 60 per cent of Welsh red meat is sold on the UK market, with only 5% of Welsh red meat sold within Wales. When it comes to dairy, in 2018-19 Wales was estimated to have produced 1,971 million litres of milk, but has a current processing capacity estimated at 956m litres per year. As a small country which produces far more milk than it consumes, we are very dependent on being able to send this to other parts of the UK for processing and consumption.
45. Whilst NFU Cymru is very keen to see a functioning UK internal market, we do have some concerns about a number of proposals contained in the UK Government's Internal Market Bill.
46. For example, in theory decisions on matters such as animal health and welfare or hormone treatment of beef rest with devolved governments. Were the UK government to decide to allow products produced to standards which would be illegal in Wales, onto the market in England as third country imports, or indeed if farmers in England were ever permitted to use such production methods, then the principle of Mutual Recognition as articulated in the draft bill would mean that they would be in free circulation across the UK, with devolved governments powerless to exclude such products from their territories.

47. It also appears unlikely that devolved governments would be able to use food labelling powers to draw attention to the particular method of production, as this may fall foul of internal market provisions around direct and indirect discrimination contained in the Internal Market Bill.
48. With work on common frameworks as yet incomplete, there are some serious doubts over whether common frameworks across the 160 or so specific policy areas identified, will be operationalised by 1<sup>st</sup> January 2021. This is concerning as presumably such frameworks have a very important role in setting out those minimum product standards which will in turn be underpinned by the twin principles of mutual recognition and non-discrimination.
49. In the absence of common frameworks establishing minimum standards, it is possible that we could see standards lowered as one home nation seeks to leverage in competitive advantage by lowering its standards, in the knowledge that the other home nations will be obliged to accept its products according to the internal market principles of mutual recognition and non-discrimination.
50. In a worst case scenario, this could lead to a race to the bottom and the home nations placed in the invidious position of having to choose between upholding high standards of production or maintaining the competitiveness of businesses in its own territory, by lowering its own standards. Outside the discipline imposed by trade agreements, this risk is amplified, and our concerns around this point would for example be particularly keenly felt, if for example the UK had not concluded a trade deal with the EU27 to take effect from 1st January 2021, and work on common frameworks was still outstanding
51. NFU Cymru considers the prospect of mutual recognition and non-discrimination principles, not properly anchored to a UK wide baseline of product standards (provided for via a common framework) to be deeply concerning, and something which could risk triggering an intra-UK race to the bottom in terms of standards. For this reason, we consider it vital that common frameworks continue to be progressed and are operationalised from 1<sup>st</sup> January.

#### Further comment from NFU Cymru

52. As has been stated previously in this paper, so many of the decisions relating to Brexit lie outside of the control of Welsh Ministers and the Welsh Parliament. For the purposes of completeness it may nonetheless be useful to set out here the key asks that NFU Cymru has of the UK government to help our sector manage the end of the transition.
- **Markets must be kept open and functional:** Exporters must be supported, the necessary processes involved in exporting are streamlined, sufficient advice and resources, including adequate numbers of vets are guaranteed

to be available. All perishable fresh agri-food product should be prioritised at the border to ensure valuable shelf life is not wasted. If and when a comprehensive and ambitious trade deal is struck with the EU, it is clearly and quickly communicated in full to industry.

- **Provide adequate financial support:** The UK Government must commit to fund appropriate levels of compensation for loss of income across all farming sectors adversely affected by market disruption at the end of the transition period. This should be set at the level necessary to provide compensation for loss of income caused by the uncertainty in markets in the months ahead and falls in prices due to any imbalance in EU/UK tariff policy.
- **Ensure adequate import tariffs are in place:** Government should honour the UKGT announcement made in May 2020 to provide safeguards to UK primary production in a no-deal scenario. It will also reinforce the need for the EU to come back to the table to negotiate a trade agreement with the UK to maintain or re-establish the market access it currently enjoys. Additionally it will ensure that cheaper imports produced to lower standards will not suddenly enter the UK market. The impacts of such an approach on consumer prices will be minimal, yet eliminating tariffs as set out in the previous “no-deal” (Temporary Tariff Regime) could have a devastating impact on some farm sectors. Furthermore, the government must guarantee that the UK will not sign up to any new trade agreements that undermine our long term objectives for the industry by failing to protect our standards of production and subjecting UK farmers to unfair competition.
- **Parliamentary Scrutiny for free trade agreement negotiations:** Given the significant impact that trade agreements invariably have on consumers and the economy, including primary producers, the negotiation and ratification of trade agreements should be subject to a high level of democratic input, scrutiny and accountability at all stages, including by the devolved legislatures. We believe that the UK Parliament should also be given an active and formal role in the process, significantly more than is currently provided for by Constitutional Reform and Governance Act 2010.
- **Robust and timely market monitoring:** Government must establish mechanisms immediately to undertake timely and comprehensive monitoring of the market, ensuring this covers all agricultural commodities at the end of the transition period. Relevant, up-to-date market data will be critical to informing the government’s trade policy and other policy interventions, such as the need for financial support.
- **Create a future immigration system that meets the specific requirement of the agri-food sector:** The system must recognise the crucial importance of migration for farmers and growers as well as the wider food manufacturing and retails sectors, and the need to fill jobs at all skill levels.

This must include a realistic assessment of the availability of UK workers to fill these positions.

- **Generate new market opportunities:** As the Government pursues the UK's independent trade policy it must seek out the best export markets and opportunities for our products, and in so doing promote our reputation abroad for high standards in animal welfare, environmental sustainability, traceability and ethical trading.

## Exiting the European Union: Preparedness in Wales for the end of the transition period

### About Universities Wales

Universities Wales represents the interests of universities in Wales and is a National Council of Universities UK. Universities Wales's membership encompasses the Vice Chancellors of all the universities in Wales, and the Director of the Open University in Wales. Our mission is to support a university education system which transforms lives through the work Welsh universities do with the people and places of Wales and the wider world.

### Introduction

- I. Universities Wales welcomes the opportunity to respond to the External Affairs and Additional Legislation Committee inquiry into the preparedness in Wales for the end of the transition period.
- II. The UK Government and the EU are currently engaged in negotiations on a possible future relationship. However, there remains a risk that no agreement is reached by the time the transition period ends. Such a scenario would have serious implications for Welsh universities, their students, their staff, their international partners and their operations.
- III. This submission outlines the main issues facing the sector as a result of the UK's exit from the EU and includes further measures that the Welsh Government can take to help universities prepare for exiting the European Union.
- IV. The EU has played an important role in Welsh higher education in terms of:
  - a. student and staff recruitment;
  - b. student and staff mobility;
  - c. research collaborations.
- V. Welsh universities have delivered significant benefits to Wales utilising investment from European programmes. EU funding has supported hundreds of millions of pounds of research and innovation infrastructure

and capacity in Wales <sup>1</sup> which brings economic benefits as well as wider health and societal benefits to communities.

- VI. The loss of EU income, without adequate replacement funding, would have a major financial impact on universities. This would make an already challenging financial position even more difficult to manage. In addition, the sector's reputation as a collaborator of choice in vital research will be weakened, and access to key funding mechanisms to support research excellence will be lost.
- VII. The main challenges that face universities in Wales as we approach the end of the transition period include the:
  - New immigration system for EU students and staff, including change in fees for EU students
  - Continued UK participation in EU research collaborations
  - Replacement of European Structural Funds
  - Mobility opportunities for Welsh staff and students
  - Implications for transnational education
  - Implications for HE in trade agreements
- VIII. We hope that clarity can be provided as soon as possible on the above issues, to minimise any potential disruption for the sector in what is already a challenging time.
- IX. Welsh universities have been preparing for the possibility of a no-deal outcome and have been taking appropriate action to minimise the risk of impact. Universities UK and Universities Wales have established a Brexit Readiness Checklist to help prepare risk registers, organised webinars, and convened a roadshow event (in October 2019) where 60 people from Welsh universities were able to discuss issues with government officials. Universities Wales has worked with Universities UK to run extensive campaigns and surveys and recently prepared a guide to help prepare universities for the end of the transition period which outlines the key issues and corresponding actions universities should consider in preparation for a possible 'no trade deal' scenario at the end of 2020.
- X. It is vital that the Welsh Government – and Ministers and officials from the devolved administrations – are fully involved in any discussions about the formulation of the UK's policy position on future trade matters, particularly

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<sup>1</sup>This includes £130m to Wales through Horizon2020 and £300m to universities as lead partners in ESIF projects 2014-2020.

<https://gov.wales/sites/default/files/inline-documents/2019-03/horizon-2020-higher-education-casestudies.pdf>

where these could have important implications for devolved matters, for example on fee levels and support. This is to ensure UK positions truly reflect the positions of all parts of the UK and shape a trade deal that works for all parts of the UK.

- XI. When compared to the rest of the UK, Welsh higher education is of greater relative importance to Wales, forming an even larger part of its economic base, than the UK higher education sector is to the UK overall<sup>2</sup>. Given their economic contribution - generating £5 billion of output in Wales in 2015/16<sup>3</sup> - their international outlook, expertise and quality research, universities are well placed to provide support and solutions for the challenges posed by exiting the EU. It is crucial that our universities, as national assets, are fully involved, engaged and their expertise utilised in the Welsh Government's plans for, and transitioning to, a post EU Wales.
- XII. The Welsh Government should ensure that Welsh universities are fully involved in the development and implementation of Welsh Government's Regional Investment Framework, and that the role of research and innovation is recognised throughout the framework.
- XIII. Welsh Government should consider further domestic policy interventions to support Welsh students and staff in gaining the international skills and experience necessary to support Wales as a global trading nation.
- XIV. The Welsh government should also consider how it might use its relationships with other governments around the world to influence the policy and regulatory conditions in the many countries in which Welsh universities are active, where doing so would unlock opportunities to advance mutual interests. It should seek to build on or develop informal networks, and relationships with regions and countries of strategic importance for Welsh higher education. These may offer opportunities for further research and academic collaboration and partnerships outside of the formal EU frameworks, for example with regional inter-Governmental bodies and country level organisations. Welsh universities welcome the opportunity to be consulted on any proposed new relationships or agreements with regional bodies and/or governments, to ensure they align with priority areas or areas of strength for Wales.
- XV. Universities Wales appreciates the Welsh Government Higher Education Brexit Working Group that has enabled the sharing of information with the sector. Continued communication and cooperation between the Welsh Government and the higher education sector will be essential in ensuring universities continue to contribute to shaping solutions to the challenges posed by exiting the EU.

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<sup>2</sup> The Economic Impact of Higher Education in Wales, Universities Wales, January 2018

<sup>3</sup> [http://uniswales.ac.uk/media/UNI010-Economic-Impact-Report\\_FINAL.pdf](http://uniswales.ac.uk/media/UNI010-Economic-Impact-Report_FINAL.pdf)



XVI. While the process of exiting the EU will bring challenges, universities welcome the opportunity to continue contributing to shaping solutions and are committed to maximising the opportunities it will present for Wales.

### Research funding and collaboration

- 1.1. Firstly, we strongly believe that Wales should maintain its participation in European programmes. We believe it is in Wales' interest to continue to be able to access leading schemes such as Horizon Europe and continue its engagement with relevant key European research and innovation networks and forums including the European Research Area and the European Strategy Forum for Research Infrastructures.
- 1.2. High quality research and innovation are the bedrocks of a growth economy and have knock-on benefits to communities across Wales. Our universities are valuable partners, collaborators and innovators in many European research and innovation collaborations across the sciences, technology, health, and social sciences with transformational benefits for Wales, the rest of the UK and for Europe.
- 1.3. Universities have accounted for nearly two-thirds of Welsh participations in Horizon 2020 programme so far and have received over sixty per cent of funding received by Welsh organisations. Through Horizon 2020 funds, Wales has attracted more than €83 million, with 191 participations by Welsh Higher education organisations and businesses in 174 projects<sup>4</sup>. Given that Wales receives only 2 per cent of overall UK R&D funding, the loss of EU structural funds and, potentially, Horizon funding will have a significant and disproportionate impact on future research and innovation investment for Wales<sup>5</sup>. As universities in Wales deliver a larger proportion of research and development than elsewhere in the UK, the implications of post-Brexit policies are much more significant.
- 1.4. Furthermore, Wales' research impact continues to punch above its weight and outperforms the other nations within the UK in a range of areas, such as value for money and international citations. Welsh universities have the highest percentage (77%) of 'world leading' research in terms of its impact of any part of the UK, with almost half of it considered to be having a transformational effect on society and the economy<sup>6</sup>.
- 1.5. No agreement has yet been reached on the UK's participation in Horizon Europe, due to start 1 January 2021. Should the UK not associate, the UK government has committed to fund international research collaboration in place of Horizon Europe participation. If no agreement is reached, then the UK government has announced it will make funding available to support

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<sup>4</sup> <https://gov.wales/sites/default/files/publications/2018-10/regional-investment-in-wales-after-brexit.pdf>

<sup>5</sup> <https://gov.wales/sites/default/files/publications/2019-03/wales-protecting-research-innovationafter-eu-exit.pdf>

<sup>6</sup> <https://www.ref.ac.uk/2014/>

participation by UK researchers in Horizon Europe projects as a third country, establish a 'Discovery Fund' to support researchers at all career stages to pursue discovery-led, ground-breaking research, as well as scaling up certain existing domestic grant schemes. The UK Government has not yet confirmed the details of the Discovery Fund. This information is critical for universities who are concerned about retaining and attracting staff who plan to apply for European Research Council awards.

- 1.6. This leaves open the possibility that the third country participation funding guarantee if the UK does not associate will not cover all researchers. For instance, there is a possibility that the UK government could choose specific topic areas where they will guarantee funding in order to limit the cost. We are strongly urging the UK Government to guarantee funding for all third country participation by UK researchers if the UK does not associate to Horizon Europe.
- 1.7. We welcome the continued funding commitments from the UK Government for R&D. It is imperative that additional funding commitments are delivered in ways which benefit the whole of the UK and, in particular, recognises the regional differences such as industry and demography, as well as the research strengths that exist across the whole of the UK.
- 1.8. Yet, the uncertainty of the replacement of structural funds, and what this means for research and innovation in Wales, presents a risk to the ways in which universities in Wales are able to collaborate with partners and networks around the globe and will have knock on implications for institutions and communities for years to come.
- 1.9. Post transition period, it is key that Wales' HE sector builds upon and expands its collaborations with international partners, including the EU. Existing partnerships which have been developed within cohesion programmes and framework programmes have delivered significant benefits and protecting what exists and then enhancing these strong collaborations should form a focus for UK R&D going forward. Universities are well versed in working in partnership with a range of stakeholders and can be leaders in this process.
- 1.10. Universities Wales commissioned Professor Graeme Reid in June 2020 to carry out a short review of the ways in which Welsh universities can better collaborate. In particular, how collaboration could support the sector in Wales to capture both a greater share of competitive research funding. 'Strength in Diversity', published 6 October 2020, outlines both the diverse strengths of the Welsh sector and its strong performance, and also the ways in which the Welsh sector would benefit from greater scale.
- 1.11. The report poses collaboration as a means to strengthen bids, ensure a greater number of Welsh universities enter funding competitions, and also as a way to provide Wales with a clear, single voice in the UK and international research and innovation environment. The report also

highlights how funding for research and innovation in Wales is exposed to political and economic pressures, some of which are amplified by the COVID19 crisis.

- 1.12. The recommendations for report include an initial focus on regional investment and funds aimed at addressing the regional disparities in productivity – this includes funds both Wales and UK-wide. The report also recommends that a separate team be formed, hosted by Universities Wales, to facilitate collaboration, establish a protocol to ease collaboration, and act as a single point of communication for the sector in Wales.
- 1.13. Our parent body, Universities UK is also developing a set of proposals for future funding of international collaboration in response to the Research and Development (R&D) Roadmap, including a Discovery Fund-style programme. With contributions from across 36 UK institutions, including two Welsh universities, it sets out a clear plan for how the UK can expand and capitalise on researchers' international links to attract talent and business investment from overseas<sup>7</sup>.

## Replacement European Structural and Investment Funds – Shared Prosperity Fund

- 2.1. European Structural Funds have provided vital investment for projects and infrastructure that contributes towards economic and social growth in Wales. In the current funding round alone, between 2014-2020<sup>8</sup>, Welsh universities have been awarded £331m of European Structural and Investment Funds as lead organisations and have been able to deliver a significant and diverse range of benefits to Wales. Specific examples of projects led by Welsh universities with multi-million-pound SF investment include (but are not limited to) the KESS projects, ASTUTE 2020 and Flexis and projects.
- 2.2. Ser Cymru is also an example of a successful scheme which has brought a range of scientific talent to Wales. The programme was jointly funded by the EU Structural Funds and is match funded by universities, Welsh Government, and HEFCW. The programme has attracted a number of early-mid career researchers into Wales, with three of the Chairs remaining in the institutions after the end of Welsh Government funding<sup>9</sup>.
- 2.3. The UK Government has committed to a Shared Prosperity Fund in place of EU structural funding, with Wales to receive at least the same level of

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<sup>7</sup> <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/International/2020/Future-international-partnerships.pdf>

<sup>8</sup> <https://gov.wales/eu-structural-funds-programme-2014-2020-approved-projects>

<sup>9</sup> <https://gov.wales/ser-cymru>

funding as through structural funds. However, details remain sparse, and so far there is no mention of higher education or research within descriptions of the Shared Prosperity Fund and no clarity on whether funding will be devolved.

- 2.4. Providing certainty and clarity for Wales over replacement funds is vital to help ensure R&D plays its fullest role in levelling up all over the UK. We urge the Welsh Government to continue working to secure clarity on this from the UK Government.
- 2.5. We continue to work with Welsh Government on the development of the proposed Regional Investment Framework.
- 2.6. There are a range of important lessons to be learned from previous rounds of European Structural Funding and Welsh universities are well placed to lead the reflection in this area given their extensive experience. There is an opportunity to retain key strengths of European funding, such as longer delivery periods and a nation-wide approach, whilst also moving to a less bureaucratic and more flexible system with a stronger focus on outcomes as opposed to inputs. As universities are embedded in their regions they can provide valuable input to framework development.
- 2.7. Strengthening partnerships will be crucial to future regional investment in Wales. Welsh universities are well-placed to participate in and facilitate these partnerships as their relationships range from local, as anchors in our communities across Wales, to global, as world-leading centres of research and innovation.
- 2.8. As outlined in our submission to the consultation on the future of regional investment in Wales<sup>10</sup>, the first priority for future regional investment should be the return on the investment for Wales. Secondly, the opportunity for partners including universities to use regional investment funding to leverage funding from other sources, both at a UK level and from global opportunities. And thirdly, research, innovation, skills, training and education should be at the heart of future regional investment in Wales after Brexit.
- 2.9. EU Structural and Investment Funds have not only played an important role in building capacity in research and innovation in Wales but also in developing skills and SME engagement. These activities are often part-funded by the EU. Post transition period, uncertainty over replacement funding presents a risk to these activities.
- 2.10. Universities in Wales are committed to working with Welsh Government and others to navigate the best course for Wales' future economic growth. It will be important that future regional bodies include

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<sup>10</sup> <http://uniswales.ac.uk/media/Unis-Wales-response-Regional-investment-in-Wales-after-Brexit.pdf>

universities as well as local businesses within their structures to ensure work on skills, research, innovation and infrastructure are joined up. The HE sector needs consistent opportunities to input practically into how the Regional Investment Framework is developed.

2.11. Whilst we are clear that the Shared Prosperity Fund should at least match previous rounds of funding, this is an opportunity for UK and Welsh Government to use the SPF to provide a bold step-change and grow the UK and Welsh economies by investing in skills and research. It is imperative that the future strategy for regional investment is approached with creativity and ambition and create transformational change in the Welsh economy.

### Immigration and status of EU nationals and increased tuition fees for EU students

3.1. UK immigration policy affecting all non-UK nationals coming to the UK will change with effect on 1 January 2021, regardless of whether an agreement is reached on the future relationship by that date. This change will have a significant impact on EU/EEA student recruitment, it means those from across Europe will now have to apply to enter the UK before studying, and following the Welsh Government's announcement (and similar announcements in England and Scotland) in August 2020 that EU, other EEA and Swiss nationals studying in Wales will no longer be eligible for home fee status from 2021/22.

3.2. The combination of these two factors is likely to result in a steep decline in EU/EEA students over the coming years. Many across the sector had already been planning for a downturn in EU/EEA student inflow, however Covid-19 has turned this into an issue of critical importance. Therefore, to help stabilise EU/EEA demand, we believe government action is essential.

3.3. Analysis undertaken by London Economics has explored the potential effects of the removal of public subsidy for EU students and the harmonisation of EU fee levels with the higher rates paid by non-EU Students<sup>11</sup>. It shows that harmonisation of EU and non-EU fee levels would bring about a 52 per cent reduction in students and this would be associated with a 15 per cent drop in the fee income received by universities.

3.4. Research from [HEPI and Kaplan](#), shows that enrolments of EU students in the UK could decrease by 57% (over 31,000 students). However, our members are reporting even higher projections. Crucially, these estimates do not factor in the impact of Covid-19. A drop in student recruitment from the EU could have a significant financial impact on all Welsh universities.

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<sup>11</sup> <https://www.hepi.ac.uk/wp-content/uploads/2017/01/The-determinants-of-international-demandfor-UK-HE-FULL-REPORT.pdf>

Such a drop would have a knock-on financial impact on the wider economy.

- 3.5. As well as an increased fee, until now many EU students were not paying upfront for tuition as it was covered through loan arrangements. Losing loan eligibility will likely act as a further deterrent.
- 3.6. Any adjustments to target recruitment areas for institutions will take time and are not certain to offset losses.
- 3.7. Furthermore, a collapse in the number of EU students in Wales would have significant wider economic implications. In 2018/19, Viewforth Consulting report published in 2017 using 2015/16 data, details the economic benefit of EU students for Wales: each EU student generated £19,300 of economic output, £9,300 of GVA and one Welsh job was generated by every six EU students in Wales<sup>12</sup>. Even local authorities without a university benefitted from the impact of international students.
- 3.8. Further action from the UK government, working in partnership with devolved administrations, and with the sector, is required to prevent a steep decline in EU/EEA students. These proposed actions are outlined in [Universities UK's paper on Five ways to stabilise EU / EEA student demand following the introduction of the points based system](#).
- 3.9. It is vital that the Welsh Government – and Ministers and officials from the devolved administrations – are fully involved in any discussions about the formulation of the UK's policy position on future trade matters, particularly where these could have important implications for devolved matters, for example on fee levels and support. This is to ensure UK positions truly reflect the positions of all parts of the UK and shape a trade deal that works for all parts of the UK.
- 3.10. The UK Government announcements in September 2019 and July 2020 that the Graduate route is to be extended to allow PhD students to stay for three years rather than two is very welcome. It sends the message that we are a welcoming country, and this will help in the recruitment of international students. However, in considering how Wales targets international markets postEU, clear, consistent, and confident messaging about Wales and its offer will be crucial.
- 3.11. International higher education services are a significant way to increase trade in Wales and as such, Welsh Government should prioritise targeted investment in international marketing and recruitment support, coordinated with all the outward facing elements of Welsh Government, in order to recruit international students.

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<sup>12</sup> <http://uniswales.ac.uk/media/Unis-Wales-international-student-research.pdf>

3.12. The Study in Wales brand messaging promotes Wales as part of the UK's world class higher education system and offers a distinct experience with a diverse range of universities, and a supportive and highly rated student experience. Post Covid-19 and post-transition, the collaborative approach of Global Wales will be able to deliver a consistent message about Welsh communities and universities as open, tolerant and diverse, and build on the reputation of Wales as a friendly and welcoming country for all international and EU students and researchers alike.

## Global Wales

- 4.1. In order to mitigate the impact of leaving the EU, Global Wales received £3.5 million from the EU Transition Fund, to promote Wales through its higher education (HE) sector in priority overseas markets, and to address the economic and cultural impact of a reduction in EU and international student numbers and projects resulting from Brexit. Global Wales aims to support the higher education sector as an export industry, affecting a dynamic change in how we pursue our overseas interests. It was established to provide strategic support to universities in a small number of target markets, including the EU, India, the US, Vietnam.
- 4.2. As an initiative to promote higher education at a country level, the Global Wales programme and the Study in Wales brand have succeeded in bringing investment to Wales. Compared to a single institution approach, Global Wales has leveraged Wales' success compared to activities developed by other countries. For example, In Vietnam, with a whole Wales approach, Global Wales has signed an MoU with the Vietnamese Government, and implemented a tiered programme at Government, sector, institution, down to individual recruitment to reach key audiences. This has helped boost our soft power, build key relationships and delivered outcomes that a single institution could not, while still achieving these objectives to the benefit of each institution.
- 4.3. Global Wales has established prestigious scholarship programmes, including partnerships with Chevening, Fulbright, and Gilman aimed at developing global leaders from Vietnam, India, and the US. Due to the significant economic, social and cultural benefits of hosting international students for Wales, (e.g. one job is created in Wales for every 3 international students recruited to a Welsh university<sup>13</sup>), and to further enhance the capacity of Welsh institutions to recruit a greater number of high-achieving international students, Global Wales has established a new 'Global Wales Postgraduate Scholarship Programme' that is available to our target markets including countries of the European Union. This prestigious scheme is the first scholarship of its kind in Wales, and Welsh Government

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<sup>13</sup> <http://uniswales.ac.uk/media/Unis-Wales-international-student-research.pdf>

should consider long term support for these scholarships, to make Wales a more attractive study destination within the UK market.

4.4. Global Wales aims to deliver wider benefits to Wales from partnerships in terms of trade and invest activity. We would recommend this approach to other sectors in their international engagement. These aspirations are crucial to Wales' future prosperity post-EU - if these meaningful relationships are not developed, the investment and students will go elsewhere.

4.5. The wider diplomatic and cultural impact of international students and staff should not be underestimated. Global Wales is engaging with international alumni and Study in Wales ambassadors through the Welsh Government's draft Diaspora plan, to promote Wales as a destination of choice for trade agreements and international students. Universities' network of high-skilled alumni and partners across the world provide a wealth of opportunity for future trade and investment, and our internationalised campuses and cities reflect Wales as a welcoming and outward-looking nation.

### Erasmus+/ Student mobility

5.1. In terms of student mobility, over 4,500 students at Welsh universities and 700 academics and teachers participated in Erasmus+ mobility programmes between 2007-2014.

5.2. Universities Wales' position remains to support full association to the future Erasmus+ programme (2021-2027). Continued participation in the Erasmus+ programme is considered vital to maintain outward and inward mobility to Wales as well as playing an important role in links between Welsh universities and universities across Europe.

5.3. A reduction in mobility opportunities for students would reduce diversity on campuses, have a detrimental effect on the development of graduates' skills, and some language courses, where study abroad is compulsory, could become vulnerable. The importance of student mobility during academic programmes is highlighted in a Universities UK report which found that 'mobile graduates from the 2015/16 academic year were more likely to be in graduate employment or further study, more likely to have a higher starting salary, and had a lower unemployment rate than their non-mobile peers'.<sup>14</sup>

5.4. There is currently a risk that no agreement on Erasmus+ participation is reached on the UK's participation in the next Erasmus+ programme, which is due to start in January 2021. Should the UK Government opt not to associate, or if the UK is not able to participate in the first year of the new programme, the UK Government has committed to fund new UK-wide

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<sup>14</sup> UUKI GO International report



'International Educational Mobilities scheme' as a replacement to Erasmus+ participation. The Department for Education has advised that this scheme will be ambitious, UK-wide and global in its reach. However, the UK government has not committed to replace the non-mobility aspects of the Erasmus+ programme, or reciprocal incoming mobility, should a new national scheme be necessary.

- 5.5. Several urgent questions remain on the design of this programme, including the scale of funding that will be available for it, subject to the Spending Review, and when details of the scheme will be made available to universities to ensure that there is no break in mobility funding for 2021/22.
- 5.6. Universities Wales has been involved in a number of stakeholder consultations on the principles and design of a national alternative to Erasmus+, both at UK government and Welsh government levels. Universities UK, submitted to the Department of Education a 2020 annex to its previous paper, 'Developing a government-funded, large scale mobility programme' outlining how a national alternative to Erasmus+ should be designed and implemented.
- 5.7. The UK government should ensure that any national alternative scheme to Erasmus+ will provide funding levels commensurate with the trajectory of growth in outward student mobility in recent years and reflect the growing amounts the UK would have received from the Erasmus+ programme. Any alternative scheme should provide mobility opportunities to UK and international staff and students to Europe and beyond for study or work placements. It should also reflect or improve existing systems to ensure it is as easy for institutions to use and to enable exchanges with institutions in the EU.
- 5.8. The UK government should also ensure that any UK-wide scheme is fully consulted on and agreed by all the devolved administrations to shape a programme that works for all parts of the UK.
- 5.9. Welsh Government should consider further domestic policy interventions to support Welsh students and staff in gaining the international skills and experience necessary to support Wales as a global trading nation.
- 5.10. Welsh universities have been taking stock of the immigration requirements for UK outgoing Erasmus+ students studying or on work placements beyond 31 December 2020 and ensuring that students are clearly advised of the various national guidance for third country nationals.
- 5.11. The UK government should ensure that there is a supportive and clear immigration route in place to ensure that incoming students can continue to use Erasmus+ to study or undergo work placements in the UK and facilitate exchanges for a national alternative scheme. This is important as

Erasmus+ students are due to arrive in the UK to undergo second semester study from the 1 January 2021.

- 5.12. Universities UK recommends the introduction (to come into effect from 1 January 2021) of a new 'Educational Exchange Immigration Route' to be established by October 2020 which allows study or work placements (paid or unpaid) for up to 12 months, for inbound EU and international students if on Erasmus+ or a future domestic scheme.

## Trade in Education services

- 6.1. The UK government will need to negotiate a series of trade agreements with countries around the world following UK's exit from the European Union. It is critical that higher education and research figure prominently as part of these discussions – both to unlock potential new opportunities, and also to ensure that altered terms of trade with the EU and all other countries are shaped with the distinctive international character of the higher education sector firmly in mind.
- 6.2. Universities play a central role in driving inclusive economic growth locally, regionally and nationally; strengthening our international trade and diplomatic relationships across Europe and the wider world. Recognition of education as part of Trade and Investment is fundamental and recognising the contribution which universities generate and how education can complement broader trade discussions is vital in order to increase collaboration.
- 6.3. As outlined in our response to the [Welsh Affairs Select Committee consultation](#), Free Trade Agreements can affect higher education and research either through the direct treatment of these sectors in dedicated chapters of an agreement, or by changing the general conditions for service trades. Other areas of higher education policy of potential relevance to future trade agreements include:
- Mobility of academic staff and students
  - Collaboration in science, research and innovation programmes
  - Recognition of degree qualifications
  - Joint use of research facilities and scientific equipment
  - Other regulatory issues
- 6.4. The negotiation of each trade agreement will be different in nature and will require tailored input from the sector to determine the most pertinent issues on which to focus. Only the sector itself has the expert knowledge necessary to inform this process, and to help prepare the ground for successful negotiations which safeguard the reputation of the sector and

capitalise on opportunities. This implies a need for detailed and ongoing consultation with the sector.

6.5. Transnational education (TNE) is potentially one of the areas of higher education which could be impacted by the type of relationship agreed on services. In 2017/18, there were 26,980 students studying for Welsh university degrees overseas<sup>15</sup>. The EU hosted 28.5% of Welsh TNE students during 2017/18.

6.6. Welsh universities operate a wide range of collaborative models for TNE, including supported distance learning, franchising, validation, twinning and dual and joint degrees. How the end of the transition period affects this provision will depend on range of factors, mainly the:

- i. nature of the agreement (or lack thereof) reached with the EU;
- ii. specific TNE arrangement,
- iii. territory where TNE is delivered.

6.7. Strengthening partnership between universities, industry and government should form a key objective going forward, but without adding bureaucracy. Universities are well versed in working in partnership with a range of stakeholders and can be leaders in this process.

6.8. The UK Government should seek an agreement that:

- ensures TNE services are protected by a comprehensive agreement.
- Grants market access and national treatment to UK higher education service providers, covering rights of establishment and rights to provide higher education through franchise and validation.
- Protects the recognition of UK professional qualifications, including where those qualifications have been obtained in third countries.
- Enables the mobility of professionals, including early career academics and graduate trainees, with minimal administrative barriers.

6.9. Bearing in mind provisions for each specific arrangement, and in the absence of an agreement that grants enhanced protection to UK TNE, universities will need to consider the legal basis for delivering activities in each specific territory, including the following issues:

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<sup>15</sup> <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2020/scale-of-UK-HETNE-Welsh-providers-2017-18.pdf>

- i. University staff travelling for professional purposes and graduates of TNE programmes will cease to be protected by the EU Directive 2005/36/EC on the recognition of professional qualifications.
  - ii. In the EU, exporting member states are responsible for the organisation and evaluation of the courses and degrees granted by their higher education institutions, including those delivered in another member state. This may no longer apply from the end of the transition period, when TNE may be subject to local quality assurance processes. iii.
  - iii. Students currently studying on TNE programmes in the EU, and prospective students, may see changes to their rights following the end of the transition period. The recognition of their professional qualifications, their immigration status or their right to work in the EU may be altered depending on the status of the programme and institution (see section below).
  - iv. The protections of Directive 2006/123/EC on services in the internal market will no longer apply. Welsh and UK universities will be subject to local regulations at the national or sub-national level applying to third country providers following the end of the transition period. Ensuing discriminatory measures could include many administrative barriers such as equity ceilings, nationality requirements, restrictions on foreign teaching staff, subsidies to local providers, authorisation for establishment, economic needs tests, requirements to use a local partner and taxation of licensing/royalty payments.
- 6.10. UUKi's activity has already helped identify specific regulatory issues in countries such as Cyprus and some German länder (Bavaria and SchleswigHolstein). In some of these territories, notably Cyprus, regulatory action has helped ensure that different modes of TNE such as franchise and validation continue to be accepted after the end of the transition period.
- 6.11. Future trade agreements should generally aim to enable conditions for enhanced cooperation in higher education and research, while acknowledging that follow-on discussions and/or separate agreements, including intergovernmental MOUs, technical agreements and strategic alliances between higher education institutions, may be the more appropriate channel to determine the details of implementation.
- 6.12. For future trade relations, Wales should project itself as a dynamic knowledge economy with many areas of excellence, including smart and flexible energy, nuclear energy, data, manufacturing and health. Universities also play a role in supporting small businesses, including SMEs, many of which go on to export internationally. It is important to note that Wales punches above its weight in terms of entrepreneurship – it has the

highest number of graduate start-ups in the UK per capita and supporting their access to international markets also needs to be considered<sup>16</sup>.

- 6.13. It is essential that the Welsh Government, and the other devolved governments, are fully involved in the negotiations to shape a trade deal that works for all parts of the UK.

### Recognition of UK qualifications

- 7.1. The Mutual Recognition of Professional Qualifications (MRPQ) Directive, the process where UK and EU nationals benefit from a simplified recognition procedure for certain regulated professions and automatic recognition for sectoral professions, will cease to apply in the UK after the transition period.
- 7.2. This means that, following the end of the transition period, it may be more challenging for graduates to pursue their chosen careers in an EU member state as mutual recognition could be lost. This could reduce the attractiveness of existing mutually-recognised courses to UK and EU students.
- 7.3. Some qualifications will remain unchanged even after the transition period. However, a number of qualifications will be impacted; UK nationals wishing to practise regulated professions in the EEA, (excluding those covered by the Withdrawal Agreement) irrespective of where they acquired their qualifications, and EEA citizens with qualifications acquired in the UK will need to have them recognised in the relevant Member State on the basis of that country's rules for third-country nationals and/or third-country qualifications.
- 7.4. For EEA nationals, the UK government introduced the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) 2019 Statutory Amendment to ensure that professionals arriving in the UK with EEA and Swiss qualifications after the exit date will have a means to seek recognition of their qualifications. The amendment stipulates that a future system of recognition will be based on the qualification being from the EEA, rather than based on an individual holding EEA nationality. Authorities will assess that the professional qualification is equal in level, and that the scope and content of the training is equal to UK qualifications.
- 7.5. For EEA nationals possessing a qualification in a sectoral profession (doctors, nurses, dental practitioners, pharmacists, veterinary surgeons, lawyers, architects or engineers), amendments have been introduced for each sector. For sectoral professions in healthcare, the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019 (for the recognition of sectoral healthcare

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<sup>16</sup> <http://uniswales.ac.uk/media/Graduate-Start-Ups-in-Wales-English.pdf>

professions) states that automatic recognition will be retained for two years, followed by a review by the relevant competent authorities.

- 7.6. Even if a free trade agreement between the UK and EU is to be reached, it will most likely not cover Mutual Recognition Agreements. The UK Government should work with Welsh Government, where relevant, to ensure that any future trade agreement provides a pathway for continued MRPQ and automatic recognition of sectoral professions to be mutually recognised across the UK and EU as far as possible, and clearly outline the regulations for third country/national recognition for UK acquired degrees in each EU27 member state following the end of the transition period.
- 7.7. The Welsh Government should seek clarity from the UK government to provide targeted guidance to EU students wishing to study as sectoral professionals, clearly explaining the rules of recognition on graduation. This is important particularly for universities attracting EU students to their courses usually covered by this directive.
- 7.8. The Welsh government should consider how it might use its relationships with other governments around the world to influence the policy and regulatory conditions in the many countries in which Welsh universities are active, where doing so would unlock opportunities to advance mutual interests.

## Data Protection

- 8.1. The impact of the end of the transition period on supply chains and other essential services and processes, including data protection, also remains uncertain.
- 8.2. The General Data Protection Regulation (GDPR) will cease to apply to the UK after the transition period, and no agreement has yet been reached on data protection from 1 January 2021. Without an 'adequacy' decision from the EU, personal data flows between the EU/EEA and the UK will become restricted without sufficient safeguards (e.g. Standard Contractual Clauses, Binding Corporate Rules) in place.
- 8.3. Data protection is an area of regulation that is critical to the functioning of university research and innovation. A possible delay or failure to obtain an adequacy decision will affect transfers of data from the EU to the UK, and could result in a possible halt on the free flow of personal data between the UK and EU/transfers of data and disruption to the use of clouds based outside the UK.
- 8.4. Universities will now have to consider reviewing data transfers, including new clauses into existing contracts, and consider all data flows, such as cloud services based in the EU/EEA, HR and payroll services outsourced within the EU/EEA or research data and databases based in the EU/EEA.

## Looking forward

9.1. Given the scale of the challenges facing Wales in the coming period, including the impact of COVID-19 on Wales, the Welsh Government should ensure that Welsh universities are fully involved and their expertise utilised, in the government's plans for, and transitioning to, a post EU Wales.

9.2. Universities in Wales are committed to working with Welsh Government and others to navigate the best course for Wales and the rest of country in a post-EU UK. Whilst the process of exiting the EU will bring challenges, universities welcome the opportunity to continue contributing to shaping solutions, and we are committed to maximising the opportunities it will present for Wales.

## Universities Wales past consultation responses in relation to the UK exiting the EU.

<https://uniswales.ac.uk/media/Universities-Wales-response-to-the-WelshGovernment-consultation-Framework-for-Regional-Investment-in-Wales.pdf> (June 2020)

<https://uniswales.ac.uk/media/Universities-Wales-response-to-the-UK-Parliamentcall-for-evidence-on-Wales-and-the-Shared-Prosperity-Fund.pdf> (April 2020)

<http://uniswales.ac.uk/media/Universities-Wales-reponse-to-inquiry-on-Brexit-andtrade-implications-for-Wales.pdf> (April 2020)

<https://uniswales.ac.uk/media/Unis-Wales-Response-EAAL-consultation-Mobilityafter-Brexit.pdf> (Sep 2019)

<http://uniswales.ac.uk/media/Unis-Wales-response-Regional-investment-in-Walesafter-Brexit.pdf> (March 2018)

<http://uniswales.ac.uk/media/Unis-Wales-EAAL-consultation-response-0311.pdf> (Nov 2017)

<http://uniswales.ac.uk/media/Unis-Wales-response-to-EU-Withdrawal-Billconsultation-20170904.pdf> (Sep 2017)

Senedd Cymru  
Y Pwyllgor Materion Allanol a  
Deddfwriaeth Ychwanegol  
Ymadael â'r Undeb Ewropeaidd:  
Paratoadau yng Nghymru ar gyfer  
diwedd y cyfnod pontio  
EAAL(5) EUP18  
Ymateb gan CGGC ac Fforwm  
Cymdeithas Sifil Cymru ar Brexit

Welsh Parliament  
External Affairs and Additional  
Legislation Committee  
Exiting the European Union:  
Preparedness in Wales for the end of  
the transition period  
Evidence from Wales Civil Society  
Forum on Brexit

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## Ymateb CGGC a Fforwm Cymdeithas Sifil Cymru ar Brexit i Ymchwiliad y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol (EAAL) i Barodrwydd yng Nghymru ar gyfer Diwedd

Hydref 2020

### Cyflwyniad

Ysgrifennwyd yr ymateb hwn i'r ymchwiliad fel rhan o brosiect Fforwm Cymdeithas Sifil Cymru ar Brexit (Y Fforwm), partneriaeth rhwng Cyngor Gweithredu Gwirfoddol Cymru (CGGC) a Chanolfan Llywodraethiant Cymru (WGC). Cyllidir y Fforwm gan y Legal Education Foundation er mwyn darparu rôl gydgyssylltiol ac i gefnogi'r trydydd sector yng Nghymru â gwybodaeth ac arbenigedd academiaidd ar oblygiadau ymadawiad y DU â'r Undeb Ewropeaidd.

CGGC yw'r mudiad aelodaeth cenedlaethol ar gyfer y sector gwirfoddol yng Nghymru. Ein gweledigaeth yw dyfodol lle mae'r trydydd sector a gwirfoddoli yn ffynnu ar draws Cymru - gan wella llesiant i bawb. Ein pwrpas yw galluogi mudiadau gwirfoddol i wneud mwy o wahaniaeth gyda'i gilydd.

Mae'r WGC yn uned ymchwil a noddir ac a gefnogir gan Ysgol y Gyfraith a Gwleidyddiaeth, Prifysgol Caerdydd. Mae'n ymgymryd â gwaith ymchwil arloesol i bob agwedd o'r gyfraith, gwleidyddiaeth, llywodraeth ac economi wleidyddol yng Nghymru, yn ogystal â chyd-destunau ehangach llywodraethiant tiriogaethol y DU ac Ewrop.

### Crynodeb

Rydym yn falch o gael y cyfle i gymryd rhan yn ymchwiliad y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol i barodrwydd Cymru ar gyfer diwedd y cyfnod pontio. Mae ein hymateb yn seiliedig ar drafodaethau â chyfranogwyr allweddol yn y Fforwm ac ar arolwg ansoddol byr a gynhaliwyd ar draws rhwydweithiau CGGC. Bydd ein sylwadau'n canolbwyntio ar ddarparu diweddariad ar yr heriau sy'n wynebu'r sector wrth baratoi at ddiwedd y cyfnod pontio. At ei gilydd, mae ein trafodaethau a'n gwaith ar y mater hwn yn awgrymu bod y sector yn ei chael hi'n anodd ystyried effaith uniongyrchol diwedd y cyfnod pontio ond yn ystyried



sut i addasu i dirwedd newydd yn y tymor canolig a'r hirdymor. Ceir pryderon y bydd hwn yn gyd-destun heriol wedi'i gyfyngu, o bosibl, gan:

- drefn gyfansoddiadol o dan straen
- ymyleiddio'r sector ymhellach oherwydd yr ymgais i ganoli ar lefel y DU
- cysylltiadau rhynglywodraethol o dan straen
- rhagor o ddibyniaeth ar gyllid wedi'i ddosrannu gan Lywodraeth y DU (os caiff Cronfa Ffyniant Gyffredin y DU – yr UKSPF – ei chanoli) tra bod profiadau diweddar yn y maes hwn yn awgrymu y gallai hyn fod yn heriol yn nhermau rhwystrau, diwylliant a chysylltiadau
- gwrthwynebiad i hawliau dynol a dulliau sy'n seiliedig ar gydraddoldeb ar lefel y DU gan gynnwys i gyfraith ryngwladol ac adolygiadau barnwrol.

I grynhoi, mae'r sector yn pryderu ynglŷn â'r symudiadau a welwn yn y dirwedd gweleidyddol-gyfreithiol a ddaeth gyda Brexit ac y gallai'r sector ei chael hi'n anodd addasu wrth i'r newidiadau yn sgil y cyfnod pontio ddod i fodolaeth ar ôl mis Rhagfyr 2020.

- Mae ffocws y trydydd sector wrth baratoi at y symudiad tuag at dirwedd ôl-bontio yn parhau'n unol â'r blaenoriaethau a amlinellwyd yn nogfen [Canfyddiadau Fforwm Brexit](#), sy'n cynnwys, *inter alia*<sup>1</sup>:
  - Sicrhau ymroddiad i beidio â chaniatáu dirywiad ac i sicrhau cynnydd mewn hawliau a safonau ar draws sectorau.
  - Diogelu cymunedau o ymfudwyr, diogelu cydlyniant cymdeithasol a lliniaru effaith Brexit yn y maes hwn.
  - Sicrhau bod unrhyw gyllid sy'n dod yn lle cyllid yr UE a'i lywodraethiant yn cael ei lunio a'i fwydo iddo gan y rheini y'i bwriedir ar eu cyfer ac yn parhau i fynd i'r afael â thlodi, allgáu cymdeithasol ac achosion amgylcheddol.
  - Sicrhau bod datganoli'n cael ei barchu, a bod tryloywder, diogelwch a chraffu priodol yn digwydd gydol y broses Brexit.

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<sup>1</sup> Fforwm Cymdeithas Sifil Cymru ar Brexit, 'Canfyddiadau Fforwm Brexit', ar gael yn: <https://static1.squarespace.com/static/5b3f67a4e17ba3bb22492189/t/5c178640aa4a99be1d7d1215/1545045570040/Brexit+Forum+Findings+C.pdf>

1. Mae capasiti o fewn y Trydydd Sector i ystyried mesurau paratoi posibl yn hynod gyfyngedig. Gwaethygydd hyn gan Covid-19 ond mae'n cael ei ddwysáu gan ansicrwydd parhaus ynglŷn â'r berthynas yn y dyfodol a datblygiadau mewnol megis Bil Marchnad Fewnol y DU.
  - 1.1. Yn ystod yr haf<sup>2</sup> ac yn dilyn cylchoedd negodi,<sup>3</sup> fe wnaeth Llywodraeth y DU hi'n glir fod yn rhaid i fudiadau baratoi tuag at ddiwedd y cyfnod pontio, a fwyfwy tuag at ymadael heb gytundeb. Fodd bynnag, mae hyn yn heriol iawn i'r trydydd sector, o safbwynt ymarferol, o ystyried natur y gwaith a gyflawnir, y ffocws ar effeithiau hirdymor a chyfyngiadau capasiti sydd wedi'u dwysáu'n sylweddol yn sgil Covid-19. Rydym yn bwriadu cynyddu'r swm o wybodaeth ynglŷn â'r hyn fydd ar gael i'r sector wrth i ddiwedd y cyfnod pontio agosáu, gan gynnwys ynghylch cynllunio wrth gefn Llywodraeth y DU a Llywodraeth Cymru er mwyn mynd i'r afael â rhai o'r pryderon a welwn. Fodd bynnag, rydyn ni'n cydnabod bod y posibiladau o leihau effaith diwedd y cyfnod pontio, ac yn enwedig os digwydd hynny heb gytundeb, yn gyfyngedig i'r sector. Serch hynny, croesawn y ffaith fod Llywodraeth Cymru wedi bod yn rhagweithiol wrth drafod cefnogaeth pontio ac ôl-bontio gyda ni.
  - 1.2. Dangosodd y rhan fwyaf o ymatebion i'n harolwg fod mudiadau naill ai ddim yn barod neu ddim yn gwybod sut y gallent baratoi tuag at ddiwedd y cyfnod pontio. Mae hyn oherwydd ansicrwydd cyffredinol ynghylch pa newidiadau fydd yn digwydd ar ôl 1 Ionawr 2021, er enghraifft ynghylch cyllido yn y dyfodol, natur y berthynas â'r UE ac, yn wir, a fydd y DU yn gadael y cyfnod pontio heb gytundeb. Mae'r ansicrwydd hwn yn ei gwneud yn heriol i fudiadau fynegi unrhyw effeithiau posibl ac felly i baratoi unrhyw gapasiti er mwyn ymateb, naill ai ar lefel polisi neu wasanaethau rheng flaen. Fodd bynnag, mynegodd y rhan fwyaf o ymatebwyr ein harolwg y byddai angen cefnogaeth bellach gan Lywodraeth Cymru er mwyn cynorthwyo'r sector i addasu i fywyd ar ôl y cyfnod pontio ac y byddai'n rhaid i hynny fynd i'r afael ag angen tymor byr a chynaliadwyedd hirdymor. Mynegodd mwyafrif sylweddol fod Brexit wedi neu'n mynd i gael effaith negyddol neu sylweddol negyddol ar eu gallu i gael mynediad at gyllid, cynhyrchu incwm a darparu gwasanaethau.
  - 1.3. Mae'r ansicrwydd hwn yn parhau i gael ei ddwysáu gan nifer o ffactorau eraill megis oedi i wybodaeth ynglŷn â Chronfa Ffyniant Gyffredin y DU, ac fe ddangosodd canlyniadau ein harolwg bryder sylweddol ynghylch hyn.

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<sup>2</sup> Swyddfa'r Cabinet, 'Major new campaign to prepare UK for end of the transition' (Saesneg yn unig), 13 Gorffennaf 2020. Ar gael yn: <https://www.gov.uk/government/news/major-new-campaign-to-prepare-uk-for-end-of-the-transition-period>

<sup>3</sup> Swyddfa'r Cabinet, 'Oral Statement to Parliament: EU Exit - Update on negotiations and the work of the Joint Committee' (Saesneg yn unig), 19 Hydref 2020. Ar gael yn: <https://www.gov.uk/government/speeches/eu-exit-update-on-negotiations-and-the-work-of-the-joint-committee>

Mae Bil Marchnad Fewnol y DU wedi cael effaith ddadsefydlogol sy'n dwysáu'r ansicrwydd parhaus ynghylch cynnwys y cytundeb perthynas arfaethedig ac sy'n ei gwneud hyd yn oed yn anoddach i baratoi. Er enghraifft, o dan y cynigion hyn, gallai gwasanaethau iechyd, sy'n cael eu heithrio, gael eu tynnu o fewn cwmpas y ddeddfwriaeth o fewn tri mis i basio'r Bil gan ddefnyddio'r weithdrefn gadarnhaol 'gwnaed' (ac felly cyn unrhyw broses ddeddfwriaethol). Ar ben hynny, mae tensiynau yn y trafodaethau a achoswyd gan y Bil hwn hefyd wedi cyflwyno pryderon ynghylch ymrwymïadau y credwyd iddynt gael eu datrys cyn hyn gan y cytundeb ymadael. Gofynnwyd i'r Fforwm ddarparu gwybodaeth i un mudiad ynghylch pa un ai fod darpariaethau hawliau dinasyddion y Cytundeb mewn perygl pe byddai'r DU yn torri ei ymrwymïadau rhyngwladol.

- 1.4. Mewn enghreifftiau eraill, mae'r sector gwirfoddoli rhyngwladol yn wynebu sawl haen o ansicrwydd ynghylch diwedd cyllid gan y Corfflu Cydsefyll Ewropeaidd, gofynion fisa newydd a pa un ai fydd y gordal iechyd yn berthnasol i wirfoddolwyr o dan y cynigion mewnfudo ar ôl Brexit - yn enwedig yn y sectorau iechyd a gofal cymdeithasol. Mae hyn yn ei gwneud yn heriol i gydraddoli cymhwyso costau lle bo cyllid yr UE yn parhau ar gael.
- 1.5. Roedd gan y sector gwirfoddol beth o'r capasiti isaf ar gyfer paratoi at Brexit fel roedd hi, a chafodd hyn ei gyfyngu ymhellach gan argyfwng Covid-19. O ganlyniad i rôl unigryw a hanfodol y sector yn hyn o beth, roedd gofyn iddo ailgyfeirio rhywfaint o sylw oddi ar Brexit tuag at yr ymateb uniongyrchol i'r pandemig. Mae'r cyfuniad o'r pwysau hwn, addasu i amodau gweithio newydd, bylchau mewn cyllido, staff wedi'u rhoi ar ffyrlo ac ansicrwydd cyffredinol wedi effeithio ar gapasiti mudiadau a llesiant staff. Mae hyn hefyd yn wir am CGGC a'r Fforwm a gwelodd y ddau leihad yn eu capasiti o ganlyniad i'r pandemig. Mae hyn wedi oedi ein darpariaeth o wybodaeth a chefnogaeth ynghylch pontio'r UE ond rydym yn bwriadu cylchredeg gwybodaeth ym mis Tachwedd.
- 1.6. Pwysleisiodd rhai mudiadau eu bod wedi archwilio peryglon uniongyrchol ond nad yw hyn wedi'i ymestyn i effeithiau eilaidd a allai gael eu cymhlethu gan Covid-19 erbyn hyn, gyda phryderon wedi'u mynegi ynghylch costau bwyd gyda chyfeiriadau at grwpiau agored i niwed fel ceiswyr lloches, yr effaith ar lefelau cyflogaeth a chefnogaeth berthnasol i gyflogaeth yn ogystal ag ar amaethyddiaeth a chymunedau gwledig Cymraeg eu hiaith. Teimlwyd hefyd nad oes modd lliniaru'r peryglon hyn heb gefnogaeth ariannol hirdymor.

## 2. Goblygiadau i barodrwydd yn codi o'r trafodaethau gyda'r UE a phartneriaid masnach eraill

- 2.1. Rydym wedi gweld peth tystiolaeth fod Brexit wedi'i hepgor o gofrestrau risg rhai o fudiadau'r trydydd sector o ganlyniad i Covid-19 ond rydym wedi bod yn gweithio trwy ein sianeli gwybodaeth er mwyn codi ymwybyddiaeth o'r posibilrwydd o ddod allan o'r cyfnod pontio heb

gytundeb. Mae ymatebion gan fudiadau yn pwysleisio mai ychydig o effaith gychwynnol maen nhw'n ei ragweld os caiff cytundeb ei sicrhau. Yn wahanol i adegau tyngedfennol blaenorol yn ymwneud â Brexit, caiff diwedd y cyfnod pontio ei weld fwy fel cam mewn cynllunio mwy hirdymor yn hytrach nag argyfwng uniongyrchol. Dim ond paratodau minimal sy'n digwydd, fel y cyfryw (megis sicrhau bod staff yr UE yn ymwybodol o'r Cynllun Preswyllo'n Sefydlog i Ddinasyddion yr UE - EUSS), gyda'r ffocws yn cael ei roi yn lle hynny ar sut i addasu i effeithiau hirdymor fel anghenion cefnogi cymunedau a sut i sicrhau gwydnwch mudiadau mewn amgylchedd ôl-Covid ac ôl-Brexit. Yn hytrach na pharatoi at ddiwedd uniongyrchol y cyfnod pontio ceir felly mwy o barodrwydd i ystyried yr agweddau hynny o'r cytundeb perthynas arfaethedig sy'n hanfodol er mwyn deall y dirwedd gyfansoddiadol, gymdeithasol a chyfreithiol y bydd angen i fudiadau addasu iddo a chanfod eu ffordd drwyddo ar ôl mis Rhagfyr 2020.

2.2. Ar ôl dweud hynny, mae'r sector yn parhau'n bryderus ynglŷn â heriau economaidd Brexit ac yn enwedig y rheini a fyddai'n deillio o ymadael â'r cyfnod pontio heb gytundeb. Ond, ar y cyfan, nid oes modd rhoi mesurau gweithredol yn eu lle er mwyn paratoi at yr heriau hyn. Yn wir, mae Covid-19 wedi catalyddio, mewn amser byr iawn, nifer o'r pryderon y mae'r sector wedi'u codi yng nghyd-destun Brexit mewn perthynas â 'storm berffaith' cynnydd mewn anghenion, cynnydd mewn galw am wasanaethau a gostyngiad mewn gwasanaethau a chyllid. Yn y tymor byr, mae'r rhagolwg o wynebu amhariad ymadael heb gytundeb ynghyd â'r heriau hyn sy'n gysylltiedig â Covid, yng nghanol gaeaf pan fo'r pwysau ar y gwasanaethau iechyd ar ei uchaf, yn frawychus. O ganlyniad i'r pryderon hyn galwodd y sector am estyniad i'r cyfnod pontio.<sup>4</sup> Yn yr hirdymor, mae'r gwahaniaeth rhwng ymadael heb gytundeb a sicrhau cytundeb ar y berthynas yn y dyfodol yn llai llwm nag yr oedd o ystyried pa mor 'gyfyngedig' mae'r cytundeb sy'n cael ei drafod ar hyn o bryd yn debygol o fod. Mae gwaith ymchwil wedi darganfod y gallai'r effaith economaidd barhau i fod yn fwy nag effaith economaidd Covid-19, gan olygu bod yn rhaid i'r sector baratoi i addasu i gyd-destun economaidd cynyddol heriol hyd y gellir rhagweld.

2.3. Pwysleisiodd mudiadau wrth ymateb i'n harolwg fod ganddyn nhw bryderon parhaus ynglŷn â pharhad cyflenwadau meddygol,<sup>5</sup> yn ogystal â

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<sup>4</sup> ThirdSector, 'Civil society organisations urge government to try to extend Brexit transition period' (Saesneg yn unig), 8 Mehefin 2020. Ar gael yn: <https://www.thirdsector.co.uk/civil-society-organisations-urge-government-try-extend-brexit-transition-period/policy-and-politics/article/1685478>

<sup>5</sup> Dr Mark Flear, Yr Athro Tamara Harvey, 'Britain's Pharmaceutical Industry and No Deal' (Saesneg yn unig), 23 Hydref 2020, Ar gael yn: <https://ukandeu.ac.uk/britains-pharmaceutical-industry-and-no-deal/>; Yr Independent, 'Brexit: Drugs industry appeals to Boris Johnson for urgent action to

bwyd ffres yng ngoleuni sylwadau diweddar gan Tesco.plc. ac maent wedi gofyn pa baratodau sydd wedi'u gwneud gan Lywodraeth Cymru a Llywodraeth y DU er mwyn lliniaru'r materion hyn. Mae hyn yn ffurfio rhan o gais ehangach am gynnydd mewn darpariaeth gwybodaeth ynghylch goblygiadau diwedd y cyfnod pontio. Pwysleisiodd sawl cyfranogwr hefyd bod unrhyw waith paratoi posibl ar gyfer diwedd y cyfnod pontio wedi ei ddadflaenoriaethu o blaid adferiad Covid-19.

2.4. Hyd yn oed os caiff cytundeb cyfyngedig ei sicrhau erbyn diwedd 2020 mae'n bosibl na fydd hyn yn mynd i'r afael â nifer o bryderon a gobeithion y sector ac o ganlyniad yn cyfyngu ymhellach ar y gwahaniaeth rhwng y ddau ganlyniad i faterion yn ymwneud ag amhariadau i gadwyni cyflenwi allweddol a'r effaith ddilynol y gallai hyn ei gael ar gymunedau. Mae hyn oherwydd bod nifer o agweddau allweddol trafodaethau perthnasau'r dyfodol sy'n berthnasol i'r trydydd sector yn parhau'n aneglur – yn cynnwys ond nid yn gyfyngedig i gyfranogiad parhaus mewn rhaglenni fel Erasmus+ sydd wedi bod yn allweddol wrth fynd i'r afael â diweithdra ymysg pobl ifanc, ymrwymadau o dan erthygl 125 o'r datganiad gwleidyddol sy'n galw am annog deialog cymdeithas ddinesig drawsffiniol, cyfranogiad i fentrau ymchwil yn y dyfodol, hawliau gofal iechyd cyfatebol, darpariaethau teg ac, wrth gwrs, cyllid yn lle cyllid yr UE. Mae'n debygol y bydd addasu, bwydo, ac annog datblygiad ynghylch nifer o'r materion hyn yn bwysig ac yn heriol i'r sector y tu hwnt i 2020 os yw'r rhain yn absennol o'r cytundeb a gyrhaeddir ar ddiwedd y flwyddyn, ac yn enwedig os yw'r berthynas rhwng y DU a'r UE yn troi'n sur yn sgîl canlyniad o ymadael heb gytundeb.

2.5. Mae Covid-19 hefyd wedi amddifadu'r sector o amser pontio gwerthfawr a fyddai wedi cael ei ddefnyddio er mwyn ystyried agweddau pwysig o'r dirwedd ar ôl Brexit gan gynnwys sut y byddai cymdeithas sifil yng Nghymru yn ymgysylltu a chysylltu â phartneriaid yn yr Undeb Ewropeaidd wrth symud ymlaen, yn ogystal ag archwilio cyfleoedd sy'n parhau ar agor fel trydedd gwlad ac o fewn strwythurau Ewropeaidd ehangach megis Cyngor Ewrop. Ceir awydd gwirioneddol yng Nghymru a'r UE am gyfranogiad parhaus yng Nghymru ac roedd mudiadau yng Nghymru yn awyddus i bwysleisio hyn er bod capasiti wedi'i ddwyn gan Covid-19, gan bwysleisio ymhellach y pwysigrwydd a roddir ar yr amcan hwn. Fodd bynnag, ni fu cyfle i symud trafodaethau yn eu blaen yn sgîl y pandemig yn ogystal â ffocws o fewn yr UE ar baratoi ar gyfer canlyniad o ymadael heb gytundeb.

2.6. Ceir diffyg tryloywder sylweddol ynghylch cynnwys a goblygiadau cytundebau masnach ar ôl Brexit. Mae Llywodraeth y DU yn ymgysylltu â

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avoid no-deal medicine shortages'(Saesneg yn unig), 22 Hydref 2020, Ar gael yn:  
[https://www.independent.co.uk/news/uk/politics/abpi-pharmaceutical-medicines-brexit-boris-johnson-b1080311.html?utm\\_source=Sailthru&utm\\_medium=email&utm\\_campaign=INDNEWS%2319102020&utm\\_term=IND\\_Headlines\\_Masterlist\\_CDP;](https://www.independent.co.uk/news/uk/politics/abpi-pharmaceutical-medicines-brexit-boris-johnson-b1080311.html?utm_source=Sailthru&utm_medium=email&utm_campaign=INDNEWS%2319102020&utm_term=IND_Headlines_Masterlist_CDP;)

rhai mudiadau ar draws y DU yn unig fel rhan o'u grwpiau cynghori masnach ac yn gofyn bod y sawl sy'n arwyddo cytundebau peidio â datgelu yn cael gweld cynnwys y cytundebau hyn. Yn amlwg, ceir diffyg cyfleoedd mewnbynnu sylweddol, sydd hefyd yn ei gwneud yn amhosibl i baratoi ar gyfer unrhyw ganlyniadau posibl ond sydd hefyd yn tansilio rôl y sector wrth fwydo polisiau a sicrhau archwilio democrataidd. Mae sefydlu grŵp cynghori LIC ar fasnach ac ymglymiad Cymru Masnach Deg o fewn hynny wedi mynd rhywfaint o'r ffordd wrth helpu i unioni hyn, ond sylweddolwn fod cyfathrebu â Llywodraeth y DU ynghylch y materion hyn yn heriol hyd yn oed i Lywodraeth Cymru. Serch hynny, sut gall y sector baratoi pan fo gwybodaeth yn amlwg yn cael ei chelu yn y man cychwyn? Cafodd y materion hyn eu dwysáu gan bryder sylweddol y bydd Bil Marchnad Fewnol y DU yn rhwystro'r Senedd a Llywodraeth Cymru rhag deddfu er mwyn atal gostyngiad mewn safonau a allai gael ei achosi gan y trafodaethau masnach hyn. Byddai hyn hefyd yn pellhau'r sector oddi wrth ganolbwynt y broses o wneud penderfyniadau trwy gynyddu canoli pŵer ac felly cyfyngu ymhellach ar unrhyw allu i fynegi llais ynglŷn â goblygiadau'r cysylltiadau masnachu hyn ar safonau yng Nghymru. Ceir gwahaniaethu tiriogaethol sylweddol rhwng y mynediad mae'r sector yn ei fwynhau yn y cyd-destun Cymreig mewn cyferbyniad â'r heriau o ymgysylltu ar lefel y DU ac mae mudiadau wedi mynegi pryder ynglŷn â'r angen i addasu yn y tymor hir i gynnydd mewn ymgysylltiad â phrosesau gwneud penderfyniadau ar lefel y DU o ganlyniad i'r gyriant hyn tuag at ganoli.

### 3. Y diffyg gwybodaeth ynglŷn â Chronfa Ffyniant Gyffredin y DU

- 3.1. Tra bod cyllid a ddiogelwyd o dan gyllideb amlflwydd 2014-2020 wedi'i warantu, daeth y diffyg parhaus mewn gwybodaeth ynglŷn â'r cyllid fydd yn dod yn lle'r cronfeydd hyn i'r amlwg fel y pryder unigol mwyaf ymysg yr ymatebion i'n harolwg. Pwysleisiodd cyfranogwyr fod ansicrwydd parhaus yn y maes hwn yn rhwystr sylweddol i gynllunio ar gyfer diwedd y cyfnod pontio ac y gallai unrhyw fwch rhwng cyllid presennol a'r Gronfa Ffyniant Gyffredin beryglu darpariaeth gwasanaethau a chynaliadwyedd mudiadau. Mae ansicrwydd parhaus ynglŷn ag egwyddorion, swm, datganoli a blaenoriaethau'r Gronfa Ffyniant Gyffredin yn peri pryder arbennig o'u gweld trwy lens Covid-19 o ystyried y gefnogaeth i gyflogaeth a ffocws ar gydraddoldeb y gwasanaethau a gyllidir. Nododd un ymatebydd eu bod yn cynllunio ar gyfer problemau sylweddol wrth ymateb i anghenion y bobl ifanc y gweithiant gyda hwy pan ddaw eu cyllid UE i ben.
- 3.2. Mae gwybodaeth ddiweddar gan Paul Scully AS a darpariaethau Bil Marchnad Fewnol y DU yn awgrymu bwriad o ganoli dosraniad y Gronfa Ffyniant Gyffredin - mae hyn, wrth reswm, wedi annog ymhellach pryderon niferus y sector yn y cyd-destun hwn. Y prif bryder yw'r posibilrwydd o gollir perthnasoedd a'r profiad a gaffaelwyd yng Nghymru ynghylch blaenoriaethau a darpariaeth cyllid yr UE gan fod y rhain yn darparu tipyn mwy o sgôp am ymglymiad y trydydd sector wrth gynllunio a darparu

cynlluniau nag yn Lloegr. Mae adroddiadau diweddar hefyd yn awgrymu symudiadau nid yn unig tuag at ymdriniaeth flynyddol yn hytrach nag ymdriniaeth amflwydd ond hefyd tuag at wariant seilwaith a'r farchnad fewnol a allai fod yn niweidiol i'r ffocws ar gydraddoldeb a chydlyniant cymdeithasol. Gallai'r ddau arwain yn y pen draw at leihau gallu'r sector i ddiwallu anghenion cymunedau yng Nghymru. Ceir pryderon hefyd ynglŷn â rhwystrau cynyddol i fynediad i gyllid wrth i fudiadau weld cynlluniau Llywodraeth y DU yn heriol i ymgeisio amdanynt o ganlyniad i'r flaenoriaeth ymddangosiadol o gyllido mudiadau ar draws yr UE a gwahaniaethau mewn diwylliant.

3.3. Cefnogir rhai o'r pryderon hyn gan gynlluniau cyllido Llywodraeth y DU yng nghyd-destun Brexit sydd wedi'u teilwra'n wael i ddiwallu anghenion y trydydd sector yng Nghymru. Ar y cyfan, bu'n anodd cael mynediad i'r rhain, ac fe'u rheolwyd mewn modd oedd yn tanseilio llesiant staff. Er enghraifft, cafodd cyllid a ddarparwyd gan y Swyddfa Gartref i fudiadau ar gyfer cefnogi unigolion agored i niwed gyda diogelu eu hawliau preswyllo ei adnewyddu ddau neu dri diwrnod yn unig cyn bod cytundebau staff i fod i ddod i ben. Ar ben hynny, roedd Cronfa Parodrwydd Brexit 2019 a agorwyd ar gyfer mudiadau'r trydydd sector yn hollol anhygyrch hyd yn oed i fudiadau mor fawr â CGGC o ganlyniad i gynllunio, amseru, blaenoriaethau a chyfathrebu gwael. Mae rhai mudiadau cymdeithas sifil a gyllidir gan Lywodraeth y DU yng Nghymru a Lloegr hefyd wedi nodi nad ydynt yn teimlo'n gyffyrddus yn beirniadu polisiâu rhag ofn na fydd cyllid yn cael ei wneud yn hygyrch iddynt yn y dyfodol. Mae hyn mewn cyferbyniad llym â'r berthynas ag awdurdodau yng Nghymru ac mae'n achosi pryder y gallai canoli'r Gronfa Ffyniant Gyffredin normaleiddio'r mater hwn ac y bydd gofyn i fudiadau addasu i'r cydberthynasau a'r arferion hyn.

3.4. Bu Cronfa Bontio'r UE Llywodraeth Cymru yn amhrisiadwy wrth gefnogi paratodau ar gyfer Brexit ond mae cyfranogwyr wedi awgrymu bod yn rhaid rhoi ystyriaeth i gronfeydd tymor byr rhesymol er mwyn ymdopi â'r gofynion uniongyrchol sy'n gysylltiedig â phontio ar ôl mis Rhagfyr 2020 wrth iddynt ddod i'r amlwg. Cafodd cefnogaeth fwy hirdymor i brosiectau er mwyn sicrhau cynaliadwyedd ac i ymateb i'r cyd-destun newydd, gan gynnwys newidiadau i'r economi wledig, prisiau, y newid yn y galw am wahanol wasanaethau ar draws grwpiau o bobl a lleoedd eu hamlygu fel nodweddion angenrheidiol hefyd. Mae hyn yn arbennig o wir o ystyried Covid-19 sydd wedi achosi gostyngiad yn incwm y sector ar ben yr ansicrwydd yn ymwneud â'r cyllid ddaw yn lle cyllid yr UE.

#### 4. Cytundebau rhynglywodraethol o fewn y DU mewn perthynas â diwedd y cyfnod pontio, gan gynnwys y rhaglen fframweithiau cyffredin.

4.1. Croesawn y ffaith fod Llywodraeth Cymru wedi bod yn rhan o waith rhynglywodraethol helaeth gyda llywodraethau eraill y DU ynghylch datblygiad fframweithiau cyffredin. Rydym yn cydnabod pa mor hanfodol yw'r rhain er mwyn rheoli agweddau o farchnad fewnol y DU ar ôl Brexit.

Fodd bynnag, ceir problemau parhaus yn ymwneud â thryloywder a chyfleoedd i'r sector fwydo i'r broses.

- 4.2. Corff sylweddol o waith diweddar yn y maes hwn, ac yng nghyswllt paratoi at ddiwedd y cyfnod pontio, oedd ymateb y sector i Fil Marchnad Fewnol y DU. Yn groes i'r ymateb adweitheddol brys y gofynnwyd amdano i'r Bil hwn – ar y cyd â'r fframweithiau cyffredin fe ddylai gynrychioli cyfle i'r sector fwydo i bolisïau sydd â'r potensial sylweddol i lunio'r dirwedd gyfansoddiadol ar ôl Brexit a sut y mae gwaith rhynglywodraethol yn cymryd lle ar draws y DU. Fodd bynnag, yn ogystal â'r cwestiynau ynghylch tryloywder y fframweithiau, ymddengys bod y rhain hefyd wedi'u tanseilio gan Fil Marchnad Fewnol y DU a fu'n destun proses ymgynghori hynod ddadleuol a ddarparodd ychydig iawn o gyfle am fewnbwn gan y trydydd sector. Mae hyn er ei fod, yn y pen draw, yn darparu ar gyfer canoli pwerau a allai gael eu defnyddio er mwyn gweithredu Cronfa Ffyniant Gyffredin y DU, y mae gan y sector gyfran sylweddol ynddi. Achosodd y Bil hwn don o bryder ar draws y sector yn ogystal, gyda'r Fforwm yn gweld cynnydd sylweddol mewn cwestiynau yn ymwneud â, *inter alia*, goblygiadau'r ddeddfwriaeth hon i'r sectorau amgylcheddol, iechyd cyhoeddus, cydraddoldebau a hawliau dynol, tai a'r celfyddydau a diwylliant yn ogystal ag yn fwy cyffredinol ynghylch y goblygiadau i ddatganoli.
- 4.3. Byddai'r Bil hwn yn pellhau'r trydydd sector o'r broses o wneud penderfyniadau hefyd. Mae hyn oherwydd pe bai'r Bil yn cael ei weithredu fel cyhoeddwyd yn wreiddiol byddai perygl o uno anuniongyrchol wedi'i orfodi ynghylch safonau'r DU nad ydynt wedi bod yn destun mewnbwn gan fudiadau yng Nghymru, y Senedd na Llywodraeth Cymru. Byddai hyn yn tanseilio'r archwilio democrataidd a ddarperir gan y trydydd sector yng Nghymru. Mae'r Bil hwn hefyd yn gosod cysail brawychus o ran ei ddatgymhwysiad o ymrwymadau hawliau dynol rhyngwladol. O wneud hynny mae'n amlygu pwysigrwydd cryfhau hawliau dynol ac yn codi cwestiynau ynglŷn â hynny.



Senedd Cymru  
Y Pwyllgor Materion Allanol a  
Deddfwriaeth Ychwanegol  
Ymadael â'r Undeb Ewropeaidd:  
Paratoadau yng Nghymru ar gyfer  
diwedd y cyfnod pontio  
EAAL(5) EUP18  
Ymateb gan CGGC ac Fforwm  
Cymdeithas Sifil Cymru ar Brexit

Welsh Parliament  
External Affairs and Additional  
Legislation Committee  
Exiting the European Union:  
Preparedness in Wales for the end of  
the transition period  
Evidence from Wales Civil Society  
Forum on Brexit

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## WCVA and Wales Civil Society Forum on Brexit Response to the EAAL Committee Inquiry into Preparedness in Wales for the End of the Transition Period

October 2020

### Introduction

This inquiry response has been written as a part of the Wales Civil Society Forum on Brexit project (The Forum), a partnership between Wales Council for Voluntary Action (WCVA) and the Wales Governance Centre (WGC). The Forum is funded by The Legal Education Foundation to provide a coordinating role and to support the third sector in Wales with information and academic expertise on the implications of the UK's withdrawal from the European Union.

WCVA is the national membership organisation for the voluntary sector in Wales. Its vision is for a future where the third sector and volunteering thrive across Wales - improving wellbeing for all. Our purpose is to enable voluntary organisations to make a bigger difference together.

The WGC is a research unit sponsored and supported in the School of Law and Politics, Cardiff University. It undertakes innovative research into all aspects of the law, politics, government and political economy of Wales, as well the wider UK and European contexts of territorial governance.

### Summary

We are pleased to have the opportunity to participate in the External Affairs and Additional Legislation Committee's inquiry into preparedness in Wales for the end of the transition period. Our response is based on discussions with key participants in the Forum and on a short qualitative survey conducted across WCVA's networks. Our comments will focus on providing an update on the challenges faced by the sector in preparing for the end of the transition period. Overall our discussions and work on this matter suggest the sector is struggling to consider the immediate impact of the end to the transition period but is considering how to adapt to new landscape in the medium and long term. There are concerns that this will be a challenging context potentially qualified by:

- a strained constitutional setup
- increased sector marginalisation because of a push for centralisation at the UK level
- strained intergovernmental relationships
- more reliance on funding distributed by the UK Government (if the UK Shared Prosperity Fund – the UKSPF - is centralised) while with recent experiences in this area suggest that this could be challenging in terms of barriers, culture and relationships
- resistance towards human rights and equality-based approaches at the UK level including to international law and to judicial review.

In summary the sector is concerned by the shifts we are seeing in the politico-legal landscape which have accompanied Brexit and which the sector may struggle to adapt to as the changes resulting from transition set in after December 2020.

- The focus for the third sector in preparing for the move to a post transition landscape continues to be in line with the priorities set out in the [Brexit Forum Findings](#) document which includes, *inter alia*<sup>1</sup>:
  - Ensuring commitment to the non-regression and progression of rights and standards across sectors.
  - Safeguarding migrant communities, protecting social cohesion and mitigating the impact of Brexit in this area.
  - Ensuring that replacements for EU funding and its governance are shaped and informed by those it is intended for and continues to tackle poverty, social exclusion and environmental causes
  - Ensuring that devolution is respected, and that proper transparency, safeguards and scrutiny take place throughout the Brexit process.

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<sup>1</sup> Wales Civil Society Forum on Brexit, 'Brexit Forum Findings', Available at: <https://static1.squarespace.com/static/5b3f67a4e17ba3bb22492189/t/5c1785fe562fa7836b3dcfa8/1545045503816/Brexit+Forum+Findings.pdf>

1. Capacity in the Third Sector to consider potential preparatory measures is extremely limited. This has been compounded by Covid-19 but is also being exacerbated by ongoing uncertainty around the future relationship and internal developments like the UK Internal Market Bill.

- 1.1. Over the summer<sup>2</sup> and following recent negotiation rounds,<sup>3</sup> the UK Government has made it clear that organisations must prepare for the end of transition and increasingly for a 'no deal' outcome. However, this is practically very challenging for the third sector given the nature of the work undertaken, the focus on long-term implications and capacity limitations which have been significantly compounded by Covid-19. We are planning to increase the amount of information on this for the sector in the run up to the end of transition, including around Welsh and UK Government contingency planning to address some of the anxieties we are seeing. However, we recognise that the possibilities for minimising the impact of the end of transition and especially if this occurs without an agreement are limited for the sector. Nevertheless, we welcome the fact that the Welsh Government has been proactive in discussing transition and post transition support with us.
- 1.2. Most responses to our survey indicated that organisations were either not ready or did not know how they could prepare for the end to the transition period. This is because of prevailing uncertainty around what changes will occur after 1 January 2021, for instance around future funding, the nature of the relationship with the EU and indeed whether the UK would exit transition without an agreement. This uncertainty makes it challenging for organisations to frame any potential impacts and therefore to mobilise any capacity to respond, either at the policy or frontline services levels. Most respondents to our survey did however indicate that further support from the Welsh Government to help the sector adapt to life after the transition period would be needed and that this would have to address both short-term need and long-term sustainability. A significant majority further indicated that Brexit has or will have a negative or significantly negative impact on their ability to access funding, generate income and deliver services.
- 1.3. This uncertainty continues to be exacerbated by several other factors such as delays to information on the UK Shared Prosperity Fund around which our survey results found considerable anxiety. The UK Internal Market Bill

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<sup>2</sup> Cabinet Office, 'Major new campaign to prepare UK for end of the transition', 13 July 2020. Available at: <https://www.gov.uk/government/news/major-new-campaign-to-prepare-uk-for-end-of-the-transition-period>

<sup>3</sup> Cabinet Office, 'Oral Statement to Parliament: EU Exit - Update on negotiations and the work of the Joint Committee', 19 October 2020. Available at: <https://www.gov.uk/government/speeches/eu-exit-update-on-negotiations-and-the-work-of-the-joint-committee>

has also had a destabilising effect which is further compounding the ongoing uncertainty surrounding the content of the future relationship agreement and is making it even more difficult to prepare. For example, under these proposals health services, which are the subject of an exclusion, could be brought within the scope of the legislation within three months of the Bill's passing using the made affirmative procedure (and therefore prior to any legislative process). Furthermore, tensions in the negotiations caused by this Bill have also introduced concern around commitments that were previously thought resolved by the withdrawal agreement. The Forum was asked to provide information to one organisation surrounding whether the citizens' rights provisions of the Agreement were at risk if the UK breached its international commitments.

- 1.4. By way of further examples, the international volunteering sector is facing several layers of uncertainty around the ending of European Solidarity Corps funding, new visa requirements and whether the health surcharge will be applicable to volunteers under the post Brexit immigration proposals particularly in the health and social care sectors. This makes it challenging to even cost applications where EU funding is still available.
- 1.5. The voluntary sector already had some of the lowest capacity to prepare for Brexit and this has been further constrained by the Covid-19 crisis. The unique and crucial role played by the sector here has required it to redirect some attention away from Brexit towards the immediate response to the pandemic. The conjunction of this pressure, adapting to new working conditions, gaps in funding, staff furloughs and overall uncertainty has impacted on organisational capacity and staff wellbeing. This is also true for WCVA and the Forum both of which saw capacity diminished because of the pandemic. This has delayed our provision of information and support around EU transition for the sector but we are planning to circulate information in November.
- 1.6. Some organisations highlighted that they had examined immediate risks but this has not extended to secondary effects which may now be compounded by Covid-19, with concerns highlighted around food costs with reference to vulnerable groups like asylum seekers, impact on employment levels and employment related support as well as on agriculture and rural Welsh speaking communities. It was also felt that many of these risks cannot reasonably be mitigated against without long-term financial support.

## 2. Implications for preparedness arising from the negotiations with the EU and other trading partners

- 2.1. We have seen some evidence that Brexit has dropped off some third sector organisations' risk registers as a result of Covid-19 but we have been working through our information channels to raise awareness of the prospect of exiting transition without an agreement. Responses from organisations have highlighted that they foresee little in the way of initial

impact if an agreement is secured. Contrary to previous Brexit related critical junctures, the end of transition is being viewed more as a step in longer term planning as opposed to an immediate crisis. As such there are only minimal preparations taking place (like ensuring EU staff members are aware of the EUSS) with focus instead being placed on how to adapt to long-term implications like community support needs and how to ensure organisational resilience in a combined post Covid and post Brexit environment. Rather than prepare for the immediate end to transition there is therefore more willingness to consider those aspects of the future relationship agreement that are critical to understanding the constitutional, social and legal landscape which organisations will need to adapt to and navigate after December 2020.

2.2. With that said the sector remains concerned about but is largely unable to put in place active measures to prepare for, the economic challenges of Brexit and especially those of a no-deal outcome to transition. Indeed Covid-19 has catalysed in a very short time many of the concerns the sector has previously raised in the context of Brexit around a ‘perfect storm’ of increased need, increased demand for services and decreasing services and funding. In the short term the prospect of facing the disruption of ‘no deal’ in conjunction with these Covid-19 related challenges, in the middle of winter when pressures on health services are the highest is daunting. As a result of these concerns the sector called for an extension to the transition period.<sup>4</sup> In the long term, the difference between ‘no-deal’ and securing an agreement on the future relationship is less stark than it was given how ‘thin’ the deal currently being negotiated is likely to be and research has found that the economic impact may still exceed that of Covid-19,<sup>5</sup> meaning that the sector must prepare to adapt to an increasingly challenging economic context for the foreseeable future.

2.3. Organisations highlighted in response to our survey that they have ongoing concerns about the continuity of medical supplies,<sup>6</sup> as well as fresh food in

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<sup>4</sup>ThirdSector, ‘Civil society organisations urge government to try to extend Brexit transition period’, 8 June 2020. Available at: <https://www.thirdsector.co.uk/civil-society-organisations-urge-government-try-extend-brexit-transition-period/policy-and-politics/article/1685478>

<sup>5</sup> Thomas Sampson, ‘A no-deal Brexit may still be more costly than Covid-19’, 26 August 2020. Available at: <https://blogs.lse.ac.uk/brexit/2020/08/26/a-no-deal-brexit-may-still-be-more-costly-than-covid-19/>; see also: Professor Anand Menon, ‘A no deal Brexit is a big deal’, 25 September 2020, Available at: <https://ukandeu.ac.uk/a-no-deal-brexit-is-a-big-deal/>

<sup>6</sup> Dr Mark Flear, Professor Tamara Harvey, ‘Britain’s Pharmaceutical Industry and No Deal’, 23 October 2020, Available at: <https://ukandeu.ac.uk/britains-pharmaceutical-industry-and-no-deal/>; The Independent, ‘Brexit: Drugs industry appeals to Boris Johnson for urgent action to avoid no-deal medicine shortages’, 22 October 2020, Available at: <https://www.independent.co.uk/news/uk/politics/abpi-pharmaceutical-medicines-brexit-boris-johnson->

light of recent Tesco plc. comments and have asked what preparations the Welsh and UK Governments have made to mitigate these issues. This forms part of a wider request for increased information provision around the implications of the end of transition. Several participants also highlighted that any potential preparation for the end of transition has been deprioritised in favour of Covid-19 recovery.

- 2.4. Even if a 'thin deal' is achieved by the end of 2020 this may not address many of the sector's concerns and aspirations thereby further limiting the difference between the two outcomes to issues pertaining to critical supply chain disruptions and the resulting impact this could have on communities. This is because many key aspects of the future relationship negotiations of relevance to the third sector remain unclear - including but not limited to continued participation in programmes like Erasmus+ which has been key in tackling youth unemployment, commitments under article 125 of the political declaration which calls for encouraging cross border civil society dialogue, future participation in research initiatives, reciprocal healthcare rights, level playing field provisions and of course replacements for EU funding. Adapting, feeding into, and encouraging development around many of these issues will likely be important and challenging for the sector beyond 2020 if these are absent from the agreement reached at the end of the year and especially if relations between the UK and EU turn sour in the aftermath of a 'no deal' outcome.
- 2.5. Covid-19 has also deprived the sector of valuable transitional time that would have been used to consider important aspects of the post-Brexit landscape including how civil society in Wales would engage and connect with partners in the European Union moving forward, as well as exploring opportunities that remain open as a third country and within wider European structures like the Council of Europe. There is considerable appetite in Wales and the EU for continued Welsh participation and organisations in Wales have been keen to highlight this despite capacity being drained by Covid-19, further highlighting the importance placed on this aim. However, discussions have not had the opportunity to move forward owing to the pandemic as well as a focus in the EU on preparing for a 'no deal' outcome.
- 2.6. There is a considerable lack of transparency surrounding the content and implications of post Brexit trade agreements. The UK Government is engaging with only a select few UK wide organisations as a part of their trade advisory groups and is requiring signature of non-disclosure agreements to have sight of the content of these agreements. Clearly there is a very considerable lack of input opportunities, which also makes it impossible to prepare for any potential outcomes but also undermines the

sector's role in informing policy and ensuring democratic scrutiny. The establishment of the WG advisory group on trade and the involvement of Fair Trade Wales within that has gone some distance in helping to remedy this, but we recognise that communications with the UK Government around these issues is challenging even for the Welsh Government. Nevertheless, how can the sector prepare when information is so openly being withheld at the source? These issues have been compounded by considerable concern that the UK Internal Market Bill will prevent the Senedd and Welsh Government from legislating to prevent a lowering of standards potentially triggered by these trade agreements. This would also distance the sector from the centre of decision making by increasing centralisation and therefore further limit any ability to have a voice on the implications of these trading relationships for Welsh standards. There is considerable territorial differentiation between the access the sector enjoys in the Welsh context when contrasted with the challenges of engaging at the UK level and organisations have expressed apprehension about the need to adapt in the long term to increased engagement with decision making processes at the UK level as a result of this drive towards centralisation.

### 3. The lack of information about the UK Shared Prosperity Fund

3.1. While funding already secured under the 2014-2020 multiannual budget is guaranteed, the ongoing lack of information on how these funds will be replaced emerged as the single biggest concern amongst responses to our survey. Participants highlighted that continued uncertainty in this area is a significant barrier to planning for the end of transition and that any gap between existing funding and the SPF could compromise service delivery and organisation sustainability. Ongoing uncertainty around the principles, quantum, devolution and priorities of the SPF are particularly concerning when seen through the lens of Covid-19 given the employment support and equality focus of the funded services. One respondent noted that they are planning for considerable issues in fulfilling the needs of the young people they work with when their EU funding ends.

3.2. Recent information by Paul Scully MP and the provisions of the UK Internal Market Bill suggest an aim to centralise the distribution of the SPF – this has of course further fuelled the numerous sectoral concerns in this area. Primary amongst these is the potential loss of relationships and experience built up in Wales around the priorities and delivery of EU funding as these provide far more scope for third sector involvement in the design and delivery of schemes than in England. Recent narratives also suggest shifts towards not only an annual as opposed to multiannual approach but also towards infrastructure and internal market spending potentially to the detriment of the equality and social cohesion focus. Both may end up reducing the sectors ability to meet community needs in Wales. There are also concerns about increased barriers to accessing funding as organisations view UK Government schemes as challenging to successfully

bid into owing to a perceived preference for funding UK wide organisations and differences in culture.

3.3. Some of these concerns are supported by recent UK Government Brexit related funding initiatives which have been poorly tailored to the needs of the third sector in Wales. These have been generally difficult to access and have been managed in such a way as to challenge staff wellbeing. For example, funding provided by the Home Office for organisations to support vulnerable individuals with securing their residency rights was renewed only two or three before staff contracts were due to end. Furthermore, the Brexit Readiness Fund in 2019 which was opened to third sector organisations was completely inaccessible even for organisations as large as WCVA due to poor design, timing, priorities and communication. Some civil society organisations funded by the UK Government in Wales and England have also noted that they do not feel comfortable criticising policy for fear of future funding being made inaccessible to them. This stands in stark contrast to the relationships with authorities in Wales and is generating anxiety that any centralisation of the Shared Prosperity Fund may normalise this issue and require organisations to adapt to these relationships and practices.

3.4. The Welsh Government EU Transition Fund has been invaluable in supporting preparation for Brexit but participants have suggested that consideration must be given to reasonable short term funds to cope with the immediate demands linked to transition after December 2020 as they emerge. Longer term support for projects to ensure sustainability and to respond to the new context, including changes in the rural economy, prices, changing demand to different services across groups of people and places was also highlighted as necessary. This is particularly the case considering Covid-19 which has triggered a drop in sector income on top of the uncertainty surrounding the replacement of EU funding.

#### 4. Intra-UK intergovernmental agreements relating to the end of the transition period, including the common frameworks programme.

4.1. We welcome that the Welsh Government has been engaging in extensive intergovernmental work with the other governments in the UK around the development of common frameworks. We recognise the necessity of these to manage aspects of the UK's internal market after Brexit. However, there are ongoing issues around transparency and opportunities for the sector to feed into this process.

4.2. A significant body of work in this area and in getting ready for the end of transition has recently been the sector's response to the UK Internal Market Bill. Contrary to the urgent reactive response this Bill has required - along with the common frameworks it should represent an opportunity for the sector to inform policy that has considerable potential to shape the post-Brexit constitutional landscape and how intergovernmental work takes place across the UK. However, in addition to the questions around the



transparency of the frameworks, these appear to have also been undermined by the Internal Market Bill which was subject to a highly questionable consultation process that provided very limited opportunity for third sector input. This is despite it ultimately providing for highly centralising powers which may be used to implement the UKSPF, in which the sector has a considerable stake. This Bill has also triggered a wave of concern across the sector with The Forum seeing a considerable spike in questions around, *inter alia*, the implications of this legislation for the environmental, public health, equalities and human rights, housing and arts and culture sectors as well as more generally around the implications for devolution.

- 4.3. This Bill would also distance the third sector from the decision making process. This is because if implemented as initially published there would be a risk of forced indirect coalescing around UK standards which have not been subject to input from Welsh organisations, the Senedd or the Welsh Government. This would undermine the democratic scrutiny provided by the third sector in Wales. The Bill also sets an alarming precedent in its disapplication of international human rights commitments. In doing so it both highlights the importance of and raises questions around strengthening of human rights.

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## Exiting the European Union: Preparedness in Wales for the end of the transition period.

### 1. Who we are:

The South and Mid Wales Chambers of Commerce are a membership-based business support organisation. We are a team of trusted experts in Wales, covering over 80% of Welsh businesses. We support companies in fast moving marketplaces and everchanging political landscapes, and we work locally and internationally to always achieve the best outcome for businesses in Wales. We recognise that every business is a community and a family; and this is at the heart of everything we do.

We are part of a network of 53 UK and 60 International accredited British Chambers that in the UK reach 56,000 businesses and 6 million employees and internationally tens of thousands more. The South and Mid Wales Chambers of Commerce support nearly 100,000 Welsh employees through our membership, with 60% of our members employing over 10 people. We have 15 expert industry partners that offer valuable insight into a variety of sectors. We provide daily support to companies exporting to 119 countries and from 2019/2020 we saw a 240% growth in income in other international services. We are based in Wales for Wales.

### 2. Introduction

It is clear that Covid-19 has impacted all business in Wales to varying degrees; businesses have had to adjust and adapt to new ways of working; some businesses have been adversely affected and seen extensive setbacks as a result of the pandemic.

As a result, businesses have not focused on preparing for the exit from the EU. The timing of the pandemic has resulted in a shift in business focus to recovery and adaptation due to Covid-19 as opposed to preparing for the end of the transition period. Despite the fact that immediate public health issues obviously carry the greatest urgency, the short period of time until the end of transition means that messaging on Brexit needs to be more prominent and frequent.

In responding to give written evidence for 'Preparedness in Wales for the end of the Transition period', this document sets out the feedback the South and Mid Wales Chambers have gathered from our members.

In order for Welsh businesses to be better prepared for the end of the transition period there needs to be:

- Clear and consistent messages to Welsh businesses about the changes that will occur from 1<sup>st</sup> January 2021
- Support to assist Welsh businesses through the transition period must be easy to access and readily available
- There should be support in place directed towards SMEs through the transition period
- Co-operation between public and private sector to ensure businesses are aware and have access to relevant support to cope with changes to trade from 1<sup>st</sup> January 2021

### 3. Welsh Government action to prepare Wales for the end of the transition period

#### 3.1 Covid-19

Understandably Government actions have focused on Covid-19 restrictions, with tighter restrictions from local lockdowns and most recently the firebreak lockdown announced to place Wales under a tougher national lockdown from 23<sup>rd</sup> October – 9<sup>th</sup> November.

As a result, messages to Welsh businesses have been centred around Covid-19 and not around the end of the EU transition period. Despite the fact that immediate public health issues obviously carry the greatest urgency, the short period of time until the end of transition means that messaging on Brexit needs to be more prominent and frequent.

#### 3.2 Border controls

There needs to be clear guidance for Welsh businesses on border controls. There is information about a border control post scheduled for Wales inland for Holyhead<sup>1</sup> but this is from UK Government. This site at Holyhead will be multi-functional, which means that any goods can be checked at the border. There is also a site due to be put in South Wales; there is however limited information available regarding this. There needs to be clear information about whether this site will be multifunctional or will be a site only for specific goods.

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<sup>1</sup> <https://www.gov.uk/guidance/list-of-roll-on-roll-off-ports>

The UK has taken the decision to introduce new border controls in three stages up until 1 July 2021. From July 2021 'Traders moving all goods will have to make declarations at the point of importation and pay relevant tariffs. Full Safety and Security declarations will be required, while for SPS commodities there will be an increase in physical checks and the taking of samples: checks for animals, plants and their products will now take place at GB Border Control Posts'.<sup>2</sup> This is from July, but as we leave seven months earlier in January there needs to be clarity about what will happen before this takes effect.

### 3.3 Welsh Government need to utilise the private sector to help businesses to navigate to the end of the transition period

Welsh Government need to utilise the private sector to help businesses prepare for the end of the transition period. Private sector companies, such as South and Mid Wales Chambers, can help businesses navigate changes to their import/export trade that will come in 2021. South and Mid Wales Chambers has an expert international team and can act as a Customs Intermediary for businesses. In 2019/2020 we exported to 119 countries and saw a 240% growth income in other international services and held 14 inward trade missions. The South and Mid Wales Chambers regularly hold online International Trade Training; in November alone, we have training on import procedures, understanding exporting, incoterms, and classification of goods. To help Welsh businesses the Chambers will be launching in November a full service, end to end, curated import and export support function for all businesses in Wales.

Businesses ought to be informed of the help that is available to them through the private sector as well as the public sector. By utilising the training and expertise from the private sector, Welsh businesses can have a better opportunity to prepare and adapt to incoming changes.

Private sector organisations do not, however, have the capacity to support all businesses. A combination of support from both public and private sector can ensure businesses do not fall under the radar.

### 3.4 Recommendations

- The Welsh Government need to consistently convey clear messages to business about the changes that will occur from 1<sup>st</sup> January 2021
- The South and Mid Wales Chamber calls for greater co-operation between public and private sector to ensure businesses are aware and have access to relevant support to cope with changes to trade from 1<sup>st</sup> January 2021

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<sup>2</sup> <https://businessnewswales.com/200-million-port-infrastructure-fund-opens-for-bids/>

## 4. Preparedness of key economic sectors in Wales

### 4.1 Covid-19

Welsh businesses are still fighting through the impact of the Covid-19 pandemic and navigating through changes to business. This means it has been hard for them to prepare and designate time to focus on preparing for Brexit. The businesses the Chambers work with are small to larger SMEs – their size means they often do not have the luxury to designate different focuses within business e.g. Some staff plan for EU transition period while others work on Covid-19 related issues.

### 4.2 Lack of preparedness across sectors

Throughout all sectors, business who trade with the EU and internationally vary in the degree of preparedness. Some are well prepared; some are beginning to prepare but do not know exactly how to fully prepare and some businesses are not prepared at all. The businesses that are well prepared tend to be larger in size.

British Chambers of Commerce (BCC) surveyed 1,580 business leaders in July 2019. Around 94% of participants were SMEs. At the time 41% of these businesses had not done a Brexit risk assessment; 63% were not aware of Transitional Simplified Procedures (TSP); 62% were not aware of Authorised Economic Operator status (AEO); and 73% were not aware of Customs Comprehensive Guarantees (CCG).<sup>3</sup> In September 2020, BCC published information stating that only 38% of firms had completed a Brexit risk assessment this year; the research also found that more than half (51%) of firms surveyed had not taken any of the 8 steps recommended by the government to prepare for changes in the movement of goods between the UK and the EU. This includes fundamentals of operation for trading businesses such as checking on the need for customs declarations and assessing the possible impact of changes on existing customers and suppliers.<sup>4</sup> These figures echo the overarching message that South and Mid Wales Chambers have received from our members: they are not well prepared for the upcoming changes. It is worth teasing out the comparison that a significant percentage of those surveyed by the BCC were SMEs; SMEs in Wales account for 62.4% of employment in Wales and 37.9% of turnover.<sup>5</sup> It is, therefore, important that direct support is given to SMEs as they make up a large proportion of Welsh businesses and are likely to be less well prepared than bigger co-operations.

Businesses that are starting to prepare are showing signs of concern for the detail. Questions that the Chambers receive in relation to Brexit focus on specific impacts to certain sectors. It would be useful if these businesses could access specific support and training relating to their business and sector. The Chambers

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<sup>3</sup> <https://www.britishchambers.org.uk/news/2019/09/bcc-business-still-unable-to-prepare-fully-for-a-no-dealbrexit>

<sup>4</sup> <https://www.britishchambers.org.uk/news/2020/09/brexit-26-unanswered-questions-for-business-with-fewer-than-100-days-to-go>

<sup>5</sup> <https://gov.wales/sites/default/files/statistics-and-research/2019-12/size-analysis-active-businesses-2019503.pdf>

can help Welsh business with a variety of trade questions such as: import and export changes and changes to documentation, but the Chambers may not always be best suited to answer very specific sector related questions.

#### 4.3 Lack of preparation for changes in importing and exporting to the EU.

It is important to help Welsh businesses to understand how changes to the Customs Union will impact them. If their EU customers/companies are more readily prepared, there is a risk these EU companies can dictate terms of business. Some businesses have considered finding an intermediary in the EU or setting up subsidiaries in the EU but are unaware of the struggle they may face in finding a suitable and cost-effective solution.

It is also important to have clear messages to businesses that the EU will impose full regulations on goods going in and out of the EU. All goods being exported will be subject to customs declarations, checks, and duties. There is a transition period of 6 months offering businesses the option to do a simplified declaration to help businesses to adjust to the new way of doing things. They will however have to do a full declaration within 6 months of the goods coming into the UK.

In September 2020, Rt Hon Michael Gove MP Chancellor of the Duchy of Lancaster published further information about a reasonable worst case scenario (RWCS) planning assumptions for potential disruption to freight travelling between Great Britain (GB) and the EU at the end of the transition period. On January 1<sup>st</sup>, 2021, the RWCS is that 40-70% of trucks travelling to the EU might not be ready for new border controls. This information should be made consistently clear to Welsh businesses so that they have time to prepare to mitigate such impacts.

#### 4.4 Recommendations

- There should be support in place directed towards SMEs.
- The Welsh Government need to consistently convey clear messages to business about the changes to trade for Welsh businesses from 1st January 2021, this is to ensure Welsh businesses are well prepared.
- Support for Welsh businesses must be available through relevant training and events - whether this be through public sector or utilise events put on within the private sector as mentioned in point 3.4
- The South and Mid Wales Chambers calls for greater co-operation between public and private sector to ensure businesses are aware and have access to relevant support to cope with changes to trade from 1st January 2021.

5. The implications for preparedness arising from the negotiation of UK international agreements, including the UK-EU future relationship agreement(s), other significant free trade agreements (e.g. UK-USA, UK-Japan, UK- Australia, UK- New Zealand) and the Community Negotiations and Coordination programme (formerly referred to as the Trade Agreement Continuity Programme)

### 5.1 Trade deals must support SMEs

Welsh Government International Trade strategy set out to grow the contribution that exports make to the Welsh economy by 5%<sup>6</sup>. One of the sectors that Wales sees itself as a world leader is semiconductors.<sup>7</sup> There is concern that big companies may dominate in this sector; bigger companies can however, more easily uproot. Greater support needs to be given to specific sectors to grow and incubate smaller businesses. As noted in the previous section SMEs account for 62.4% of employment in Wales <sup>8</sup>, they should be considered a priority in relation to trade deals.

### 5.2 UK-USA trade deal

There is confusion about how this will change depending on the upcoming US presidential election. Trade deals with the US should also not be seen as a main priority; analysis published by the UK Government shows ‘the most optimistic scenario modelled by the UK government points to gains for the UK of 0.16% if GDP over 15 years. This will in no way compensate for the lost trade with the EU’<sup>9</sup>

### 5.3 UK-Japan trade deal

Business Wales have said the ‘Japan Historic Trade Agreement is set to benefit businesses in Wales’. ‘The deal could increase UK trade with Japan by £15.7 billion, giving £1.5 billion boost to the economy and increasing UK workers’ wages by £800 million. This could benefit over 200 businesses in Wales that exported £295.9 million in goods to Japan last year and help even more local businesses sell their goods and services to the Japanese market<sup>10</sup>.

It would be useful for Welsh businesses if there was more clarity and information about a trade deal between the UK and Japan. In addition, if the public and private sector could provide events and training as well as information on how businesses can access these new markets.

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<sup>6</sup> <https://gov.wales/international-strategy-for-wales-html>

<sup>7</sup> <https://gov.wales/a-new-international-strategy-for-wales>

<sup>8</sup> <https://gov.wales/sites/default/files/statistics-and-research/2019-12/size-analysis-active-businesses-2019-503.pdf>

<sup>9</sup> <https://gov.wales/written-statement-uks-approach-trade-negotiations-us>

<sup>10</sup> <https://businessnewswales.com/japan-historic-trade-agreement-set-to-benefit-businesses-in-wales/>

## Recommendations

- Welsh businesses need to be given more consistent, clear, and specific information about trade deals.
- Where possible there should be lobbying to push for trade deals that will substantially benefit Wales.
- Support for SMEs should be a key consideration in trade deals.

### 6. Intra- UK intergovernmental agreements relating to the end of the transition period, including Common frameworks programme

#### 6.1 Lack of knowledge, awareness, and preparedness

Very few businesses are aware of the Common frameworks programme or aware that there could be changes to the UK Internal Market. As a result, businesses are not well prepared for any changes in UK intergovernmental agreements.

Therefore, there needs to be clarity on how this will affect businesses.

#### 6.2 Internal Market Bill

South and Mid Wales Chambers held a roundtable event to discuss the Internal Market Bill on the 7<sup>th</sup> August 2020. This was an opportunity to discuss with Welsh businesses the implications of the bill. Some of the main findings were:

- There is a concerningly low level of awareness and engagement in the White Paper relating to the UK Internal Market. Few people that we spoke to were even aware that exists let alone the potential impact it may have on their business.
- Due to lack of clarity there are concerns that some of the specific standards that apply to any given sector may now be affected both nationally and internationally.
- There is general concern amongst food and drink manufacturers that changes to labelling locally or nationally could affect business.
- There is worry about the Devolved Administrations having the same input as UK Government. Therefore, it is critical that support for Intra-UK intergovernmental agreements be a four nation about and not seen to be centred in Westminster.

#### 6.3 Recommendation

- There need to be clear and easily accessible information to businesses about IntraUK intergovernmental agreements such as Common frameworks programme



- There needs to be consistent and clear messages to business about the potential changes to trade within the UK from 1st January 2021
- Devolved Administrations need to have equal say with UK Government to ensure that Welsh businesses are not adversely affected by any Intra-UK intergovernmental agreements.

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## Ymadael â'r Undeb Ewropeaidd: Paratoadau yng Nghymru ar gyfer diwedd y cyfnod pontio

Ymateb Cyngor Celfyddydau Cymru/Celfyddydau Rhyngwladol Cymru i ymchwiliad y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol – gwybodaeth atodol

Hydref 2020

1. Ym mis Gorffennaf 2020, cyflwynwyd nodyn briffio gennym i Bwyllgor Materion Allanol a Deddfwriaeth Ychwanegol a Phwyllgor Diwylliant, y Gymraeg a Chyfathrebu'r Senedd. Roedd y nodyn briffio hwnnw'n amlinellu'r prif feysydd sy'n peri pryder ac yn dangos effaith bosibl Brexit ar y celfyddydau yng Nghymru. Mae'r papur hwn yn rhoi gwybodaeth ychwanegol i gyd-fynd â'r nodyn briffio hwnnw, ac mae'n rhoi diweddariad am y sefyllfa bresennol ym mis Hydref 2020.
2. Ym mis Gorffennaf, soniwyd am y modd roedd y celfyddydau yng Nghymru yn wynebu "ergyd ddwbl" yn sgil yr effaith negyddol a'r ansicrwydd sydd ynghlwm wrth Covid-19 a Brexit. Yr un yw'r sefyllfa hon wrth i gyfyngiadau Covid barhau ac os na fydd cytundeb rhwng y Deyrnas Unedig a'r Undeb Ewropeaidd (ar adeg llunio'r ddogfen hon). Mae'r sector celfyddydau yng Nghymru yn paratoi at ddiwedd y cyfnod pontio yn ogystal â pharatoi i ailagor a gweithredu o dan ganllawiau diwygiedig Covid.
3. Ar hyn o bryd, mae'n debygol y bydd bwlch cyllido ar ddiwedd y cyfnod pontio cyn cyflwyno unrhyw raglenni cyllido domestig, gwahanol. Ym mis Gorffennaf, aethom ati ar y cyd â Creative Scotland a DCMS i drefnu digwyddiad bord gron i randdeiliaid. Y nod oedd ymgynghori â'r sector celfyddydau am raglen arfaethedig yn y Deyrnas Unedig yn lle Ewrop Greadigol. Rydym yn aros i glywed sut y bydd canlyniad yr Adolygiad o Wariant, sydd bellach yn cwmpasu blwyddyn yn unig, yn effeithio ar y cynigion hyn. Byddwn hefyd yn parhau i eirioli'n gryf dros fanteision parhau i fod yn rhan o'r rhaglen Ewrop Greadigol.
4. Yn yr haf hefyd, cyflwynwyd ymatebion gennym i ymgynghoriadau am y cynigion ar gyfer y Gronfa Ffyniant Gyffredin, ac rydym yn aros rhagor o newyddion am hyn, gan fod nifer o sefydliadau celfyddydol wedi elwa'n fawr o gronfeydd

strwythurol yr Undeb Ewropeaidd hyd yma. Mae pryderon am effaith Bil y Farchnad Fewnol ac uno'r Adran Cymorth Tramor Rhyngwladol a'r Swyddfa Dramor a'r Gymanwlad ar feysydd datganoledig fel diwylliant a phŵer meddal.

5. Mae DCMS wedi cynnal nifer o ddigwyddiadau briffio i randdeiliaid dros y pythefnos diwethaf, a gwahoddwyd Celfyddydau Rhyngwladol Cymru a nifer o brif gwmnïau celfyddydol Cymru i'r rhain. Rhoddwyd diweddariadau am y newidiadau disgwylidig i'r rhyddid i symud nwyddau a rhyddid pobl i symud o fis Ionawr 2021.

6. Mae gan y sector celfyddydau bryderon mawr am y newidiadau i'r trefniadau ar gyfer symud nwyddau a hawliau symud pobl, a hynny o ran mynd allan i'r Undeb Ewropeaidd a dod i mewn i'r Deyrnas Unedig ill dau. Os na cheir cytundeb, bydd costau fisas ychwanegol; bydd angen trwyddedau gwaith; bydd costau nawdd cymdeithasol; a bydd angen trwyddedau i symud nwyddau.

7. Er y gellid datrys rhai o'r pryderon hyn os ceir cytundeb rhwng y Deyrnas Unedig a'r Undeb Ewropeaidd, mae'n rhaid i sefydliadau celfyddydol gynllunio'n ofalus at wahanol senarios a chostio nifer o opsiynau os ydynt yn ystyried teithio i unrhyw wlad yn yr Undeb Ewropeaidd ar ôl mis Ionawr 2021, neu os ydynt yn cynnal digwyddiadau yn y Deyrnas Unedig sy'n cynnwys artistiaid neu gwmnïau o'r Undeb Ewropeaidd. (Mae hyn yn ychwanegol at yr angen i greu cynlluniau wrth gefn i addasu i ganllawiau Covid wrth i'r rheini newid).

8. Mae diffyg gwybodaeth, a sut i gyflwyno'r newidiadau a ddaw i rym ym mis Ionawr 2021, wedi bod yn gryn her i'r sector celfyddydau, ond yn ddiweddar bu mwy o sesiynau gwybodaeth a sesiynau briffio gan gyrff yn y sector, ynghyd â sesiynau briffio diweddar DCMS.

9. Mae Celfyddydau Rhyngwladol Cymru/Cyngor Celfyddydau Cymru, ynghyd â'n chwaer-asiantaethau, Creative Scotland ac Arts Council England, wedi ymrwmo i ddatblygu cynllun i roi gwybodaeth am allu artistiaid i ddod i'r Deyrnas Unedig o'r Undeb Ewropeaidd/o wledydd rhyngwladol, gan roi sylw i feysydd ymarferol a chyfreithiol fel fisas, treth, nawdd cymdeithasol ac ati. Bydd modd cyfeirio pobl hefyd at adnoddau/ffynonellau gwybodaeth eraill, gan gynnwys pan fydd gwybodaeth ar gael am allu artistiaid i symud o'r Deyrnas Unedig i'r Undeb Ewropeaidd/i wledydd rhyngwladol. Prosiect peilot yw hwn a fydd i'w gynnal rhwng mis Ionawr a mis Rhagfyr 2021.

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## Exiting the European Union: Preparedness in Wales for the end of the transition period

Response to the External Affairs and Additional Legislation Committee inquiry from Arts Council of Wales / Wales Arts International – supplementary information

October 2020

1. In July 2020 we submitted a briefing note to the Senedd's External Affairs and Additional Legislation Committee and the Culture, Welsh Language and Communication Committee setting out the main areas of concern and potential impact of Brexit on the arts in Wales. This paper is to provide additional information to that briefing note and to update on the current situation in October 2020.
2. In July we reported on the “double whammy” that the arts in Wales are facing because of the negative impact and uncertainty being caused by Covid-19 and Brexit. This remains the same with continued Covid restrictions and without any UK-EU deal (correct at time of writing). The arts sector in Wales is preparing for the end of the transition period alongside preparation to re-open and operate under Covid adapted guidelines.
3. At this stage it is likely there will be a funding gap at the end of the transition period before any domestic alternative funding programmes start up. In July 2020 we jointly organised a roundtable stakeholder event with Creative Scotland and DCMS, to consult with the arts sector on a proposed UK replacement programme for Creative Europe. We await to hear what the result of the now one-year Spending Review will be on these proposals – whilst maintaining our strong advocacy of the benefits of continued participation in the Creative Europe programme.
4. We also responded in the summer to consultations on proposals for the Shared Prosperity Fund and await further news on this, as many arts organisations have benefitted greatly from EU structural funds to date. There are concerns over the impact of the Internal Market Bill and the

merger of the Department of International Foreign Aid and the Foreign and Commonwealth Office on devolved areas such as culture and soft power.

5. DCMS has run a number of stakeholder briefings in the past couple of weeks, to which Wales Arts International and several key arts companies from Wales were invited, with updates on expected changes to freedom of movement of goods and of people from January 2021.
6. The main concerns of the arts sector in terms of movement of people and goods, are both outgoing to the EU as well as incoming to the UK. In the event of a no deal, there will be additional visa costs; work permits required; social security costs; and licenses and carnets for moving goods.
7. Whilst some of these concerns may be resolved in the event of a UK-EU deal being agreed, arts organisations are having to carefully scenario plan and cost out a number of options if they are considering touring to any countries in the EU post January 2021, or if they are holding events in the UK which involve EU artists or companies. (This is in addition to having to make contingency plans to adapt to changing Covid guidance).
8. Lack of information, and how to apply the changes that will take place from January 2021 has been a challenge to the arts sector, but there have recently been more information sessions and briefings from arts sector bodies, as well as the recent DCMS briefings.
9. Wales Arts International/Arts Council of Wales, alongside our sister agencies Creative Scotland and Arts Council England have committed to developing an Infopoint – an initiative set up to provide a practical source of information on incoming artist mobility to the UK from EU/International on practical and legal issues such as visa, tax, social security etc. It will also signpost to other resources/sources of information, including where there is information on outgoing artist mobility from UK to EU/international. This is a pilot project which will run from January – December 2021.









# Food and Feed Safety and Hygiene Common Framework

Provisional Framework Outline Agreement and Concordat

Presented to Parliament  
by the Secretary of State for Health and Social Care  
by Command of Her Majesty

November 2020

CP 321





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# FOOD AND FEED SAFETY AND HYGIENE COMMON FRAMEWORK PROVISIONAL FRAMEWORK OUTLINE AGREEMENT

## PART 1: CONTEXT

### 1 Policy area

#### **Food and Feed Safety and Hygiene Law**

1.1 Food and feed safety and hygiene (FFSH) law is set out in retained European Union regulations which set out an overarching and coherent framework for the development of food and feed legislation and lay down principles, requirements and procedures that underpin decision-making in matters of food and feed safety. This legislation covers all stages of food and feed production, including risk analysis; food safety labelling, distribution, incident handling, and food and feed law enforcement (official controls).

### 2 Definitions

2.1 A full list of definitions can be found in Annex 3.

### 3 Scope

#### **Food and Feed Safety and Hygiene Law - intersect with devolved competence and existing arrangements**

FFSH is a devolved policy area. This is set out as follows in the devolution settlements for each nation:

- 3.1 Schedule 5 of the Scotland Act 1998 sets out those matters which are reserved to the UK Parliament. Any area not listed in Schedule 5 is devolved to the Scottish Parliament. While 'consumer protection' and 'import and export control' are considered reserved matters, exceptions are included for food and feed safety (see section C5 and C7), meaning FFSH is a fully devolved matter.
- 3.2 Schedule 7A to the Government of Wales Act 2006 sets out those matters which are reserved to the UK Parliament. Any area not listed in Schedule 7A is devolved to the Welsh Parliament. While 'consumer protection' and 'import and export control' are considered reserved matters, exceptions are included for food and feed safety (see section C5 and C6), meaning FFSH is a fully devolved matter.
- 3.3 Schedule 2 of the Northern Ireland Act 1998 sets out 'excepted matters' (matters of national importance on which the NI Assembly does not have competence to legislate), and Schedule 3 of the Northern Ireland Act sets out which matters fall into the 'reserved' category. Anything that is not explicitly reserved or excepted in Schedules 2 or 3 is deemed to be devolved and the NI Assembly has full legislative competence. While 'technical standards and requirements in relation to products' are reserved under Schedule 3, there is an exception for 'standards and requirements in

relation to food, agricultural or horticultural produce, fish or fish products, seeds, animal feeding stuffs, fertilisers or pesticides' meaning FFSH is a fully devolved matter.

- 3.4 While FFSH policy areas are devolved matters, international trade is reserved, creating an area of overlapping interests where UK trade negotiations and implementation may intersect with aspects of devolved policy areas, such as FFSH. Though FFSH is devolved, it remains the responsibility of the UK government to ensure the UK complies with its international trading obligations. For example, the World Trade Organisation Sanitary and Phytosanitary Agreement (WTO SPS Agreement, see Annex 3 for 'Definitions') Article 13 permits Members to devolve the implementation of SPS to non-central government bodies, but explicitly states "Members are fully responsible under this Agreement for the observance of all obligations set forth herein". Thus, UK Government will be held to account on behalf of all devolved nations for this specific function.
- 3.5 The Food Standards Agency (FSA) has responsibility at central government level for the main body of feed and food safety law in England, Wales and Northern Ireland. Food Standards Scotland (FSS) has similar competence in Scotland. The FSA and FSS have an MoU in place which sets out how the organisations work together in detail. Both the FSA and FSS are responsible for developing and implementing policy related to general food and feed hygiene and traceability. This includes the protection of public health via import controls, labelling related to food safety (such as allergens), biological and chemical safety, and biotechnology.
- 3.6 In England, Wales and Northern Ireland, the FSA (in conjunction with local authorities which carry out certain functions) is responsible for monitoring, verifying compliance and enforcing the requirements of FFSH law. In Wales and Northern Ireland the FSA also has responsibility for food compositional standards and labelling. In Northern Ireland, the FSA additionally has responsibility for nutrition. The 'food compositional standards and labelling' and 'nutrition labelling, composition and standards framework policy areas are being managed through separate frameworks which are led by Defra and DHSC respectively. FSS undertakes all such controls in Scotland. Unlike the FSA in Wales and Northern Ireland (which are part of the FSA), FSS is a separate and fully devolved body.
- 3.7 The detailed explanation of the specific scope of the FFSH Framework is set out in section 4.7 - 4.17.

### **How the European Union framework operated**

- 3.8 Until the end of the transition period, the majority of FFSH law was harmonised at European Union level, relying on European Union processes and institutions to carry out most risk assessments, risk management decisions and develop and pass legislation. Much of the FSA's work at the European Union level previously took place through 'comitology' procedures. In policy areas such as FFSH, where uniform conditions for implementation were often needed, the European Commission would adopt 'Implementing Acts' or 'Delegated Acts' to supplement or amend certain parts

of European Union regulations. Before doing so, standing ('comitology') committees, in which all Member States would be represented, consulted and voted on proposals. In addition, expert working groups would be consulted carefully before a proposal was put to the standing committee. Commission proposals voted on in standing committees are disclosed to the European Union Parliament and European Union Council (and may or may not be discussed in their committees). Once a decision has been agreed at standing committee, the European Union Parliament and European Union Council have the right of scrutiny and may or may not discuss the matter in their committees). It should be noted that prior to the end of the transition period, a significant number of risk management decisions, such as decisions on enforcement and incident handling, were also taken at national level. Decisions in these areas are considered outside the scope of the FFSH Framework.

- 3.9 The Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) is the key committee of relevance for FFSH. The FSA represented the UK at 6 sections of the SCoPAFF committee on food and feed safety matters and in technical discussions at 16 working groups that feed into the SCoPAFF standing committees. In representing the UK government on the standing committees, the FSA worked collaboratively with devolved nations and other departments to establish UK positions on proposals, and consulted Ministers and other interested parties as appropriate. Legislative decisions were taken through comitology procedures on a frequent basis: in 2016 there were 76 decisions taken in FFSH policy areas.
- 3.10 Where changes were proposed to the broader principles of legislation (or new pieces of legislation are put forward), the FSA represented the UK in the European Union's 'Ordinary Legislative Procedure', whereby the Commission would submit a legislative proposal for the European Parliament and European Council to amend and adopt. The FSA fed into Council working parties and Parliament committees (convened to inform the Council/ Parliament) as and when a new law (or amendment to the broad principles of a law) was made that fell within the remit of FFSH policy areas.
- 3.11 For significant components of European Union food law (particularly in relation to regulated products), the European Union framework relied largely on the European Food Safety Authority (EFSA) for independent scientific advice and risk assessments. Most of EFSA's work is undertaken in response to requests for scientific advice from the European Commission, the European Parliament and European Union Member States. While some risk assessments were carried out already at UK level, the end of the transition period will require increased capacity for domestic risk assessments, as well as governance processes for how these are carried out across the UK. The UK has expanded its risk assessment capacity accordingly.

**Retained European Union rules and what they achieve (See Annex 1 and 2 for further detail)**

- 3.12 FFSH can be broken down into four broad policy areas, all of which fall within devolved competence and were formerly largely harmonised at European Union level, and have been transferred onto the UK statute book as retained European Union law. The exception to this was the limited scope provided for the adoption of

national measures to achieve common outcomes where these are in-keeping with the principle of subsidiarity. The four broad policy areas within the scope of European Union FFSH legislation are:

- general food law and hygiene
- food safety standards
- official controls for food and feed
- public health controls on imported food

3.13 The main objectives of food and feed law are to:

- guarantee a high level of protection of human life and health and the protection of consumers' interests.
- ensure free movement of food and feed manufactured and marketed in the European Union, in accordance with the General Food Law Regulation; and
- facilitate global trade of safe feed and safe, wholesome food by taking into account international standards and agreements when developing the European Union legislation, except where this might undermine the high level of consumer protection pursued by the European Union.

### **International obligations**

3.14 The Codex Alimentarius (Codex) is a series of voluntary food standards and related texts, which aim to provide a high level of consumer protection and fair practice in the international trade of food and agricultural products. The Codex Alimentarius Commission (CAC) is recognised in the relevant WTO agreements as the international body able to provide these guarantees: in the event of a trade dispute, Codex standards would become accepted reference documents for settlement. The CAC is responsible for the development of Codex standards and related texts. Defra acts as the national contact point for the UK in Codex, though the FSA takes the lead in many of the vertical committees dealing with food hygiene, food additives and food contaminants (which draft standards, codes of practice and other guidance). The FSA already undertakes a considerable amount of international engagement beyond the European Union, reflecting the increasingly global nature of food supply systems and of international regulatory standards; plans are also in train to allow for an increase in this activity.

3.15 Having left the European Union, the UK has taken up new obligations as an independent WTO member at the WTO SPS committee. The SPS committee was previously attended by European Union experts on behalf of the UK. Cross-departmental processes have been developed by Defra (with participation from the FSA) to ensure we fulfil our new obligations, including consulting stakeholders on SPS measures, notifying the committee of any change in SPS measures, responding to other nations' queries during the consultation period, and actively participating in committee work. The FFSH Framework is designed in a way that ensures the UK can continue to effectively fulfil its international obligations as a WTO member.



### **Scope for legislative divergence**

- 3.16 Under the European Union regime, in a small number of cases where national measures to achieve common outcomes are allowed, different actions and decisions could be taken by individual administrations across the UK. One example of where these differences exist is raw drinking milk: it is an offence to place raw milk or cream on the market for direct consumption in Scotland, but not in the rest of the UK. In addition to this, where the European Union legislation is outcome focused, differences can exist in the means through which administrations achieve the same outcome, for example there are differences in hygiene guidelines for cooking burgers.
- 3.17 European Union legislation also enabled Member States to develop their own enforcement and execution provisions, and the four nations of the UK therefore all have their own national regulations for enforcement and execution of European Union provisions. Similarly, under European Union legislation the operational management of incidents allows Member States to determine their own rules for managing the practicalities of incident response, in line with the general requirements set out in European Union legislation. Protocols for UK incident handling are covered by the FSA-FSS MoU.

### **Interdependencies/other linked frameworks policy areas**

- 3.18 There is cross-over between policy areas under FFSH legislation and other public health policy areas (whose frameworks are being led by Defra or DHSC).

These policy areas include framework areas in which the FSA/FSS are directly involved:

- nutrition labelling, composition and standards (DHSC-led, FSA involved in NI, FSS involved)
  - food compositional standards and labelling (Defra-led, FSA involved in NI and Wales, FSS involved) and framework areas in which the FSA/ FSS are not directly involved, but have an interest:
    - animal health and welfare (Defra-led)
    - plant health (Defra-led)
    - pesticides (Defra-led)
- 3.19 Ongoing work on the UK internal market and international trade obligations will also need to be monitored and factored into the FFSH Framework proposals. It will also be necessary to engage with teams working on the Future Relationship (FR) to ensure the framework takes account of any further requirements that may arise as a result of the UK's future relationship with the European Union, such as how any additional UK governance structures that may be established will work on a four nations basis.

### **Geographical scope**

3.20 It is the intention that the framework should apply in England, Wales, Northern Ireland and Scotland. Officials in all four nations have been closely involved throughout the development of the FFSH Framework proposals.

### **Northern Ireland considerations**

3.21 On 15<sup>th</sup> June 2020, the Northern Ireland Executive agreed to the principles JMC(EN) had agreed in October 2017 to underpin the development of frameworks. Prior to this, FSA officials in Northern Ireland had provided technical and analytical input to the development of the FFSH Framework.

3.22 The FFSH Framework will be a four nations agreement. However, the specific circumstances of Northern Ireland are respected and reflected throughout the framework outline.

3.23 This includes the provisions of the Belfast Agreement (including the North/South dimension highlighted in Strand 2 of that Agreement). These provisions will be respected.

3.24 Further to this, the framework ensures that Northern Ireland continues to contribute to the formulation of UK policy on food and feed safety and hygiene. Northern Ireland's involvement in policy making will ensure that the economic and social linkages between Northern Ireland and Ireland will be recognised and incorporated into policy outcomes.

3.25 The FSA's role in respect to Northern Ireland within the Framework will also reflect the requirements of the Northern Ireland Protocol. The legislation within the scope of the Framework is detailed within Annex 2 of the NIP, and therefore European Union legislation will continue to be directly applicable in NI whilst the rest of the UK will set its own regulatory regime at the end of the transition period. While the circumstances in Northern Ireland will be different as a result of the Northern Ireland Protocol, officials and Ministers will continue to be involved in the framework's processes and governance structures. How the specific circumstances in Northern Ireland will be reflected in ways of working is detailed throughout the framework outline.

## **PART 2: PROPOSED BREAKDOWN OF POLICY AREA AND FRAMEWORK**

### **FFSH Framework analysis**

4.1 The FFSH Framework proposals have been developed in accordance with the JMC(EN) principles, in line with guidance on frameworks developed jointly by UK Government and the Devolved Administrations. Officials agreed that in considering

the requirements of the FFSH Framework, the following JMC(EN) principles would be of key importance<sup>1</sup>:

- enabling the functioning of the UK internal market, while acknowledging policy divergence; and
- ensuring the UK can negotiate, enter into and implement new trade agreements and international treaties and comply with international obligations;
- respecting the devolution settlements and the democratic accountability of the devolved legislatures;
- maintaining, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by the current European Union rules.

4.2 In the first UKG-DA deep dive on food safety, officials agreed that common approaches were **at least desirable** for all areas of FFSH within scope of the Framework. It was proposed in a number of areas that it was **necessary** to have a common approach according to the JMC(EN) framework principles. Colleagues from Scottish Government would only accept a common approach was *desirable*, because of a concern that agreeing a common approach was *necessary* would mean that a harmonised approach was required. It has subsequently been discussed and agreed by officials that common approaches for creating FFSH policy should be developed through the framework, noting that such approaches may still result in evidence-based divergence where this is considered appropriate.

4.3 Technical working groups (comprising of representatives from all four nations) collaboratively broke down each broad policy area (see Annex 1) into its component parts. The technical working groups developed initial proposals as to where within each policy area commonality might be needed. Officials from the four nations agreed that commonality is preferred across all areas of food & feed safety and hygiene law which are currently harmonised at a European Union level; the areas in scope of the framework and that common arrangements should be developed to deliver this. Officials from the four nations agreed that existing four nations cooperation mechanisms should be built on where possible.

### **FFSH Framework implementation**

4.4 After the end of the Transition Period, there will be a common body of FFSH law in place across the UK, put in place in GB through the European Union Exit statutory instruments. The FFSH Framework agreement itself will primarily be implemented through non-legislative agreements. It is proposed that the Framework should primarily be implemented through:

- a concordat between the four Governments (signed by Health Ministers); and
- a revised FSA-FSS MoU (setting out the elements of the Framework delivered by the food safety bodies of the UK).

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<sup>1</sup> It should be noted that this is not an exhaustive list of principles agreed by JMC, but rather highlights the key principles of relevance to the FFSH Framework.

This Framework Outline document will be publicly available once it has been agreed and it will set out the contents of the FFSH Framework.

4.5 These non-legislative elements to the implementation of the UK Framework will need to dovetail with each other, as well as the overarching UKG-DA MoU. The non-legislative elements of the Framework will include the:

- Scope of the Framework;
- High level principles for ways of working;
- Governance and principles for joint ways of working (including management of divergence);
- Framework review and management arrangements; and
- Governance arrangements for dispute avoidance and resolution.

#### **Potential legislative requirements - concurrent powers**

4.6 Officials from the four nations will undertake an exercise in 2021 to assess where within FFSH policy areas (within scope of the Framework) it would be beneficial to have concurrent powers<sup>2</sup> available so that one statutory instrument can be used to implement consistent decisions across the UK. It should be noted that UK wide SIs under FFSH legislation could only be made with the explicit consent of DA Ministers, and if considered appropriate would likely be limited to certain technical areas. The FFSH Framework will be fully functional from the end of the transition period regardless of the outcome of this assessment.

#### **Scope of the food and feed safety and hygiene framework**

*This section will be reviewed during Phase 4 of the framework development when then the UK Internal Market legislation is in place.*

4.7 Officials have agreed to take a principles-based approach to determining whether a proposed change is in scope of the Framework. The following principles should be considered when determining whether a policy change falls:

- a) In scope of the FFSH Framework
- b) In scope of the FFSH Framework processes and subject to notification procedures but not the full joint risk analysis processes
- c) Outside scope of the FFSH Framework

#### **Principles for determining scope**

- a) Policy changes should be considered in scope of the FFSH Framework if changes are being proposed where:
  - a decision in an area of returning powers would have an effect on any of the JMC principles.

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<sup>2</sup> Concurrent power - the power for a UKG Secretary of State to make changes to retained European Union law in secondary legislation through one UK wide SI with the consent of DA Ministers.

- the requirements (both safety and hygiene) are intended to apply to establishments across the UK (or internationally) or products that are marketed across the UK and are currently harmonised at European Union level.
  - the policy area is the responsibility of food safety bodies in all four nations<sup>3</sup>.
  - the issue is not explicitly considered outside of scope.
- b) Policy changes should be considered in scope of the FFSH Framework but subject to notification processes and not the joint ways of working where:
- different requirements are proposed for establishments within one territory placing products on the market solely within the territory of that nation (i.e. establishments are based in and supplying the local market only); or
  - different requirements are proposed for products produced in and placed on the market solely within the territory of one nation (i.e. products are produced and consumed exclusively in the local market only).
- c) Policy changes should be considered outside scope of the FFSH Framework where:
- retained European Union legislation provides scope for national measures to achieve common outcomes and so divergence is already possible.
  - existing European Union legislation provides flexibility for the law to be applied in different ways i.e. this flexibility will be maintained.

#### **Areas in scope of FFSH Framework**

4.8 The FFSH Framework applies to retained European Union food & feed safety and hygiene legislation. A detailed breakdown of the legislation is set out in Annex 1: Retained European Union FFSH Legislation. Broadly the FFSH areas currently harmonised at a European Union level where it is agreed by officials that common approaches and arrangements for working together should be developed are (see Annex 1: Retained European Union FFSH Legislation for further details):

- general food and feed law and hygiene
- food and feed safety standards
- official controls for food and feed
- public health controls on imported food and feed

4.9 Unless explicitly ruled out of scope (see section 6) changes to the above areas that would be considered in scope of the framework include:

- proposals for changes to retained European Union legislation;
- proposals for new legislation in currently harmonised policy areas of retained European Union legislation;

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<sup>3</sup> The scope of the framework for food and feed safety and hygiene (FFSH) extends only to those policy areas for which responsibility falls to food safety bodies across all four nations (i.e. frameworks / policy areas that fall within other departments' remit at UKG level will be managed by these departments, such as any replacement for Sante F, official controls for animal health and welfare, frameworks for general food labelling, food compositional standards, and nutrition etc.).

- 4.10 The scope therefore includes food and feed safety requirements for products which are marketed across the UK and the harmonised rules (both safety and hygiene) under which businesses that operate across the UK produce them. The FFSH Framework will provide for a common approach to developing and making changes to UK FFSH legislation in areas where European Union law is currently harmonised, with a clear approach set out in the framework to manage divergence.

**Areas in scope and subject to notification processes within the framework but not the joint ways of working**

- 4.11 The changes identified within scope of this are in principle:
- different requirements proposed for establishments within one territory placing products on the market solely within the territory of that nation (i.e. establishments are based in and supplying the local market only); or
  - different requirements proposed for products produced in and placed on the market solely within the territory of one nation (i.e. products are produced and consumed exclusively in the local market only).
- 4.12 The purpose of ensuring that each nation of the UK has the ability to make changes of this nature without having to engage the full joint risk analysis process is to ensure that where necessary Ministers can make recommendations to protect public health in response to inquests or fatal accident inquiries that have been as a result of specific circumstances within their territory and have primarily occurred only in their territory of the UK. For example, following a public enquiry after an *E. coli* outbreak associated with meat products in Wales (2005), Ministers followed recommendations from a public enquiry to apply additional requirements on establishments, food business operators (FBOs) or local authorities (such as enhanced training for enforcement officers, enhanced hygiene requirements, increased audits etc.) only within Wales.
- 4.13 In these instances, in the framework there would be requirements to engage as early as reasonably possible with the other nations and notify them of expected changes (i.e. so that other nations in the UK can consider whether they wish to follow the same approach ), but these areas would not be subject to the full risk analysis processes outlined in the framework. This would, for example, allow Ministers to respond to serious public health incidents such as the *E. coli* outbreak in Scotland in 1996 where Ministers applied different hygiene requirements for butchers solely in Scotland. As we have seen with the recent allergens review (which is an issue that is out with the scope of the framework) , even where the potential exists for different approaches to be taken now, the four nations can respond in a joint manner to key issues, where appropriate and in line with our ways of working set out in the FSS-FSA MoU.
- 4.14 Risk management recommendations on products produced within and placed solely on the market within one specific UK nation (i.e. the requirements apply only to producers in one nation of the UK placing the product exclusively on that market), or where structural or hygiene requirements are stipulated for establishments located in

one UK nation only, would not be the subject of the full joint working processes under the UK framework but would still be considered part of the overall framework and subject to a notification procedure. These matters will be subject to policy engagement arrangements as per the FSA-FSS MoU.

#### **Areas outside scope of FFSH Framework**

- 4.15 Areas outside of scope of the framework will not be included within the formal joint policy-making and joint decision-making protocols set out in the framework. However, for these areas, officials agree that joint notification procedures and working arrangements between food safety bodies under the FSA-FSS MoU should be continued and mechanisms for sharing this information reviewed
- 4.16 Equivalent flexibility for tailoring legislation to the specific needs of each of the four UK nations as is afforded by current European Union rules will be maintained and existing areas of flexibility for different approaches will be maintained. Within food & feed safety and hygiene there are a number of areas where European Union legislation offers flexibility for the law to be applied in different ways, with scope for national measures to achieve common outcomes permitted by the legislation. Within the European Union FFSH legislation, this includes:
- a) Enforcement and execution - European Union legislation provides flexibility for Member States to develop their own enforcement and official control provisions in certain areas.
  - b) Risk management decisions currently taken at national level in areas where European Union legislation permits different approaches.
  - c) Incident management – well developed practical procedures for managing incidents and emergencies are already in place across the UK (while adhering to the broad requirements for incident management outlined in legislation which are in scope of the framework).

#### **Examples of areas outside of scope of framework**

- 4.17 Because of the complex and interlinked nature of FFSH legislation both at a European Union level and at a domestic level it is likely that in future there may be uncertainty as to whether a proposed change to food and feed safety rules falls within the scope of the FFSH Framework. To offer additional clarity, the following examples are illustrations of the areas that would be considered outside the scope of the UK framework<sup>4</sup> (meaning requirements laid out under the framework will not apply to these areas):
- Enforcement measures: While European Union legislation sets out the general approaches and principles that must be taken for the monitoring and enforcement of feed and food law requirements (which are in scope of the framework), it also provides considerable scope for national enforcement measures, allowing flexibility for competent authorities in setting enforcement provisions. In addition, each nation in the UK has scope to take different approaches to some enforcement measures.

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<sup>4</sup> The FSA and FSS already have an MoU in place which governs ways of working in these areas.

For example, Scotland, Wales and Northern Ireland have extended the scope of where remedial action notices (an enforcement notice) can be used to include all food businesses in comparison to only approved establishments in England.

- Changes in areas where national measures are permitted: Flexibility provisions in the Hygiene Package (commonly understood to consist of: Regulation (EC) No 852/2004 concerning the hygiene of foodstuffs; Regulation (EC) No 853/2004 concerning specific hygiene rules for food of animal origin; Regulation (EC) No 625/2019 with regards to requirements for the entry into the European Union of consignments of certain animals and goods intended for human consumption; and Regulation (EC) No 628/2019 concerning model official certificates for certain animals and goods) specifically exclude certain activities from the scope of the regulation, including direct supply by primary producers of small quantities of primary products to consumers (e.g. raw milk) and local retail establishments directly supplying the final consumer (e.g. eggs, honey, fruit, vegetables, wild game). Member States are obliged to adopt national rules for these activities. An example of where different national measures are already adopted in Scotland and the rest of the UK is raw drinking milk: it is an offence to place raw milk or cream on the market for direct consumption in Scotland, as per Scottish national measures, but not in the rest of the UK, where raw milk sales are permitted on a restricted basis to on-farm sales.
- Operational handling of incidents: The general requirements regarding response to food safety incidents harmonised at European Union level (Regulation EC 178/2002) will remain within the scope of the FFSH Framework. However, the operational management of incidents, where Member States currently have scope to determine their own rules for managing the practicalities of incident response, is considered outside the scope of the framework. Protocols for UK incident handling are covered by the MoU between the FSA and FSS, which refers to the FSA's and FSS' incident management plans. As per agreements set out in the MOU and incident management plans, the FSA is responsible for management of incidents with UK-wide implications, while incidents which do not have an impact extending beyond Scotland are managed under the FSS incident management plan (with requirements for information about such incidents to be shared with FSA).

## **5 Overview of proposed framework**

### **Overview of proposed FFSH Framework**

- 5.1 This section provides an overview of proposals for the FFSH Framework. Further detail on the proposed operation of the framework can be found in the later sections of this document. The FFSH Framework is intended to put in place shared ways of working between the four nations and their food safety bodies to drive for common approaches to retained European Union law (within scope of the framework), where agreed by all four nations. The intention is not to mandate harmonisation, but to recognise that businesses and consumers in all four nations (as well as international trading partners) often benefit from there being one consistent set of FFSH legislation



(where those rules are considered to be in their interests), and agreed approaches for changing FFSH rules. However, the framework also allows for divergence, as there will be instances where it is appropriate for nations in the UK to take different approaches to risk-based consumer protection.

5.2 The FFSH Framework commits the parties to UK approaches for:

- policy development, including
  - undertaking FFSH risk assessment
  - developing risk management options and making risk management recommendations to Ministers within FFSH legislation;
- managing UK pre-market approval and authorisation processes
- managing divergence;
- decision-making;
- implementation of decisions; and
- dispute avoidance and resolution.

5.3 The following principles have been established for the FFSH Framework to underpin shared ways of working while respecting and enhancing the devolution settlements and the democratic accountability of the devolved legislatures:

1. The framework for changing UK FFSH legislation should respect the JMC principles, devolved responsibilities and accountability across the UK.
2. The four nations should work together to develop evidence based approaches for ensuring protection of public health and wider consumer interests, with the aim being to have common approaches to UK food & feed safety and hygiene policy developed and agreed by all four nations where evidence presented supports that position.
3. Flexibility should be provided for administrations to act within the framework to meet local needs and circumstances while delivering the same outcomes.
4. Within the framework, all four administrations should have the ability to diverge within their territory (having followed the principles set out in the framework for managing divergence) where the outputs of risk analysis<sup>5</sup> undertaken by food safety bodies show that divergence is both necessary and proportionate to the risk to provide appropriate consumer protection in all nations.
5. Governance arrangements should be effective and proportionate whilst keeping administrative complexity and burdens to the minimum.
6. The framework should operate transparently: the framework's governance arrangements should be publicly available, and principles for transparency should be built into the framework where appropriate.

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<sup>5</sup> Risk analysis is defined by the World Health Organization as a risk-based approach to the identification and management of public health hazards in food. In the UK, this will follow a structured approach developed and agreed by FSA and FSS comprising the three distinct but closely linked components of risk analysis (risk assessment, risk management and risk communication).

## **FFSH policy development**

- 5.4 The FFSH Framework agreement will set out the commitment of the four nations to deliver joint ways of working. To deliver the framework, new ways of working and governance arrangements will be needed to manage four nations input into the development of risk management advice for Ministers across FFSH policy areas. These new ways of working are being developed to manage the regulatory regime when the UK exits the European Union, building upon existing working arrangements between food safety bodies.
- 5.5 One mechanism through which the framework will be operationalised will be the new risk analysis process (comprising risk assessment, risk management and risk communication) which has been developed as a joint endeavour by the FSA and FSS through the food and feed safety risk analysis project.
- 5.6 Mechanisms will be in place throughout the process to ensure FSA and FSS have opportunity to discuss, and for matters within scope of the framework, agree the prioritisation and triage of issues and risk management proposals (particularly those triaged as “non-routine”), so risk management interventions are effective for the UK as a whole or for individual nations as needed.
- 5.7 To ensure a meaningful four nations approach and allow early and ongoing opportunities for each nation to input into the development of UK policy change it is proposed the framework agreement will include in relation to joint policy development:
- A commitment from all four nations to engage with the other three nations at the earliest opportunity when considering any potential policy changes (For Northern Ireland, where possible this will include discussion of changes that are being discussed at the Joint Consultative Working Group and other committees established under the Northern Ireland Protocol).
  - A commitment from all four nations to notify and share consistent information in all FFSH policy areas at key stages in the policy development process through the mechanisms of engagement agreed for the risk analysis process.
  - A commitment to provide sufficient resources to joint working arrangements.
- 5.8 To deliver on these commitments, it is proposed that there will need to be:
- A consistent mechanism for policy leads in any of the four nations to identify counter parts and share information.
  - Regular engagement between policy leads in all four nations.
  - An administrative function to provide oversight of information sharing between the four nations and joint working arrangements.
- 5.9 In Northern Ireland, European Union risk management decisions will apply for food and feed safety and consequently for any food that comes into the rest of the UK from Northern Ireland. For European Union regulations that will apply only in Northern Ireland under the Protocol, full risk analysis may not be undertaken for some

European Union regulations assessed as routine at triage. Those European Union regulations assessed as non-routine at triage would be prioritised for risk analysis as appropriate to the issue.

### **FFSH risk assessment**

5.10 Risk assessment is a scientific process which assesses the risk associated with food or feed and consists of the following steps: (i) hazard identification, (ii) hazard characterisation, (iii) exposure assessment and (iv) risk characterisation. Having robust risk assessment principles in place is important for providing assurance to consumers, businesses, stakeholders and trading partners that risk assessments are carried out appropriately for ensuring public health protection across the UK. Although some capacity for FFSH risk assessment already exists in the UK, much of the risk assessment required for FFSH is currently carried out by the European Food Safety Authority (EFSA).

5.11 A set of FFSH Framework principles for governing risk assessment have been developed. These principles should provide assurance that risk assessments are responsive to the four nation's needs. The FFSH Framework principles proposed to govern risk assessment are:

- There is a four nations representation at each appropriate stage of the risk assessment as needed.
- Risk assessments are undertaken on a UK wide basis, but with capacity for non-UK wide risk assessments where particular issues require single nation approaches (risk assessment done on a UK wide basis could also include nation specific outputs, which would allow for comparison of risk across the four nations).
- Risk assessments are independent, free from undue influence and are carried out according to recognised international principles.
- There is a suitable challenge mechanism in the risk assessment process once we have left the European Union.
- There are appropriate governance arrangements in place for recognising devolved matters in the prioritisation, commissioning and quality assurance of risk assessments.
- The FSA will consult the relevant home nation with regard to any issues, evidence or analysis specific to that nation, with the aim of ensuring that risk assessments properly reflect the situation in the different constituent parts of the UK, as far as the evidence allows.
- There is the capacity for a number of different outputs / approaches where required – this could include:
  - RA undertaken on a UK basis with one UK output.
  - RA undertaken on a UK basis with nation specific outputs.
  - RA undertaken on a single nation basis.
  - RA undertaken for more than one nation but not all four.
- Where nation specific outputs are requested / needed risk assessments will capture any different county specific characteristics, nuances and demographics.

- Supplementary information on nation specific issues will be based on robust data sources, for example the National Diet and Nutrition Survey.
- Any difference in risk assessment conclusion for nation specific outputs are clearly set out, explained and justified.

5.12 As part of the risk analysis process, the FSA, in conjunction with FSS, is working to determine how risk assessments will be undertaken, commissioned and prioritised. The principles for risk assessment agreed within the UK framework are reflected in the FSA and FSS risk assessment process. This will ensure that risk assessments are responsive to the four nation's needs.

### **FFSH risk management**

5.13 Within the scope of the UK framework, the risk analysis process will bring together officials from across the UK to consider risk management proposals on issues in scope of the framework.

5.14 Opportunities for four nations discussion will exist at all stages of risk management to ensure that all relevant considerations are taken into account when forming risk management advice and recommendations. Discussion on issues such as terms of reference and potential membership of any joint risk management groups will take place in phase 4 of framework development.

5.15 The risk analysis process will operate transparently, enhancing trust and confidence once the UK is outside of the European Union framework. The process will seek to provide, wherever appropriate, a cohesive UK risk management opinion on matters of food and feed.

### **UK pre-market approval and authorisation processes**

5.16 Where changes are driven by businesses (for example an application for the authorisation of a new feed or food additive), the Framework commits all parties to a single application process for businesses applying for pre-market approvals and re-authorisations for the GB market. Where applications are made by businesses for the authorisation of a new regulated food or feed product, or for renewals of existing authorisations, these can be submitted via an online portal. All information/data submitted in support of applications will be accessible to the relevant leads in each of the four nations. The operational detail of this has been developed by FSA and FSS officials.

5.17 Businesses applying for pre-market approvals and re-authorisations for the Northern Ireland market will submit applications to the relevant body as set out in European Union legislation (ESFA or the European Commission).

## **Managing divergence**

5.18 In making changes to retained European Union food & feed safety and hygiene legislation within scope of the framework, the four nations will aim to develop common policy approaches where this is appropriate. Where it is considered that a common approach is not the most suitable for taking forward changes to FFSH legislation, the following principles have been developed to manage divergence:

- Where one or more nation wishes to diverge from a four nations approach to food & feed safety and hygiene, before divergence can happen, nations must first see if they can agree a common approach that accommodates the desired outcomes of individual nations.
- In line with normal working arrangements, proposals should be discussed on a four nations basis using existing forums in place between FSA and FSS to develop the proposed approaches.
- Where a common approach cannot be agreed through normal policy routes, and divergence is not considered acceptable by one or more nations in the UK, then the dispute resolution mechanism can be engaged.
- In Northern Ireland, officials and Ministers will still have the opportunity to fully participate in discussions on how potential divergence will be managed across the UK even when those issues fall within scope of the Northern Ireland Protocol.

## **Ministerial decision-making**

5.19 Governance arrangements are needed for how the appropriate authorities (namely UKG and DA Ministers) take decisions based on joint recommendations from food safety bodies. While Ministers will ultimately retain the right to take individual decisions for their nation, as with officials, for areas within scope of the framework a consensus should first be sought, and efforts made to resolve any disputes. Proposals for the governance around Ministerial decision-making are covered in section 7.

## **Implementation of decisions**

5.20 The mechanisms for joint working should provide, as part of proposed recommendations to Ministers, a recommendation on the most appropriate means for implementing decisions within scope of the framework, including whether decisions should be implemented in primary or secondary legislation or guidance, when they should come into effect. Shared processes for communicating changes to UK businesses and consumers should be used where appropriate.

5.21 UK-wide primary legislation will only be taken forward where consent has been sought of DA Ministers (as is the case at present) as well as Scottish and Welsh parliaments and the Northern Ireland Assembly under respective devolution settlements.

- 5.22 As noted in section 4, work will be undertaken in 2021 to assess the case for including concurrent powers in specific areas. If concurrent powers are put in place in certain areas, further consideration will be needed as to how the parties to the framework will determine the appropriate approach to take in these areas (i.e. whether to implement decisions through UK-wide legislation or separate legislation in one or more nation).

### **Dispute resolution**

- 5.23 The process for resolving disputes at official level is expected to only be needed in a very small number of cases as the majority of the time food safety bodies are likely to agree on the recommendation for Ministers. Dispute resolution processes should only be used if resolution through normal working processes has not been possible. In some areas, commonality of approach will not be needed in order to meet the JMC principles, and in these cases divergent approaches could be recommended to Ministers. Where disputes do arise, they should be handled with adherence to the agreed principles and processes for resolution. The proposed operational detail of dispute resolution within the FFSH Framework is set out in section 12.

### **Framework implementation**

- 5.24 As noted in section 4, the FFSH Framework will primarily be implemented through non-legislative agreements. The Framework will be implemented through:
- a concordat between the four Governments (signed by Health Ministers); and
  - a revised FSA-FSS MoU (setting out the elements of the Framework delivered by the food safety bodies of the UK).

## **6 Detailed overview of areas where no further action is thought to be needed**

- 6.1 There are areas within FFSH where European Union legislation offers flexibility for the law to be applied in different ways, with scope for national measures to achieve common outcomes permitted by the legislation. In these areas, different decisions may be taken by individual administrations across the UK. These areas will be considered explicitly outside the scope of the UK framework. Section 4 of this document provides further detail on the scope of the FFSH Framework and specifies the elements of FFSH that are outside the scope of the framework, where proposals made in this document would not apply (for example, areas such as incidents handling, risk assessment during incidents, specific elements of the hygiene package and local enforcement). It should be noted that working arrangements between the food safety bodies on some of the 'out of scope' areas are already covered in an MoU between FSS and FSA (which will be revised to reflect new ways of working as a result of the framework proposals and European Union exit projects).
- 6.2 There are no areas of retained harmonised European Union FFSH legislation where it has been identified as undesirable to maintain shared ways of working for the development of FFSH policy.

## PART 3: PROPOSED OPERATIONAL ELEMENTS OF FRAMEWORK

### 7 Decision making

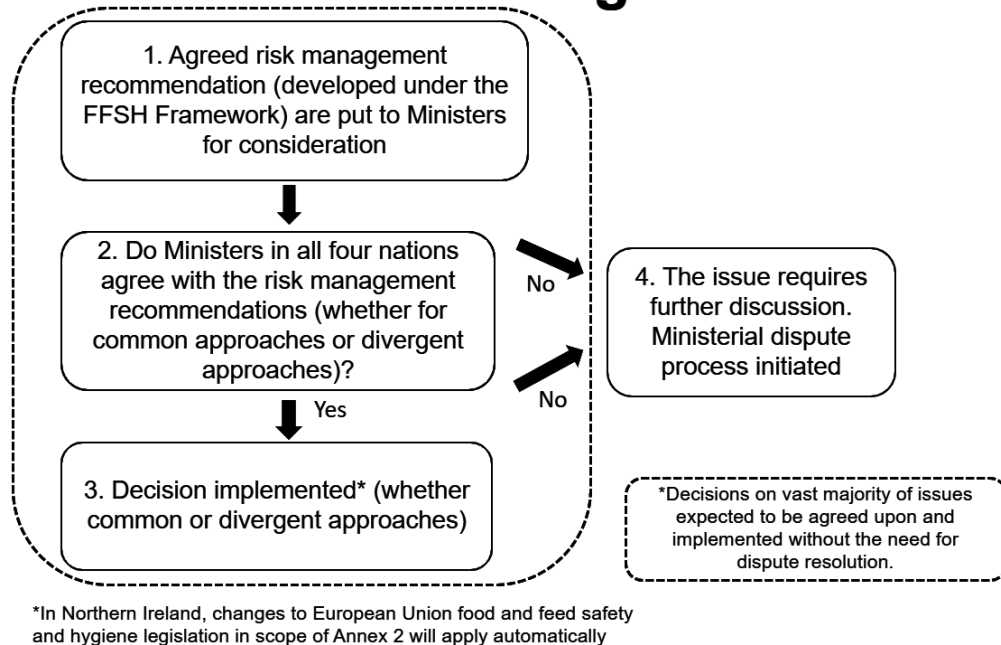
- 7.1 After European Union Exit, the appropriate authorities (namely UKG and DA Ministers) will need to take decisions on future changes to all areas of retained European Union FFSH law based on recommendations from officials. This will include both technical changes made through secondary legislation (of which there are likely to be many) as well as any changes to or new primary legislation that fall within scope of the framework. Annex 1 provides a detailed breakdown of the areas of European Union FFSH legislation where changes could occur. Annex 2 provides a breakdown of the retained European Union legislation.
- 7.2 Governance arrangements are needed under the framework for how Ministers will take decisions for their nations based on recommendations from food safety bodies (as jointly agreed by officials across the UK through the risk analysis process) in areas within scope of the framework. While Ministers will ultimately retain the right to take individual decisions for their nation (notwithstanding issues in scope of the Northern Ireland Protocol), as with officials, for areas within scope of the framework a consensus should first be sought on the approaches to take, and efforts made to resolve any disputes. For Ministerial decision making it is proposed that:
- Where timelines are prescribed in retained European Union law, decision-making processes should operate to these.
  - Officials should seek decisions from Ministers at approximately the same time.
  - Where Ministers do not agree on the recommendation made by food safety bodies (either for a common approach or divergent approaches across the UK) the Ministerial dispute resolution mechanism can be engaged (see section 12) to see if a consensus can be reached by portfolio Ministers (this is separate to the official level dispute resolution process, which deals with disputes arising at official level).
  - Ministers' responses to recommendations should be managed and tracked, and policy officials in each of the four nations should share information on respective Ministers' responses to recommendations.
- 7.3 When recommendations are made to Ministers by food safety bodies, Ministers will be made aware of the recommendations being made in all four nations (whether for common or divergent approaches). Officials then provide an explanation of the underpinning rationale for the recommendations, including an explanation as to why the specific approaches are considered to be appropriate. The evidence supporting any recommendation (either for common or divergent approaches) would have been generated through a risk analysis process in which all four nations will participate. See section 5 for more information on the risk analysis process.
- 7.4 It is proposed that the Ministerial decision-making process would follow the process outlined in Diagram 1. Where divergent approaches are recommended to Ministers or one or more Minister is not content to proceed, Ministers have the opportunity to consider whether they are content for respective approaches to be implemented; if

not they can decide to escalate the issue and engage the dispute avoidance and resolution mechanism (see section 12 for details).

- 7.5 There are no areas in scope of the framework where decisions will need to be taken by third parties, or by individual administrations without the issue having been considered through the risk analysis process and Ministerial decision-making process.

**Diagram 1:**

## Ministerial Decision Making Process



### 8 Roles and responsibilities of each party to the framework

See Section 9.

### 9 Roles and responsibilities of existing or new bodies

- 9.1 The FFSH Framework will commit the four nations to participation in ways of working set up as a result of the European Union Exit in part to deliver the framework (such as the risk analysis process) and the formalisation of existing or new working arrangements (such as the FFSH Frameworks Management group). Each of these will have specific roles and responsibilities within the framework.

#### Four nations working level arrangements

- 9.2 As detailed in the risk analysis process, if one or more nation has a specific issue that they wish to discuss at a working level on a four nations basis in relation to any area within scope of the framework, all four nations are committed to engaging on the issue at a working level. When policy leads from the four nations are engaging to jointly develop risk management recommendations they will do so under agreed ways



of working (which will be developed as part of the risk analysis process). These principles will strengthen existing working arrangements between the four nations of the UK.

### **FFSH Frameworks Management Group**

- 9.3 A FFSH Frameworks Management Group will be established to provide oversight of the FFSH Framework. The group would be made up of senior representatives between Grade 6 and Deputy Director level from food safety bodies from all four nations. Key responsibilities would include:
- considering amendments to the framework;
  - undertaking reviews of the framework in line with the agreed Terms of Reference (noting that any recommended changes to the framework Concordat would be subject to Ministerial approval);
  - reporting on the FFSH Framework to the appropriate authorities (JMC, FSA/FSS Boards, Ministers etc.); and
  - resolving working level disputes on disagreements on interpretation or breaches of the agreed framework processes. See Annex 4 for Terms of Reference.

### **Four Nations Director Group**

- 9.4 The Four Nations Director Group would act as the initial stage of escalation within the official level dispute resolution process for policy disputes. This group will meet on an ad-hoc basis as and when required, and membership will comprise of the relevant directors from the food safety bodies as the dispute in hand requires. See Annex 5 for Terms of Reference.

### **FSA and FSS Boards**

- 9.5 The FSA and FSS boards have both made commitments to collaborative working on risk analysis: further information can be found in Board papers published on both organisations' websites. This will commit all four nations to being open and transparent in how risk management recommendations were reached, upholding the public interest in relation to food and protecting public health and consumers' wider interests in food. Both boards have made commitments to publishing the advice they provide and the evidence on which that advice is based, to fulfil both organisations' longstanding principles of openness and transparency.
- 9.6 The FSA and FSS Boards will play a role in assuring that the Framework is operating effectively. This assurance will be provided through the assurance processes for risk analysis (which both Boards have agreed), the annual review of the FSA-FSS MoU and the joint annual framework report carried out by the FSA-FSS Frameworks Management Group.

## **10 Monitoring and enforcement**

- 10.1 The FFSH Frameworks Management Group (comprising senior officials from all four nations) will monitor the functioning of the framework and assess any new needs of the framework at regular intervals (see section 11). The Frameworks Management Group should oversee the functioning of the framework, and any requests to amend any element of the framework should be raised to this group in the first instance. The group should agree what information it will need and on what frequency to provide assurance as required that the framework is operating effectively.
- 10.2 The dispute avoidance and resolution mechanisms (at both official and Ministerial level) will also be key components in ensuring the framework is adhered to. Any perceived breach of the agreed framework processes would be handled through the dispute avoidance and resolution processes (see section 12).

## **11 Review and amendment**

- 11.1 There will be a need to review the FFSH Framework after it is put into practice. It is proposed that the FFSH Frameworks Management Group (a senior officials group with representatives from all four nations) should initially meet every quarter to review the delivery and operation of the framework and assess any new needs of the framework. The first full post implementation review should be carried out one year after the framework is implemented; the group will report on the review to those with assurance responsibilities for the framework (likely to include the FSA and FSS Boards, portfolio Ministers and JMC (EN). After that the frequency on framework reviews should be proposed by the Frameworks Management Group to the relevant decision makers (taking account of departmental and wider framework Governance requirements).
- 11.2 Requests to amend any element of the framework should be raised to the Frameworks Management Group. A Terms of Reference has been developed detailing requirements and timescales (see Annex 4).

## **12 Dispute resolution**

- 12.1 The dispute avoidance and resolution processes should only be engaged once all normal avenues to try and resolve the dispute have been exhausted. The Framework governance provides mechanisms for good communication and cooperation, which should reduce the likelihood of disputes arising. Where disputes do occur, consensus should be sought on the approach to take and efforts made to resolve the dispute. Actions under dispute should be paused pending resolution through the dispute resolution mechanism.
- 12.2 Disputes could potentially arise at official level or at Ministerial level. Where disputes arising at official level cannot be resolved through officials' dispute avoidance and resolution process, they should be escalated to Ministerial level.

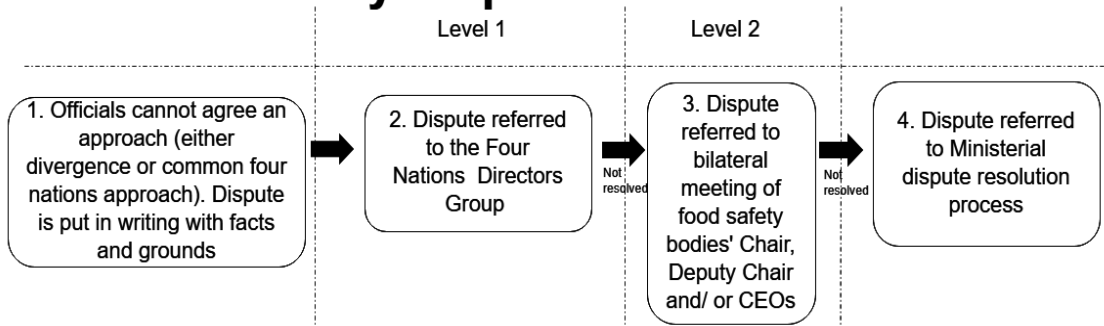
- 12.3 There is a distinction between a ‘difference’ and ‘dispute’. Differences may arise at any level, even Ministerial, and may be resolved without being elevated to the level of ‘dispute’ thus avoiding the formal resolution process. For example, a clarification provided by an exchange of emails or letters between senior officials or even Ministers may resolve a concern or potential issue. It should be noted that commonality of approach will not be needed to meet the JMC principles and therefore an “agreement to diverge” would be appropriate on some issues. If an issue cannot be resolved and it is necessary to escalate the issue to ministerial level, Ministers will be informed of the dispute in their advice from the parties and it will be for Ministers to determine whether they raise the dispute with their counterparts.
- 12.4 Where disputes do arise, they should be managed with adherence to the following principles:
- Commitment to evidence-based approaches to resolving disputes
  - Transparency (auditable, open to scrutiny unless legal requirements for non-disclosure)
  - Timely resolution (meeting deadlines for actions/stages, agreement to accelerated timescale in emergencies)
  - Compliance (with process and outcome)

#### **Officials’ dispute resolution**

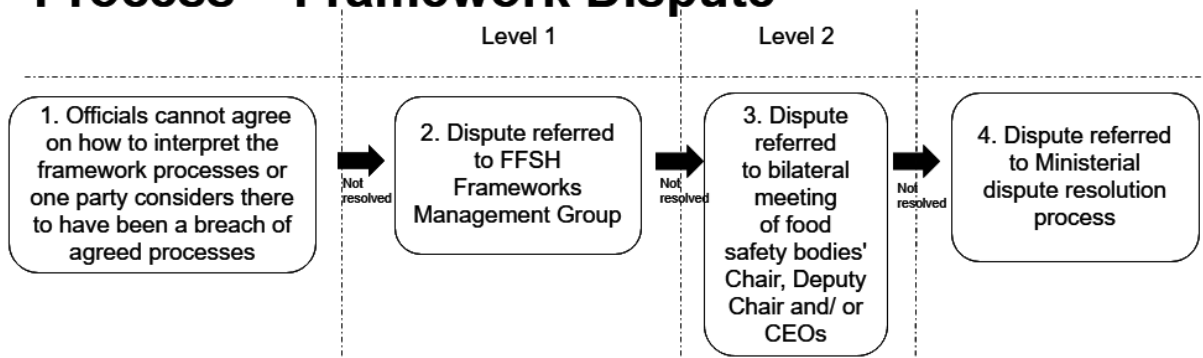
- 12.5 At official level, disputes could either arise:
- a) Over disagreement on the approach to a policy issue, where officials cannot agree an approach (either to recommending common approaches, or to recommending that divergence is appropriate); or
  - b) Over disagreement on the functioning of the framework, where officials in one or more nation consider officials in another nation/ nations to have breached an element of the agreed framework processes.
- 12.6 In either type of dispute, for areas within scope of the Framework, the issue should first pass through the officials’ dispute avoidance and resolution processes. In the rare instances where officials cannot resolve a dispute and it is escalated to Ministers, the Ministers’ dispute avoidance and resolution protocol should be engaged (see below).
- 12.7 Diagram 2 sets out the different levels of escalation for different types of disputes arising at official level.

**Diagram 2:**

## Officials' Level Dispute Avoidance & Resolution Process – Policy Dispute



## Official Level Dispute Avoidance & Resolution Process – Framework Dispute



12.8 **Level 1:** at level 1 there are two different groups where disputes may be discussed depending on the type of dispute (either a dispute on a policy issue; or a dispute relating to the functioning of the Framework). If the dispute is around the policy recommendation, then the dispute is referred to a four nations Directors group. This group is an ad-hoc group called together only when disputes need to be resolved. The group should consist of the relevant Directors from across the food safety bodies and OGD representatives if required.

12.9 If the dispute is around the functioning of the framework itself, then the dispute is referred to the FFSH Frameworks Management Group. This group should consist of senior officials from food safety bodies in all parts of the UK and should have responsibility for overseeing the functioning of the Framework (for example, the annual review of the Framework) as well as seeking to resolve disputes that arise around the functioning of the Framework.

12.10 **Level 2:** at level 2, disputes should be handled through the same mechanism regardless of the type of dispute. Bilateral meetings already regularly happen between the FSA Chair/CEO and the FSS Chair/CEO. It is proposed that when a

dispute is escalated to level two, the bilateral meeting is used as the forum for discussing the dispute and that the Deputy Chair of each food safety body should also participate in the dispute discussion.

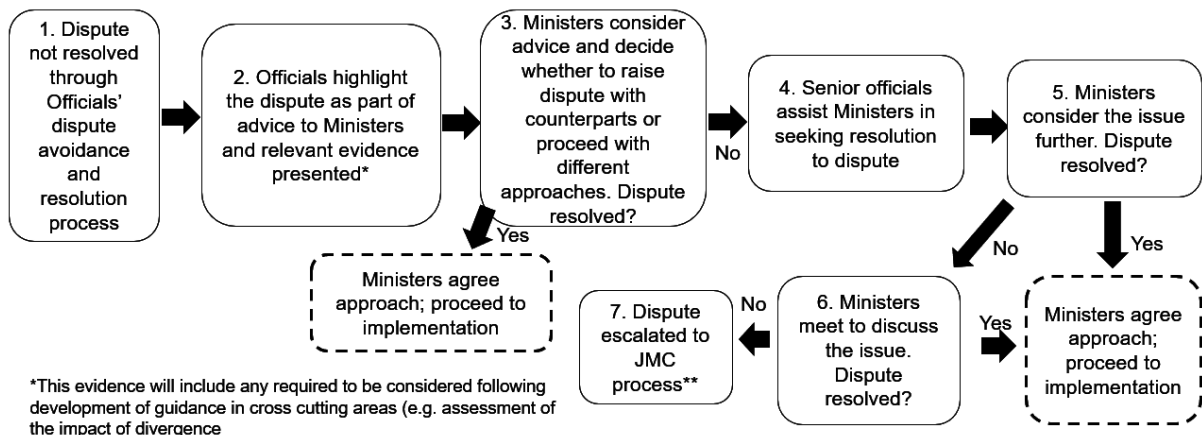
**Ministers’ dispute resolution**

12.1 In rare instances where Ministers do not reach unanimous agreement on a joint recommendation from food safety bodies, and in instances where officials cannot agree an approach (having attempted to reach agreement through the officials’ dispute avoidance and resolution process), then the Ministers’ dispute avoidance and resolution mechanism will be used to resolve the dispute and reach agreement on appropriate approaches.

12.2 In either of these situations, disputes should be handled with adherence to the same principles as the officials’ dispute avoidance and resolution process. Diagrams 3 and 4 set out the two different ways disputes could be escalated to Ministerial level.

**Diagram 3:**

## Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Official Level

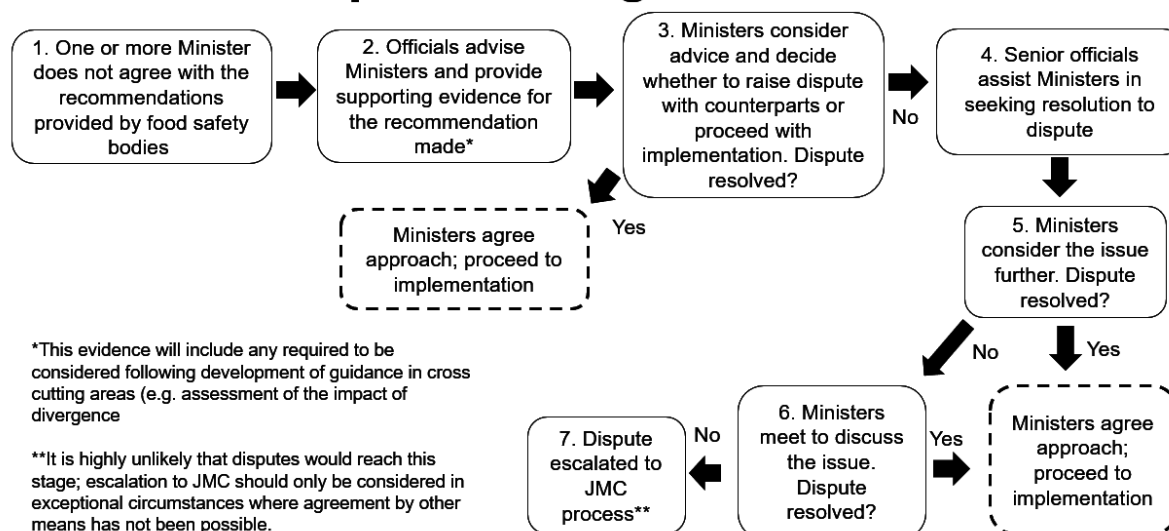


\*This evidence will include any required to be considered following development of guidance in cross cutting areas (e.g. assessment of the impact of divergence)

\*\*It is highly unlikely that disputes would reach this stage; escalation to JMC should only be considered in exceptional circumstances where agreement by other means has not been possible.

**Diagram 4:**

## Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Ministerial Level



- 12.11 Disputes could arise at official level if officials cannot agree either to recommending a common approach, or to recommending that divergence is appropriate. Initially, the issue should pass through the officials' dispute avoidance and resolution processes. If it is not possible to resolve the issue through official level processes, the issue would be raised to Ministerial level for a decision on how to proceed.
- 12.12 In this situation, officials would highlight the disagreement at official level alongside respective food safety bodies' advice to Ministers including any relevant evidence (including any required to be considered following development of guidance in cross cutting areas, such as an assessment of the impact of divergence). It would be for Ministers to review the impacts of the proposed approaches before taking a decision on whether to proceed, or to raise a dispute at Ministerial level.
- 12.13 If Ministers could not agree to proceed with the recommended approaches having reviewed the evidence, the issue would continue through the stages of the dispute process: officials would provide assistance to Ministers in seeking resolution as requested, and further consideration of the issue would be given by Ministers.
- 12.14 If the dispute could not be resolved during these stages, portfolio Ministers would meet in person to discuss the issue. If resolution could still not be reached, the issue would be escalated to the JMC process (though it is considered that disputes would very rarely be escalated to this level).
- 12.15 Disputes could also arise at Ministerial level in cases where one or more Minister was not content to proceed with the recommendation from food safety bodies. In these cases, the issue would come back to officials in all four nations to carry out a review

of the evidence (including the impacts of decision(s) taken) and provide further advice to Ministers. If the divergence was not considered to be acceptable, a dispute could be raised, following the same stages of escalation.

- 12.16 It will be necessary to continue to discuss the interdependencies of the FFSH Framework dispute avoidance and resolution processes with cross-cutting areas such as internal market considerations and international trade implications to ensure the dispute avoidance and resolution processes of the 'vertical' policy framework joins up appropriately with any 'horizontal' cross-cutting frameworks as these are developed.
- 12.17 In Northern Ireland, for issues in scope of the Northern Ireland Protocol, officials and Ministers will still be a full participant in any four nations correspondence or discussions that take place as part of dispute resolution processes

## **PART 4: PRACTICAL NEXT STEPS AND RELATED ISSUES**

### **13 Implementation**

#### **Next Steps**

- 13.1 Once Ministers' provisional agreement is given and JMC has agreed to the implementation of the FFSH Framework, preparation to implement the Framework will begin.
- 13.2 The non-legislative agreements that will implement the FFSH Framework will then be signed. These are:
- the Concordat between the four Governments (signed by Health Ministers); and
  - the revised FSA-FSS MoU (setting out the operational detail of the Framework, signed by FSA and FSS CEOs).
- 13.3 Work will also be needed to:
- ensure that the proposals set out in the framework are flexible enough to align with the outcomes of FR negotiations.
  - understand how the governance of the framework might interact with any potential commitments made to the European Union to demonstrate UK wide compliance with FR commitments.

## **Resource requirements**

- 13.4 There will be resource requirements to develop and implement the framework and then ongoing resource requirements to support the effective functioning of the framework. Once implemented, the framework will require continued resourcing from all four nations in the policy groups, supporting Ministerial decision-making and the Frameworks Management Group.
- 13.5 A significant proportion of this resource would be required anyway to support delivery of FFSH after the European Union Exit and taking a four nations approach under the framework will ensure that expertise is shared and resource requirements are actually lower overall than if the four nations were taking this work forward individually. However, it is likely that ongoing resource and funding requirements will be needed to enable effective functioning of the framework.



## **ANNEX 1 – DETAILED BREAKDOWN OF EUROPEAN UNION FFSH LEGISLATION**

### **General Food Law & Hygiene**

#### Food and feed safety (as set out in General Food Law)

Regulation (EC) No 178/2002<sup>6</sup> is often referred to as ‘General Food Law’ and is the key piece of legislation laying down high-level principles underpinning the placing of safe food and feed on the market in the European Union. It establishes and describes institutions and bureaucratic functions concerning food and feed safety. The main objectives of food and feed law are to guarantee a high level of protection of human health and consumers’ interests in relation to food and to ensure free movement of food and feed manufactured and marketed in the European Union. A number of functions are provided by the Commission or other European Union bodies under food and feed law (such as the European Food Safety Authority (EFSA) and tools for sharing of food safety information (such as the Rapid Alert System for Food and Feed (RASFF)).

The main objectives of food and feed law are to:

- guarantee a high level of protection of human life and health and the protection of consumers’ interests;
- ensure free movement of food and feed manufactured and marketed in the European Union, in accordance with the General Food Law Regulation; and
- facilitate global trade of safe feed and safe, wholesome food by taking into account international standards and agreements when developing Union legislation, except where this might undermine the high level of consumer protection pursued by the European Union.

A number of functions are provided by the Commission or other European Union bodies under food and feed law:

- Standing Committee on Plants, Animals, Food and Feed (SCOPAFF) provides expertise to ensure legislation/measures are up to date, practical and effective.
- EFSA undertakes risk assessments for food and feed safety as well as providing scientific advice and support.
- Commission provides tools for sharing of food safety information (such as RASFF).

#### Food hygiene regulations

Regulation (EC) Nos 852/2004 and 853/2004 set out the requirements for the hygiene of foodstuffs and hygiene rules for food of animal origin. The hygiene package establishes the general principles for food hygiene controls and harmonised approaches. The legislation lays down the food hygiene rules for all food businesses, applying effective and proportionate controls throughout the food chain, from primary production to sale or supply to the final consumer. Commission Regulation (EC) No 2073/2005 provides that food business operators undertake sampling and testing to ensure that foodstuffs comply with the microbiological criteria set out in that Regulation.

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<sup>6</sup> Pursuant to Article 288 of the Treaty of the Functioning of the EU, EU Regulation has general application and is binding in its entirety and directly applicable on all Member States. This applies to all references to EU regulation.

Regulation (EC) No 852/2004 applies general hygiene rules for all food businesses on the hygiene of foodstuffs. Regulation (EC) No 853/2004 provides specific hygiene rules for food products of animal origin.

Commission Regulation (EC) No 2073/2005 lays down the microbiological criteria for certain microorganisms, and in certain food commodities.

### Feed hygiene requirements

Regulation (EC) No 183/2005 lays down general rules on feed hygiene; conditions and arrangements ensuring traceability of feed; and conditions and arrangements for registration and approval of establishments to ensure a high level of consumer protection with regard to food and feed safety. Additionally, Regulation (EC) No 767/2009 the objective of which, in accordance with the general principles laid down in Regulation (EC) No 178/2002, is to harmonise the conditions for the placing on the market and the use of feed, in order to ensure a high level of feed safety and thus a high level of protection of public health, as well as to provide adequate information for users and consumers and to strengthen the effective functioning of the internal market.

There are also additional European Union Regulations and Directives relating to feed setting out restrictions on undesirable substances (Directive 2002/32/EC) and feed for particular nutritional uses (Commission Directive 2008/38/EC).

### Food Safety Standards

European Union regulations and directives cover requirements for:

#### Food Improvement Agents, and Feed Additives including:

- Food additives;
- Food enzymes;
- Food flavourings;
- Feed additives; and
- Extraction solvents.

Food improvement agents and feed additives are governed by harmonised rules across the European Union. Food improvements agents and feed additives require authorisation before products can be placed on the market. Proposed authorisations and withdrawals are considered at Working Group level by technical experts from all Member States following a safety assessment by the European Food Safety Authority (EFSA). The final risk management decision on authorisations and withdrawals from the market is taken by the European Commission based on qualified majority voting at Standing Committees (sub-sections of the Standing Committee on Plants, Animals, Food & Feed (SCOPAFF)) with responsibility for food and feed safety, and are brought into effect through legislation.

European Union Regulations provide for: harmonised lists of approved food improvements agents (additives and flavourings), conditions for authorisation and use for food additives, food enzymes, food flavourings; rules on the labelling of certain food improvements agents (including the so called "Southampton colours"); and specifications (purity criteria) for permitted substances. European Union Regulations list those feed additives authorised for use. In some cases, it lays down restrictions / conditions of use.

In relation to feed additives, Regulation (EC) 1831/2003 specifies the information which must appear on additive and premixture labels. It covers zootechnical additives, some categories of which are the responsibility of the Veterinary Medicines Directorate (VMD). In addition,

Commission Regulation (EC) No 429/2008 sets out detailed rules for the implementation of Regulation (EC) No 1831/2003 with regard to the preparation and presentation of applications and the assessment and the authorisation of feed additives. Individual Commission Delegated Acts cover the authorisation of feed additives and any particular conditions of use. The process covers first time authorisations and renewal of existing authorisations and is a fast-moving area.

Enforcement is delegated to local authorities and powers for enforcement are provided by the Food Additives, Flavourings, Enzymes and Extraction Solvents (England) Regulations 2013; and the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015. Separate, equivalent regulations are in place in the devolved nations, and DAERA is the enforcement authority for feed in NI.

#### Food Contact materials and contaminants of food and feed, including:

- Food and feed contaminants;
- Food contact materials;
- Radioactive contamination of food and feed; and
- Feed detoxification processes.

Food contact materials and articles such as packaging, containers, cutlery, kitchenware, food handling gloves and plates etc are governed by general safety rules across the European Union and more specific rules for the manufacture, marketing and use of certain materials. In addition, specific European Union measures are in place for plastics, recycled plastics, regenerated cellulose film, lead and cadmium from ceramics and active and intelligent materials and articles. However, in areas where there are no specific European Union measures, Member States may maintain or adopt their own national provisions on other FCMs. For other materials and articles, the European Union deploys the principle of mutual recognition which guarantees that any product lawfully sold in one the European Union Member State can be sold in another, even if the product does not fully comply with the technical rules of the other nation.

European Union Regulations provide detailed requirements to ensure that any migration of chemicals from food contact materials and articles into food is at levels that will not harm human health nor detrimentally affect the nature and quality of the food. The Regulations also require operators to document both good manufacturing practice procedures and legal compliance of goods (including requirements for declarations of compliance).

Enforcement is delegated to local authorities and powers for enforcement are provided by the Materials and Articles in Contact with Food (England) Regulations 2012. Separate, equivalent regulations are in place in the devolved nations.

#### Contaminants

Contaminants in food and feed are governed by general principles and more specific harmonised rules across the European Union that aim to manage the presence of chemical contaminants in food and feed and ensure that any presence does not compromise public and animal health.

European Union Regulations establish harmonised general principles for food contaminants and provide specific maximum levels for certain foods/contaminants which take account of EFSA risks assessments on the contaminant in question. In general, where specific maximum levels are provided at European Union level for a contaminant there are no

national rules. However, national limits may exist where the European Union has not acted although this can create intracommunity trade problems.

There are some existing examples of relaxation of rules at national level (agreed at the European Union level) where local produce contains higher levels of contamination (e.g. fish from the Baltic sea). Such relaxations allow for local fishing and consumption as long as produce is not marketed outside the nation.

In addition to the European Union legislation, European Union codes of practice are also used such as for the reduction of fusarium and ochratoxin A mycotoxins in cereals which apply in the UK.

Enforcement is delegated to local authorities and powers for enforcement are provided by the Contaminants in Food (England) Regulations 2013. Separate, equivalent regulations are in place in the devolved nations.

### Undesirable substances

Directive 2002/32/EC deals with undesirable substances in products intended for animal feed. The aim of this European Union legislation is to ensure that feed is put into circulation only if it is sound, genuine and of merchantable quality and, when correctly used, does not represent any danger to human health, animal health or the environment and does not adversely affect livestock production. This legislation prohibits the dilution of contaminated feed materials and it includes maximum limits for heavy metal presence such as arsenic, lead, mercury and cadmium as well as for arsenic, dioxin, aflatoxin, certain pesticides, and botanical impurities in certain feed materials, feed additives and feeding stuffs.

Enforcement is delegated to local authorities and powers for enforcement are provided by The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015. Separate, equivalent regulations are in place in the devolved nations.

### Radioactive contamination of food and feed

Council Directive 2013/59/EURATOM establishes uniform basic safety standards for the protection of the health of individuals subject to occupational, medical and public exposures against the dangers arising from ionising radiation. These standards set limits and reference levels that take into account total exposure from all sources (ingestion, inhalation and external exposure). The Directive specifically prohibits the deliberate addition of radioactive substances in the production of foodstuffs, animal feeding stuffs, and even cosmetics. It also prohibits the import or export of such products.

Council Regulation (Euratom) 2016/52 sets maximum permitted levels of radioactive contaminants in food and feed following a future nuclear accident or other radiological emergency. Regulations also cover checks and controls on the import of specific foods from nations affected by the Chernobyl nuclear accident (Council Regulation (EC) No 733/2008 and Commission Regulation (EC) No 1635/2006) and from Japan following the Fukushima nuclear accident (Commission Implementing Regulation (EU) 2016/6). Enforcement powers are provided by declarations under the Official Food and Feed Controls (England) Regulations 2009 and the Trade in Animal and Related Products Regulations 2011 in England. Separate, equivalent regulations are in place in the devolved nations.

### Feed Detoxification processes

Detoxification processes can be applied to non-compliant animal feed to remove, breakdown into harmless compounds, destroy, or metabolise specific undesirable substances. Once the

feed has undergone detoxification it may be placed on the market. To ensure that the detoxified feed does not endanger animal and public health and the environment and that the characteristics of the feed are not adversely altered all processes are safety assessed by EFSA.

European Union Regulations provide acceptability criteria for the authorisation of detoxification processes, whilst the substances that may be removed are listed in the European Union Directive 2002/32/EC. The Directive prohibits the use of products intended for animal feed which contain levels of undesirable substances exceeding the maximum levels laid down in Annex I of that Directive. It is down to competent authorities to authorise a company to use the process permitted at European Union level.

#### GMOs (food and feed); Irradiated Food and Novel Foods, including:

- GMOs food & feed authorisations and labelling;
- GMOs traceability and labelling;
- Irradiated food; and
- Novel foods.

GMOs for use in food and feed are subject to a centralised authorisation procedure with a prior safety assessment before they can be placed on the market. European Union Regulations provide a harmonised procedure for the scientific assessment and authorisation of GMOs and GM food and feed with the European Food Safety Authority (EFSA) responsible for risk assessments.

European Union Regulations are in place for the traceability and labelling of GMOs and the traceability of food and feed products produced from GMOs. This provides a harmonised European Union system for identifying GM products throughout the supply chain that covers any products (including food or feed) consisting of or containing GMOs, food produced from GMOs and Feed produced from GMOs which are placed on the market. Responsibility for the safety of GMOs for food and feed use rests with the FSA.

Enforcement is delegated to Local Authorities and powers for enforcement are provided by the Genetically Modified Food (England) Regulations 2004 and the Genetically Modified Organisms (Traceability and Labelling) (England) Regulation 2004. Separate, equivalent regulations are in place in the devolved nations.

Policy on the cultivation of GM crops and environmental release of GMOs in England rests with Defra.

#### Irradiated Food

European Union Directives 1999/2/EC and 1999/3/EC and related Commission Decisions setting out the foods and food ingredients that may be treated with ionising radiation and the establishments that are permitted to carry out food irradiation. Irradiation treatment can be used to destroy bacteria and other micro-organisms which cause food-borne illness, extend shelf-life by delaying ripening or sprouting and remove insect infestations. These Directives are implemented in England by the Food Irradiation (England) Regulations 2009. Separate, equivalent regulations are in place in the devolved nations.

These Regulations set out the requirements and procedures for the approval (licensing) of food irradiation facilities in the UK and the restrictions on importation, storage, transport and sale of irradiated foods by other food businesses. There is one licensed facility in the UK however, at present it is not operating in this capacity.

The licensing of food irradiation facilities ensures that food is treated following international (Codex) standards. Properly irradiated food poses no food safety risk but is seen as a consumer choice issue and this legislation ensures traceability of irradiated food so that information can be made available to consumers (ultimately through labelling requirements in the Food Information Regulations 2014).

Enforcement in respect to provisions related to a licensee is the responsibility of the FSA or FSS. Enforcement of provisions other than those of a licensee is delegated to local authorities and powers for enforcement are also provided by The Food Irradiation (England) Regulations 2009. Separate, equivalent regulations are in place in the devolved nations.

### Novel Foods

Regulation (EU) 2015/2283 concerning novel foods establishes the concept of a novel food (foods that do not have a significant history of consumption in the European Union before May 1997) and sets out that these foods cannot be marketed within the European Union until they are demonstrated to be safe. The regulation provides for a centralised risk assessment process for both novel foods and a subcategory of these traditional foods from of novel foods. It provides a mechanism by which Member States can share information in order to decide on whether or not foods fall within the scope of the Regulation. Implementing regulation (EU) 2017/2470 establishes the European Union list of novel foods.

Enforcement is delegated to local authorities and powers for enforcement are provided by the Novel Foods (England) Regulations 2018. Separate, equivalent regulations are in place in the devolved nations.

It is noted that labelling requirements are an integral part of the authorisations for some products within scope (e.g. novel foods) and whilst general labelling will be picked up elsewhere, as a legitimate risk management tool specific safety labelling remains directly relevant to food safety common frameworks.

### Official Controls for Food and Feed

Regulation (EU) No 2017/625 (the Official Controls Regulation) applied from 14<sup>th</sup> December 2019. It sets out rules for the performance of official controls by authorities which are required to verify compliance with feed and food law, rules on animal health and welfare, plant health and plant protecting products. It repealed several older Regulations on official controls for food and feed. More detailed rules on areas including import controls and hygiene controls on products of animal origin are set out in several pieces of tertiary legislation.

Official controls legislation is deeply interlinked with the rules it is in place to verify – for example the Food Hygiene Package (Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004) and the Feed Hygiene Regulation (EC) No 183/2005.

European Union legislation in this area sets out what must be achieved by Member State – a comprehensive, risk-based, proportionate, transparent official controls system – as well as detailed rules on how this is to be achieved in certain areas.

Legislation in this area provides a balance of principles and detailed rules, allowing for a reasonable amount of subsidiarity in how controls are performed and organised at MS level. As such the legislation itself spans a number of policy areas, notably:

- General Obligations of MS – this includes operational criteria, rules for the delegation of control tasks, rules on staff training and independence, rules on transparency and confidentiality;
- High-level rules on control methods and activities to be performed, by whom and when;
- Methods of sampling and analysis;
- Rules on laboratories used for the performance of official controls and international networks of reference laboratories;
- Guidelines for crisis management plans;
- Rules on import controls on animals and goods entering from third nations (please see the Imports/Exports return for further detail in this policy area);
- Rules for financing official controls; and
- Rules for cooperation between MS' competent authorities.

### **Public Health Controls on Imported Food**

Specific requirements for imported food entering the European Union are covered by positive lists, standalone SIs and emergency declarations. Positive lists mandate increased levels of controls of feed and food of non-animal origin (FNAO). Where significant or sustained risks are identified, high-risk FNAO products may be subject to more stringent safeguard measures (including documentary checks, percentage of ID and physical checks required, health certificate requirements, sampling and analytical results, imports through designated entry points where appropriate facilities and staff are available to undertake the necessary controls, pre-notification requirements, specified time frames official controls must be completed within, onward transportation requirements and temporary suspension of a specific food or feed from a specific nation where a significant or sustained high risk has been identified). Importers are required to ensure that all listed products comply with the import requirements before they can be legally placed on the market. Standalone SIs cover specific import requirements for high-risk food (such as curry leaves and okra from India and GMOs in rice products from China). Emergency Declarations are issued when there is a serious and imminent risk to animal or public health and control measures need to be put in place rapidly.

### **European Union Decisions and Regulations**

#### **Positive lists:**

- Commission Regulation (EC) No 669/2009 – Mandates increased level of controls of feed and food of non-animal origin. Provides for controls on emerging or re-emerging risks of high-risk FNAO. Where significant or sustained risks are identified, high-risk FNAO products may be subject to more stringent safeguard measures. The import requirements on importers and enforcement bodies of both Commission Regulation (EC) No 669/2009 and various safeguard measures include the following: documentary checks, percentage of ID and physical checks required (as specified within the safeguard measure), health certificate requirements in some cases, sampling and analytical results required from the nation of origin in some cases, imports through designated entry points where appropriate facilities and staff are available to undertake the necessary import controls, pre-notification requirements, specified time frames official controls must be completed within, onward transportation requirements and temporary suspension of a specific food or feed from a specific nation of origin where a significant or sustained high risk has been

identified. Importers are required to ensure that all listed products comply with the import requirements before they can be legally placed on the market.

- Commission Implementing Regulation (EC) No 884/2014 – Controls due to contamination risk by aflatoxins.

#### Standalone SIs:

- Commission Implementing Regulation (EU) No 885/2014 – Curry leaves and okra from India.
- Commission Implementing Regulation (EU) 2016/6 – Controls following the accident at Fukushima power station.
- Commission Implementing Decision 2011/884/EU – GMOs in rice products from China.
- Commission Implementing Decision 2014/88/EU – Betel leaves from Bangladesh.
- Commission Implementing Regulation (EU) 2015/175 – Guar gum from India.
- Commission Implementing Regulation (EU) 2015/943 – Dried beans from Nigeria.
- Commission Implementing Regulation (EU) 211/2013 – Imports of sprouts and seeds.
- Commission Implementing Regulation (EU) 2017/186 – Microbiological contamination.
- Council Regulation (EC) No 733/2008 – Chernobyl.
- Kava-kava in Food (England) Regulations 2002. Separate, equivalent regulations are in place in the devolved nations.

#### Emergency Declarations

Issued when there is a serious and imminent risk to animal or public health and control measures need to be put in place rapidly. Examples include:

- Commission Implementing Regulation (EU) 2017/186 - betel leaves and sesame seeds from India;
- Commission Implementing Regulation (EU) 2017/2058 - food and animal feed from Japan;
- Commission Implementing Regulation (EU) 2016/6;
- Commission Implementing Regulation (EU) 2016/24 – groundnuts from Brazil, capsicum annum and nutmeg from India and nutmeg from Indonesia;
- Commission Implementing Regulation (EU) 2016/166 - betel leaves from India;
- Commission Implementing Regulations (EU) 2016/884 - betel leaves from Bangladesh; and
- Commission Implementing Regulation (EU) 2016/874 - dried beans from Nigeria.

The Official Controls Regulation (EU) 2017/625 and its empowered tertiary legislation is the overarching European Union legislation that provides powers for official controls at the European Union borders. It sets out the framework for verification of compliance with food and feed law, rules on animal health and welfare, plant health and plant protection products



## ANNEX 2 – SUMMARY OF RETAINED EUROPEAN UNION LEGISLATION

### General food and feed law

Regulation (EC) No 178/2002 - on General Food Law.	The General Food Law (Amendment etc.) (EU Exit) Regulations 2019 2019/641
Regulation (EC) No 852/2004 - on the hygiene of foodstuffs.	The General Food Hygiene (Amendment) (EU Exit) Regulations 2019 2019/642
Regulation (EC) No 853/2004 - laying down specific hygiene rules for food of animal origin.	The Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 2019/640
Regulation (EC) No 183/2005 - laying down requirements for feed hygiene.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 2074/2005 - laying down implementing measures for certain products under Regulation (EC) No 853/2004 and Regulation (EC) No 854/2004 and Regulation (EC) No 882/2004.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019 2019/1013

### Food and feed safety standards

Regulation (EC) No 1829/2003 – GMOs and Food – authorisations and labelling.	The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019 2019/705
Regulation (EC) No 2283/2015– Novel foods.	The Novel Food (Amendment) (EU Exit) Regulations 2019 2019/702
Regulation (EC) No 1333/2008 – Food additives.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Regulation (EC) No 1935/2004 – Food contact materials.	The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019 2019/704
Council Regulation (EEC) No 315/1993 – Food contaminants.	The Contaminants in Food (Amendment) (EU Exit) Regulations 2019 2019/639
Commission Regulation (EC) No 2073/2005 – Microbiological criteria.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019 2019/1013
Regulation (EC) No 1831/2003 – Feed additives.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Commission Regulation (EU) No 68/2013 - Catalogue of Feed materials.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 1332/2008 – Food enzymes.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Regulation (EC) No 1334/2008 – Food flavourings.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Commission Regulation (EU) No 234/2011 – Common Authorisation Procedure.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860

### **Food and feed law enforcement (official controls)**

Regulation (EU) No 2017/625 - on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.	The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020
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### **Public Health Controls on Imported Food**

Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the European Union of certain goods from certain third nations	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2020
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## ANNEX 3: FULL LIST OF DEFINITIONS

### UK Food Safety Agencies:

- The **Food Standards Agency (FSA)** is a non-ministerial UK government department. It is responsible for protecting public health in relation to food and animal feed in England, Wales and Northern Ireland. It is led by a board appointed to act in the public interest. Its headquarters are in London, with national offices in Wales and Northern Ireland. The FSA is responsible for developing and implementing policy related to general food and feed hygiene and traceability. This includes the protection of public health via import controls, labelling related to food safety (such as allergens), food and feed safety standards, and biological and chemical safety. In Wales and Northern Ireland, the FSA is also responsible for general labelling related to public health and issues regarding food composition and standards. The FSA in Northern Ireland additionally has responsibility for nutrition.
- **Food Standards Scotland (FSS)** is a devolved, non-ministerial government department of the Scottish Government. It has responsibility for food and feed safety, food standards, nutrition, food labelling and meat inspection in Scotland. Established by the Food (Scotland) Act 2015, FSS took over the responsibilities previously held by the FSA in Scotland, as well as taking responsibility for nutrition and labelling in Scotland.

### Frameworks:

- **Devolved administrations** refers to the Scottish Parliament, the Welsh Parliament and the Northern Ireland Assembly and to their associated executive bodies the Scottish Government, the Welsh Government and the Northern Ireland Executive.
- **Common frameworks** set out processes and governance arrangements for collaboration across the four nations of the UK to maintain consistent approaches in areas that are governed by European Union law before March 2019, but are otherwise within areas of competence of the devolved administrations. Common frameworks may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.
- **'Deep dive'** meetings have formed the formal official-level engagement on common frameworks for food and feed safety and hygiene jointly undertaken by all UK Administrations (as agreed by the Joint Ministerial Committee on European Union Negotiations (JMC(EN)) as part of the wider programme of work to develop common frameworks). Three 'deep dive' sessions have taken place since February with representatives from food and feed safety bodies and governments of all four nations. The deep dives have been used to discuss work carried out by working groups comprising representatives from across the four nations of the UK which have developed proposals for how the food and feed safety and hygiene framework could operate. Working group and review meetings have taken place regularly over the last six months, and the proposals developed by these groups have formed the basis of the framework outline.

- The **framework outline** is a template agreed by JMC(EN) which all frameworks policy areas have been required to complete, providing a suggested outline for an initial UK-wide framework agreement. It is intended to facilitate multilateral policy development and set out proposed high-level commitments for the four UK Administrations. The document will be published once it is finalised.

European Union Institutions, Systems and Processes:

- The **European Food Safety Authority (EFSA)** provides independent scientific advice and risk assessments covering food, animal feed, pesticides, GMO, animal health and welfare, plant health and nutrition. EFSA supports the European Commission, the European Parliament and European Union member states in taking effective and timely risk management decisions that ensure the protection of the health of European consumers and the safety of the food and feed chain.
- The **Rapid Alert System for Food and Feed (RASFF)** is an European Union IT system that provides early alerts of contaminants in food and feed from across the European Union (often foodborne diseases), enabling rapid response to serious risks to human health.
- **Comitology** is a process by which European Union law is modified, supplemented or adjusted and takes place within "comitology committees" chaired by the European Commission. Comitology committees are part of the European Union's broader system of committees that assist in the making, adoption, and implementation of European Union laws. The Standing Committee on Plants, Animals, Food and Feed (SCOPAFF) is the comitology committee that provides expertise to ensure food and feed legislation and measures are up to date, practical and effective. SCOPAFF is made up of multiple different sections (such as General Food Law, Biological Safety of the Food Chain and Novel Food and Toxicological Safety of the Food Chain), each with their own working/ expert groups which sit beneath the standing committees.
- **National measures** are measures that Member States may adopt where there is flexibility in European Union regulations for Member States to adopt local solutions (based on the principle of subsidiarity). National measures may be adopted to make exemptions from certain requirements laid down in annexes of European Union legislation. When making use of flexibility provisions, Member States must notify the European Commission.
- **The principle of subsidiarity** (outlined in Article 5 of the Treaty on European Union) guarantees that decisions are taken as closely as possible to the citizen. In areas in which the European Union does not have exclusive competence, the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions. In areas where the European Union does not have exclusive competence it will only take action in cases where it would be more effective than an action taken at the national, regional or local level.

### International Institutions:

- **Codex Alimentarius** is a collection of internationally recognised standards, codes of practice, guidelines, and other recommendations relating to foods, food production, and food safety. Its texts are developed and maintained by the Codex Alimentarius Commission, whose main goals are to protect the health of consumers and ensure fair practices in the international food trade. The Codex Alimentarius is recognized by the World Trade Organisation as an international reference point for the resolution of disputes concerning food safety and consumer protection.
- The **WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee")** was established by the WTO SPS Agreement (which sets out the basic rules for food safety and animal and plant health standards) as a forum for consultations about food safety or animal and plant health measures which affect trade, and to ensure the implementation of the SPS Agreement. It is open to all WTO member nations. Governments may send appropriate officials to participate in the meetings of the SPS Committee (e.g. food safety authorities or veterinary or plant health officials). The SPS Committee usually holds three regular meetings each year.

### Food and Feed Safety and Hygiene:

- **Food and feed hygiene** refers to the conditions and measures needed to ensure that the safety of food and feed is not compromised throughout the food chain from primary production to sale or supply to the final consumer. Food and feed hygiene requirements establish the general principles for food hygiene controls, including food hygiene rules for food and feed businesses, specific controls for products of animal origin, microbiological criteria for certain commodities, and conditions and arrangements for ensuring traceability.
- **Food and feed safety** refers to the handling, preparation, and storage of food and feed in ways that prevent food-borne illness. Food and feed safety requirements lay down the high-level principles underpinning the placing of safe food and feed on the market, and establish institutions and bureaucratic functions concerning food and feed safety. The main objective of food and feed law is to guarantee a high level of protection of human life and health and the protection of consumers' interests.
- **Official controls** are activities carried out by competent authorities to verify business compliance with the requirements set out in agri-food chain legislation for ensuring the safety and quality of food and feed (as well as plant health, animal health and welfare). Official controls take place across the food chain, from plants and animal production, to food manufacturing, processing and distribution. They also cover import controls on animal products from third nations. Competent authorities organise official controls systems within their territory to verify that operators' activities and goods placed on the market comply with relevant standards and requirements. A key mechanism by which the FSA and FSS influence official control activity carried out by local and port health authorities is the Framework Agreement on Official Feed and Food Controls by Local Authorities, which sets out what the FSA and FSS expect from local authorities in their delivery of official controls on feed and food law.

- **Regulated products** are food and feed products that require an authorisation, which involves a scientific assessment to evaluate their safety, before they can be placed on the market. Regulated products include substances used in food and feed (such as additives, enzymes, flavourings), food contact materials and pesticides, genetically modified organisms, novel foods and food-related processes, and processing aids.
- **Food and feed safety enforcement:** legislation sets out the general approaches and principles that must be taken for the monitoring and enforcement of feed and food law requirements. There is also considerable scope for national enforcement measures. National legislation allows flexibility for competent authorities to organise enforcement arrangements (in line with the general principles set out in European Union law). Each nation in the UK has scope to take different approaches to some enforcement measures. Across the UK, much enforcement work is carried out by Local Authorities.
- **Food defence** refers to procedures adopted to assure the security of food and drink and their supply chains from malicious and ideologically motivated attack leading to contamination or supply disruption.
- **Food fraud** refers to dishonest act or omission, relating to the production or supply of food, which is intended for personal gain or to cause loss to another party.

#### Risk Analysis:

- **Risk** is a function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food (i.e. how likely is it that harm will be done and how severe are the health effects likely to be?).
- **Risk analysis** is a process consisting of three distinct but closely linked components: risk assessment, risk management and risk communication.
- **Risk management** is the process, distinct from risk assessment, of weighing policy, alternatives in consultation with interested parties, considering risk assessment and other factors relevant to health protection of consumers, and if needed, selecting appropriate prevention and control options.
- **Risk communication** is the interactive exchange of information and opinions throughout the risk analysis process concerns risks, risk-related factors and risk perceptions, among risk assessors, risk managers, consumers, feed and food businesses, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions.
- **Risk assessment** is a scientifically based process consisting of the following four steps: hazard identification, hazard characterisation, exposure assessment and risk characterisation.

- **A hazard** is a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.
- **Hazard (toxicological):** An inherent property of an agent or situation having the potential to cause adverse effects when an organism, system or (sub)population is exposed to that agent.
- **Other legitimate factors** refer to issues other than human health risk assessment that inform risk management and communication.

## ANNEX 4: FRAMEWORKS MANAGEMENT GROUP TERMS OF REFERENCE

### 1. Purpose and Scope

1.1 The Food and Feed Safety and Hygiene Frameworks Management Group (FMG)'s principal purpose is to bring together senior officials with oversight of the functioning of the Common Framework for Food and Feed Safety and Hygiene (the Framework). The Framework sets out ways of working and governance arrangements to maintain a collaborative four nations approach to food and feed safety and hygiene after the UK's exit from the European Union. The FMG will be responsible for assessing any new needs of the framework at regular intervals and will play a role in resolving disputes related to the functioning of the Framework. The FMG will be comprised of senior food safety officials from the UK Government and devolved administrations (and, on a case by case basis, other departments if necessary).

1.2 The scope of the FMG's responsibilities include:

- **Considering amendments to the Framework:**
  - Proposed amendments to the Framework can be put forward by officials in any nation. Proposals should be made in writing and should include rationale for the proposed change(s). Any proposed change to the framework Concordat would be subject to Ministerial agreement.
  - The FMG should respond without undue delay to any requests for Framework amendments setting out the decision of the FMG.
  - If the FMG fails to agree an approach in response to a proposed amendment to the Framework and a dispute arises, the issue should be escalated through the officials' dispute avoidance & resolution process.
  
- **Undertaking Framework reviews in line with the agreed protocols:**
  - The first full post-implementation review should be carried out one year after the framework is implemented. After the first review, the frequency of framework reviews should be agreed by the FMG and included in the Terms of Reference (ToR).
  - The FMG should agree what information it needs to see to provide assurance that the framework is operating effectively.
  
- **Reporting on the Framework to appropriate authorities as required:**
  - The FMG should seek to provide jointly agreed updates on the functioning of the Framework to the FSA/ FSS boards, Ministers and JMC as required.
  
- **Resolving official-level disputes regarding the interpretation or breaches of framework processes (see process diagram in Diagram 2).**
  - If a dispute arises over the functioning of the framework (i.e. if officials in one or more nation consider officials in another nation or nations to have breached an



element of the agreed framework processes), the FMG will act as the first point of escalation; it should aim to reach a consensus on the approach to take to resolve the dispute.

- A summary of the dispute should be provided to the FMG in writing, including the background of the issue and the positions of all parties.
- A dispute can be escalated to the FMG at any time. The FMG should aim to meet within one month of the dispute being raised.
- If the FMG fails to resolve a dispute, the issue should progress through the officials' dispute avoidance & resolution process (it should be escalated to a bilateral meeting of Chairs/ CEOs).

1.3 The following areas are outside the scope of the FMG:

- Resolving policy risk management-related disputes (risk management related disputes will be escalated to a meeting of Directors, as outlined in the officials' dispute avoidance & resolution process).

## 2 Representatives & Contact Details

2.1 Group membership will consist of senior officials representing the food safety bodies in each administration.

Department	Representative	Contact Details
FSA - England	Anjali Juneja	Anjali.Juneja@food.gov.uk
FSA - Northern Ireland	Sharon Gilmore	Sharon.Gilmore@food.gov.uk
FSA - Wales	Nathan Barnhouse	Nathan.Barnhouse@food.gov.uk
Food Standards Scotland	David Johnston	David.Johnston@fss.scot

2.2 Meeting Frequency and Location

Frequency	Location	Papers Issued
<p>Initial meetings will be held quarterly in the year following the Framework's implementation.</p> <p>Thereafter, the frequency of meetings shall be determined by the FMG.</p> <p>The FMG will be required to meet within one month if a dispute is escalated to the FMG for its attempts at resolution.</p>	<p>1 meeting per year face to face; location TBC;</p>	<p>Papers issued a minimum of 1 week prior to meetings.</p>

## ANNEX 5: FOUR NATIONS DIRECTOR GROUP TERMS OF REFERENCE

### 1 Purpose and Scope

- 1.1 The Food and Feed Safety and Hygiene Four Nations Director Group (FDG)'s principal purpose is to bring together senior officials with oversight of the official level dispute resolution process. The FDG is responsible for the initial stage of escalation within the official level disputes resolution process for policy issue disputes in which officials cannot agree a risk management approach. The FDG will be comprised of relevant directors from the food safety bodies as the dispute in hand requires. This group will meet on an ad-hoc basis as and when required.

Four Nations Director Group would act as the initial stage of escalation within the official level dispute resolution process for policy disputes

### 2 Representatives & Contact Details

- 2.1 Group membership will consist of senior officials representing the food safety bodies as the dispute in hand requires.

Department	Representative	Contact Details
FSA - England	Rebecca Sudworth	Rebecca.Sudworth@food.gov.uk
FSA - Northern Ireland	Maria Jennings	Maria.Jennings@food.gov.uk
FSA - Wales	Nathan Barnhouse	Nathan.Barnhouse@food.gov.uk
Food Standards Scotland	Garry Mournian	Garry.Mournian@fss.scot

#### 2.2 Meeting Frequency and Location

This Four Nations Director Group will meet on an ad-hoc basis as and when required.

# FOOD AND FEED SAFETY AND HYGIENE FRAMEWORK PROVISIONAL CONCORDAT

between the UK Government, Scottish Government, Welsh Government, and  
Northern Ireland Executive

## 1. Introduction

- 1.1 This Concordat is an agreement between the UK Government (UKG), Scottish Government (SG), Welsh Government (WG), and Northern Ireland Executive (NIE), henceforth referred to as “the parties”, providing one of the non-legislative mechanisms which underpin the Food and Feed Safety and Hygiene (FFSH) framework<sup>7</sup>. It is not intended to constitute a legally enforceable contract or create any rights or obligations which are legally enforceable.
- 1.2 This Concordat puts in place agreed ways of working between the four nations’ administrations to drive for consistent policy approaches in the areas within scope (where this is agreed by the parties), recognising that businesses and consumers in all four nations, as well as international trading partners, often benefit from consistent FFSH legislation. It sets out commitments to communication and cooperation between the parties regarding decision-making and dispute resolution after policy recommendations have been made by the food safety bodies (Food Standards Agency (FSA) in England, Wales and Northern Ireland and Food Standards Scotland (FSS) in Scotland.
- 1.3 This Concordat recognises and operates in accordance with the Memorandum of Understanding and Supplementary Agreements between the parties referred to as the ‘Devolution MoU’<sup>8</sup> (noting that this agreement is currently under review). It puts in place arrangements between the parties in line with those set out in the Food and Feed Safety and Hygiene Framework Outline Agreement.
- 1.4 This Concordat has been developed in line with UKG and Devolved Administration joint central guidance on common frameworks, notably the principles described in the Joint Ministerial Committee’s communique of 16 October 2017<sup>9</sup>. In line with this central guidance and the Devolution MoU, the arrangements set out in this Concordat allow for policy divergence, recognising that there will be instances where it is appropriate for nations in the UK to take different approaches to risk-based consumer protection.

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<sup>7</sup> The Memorandum of Understanding between the Food Standards Agency and Foods Standards Scotland is the other non-legislative mechanism which sets out the operational detail of the FFSH Framework at official level.

<sup>8</sup> [Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee, October 2013](#)

<sup>9</sup>[JMC communique of 16 October 2017](#)

1.5 The Ireland/ Northern Ireland Protocol will create different circumstances in Northern Ireland from the other three nations of the UK. It specifies that Northern Ireland must follow European Union rules on agri-food matters. As changes are made to areas in scope of those rules, they will apply directly in Northern Ireland. The implementation of the Protocol means that, in some instances, Northern Ireland will not implement the same food and feed safety policy approaches as the GB nations.

1.6 Northern Ireland will, however, continue to play a role in the development of food and feed safety and hygiene policy under the FFSH Framework. Food and feed safety issues will continue to be considered on a four nations basis: officials and Ministers in Northern Ireland will continue to be involved in policy development and discussions to resolve disputes.

## **2. Scope**

2.1. This Concordat applies to retained European Union FFSH legislation. A detailed breakdown of the legislation is set out in Annex 1: Retained European Union FFSH legislation. Broadly this includes:

- General Food and Feed Law and Hygiene
- Food and Feed Safety Standards
- Official Controls for Food and Feed
- Public Health Controls on Imported Food and Feed

2.2. Changes to the above areas that would be considered in scope of the arrangements set out in the Concordat include:

- Proposals for changes to retained European Union legislation;
- Proposals for new legislation in previously harmonised policy areas of retained European Union legislation;
- Proposals for changes to technical standards in retained European Union legislation; and
- Proposals for new technical standards in previously harmonised areas of retained European Union legislation.

2.3. Equivalent flexibility for tailoring legislation to the specific needs of each of the four UK nations as was afforded by previous European Union rules will be maintained. Within FFSH there are a number of areas where retained European Union legislation offers flexibility for the law to be applied in different ways, with scope for national measures to achieve common outcomes permitted by the legislation. These areas are out of scope of this Concordat, and include:

- d) Enforcement and execution - retained European Union legislation provides flexibility for different enforcement and official control provisions in certain areas.
- e) Risk management decisions currently taken at national level where retained European Union legislation permits different approaches (for example raw drinking milk).

- f) Incident management – well developed practical procedures for managing incidents and emergencies are already in place across the UK (while adhering to the broad requirements for incident management outlined in legislation which are in scope of the framework).

2.4 As foreign policy issues are reserved to the UK Government, UK Government retains overall policy responsibility for the formulation of UK policy. UK Government will involve the devolved administrations fully in discussions about the formulation of UK policy in this area as outlined in the current [Devolution: Memorandum of Understanding](#) (currently under review)<sup>10</sup>.

### **3. Principles for Working Together**

3.1 All parties agree to the following principles to underpin shared ways of working while respecting and enhancing the devolution settlements and the democratic accountability of the devolved legislatures:

1. Processes for changing FFSH legislation should respect the JMC principles, devolved responsibilities and accountability across the UK.
2. Flexibility should be provided for administrations to act to meet local needs and circumstances while delivering the same outcomes.
3. The parties should have the ability to diverge within their territory (having followed the processes set out in this Concordat for managing divergence) where the recommendations from food safety bodies show that divergence is both necessary and proportionate for providing consumer protection across the UK.
4. Governance arrangements should be transparent, effective and proportionate whilst keeping administrative complexity and burdens to the minimum.

### **4. Ministerial Decision-making**

4.1 Ministers representing each of the parties<sup>11</sup> will take decisions on changes to all areas of retained European Union FFSH law, following recommendations from food safety bodies. This will include both technical changes made through secondary legislation as well as any changes to or new primary legislation that fall within scope of this Concordat. Annex 1 provides a detailed breakdown of the areas of retained European Union FFSH legislation where changes could occur. A diagrammatic summary of the decision-making process is set out in Annex 2.

4.2 For areas within scope of this Concordat, the parties agree that:

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<sup>10</sup> The text in 2.4 recognises that discussions are ongoing on the operation of Common Frameworks in areas where they intersect with the reserved matter of international trade negotiations. The outcome of these discussions will inform the content of all framework concordats, including FFSH. The text at 2.4 should therefore be considered only a “placeholder” while those discussions continue and will be formally agreed later in the process when more time is available to complete discussions.

<sup>11</sup> With the exception of Ministers in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

- Where timelines are prescribed in retained European Union law, decision-making processes should operate to these.
- The parties should aim to implement policy decisions at approximately the same time.
- All parties should be informed of the recommendations made in the other nations (whether for common or divergent approaches) and the underpinning rationale.
- A consensus should be sought among the parties on the approaches to take, and efforts made to resolve any disputes that occur (see section 6).

4.3 Where it is an option, a GB-wide legislative vehicle will be considered for implementing changes to FFSH legislation applying to businesses or foods marketed across the GB. GB-wide legislation will only be taken forward where consent has been sought of devolved administration Ministers (as is the case at present) and parliaments as required under respective devolution settlements.

## 5. Managing Divergence

5.1 In making changes to retained European Union food & feed safety and hygiene legislation within scope of this Concordat, the parties<sup>12</sup> commit to aiming to implement common policy approaches where appropriate.

5.2 Where it is considered that a common approach is not the most suitable for taking forward changes to FFSH legislation, the following principles for managing divergence will be followed:

- Where one or more parties wishes to diverge from a four nations approach to any area within scope of the Concordat, before divergence can happen, the parties must first attempt to agree a common approach that accommodates the desired outcomes of individual nations.
- Where a common approach cannot be agreed, and divergence within the UK is not considered acceptable by any party, then the dispute resolution mechanism should be engaged.
- In Northern Ireland, Ministers will still have the opportunity to fully participate in discussions on how potential divergence will managed even when those issues fall within scope of the Ireland/ Northern Ireland Protocol.

## 6. Dispute Resolution

6.1 Where disputes arise, they should be managed with adherence to the following principles:

- Commitment to evidence-based approaches to resolving disputes
- Transparency (auditable, open to scrutiny unless legal requirements for non-disclosure)

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<sup>12</sup> With the exception of Ministers in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

- Timely resolution (meeting deadlines for actions, agreement to accelerated timescale in emergencies)
  - Compliance (with process and outcome)
- 6.2 In Northern Ireland, officials and Ministers will have the opportunity to be involved in any four nations correspondence or discussions that take place as part of dispute resolution processes to consider issues even when those issues fall in scope of the Ireland/ Northern Ireland Protocol.
- 6.3 If food safety body officials<sup>13</sup> cannot agree either to recommending common approaches, or to recommending that divergence is appropriate, the issue should be escalated to the parties for a decision on how to proceed. In this situation, officials should highlight the disagreement alongside respective food safety bodies' advice to the parties including relevant evidence. The parties should review the impacts of the proposed approaches before taking a decision on whether to proceed with recommendations, or to raise a dispute with counterparts.
- 6.4 If the parties cannot agree to proceed with the recommended approaches having reviewed the evidence, the issue should continue through the stages of the dispute process: officials should provide assistance in reaching resolution, and further consideration of the issue should be given by the parties. If the dispute cannot be resolved during these stages, Ministers from all parties should meet in person to discuss the issue. If resolution could still not be reached, the issue should be escalated to the JMC dispute process for resolution. A diagrammatic summary of the process is set out in Annex 3.
- 6.5 If a dispute arises where one or more party<sup>14</sup> wishes to take a decision that is different from the recommendations made by food safety bodies (whether this is for common or divergent approaches), the issue should come back to officials in all four nations to carry out a review of the evidence and the impacts of the alternative approach, and provide further advice to the parties. All parties should have the opportunity to consider whether they are content for the alternative approach to be implemented. If the alternative approach is not considered to be acceptable by any party, a dispute should be raised, following the same stages of escalation.

## 7. Review

- 7.1 This Concordat will be formally reviewed at one year and three years from the date of its implementation and thereafter at five-year intervals. Any changes to the Concordat must be agreed by all parties to it.

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<sup>13</sup> With the exception of officials in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

<sup>14</sup> With the exception of Ministers in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

## ANNEX 1 – SUMMARY OF RETAINED EUROPEAN UNION LEGISLATION

### General food and feed law

Regulation (EC) No 178/2002 - on General Food Law.	The General Food Law (Amendment etc.) (EU Exit) Regulations 2019 2019/641
Regulation (EC) No 852/2004 - on the hygiene of foodstuffs.	The General Food Hygiene (Amendment) (EU Exit) Regulations 2019 2019/642
Regulation (EC) No 853/2004 - laying down specific hygiene rules for food of animal origin.	The Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 2019/640
Regulation (EC) No 183/2005 - laying down requirements for feed hygiene.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 2074/2005 - laying down implementing measures for certain products under Regulation (EC) No 853/2004 and Regulation (EC) No 854/2004 and Regulation (EC) No 882/2004.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019 2019/1013

### Food and feed safety standards

Regulation (EC) No 1829/2003 – GMOs and Food – authorisations and labelling.	The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019 2019/705
Regulation (EC) No 2283/2015– Novel foods.	The Novel Food (Amendment) (EU Exit) Regulations 2019 2019/702
Regulation (EC) No 1333/2008 – Food additives.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Regulation (EC) No 1935/2004 – Food contact materials.	The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019 2019/704
Council Regulation (EEC) No 315/1993 – Food contaminants.	The Contaminants in Food (Amendment) (EU Exit) Regulations 2019 2019/639
Commission Regulation (EC) No 2073/2005 – Microbiological criteria.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019 2019/1013
Regulation (EC) No 1831/2003 – Feed additives.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Commission Regulation (EU) No 68/2013 - Catalogue of Feed materials.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 1332/2008 – Food enzymes.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Regulation (EC) No 1334/2008 – Food flavourings.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Commission Regulation (EU) No 234/2011 – Common Authorisation Procedure.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860



### Food and feed law enforcement (official controls)

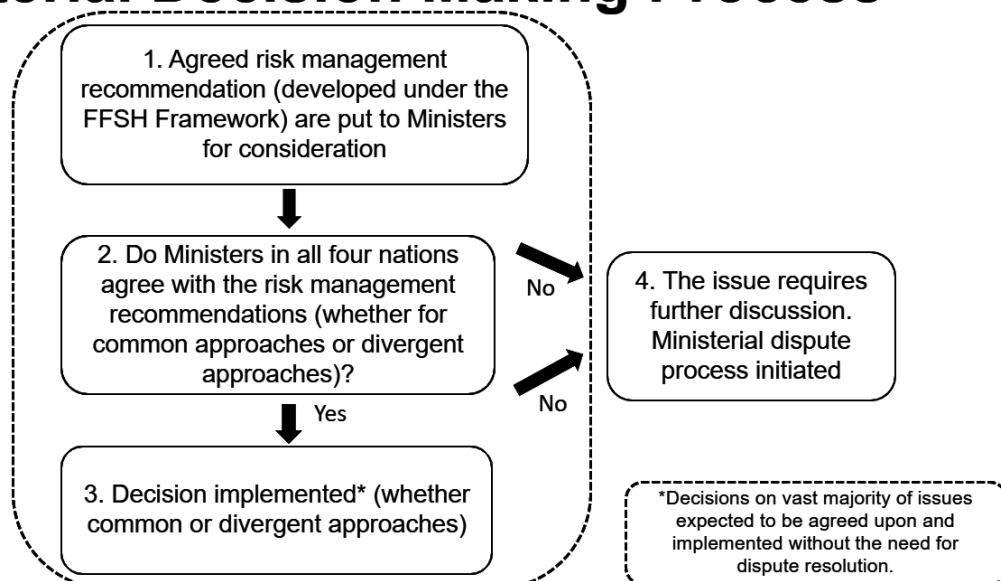
Regulation (EU) No 2017/625 - on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.	The Official Feed and Food Controls (England) (Amendment) Regulations 2020 2020/738
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### Public Health Controls on Imported Food

Commission Regulation (EC) No 669/2009 - regulates specific high risk product of non-animal origin now 2019/1793	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2020
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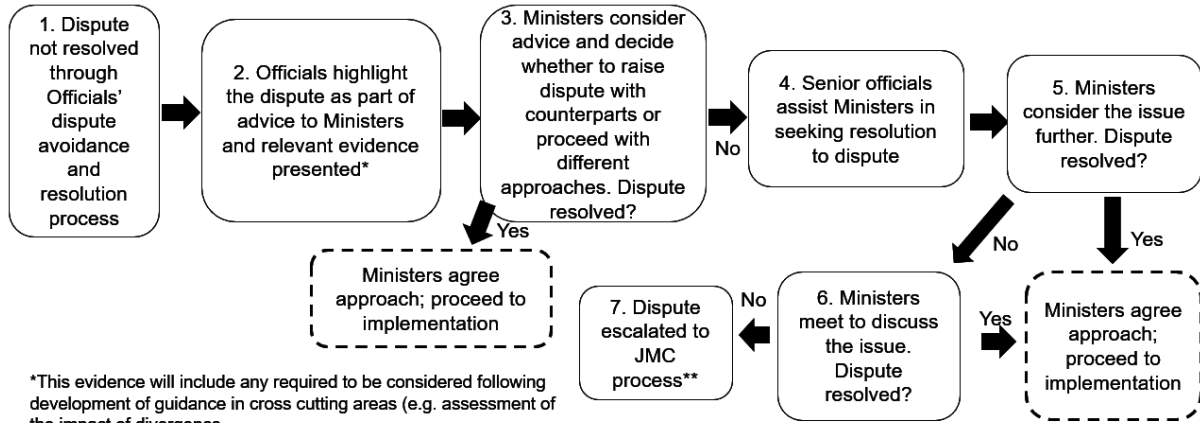
## ANNEX 2 – MINISTERIAL DECISION-MAKING PROCESS

# Ministerial Decision Making Process



\*In Northern Ireland, changes to European Union food and feed safety and hygiene legislation in scope of Annex 2 will apply automatically

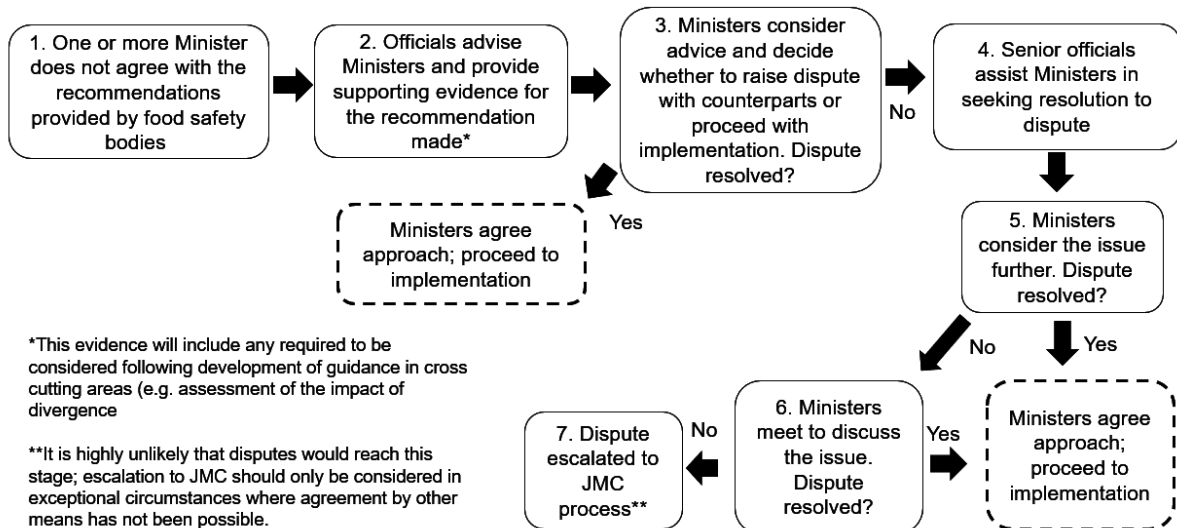
## Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Official Level



\*This evidence will include any required to be considered following development of guidance in cross cutting areas (e.g. assessment of the impact of divergence)

\*\*It is highly unlikely that disputes would reach this stage; escalation to JMC should only be considered in exceptional circumstances where agreement by other means has not been possible.

## Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Ministerial Level



\*This evidence will include any required to be considered following development of guidance in cross cutting areas (e.g. assessment of the impact of divergence)

\*\*It is highly unlikely that disputes would reach this stage; escalation to JMC should only be considered in exceptional circumstances where agreement by other means has not been possible.



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978-1-5286-2222-6

# FOOD AND FEED SAFETY AND HYGIENE FRAMEWORK CONCORDAT

between the UK Government, Scottish Government, Welsh Government, and Northern Ireland Executive

## 1. Introduction

- 1.1 This Concordat is an agreement between the UK Government (UKG), Scottish Government (SG), Welsh Government (WG), and Northern Ireland Executive (NIE), henceforth referred to as “the parties”, providing one of the non-legislative mechanisms which underpin the Food and Feed Safety and Hygiene (FFSH) framework<sup>1</sup>. It is not intended to constitute a legally enforceable contract or create any rights or obligations which are legally enforceable.
- 1.2 This Concordat puts in place agreed ways of working between the four nations’ administrations to drive for consistent policy approaches in the areas within scope (where this is agreed by the parties), recognising that businesses and consumers in all four nations, as well as international trading partners, often benefit from consistent FFSH legislation. It sets out commitments to communication and cooperation between the parties regarding decision-making and dispute resolution after policy recommendations have been made by the food safety bodies (Food Standards Agency (FSA) in England, Wales and Northern Ireland and Food Standards Scotland (FSS) in Scotland.
- 1.3 This Concordat recognises and operates in accordance with the Memorandum of Understanding and Supplementary Agreements between the parties referred to as the ‘Devolution MoU’<sup>2</sup> (noting that this agreement is currently under review). It puts in place arrangements between the parties in line with those set out in the Food and Feed Safety and Hygiene Framework Outline Agreement.
- 1.4 This Concordat has been developed in line with UKG and Devolved Administration joint central guidance on common frameworks, notably the principles described in the Joint Ministerial Committee’s communique of 16 October 2017<sup>3</sup>. In line with this central guidance and the Devolution MoU, the arrangements set out in this Concordat allow for policy divergence, recognising that there will be instances where it is appropriate for nations in the UK to take different approaches to risk-based consumer protection.

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<sup>1</sup> The Memorandum of Understanding between the Food Standards Agency and Foods Standards Scotland is the other non-legislative mechanism which sets out the operational detail of the FFSH Framework at official level.

<sup>2</sup> [Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee, October 2013](#)

<sup>3</sup> [JMC communique of 16 October 2017](#)

- 1.5 The Ireland/ Northern Ireland Protocol will create different circumstances in Northern Ireland from the other three nations of the UK. It specifies that Northern Ireland must follow European Union rules on agri-food matters. As changes are made to areas in scope of those rules, they will apply directly in Northern Ireland. The implementation of the Protocol means that, in some instances, Northern Ireland will not implement the same food and feed safety policy approaches as the GB nations.
- 1.6 Northern Ireland will, however, continue to play a role in the development of food and feed safety and hygiene policy under the FFSH Framework. Food and feed safety issues will continue to be considered on a four nations basis: officials and Ministers in Northern Ireland will continue to be involved in policy development and discussions to resolve disputes.

## **2. Scope**

- 2.1. This Concordat applies to retained European Union FFSH legislation. A detailed breakdown of the legislation is set out in Annex 1: Retained European Union FFSH legislation. Broadly this includes:
- General Food and Feed Law and Hygiene
  - Food and Feed Safety Standards
  - Official Controls for Food and Feed
  - Public Health Controls on Imported Food and Feed
- 2.2. Changes to the above areas that would be considered in scope of the arrangements set out in the Concordat include:
- Proposals for changes to retained European Union legislation;
  - Proposals for new legislation in previously harmonised policy areas of retained European Union legislation;
  - Proposals for changes to technical standards in retained European Union legislation; and
  - Proposals for new technical standards in previously harmonised areas of retained European Union legislation.
- 2.3. Equivalent flexibility for tailoring legislation to the specific needs of each of the four UK nations as was afforded by previous European Union rules will be maintained. Within FFSH there are a number of areas where retained European Union legislation offers flexibility for the law to be applied in different ways, with scope for national measures to achieve common outcomes permitted by the legislation. These areas are out of scope of this Concordat, and include:
- a) Enforcement and execution - retained European Union legislation provides flexibility for different enforcement and official control provisions in certain areas.
  - b) Risk management decisions currently taken at national level where retained European Union legislation permits different approaches (for example raw drinking milk).

c) Incident management – well developed practical procedures for managing incidents and emergencies are already in place across the UK (while adhering to the broad requirements for incident management outlined in legislation which are in scope of the framework).

2.4 As foreign policy issues are reserved to the UK Government, UK Government retains overall policy responsibility for the formulation of UK policy. UK Government will involve the devolved administrations fully in discussions about the formulation of UK policy in this area as outlined in the current [Devolution: Memorandum of Understanding](#) (currently under review)<sup>4</sup>.

### **3. Principles for Working Together**

3.1 All parties agree to the following principles to underpin shared ways of working while respecting and enhancing the devolution settlements and the democratic accountability of the devolved legislatures:

1. Processes for changing FFSH legislation should respect the JMC principles, devolved responsibilities and accountability across the UK.
2. Flexibility should be provided for administrations to act to meet local needs and circumstances while delivering the same outcomes.
3. The parties should have the ability to diverge within their territory (having followed the processes set out in this Concordat for managing divergence) where the recommendations from food safety bodies show that divergence is both necessary and proportionate for providing consumer protection across the UK.
4. Governance arrangements should be transparent, effective and proportionate whilst keeping administrative complexity and burdens to the minimum.

### **4. Ministerial Decision-making**

4.1 Ministers representing each of the parties<sup>5</sup> will take decisions on changes to all areas of retained European Union FFSH law, following recommendations from food safety bodies. This will include both technical changes made through secondary legislation as well as any changes to or new primary legislation that fall within scope of this Concordat. Annex 1 provides a detailed breakdown of the areas of retained European Union FFSH legislation where changes could occur. A diagrammatic summary of the decision-making process is set out in Annex 2.

4.2 For areas within scope of this Concordat, the parties agree that:

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<sup>4</sup> The text in 2.4 recognises that discussions are ongoing on the operation of Common Frameworks in areas where they intersect with the reserved matter of international trade negotiations. The outcome of these discussions will inform the content of all framework concordats, including FFSH. The text at 2.4 should therefore be considered only a “placeholder” while those discussions continue and will be formally agreed later in the process when more time is available to complete discussions.

<sup>5</sup> With the exception of Ministers in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

- Where timelines are prescribed in retained European Union law, decision-making processes should operate to these.
- The parties should aim to implement policy decisions at approximately the same time.
- All parties should be informed of the recommendations made in the other nations (whether for common or divergent approaches) and the underpinning rationale.
- A consensus should be sought among the parties on the approaches to take, and efforts made to resolve any disputes that occur (see section 6).

4.3 Where it is an option, a GB-wide legislative vehicle will be considered for implementing changes to FFSH legislation applying to businesses or foods marketed across the GB. GB-wide legislation will only be taken forward where consent has been sought of devolved administration Ministers (as is the case at present) and parliaments as required under respective devolution settlements.

## **5. Managing Divergence**

5.1 In making changes to retained European Union food & feed safety and hygiene legislation within scope of this Concordat, the parties<sup>6</sup> commit to aiming to implement common policy approaches where appropriate.

5.2 Where it is considered that a common approach is not the most suitable for taking forward changes to FFSH legislation, the following principles for managing divergence will be followed:

- Where one or more parties wishes to diverge from a four nations approach to any area within scope of the Concordat, before divergence can happen, the parties must first attempt to agree a common approach that accommodates the desired outcomes of individual nations.
- Where a common approach cannot be agreed, and divergence within the UK is not considered acceptable by any party, then the dispute resolution mechanism should be engaged.
- In Northern Ireland, Ministers will still have the opportunity to fully participate in discussions on how potential divergence will managed even when those issues fall within scope of the Ireland/ Northern Ireland Protocol.

## **6. Dispute Resolution**

6.1 Where disputes arise, they should be managed with adherence to the following principles:

- Commitment to evidence-based approaches to resolving disputes

---

<sup>6</sup> With the exception of Ministers in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.



- Transparency (auditable, open to scrutiny unless legal requirements for non-disclosure)
  - Timely resolution (meeting deadlines for actions, agreement to accelerated timescale in emergencies)
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- 6.3 If food safety body officials<sup>7</sup> cannot agree either to recommending common approaches, or to recommending that divergence is appropriate, the issue should be escalated to the parties for a decision on how to proceed. In this situation, officials should highlight the disagreement alongside respective food safety bodies' advice to the parties including relevant evidence. The parties should review the impacts of the proposed approaches before taking a decision on whether to proceed with recommendations, or to raise a dispute with counterparts.
- 6.4 If the parties cannot agree to proceed with the recommended approaches having reviewed the evidence, the issue should continue through the stages of the dispute process: officials should provide assistance in reaching resolution, and further consideration of the issue should be given by the parties. If the dispute cannot be resolved during these stages, Ministers from all parties should meet in person to discuss the issue. If resolution could still not be reached, the issue should be escalated to the JMC dispute process for resolution. A diagrammatic summary of the process is set out in Annex 3.
- 6.5 If a dispute arises where one or more party<sup>8</sup> wishes to take a decision that is different from the recommendations made by food safety bodies (whether this is for common or divergent approaches), the issue should come back to officials in all four nations to carry out a review of the evidence and the impacts of the alternative approach, and provide further advice to the parties. All parties should have the opportunity to consider whether they are content for the alternative approach to be implemented. If the alternative approach is not considered to be acceptable by any party, a dispute should be raised, following the same stages of escalation.

## **7. Review**

- 7.1 This Concordat will be formally reviewed at one year and three years from the date of its implementation and thereafter at five-year intervals. Any changes to the Concordat must be agreed by all parties to it.

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<sup>7</sup> With the exception of officials in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

<sup>8</sup> With the exception of Ministers in Northern Ireland for issues that fall in scope of the Ireland/ Northern Ireland Protocol and where European Union FFSH legislation will apply in Northern Ireland.

## ANNEX 1 – SUMMARY OF RETAINED EUROPEAN UNION LEGISLATION

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Regulation (EC) No 183/2005 - laying down requirements for feed hygiene.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 2074/2005 - laying down implementing measures for certain products under Regulation (EC) No 853/2004 and Regulation (EC) No 854/2004 and Regulation (EC) No 882/2004.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019 2019/1013

### Food and feed safety standards

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Council Regulation (EEC) No 315/1993 – Food contaminants.	The Contaminants in Food (Amendment) (EU Exit) Regulations 2019 2019/639
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Commission Regulation (EU) No 68/2013 - Catalogue of Feed materials.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 1332/2008 – Food enzymes.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Regulation (EC) No 1334/2008 – Food flavourings.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Commission Regulation (EU) No 234/2011 – Common Authorisation Procedure.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860

### Food and feed law enforcement (official controls)

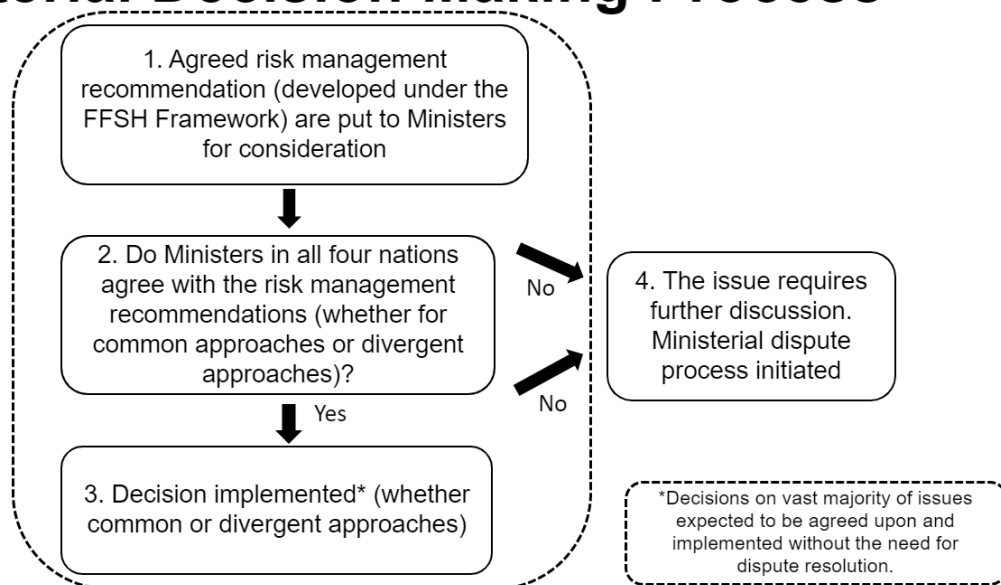
Regulation (EU) No 2017/625 - on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.	The Official Feed and Food Controls (England) (Amendment) Regulations 2020 2020/738
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### Public Health Controls on Imported Food

Commission Regulation (EC) No 669/2009 - regulates specific high risk product of non-animal origin now 2019/1793	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2020
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## ANNEX 2 – MINISTERIAL DECISION-MAKING PROCESS

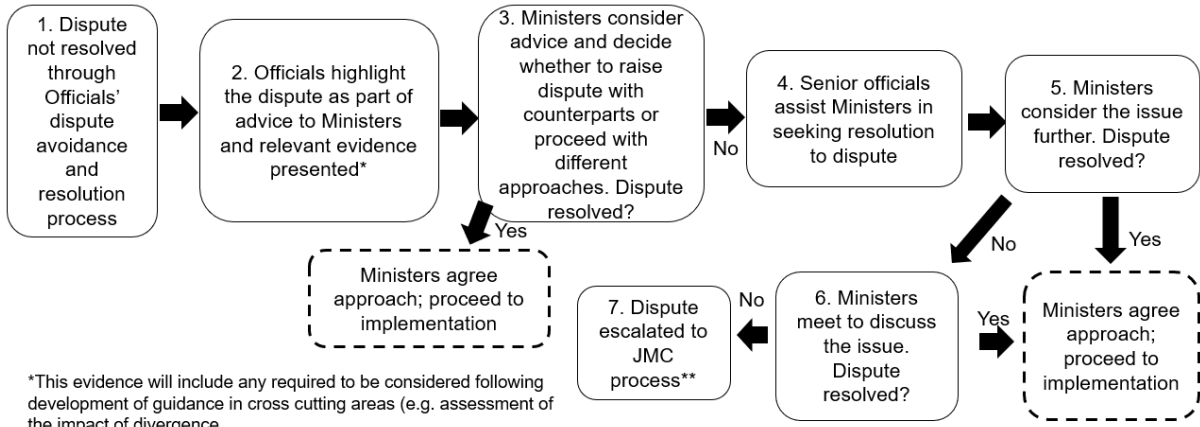
# Ministerial Decision Making Process



\*In Northern Ireland, changes to European Union food and feed safety and hygiene legislation in scope of Annex 2 will apply automatically

**ANNEX 3 – DISPUTE AVOIDANCE & RESOLUTION PROCESSES**

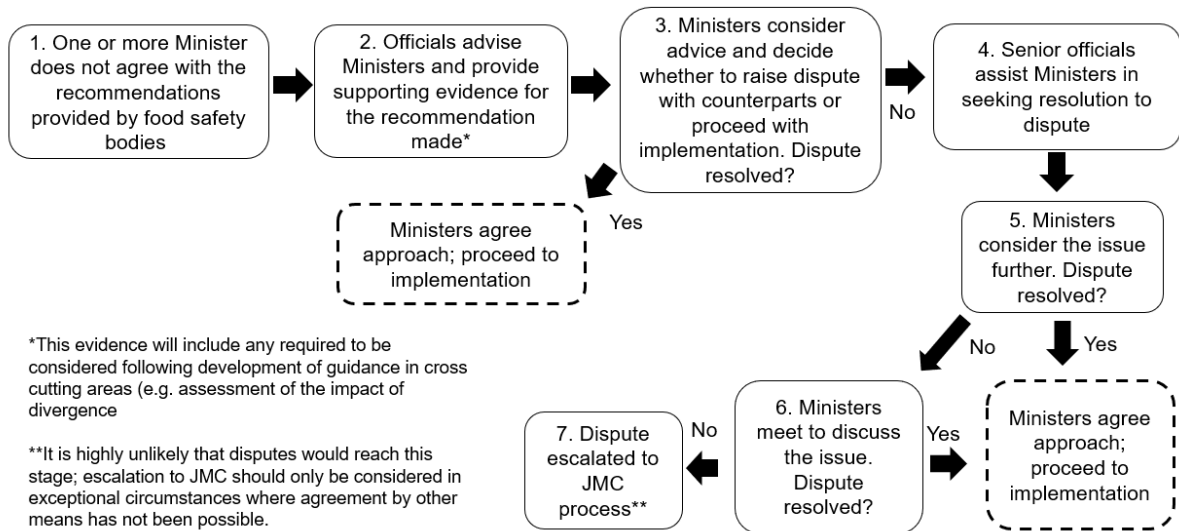
## Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Official Level



\*This evidence will include any required to be considered following development of guidance in cross cutting areas (e.g. assessment of the impact of divergence)

\*\*It is highly unlikely that disputes would reach this stage; escalation to JMC should only be considered in exceptional circumstances where agreement by other means has not been possible.

## Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Ministerial Level



\*This evidence will include any required to be considered following development of guidance in cross cutting areas (e.g. assessment of the impact of divergence)

\*\*It is highly unlikely that disputes would reach this stage; escalation to JMC should only be considered in exceptional circumstances where agreement by other means has not been possible.

## **COMMON FRAMEWORKS: FRAMEWORK OUTLINE – FOOD AND FEED SAFETY AND HYGIENE**

### **Purpose**

This document provides a suggested outline for an initial UK wide, or GB, framework agreement in a food/feed safety policy area. It is intended to facilitate multilateral policy development and set out proposed high level commitments for the four UK Administrations. It should be viewed as a tool that helps policy development, rather than a rigid template to be followed. The document may be developed iteratively and amended and added to by policy teams as discussions progress. It should be read alongside the accompanying guidance (UKG and DA Guidance Note for Phase 2 Engagement).

Population of the agreement skeleton should be based on the existing work undertaken and should remain consistent with the underlying Framework Principles agreed by the UK, Scottish and Welsh Governments. The content should inform the drafting of any legislative and non-legislative mechanisms required to implement UK wide frameworks.

Until it is formally agreed this document should not be considered as Government policy for any of the participating administrations and should be treated as confidential. The process for developing and finalising this document will be mutually agreed by all administrations.

The document is made up of four sections:

### **Outline**

1. **Part 1: What We Are Talking About.** This section will set out the area of EU law under consideration, current arrangements, and any elements from the policy that will not be considered. It will also include any relevant legal or technical definitions.
2. **Part 2: Proposed Breakdown of Policy Area and Framework.** This section will break the policy area down into its component parts, explaining where common rules will and will not be required and the rationale for this approach. It will also set out any areas of disagreement.

### **Operational Detail**

3. **Part 3: Proposed Operational Elements of Framework.** This section will explain how the framework will operate in practice by setting out: how decisions will be made; the planned roles and responsibilities for each administration, or a third party; how implementation of the framework will be monitored and, if appropriate enforced; arrangements for reviewing and amending the framework; and proposed arrangements for resolution of a dispute.
4. **Part 4: Practical Next Steps and Related Issues.** This section will set out the next steps that would be required to implement the framework (subject to Ministerial agreement) and key timings.

## Draft Framework Outline

### Part 1: WHAT WE ARE TALKING ABOUT

#### 1. Policy area

*Please use this section to list the name of the overall policy area under consideration, as set out in [the UK Government's provisional policy analysis](#). Please note if this framework only covers a particular element of that policy area and include any additional information necessary to clarify and ensure a shared understanding of what is included in an area.*

#### **Food and Feed Safety and Hygiene Law**

1.1 Food and feed safety and hygiene (FFSH) law is set out in retained European Union regulations which set out an overarching and coherent framework for the development of food and feed legislation and lay down principles, requirements and procedures that underpin decision-making in matters of food and feed safety. This legislation covers all stages of food and feed production, including risk analysis; food safety labelling, distribution, incident handling, and food and feed law enforcement (official controls).

#### 2. Scope

*In this section, policy teams should set out existing arrangements, specifically:*

- 2 *the elements of EU law in this area that intersect with devolved competence i.e. the specific regulations, directives, etc.;*
- 3 *the split between reserved and devolved competencies in this area, including highlighting any differences in the devolution settlements, and flagging if there are any disagreements over the division of competencies;*
- 4 *broadly what the EU law currently does, i.e. the rules that all parts of the UK currently have to comply with - the exact areas of EU law will be added as an annex once agreed by lawyers;*
- 5 *briefly how the existing EU framework currently operates, i.e. what the relevant EU or UK bodies are, and the functions and decision-making arrangements of these bodies;*
- 6 *the scope, within these rules, for different parts of the UK to do things differently (i.e. the decision-making powers that the DAs currently are able to exercise, and the extent of existing divergence); and*
- 7 *relevant international obligations.*

*Policy teams should also set out:*

- 8 *geographic scope of the framework (whether UK wide, or GB only);*
- 9 *any explicit exclusions from their considerations; and*
- 10 *any interdependencies or key variables (including any other frameworks policy areas or elements of policy areas which are inextricably linked).*

## **Food and Feed Safety and Hygiene Law - intersect with devolved competence and existing arrangements**

FFSH is a devolved policy area. This is set out as follows in the devolution settlements for each nation:

- 2.1 Schedule 5 of the Scotland Act 1998 sets out those matters which are reserved to the UK Parliament. Any area not listed in Schedule 5 is devolved to the Scottish Parliament. While 'consumer protection' and 'import and export control' are considered reserved matters, exceptions are included for food and feed safety (see section C5 and C7), meaning FFSH is a fully devolved matter.
- 2.2 Schedule 7A to the Government of Wales Act 2006 sets out those matters which are reserved to the UK Parliament. Any area not listed in Schedule 7A is devolved to the Welsh Parliament. While 'consumer protection' and 'import and export control' are considered reserved matters, exceptions are included for food and feed safety (see section C5 and C6), meaning FFSH is a fully devolved matter.
- 2.3 Schedule Schedule 2 of the Northern Ireland Act 1998 sets out 'excepted matters' (matters of national importance on which the NI Assembly does not have competence to legislate), and Schedule 3 of the Northern Ireland Act sets out which matters fall into the 'reserved' category. Anything that is not explicitly reserved or excepted in Schedules 2 or 3 is deemed to be devolved and the NI Assembly has full legislative competence. While 'technical standards and requirements in relation to products' are reserved under Schedule 3, there is an exception for 'standards and requirements in relation to food, agricultural or horticultural produce, fish or fish products, seeds, animal feeding stuffs, fertilisers or pesticides' meaning FFSH is a fully devolved matter.
- 2.4 While FFSH policy areas are devolved matters, international trade is reserved, creating an area of overlapping interests where UK trade negotiations and implementation may intersect with aspects of devolved policy areas, such as FFSH. Though FFSH is devolved, it remains the responsibility of the UK government to ensure the UK complies with its international trading obligations. For example, the World Trade Organisation Sanitary and Phytosanitary Agreement (WTO SPS Agreement, see Annex 3 for 'Definitions') Article 13 permits Members to devolve the implementation of SPS to non-central government bodies, but explicitly states "Members are fully responsible under this Agreement for the observance of all obligations set forth herein". Thus, UK Government will be held to account on behalf of all devolved nations for this specific function.
- 2.5 The Food Standards Agency (FSA) has responsibility at central government level for the main body of feed and food safety law in England, Wales and Northern Ireland. Food Standards Scotland (FSS) has similar competence in Scotland. The FSA and FSS have an MoU in place which sets out how the organisations work together in detail. Both the FSA and FSS are responsible for developing and implementing policy related to general food and feed hygiene

and traceability. This includes the protection of public health via import controls, labelling related to food safety (such as allergens), biological and chemical safety, and biotechnology.

2.6 In England, Wales and Northern Ireland, the FSA (in conjunction with local authorities which carry out certain functions) is responsible for monitoring, verifying compliance and enforcing the requirements of FFSH law. In Wales and Northern Ireland the FSA also has responsibility for food compositional standards and labelling. In Northern Ireland, the FSA additionally has responsibility for nutrition. The 'food compositional standards and labelling' and 'nutrition labelling, composition and standards framework policy areas are being managed through separate frameworks which are led by Defra and DHSC respectively. FSS undertakes all such controls in Scotland. Unlike the FSA in Wales and Northern Ireland (which are part of the FSA), FSS is a separate and fully devolved body.

2.7 The detailed explanation of the specific scope of the FFSH Framework is set out in section 4.7 - 4.17.

### **How the EU framework operated**

2.8 Until the end of the transition period, the majority of FFSH law was harmonised at European Union level, relying on European Union processes and institutions to carry out most risk assessments, risk management decisions and develop and pass legislation. Much of the FSA's work at the European Union level previously took place through 'comitology' procedures. In policy areas such as FFSH, where uniform conditions for implementation were often needed, the European Commission would adopt 'Implementing Acts' or 'Delegated Acts' to supplement or amend certain parts of European Union regulations. Before doing so, standing ('comitology') committees, in which all Member States would be represented, consulted and voted on proposals. In addition, expert working groups would be consulted carefully before a proposal was put to the standing committee. Commission proposals voted on in standing committees are disclosed to the European Union Parliament and European Union Council (and may or may not be discussed in their committees). Once a decision has been agreed at standing committee, the European Union Parliament and European Union Council have the right of scrutiny and may or may not discuss the matter in their committees). It should be noted that prior to the end of the transition period, a significant number of risk management decisions, such as decisions on enforcement and incident handling, were also taken at national level. Decisions in these areas are considered outside the scope of the FFSH Framework.

2.9 The Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) is the key committee of relevance for FFSH. The FSA represented the UK at 6 sections of the SCoPAFF committee on food and feed safety matters and in technical discussions at 16 working groups that feed into the SCoPAFF standing committees. In representing the UK government on the standing committees, the FSA worked collaboratively with devolved nations and other departments to establish UK positions on proposals, and consulted Ministers and other interested parties as appropriate. Legislative decisions were taken through comitology procedures on a frequent basis: in 2016 there were 76 decisions taken in FFSH policy areas.



2.10 Where changes were proposed to the broader principles of legislation (or new pieces of legislation are put forward), the FSA represented the UK in the European Union's 'Ordinary Legislative Procedure', whereby the Commission would submit a legislative proposal for the European Parliament and European Council to amend and adopt. The FSA fed into Council working parties and Parliament committees (convened to inform the Council/ Parliament) as and when a new law (or amendment to the broad principles of a law) was made that fell within the remit of FFSH policy areas.

2.11 For significant components of European Union food law (particularly in relation to regulated products), the European Union framework relied largely on the European Food Safety Authority (EFSA) for independent scientific advice and risk assessments. Most of EFSA's work is undertaken in response to requests for scientific advice from the European Commission, the European Parliament and European Union Member States. While some risk assessments were carried out already at UK level, the end of the transition period will require increased capacity for domestic risk assessments, as well as governance processes for how these are carried out across the UK. The UK has expanded its risk assessment capacity accordingly.

**Retained European Union rules and what they achieve (See Annex 1 and 2 for further detail)**

2.12 FFSH can be broken down into four broad policy areas, all of which fall within devolved competence and were formerly largely harmonised at European Union level, and have been transferred onto the UK statute book as retained European Union law. The exception to this was the limited scope provided for the adoption of national measures to achieve common outcomes where these are in-keeping with the principle of subsidiarity. The four broad policy areas within the scope of European Union FFSH legislation are:

- General Food Law and Hygiene
- Food Safety Standards
- Official Controls for Food and Feed
- Public Health Controls on Imported Food

2.13 The main objectives of food and feed law are to:

- guarantee a high level of protection of human life and health and the protection of consumers' interests.
- ensure free movement of food and feed manufactured and marketed in the European Union, in accordance with the General Food Law Regulation; and
- facilitate global trade of safe feed and safe, wholesome food by taking into account international standards and agreements when developing the European Union legislation, except where this might undermine the high level of consumer protection pursued by the European Union.

**International obligations**

- 2.14 Codex Alimentarius (Codex) is a series of voluntary food standards and related texts, which aim to provide a high level of consumer protection and fair practice in the international trade of food and agricultural products. The Codex Alimentarius Commission (CAC) is recognised in the relevant WTO agreements as the international body able to provide these guarantees: in the event of a trade dispute, Codex standards would become accepted reference documents for settlement. The CAC is responsible for the development of Codex standards and related texts. Defra acts as the national contact point for the UK in Codex, though the FSA takes the lead in many of the vertical committees dealing with food hygiene, food additives and food contaminants (which draft standards, codes of practice and other guidance). The FSA already undertakes a considerable amount of international engagement beyond the European Union, reflecting the increasingly global nature of food supply systems and of international regulatory standards; plans are also in train to allow for an increase in this activity.
- 2.15 Having left the European Union, the UK has taken up new obligations as an independent WTO member at the WTO SPS committee. The SPS committee was previously attended by European Union experts on behalf of the UK. Cross-departmental processes have been developed by Defra (with participation from the FSA) to ensure we fulfil our new obligations, including consulting stakeholders on SPS measures, notifying the committee of any change in SPS measures, responding to other nations' queries during the consultation period, and actively participating in committee work. The FFSH Framework is designed in a way that ensures the UK can continue to effectively fulfil its international obligations as a WTO member.

#### **Scope for legislative divergence**

- 2.16 Under the European Union regime, in a small number of cases where national measures to achieve common outcomes are allowed, different actions and decisions could be taken by individual administrations across the UK. One example of where these differences exist is raw drinking milk: it is an offence to place raw milk or cream on the market for direct consumption in Scotland, but not in the rest of the UK. In addition to this, where the European Union legislation is outcome focused, differences can exist in the means through which administrations achieve the same outcome, for example there are differences in hygiene guidelines for cooking burgers.
- 2.17 European Union legislation also enabled Member States to develop their own enforcement and execution provisions, and the four nations of the UK therefore all have their own national regulations for enforcement and execution of European Union provisions. Similarly, under European Union legislation the operational management of incidents allows Member States to determine their own rules for managing the practicalities of incident response, in line with the general requirements set out in European Union legislation. Protocols for UK incident handling are covered by the FSA-FSS MoU.

#### **Interdependencies/other linked frameworks policy areas**

- 2.18 There is cross-over between policy areas under FFSH legislation and other public health policy areas (whose frameworks are being led by Defra or DHSC).

These policy areas include framework areas in which the FSA/FSS are directly involved:

- nutrition labelling, composition and standards (DHSC-led, FSA involved in NI, FSS involved)
- food compositional standards and labelling (Defra-led, FSA involved in NI and Wales, FSS involved) and framework areas in which the FSA/ FSS are not directly involved, but have an interest:
  - animal health and welfare (Defra-led)
  - plant health (Defra-led)
  - pesticides (Defra-led)

2.19 Ongoing work on the UK internal market and international trade obligations will also need to be monitored and factored into the FFSH Framework proposals. It will also be necessary to engage with teams working on the Future Relationship (FR) to ensure the framework takes account of any further requirements that may arise as a result of the UK's future relationship with the European Union, such as how any additional UK governance structures that may be established will work on a four nations basis.

### **Geographical scope**

2.20 It is the intention that the framework should apply in England, Wales, Northern Ireland and Scotland. Officials in all four nations have been closely involved throughout the development of the FFSH Framework proposals.

### **Northern Ireland considerations**

2.21 On 15<sup>th</sup> June 2020, the Northern Ireland Executive agreed to the principles JMC(EN) had agreed in October 2017 to underpin the development of frameworks. Prior to this, FSA officials in Northern Ireland had provided technical and analytical input to the development of the FFSH Framework.

2.22 The FFSH Framework will be a four nations agreement. However, the specific circumstances of Northern Ireland are respected and reflected throughout the framework outline.

2.23 This includes the provisions of the Belfast Agreement (including the North/South dimension highlighted in Strand 2 of that Agreement). These provisions will be respected.

2.24 Further to this, the framework ensures that Northern Ireland continues to contribute to the formulation of UK policy on food and feed safety and hygiene. Northern Ireland's involvement in policy making will ensure that the economic and social linkages between Northern Ireland and Ireland will be recognised and incorporated into policy outcomes.

2.25 The FSA's role in respect to Northern Ireland within the Framework will also reflect the requirements of the Northern Ireland Protocol. The legislation within the scope of the

Framework is detailed within Annex 2 of the NIP, and therefore European Union legislation will continue to be directly applicable in NI whilst the rest of the UK will set its own regulatory regime at the end of the transition period. While the circumstances in Northern Ireland will be different as a result of the Northern Ireland Protocol, officials and Ministers will continue to be involved in the framework's processes and governance structures. How the specific circumstances in Northern Ireland will be reflected in ways of working is detailed throughout the framework outline.

### 3. Definitions

*In this section, policy teams should include any legal and/or technical definitions required to avoid any misinterpretations and ensure there is a shared understanding of what matters are within the scope of the agreement.*

#### 3.1 Key definitions:

A full list of definitions can be found in Annex 3.

## Part 2: PROPOSED BREAKDOWN OF POLICY AREA AND FRAMEWORK

### 4. Summary of proposed approach

*In the policy areas where we are exploring legislation, it is likely that the overall framework will have both legislative and non-legislative elements.*

*Breaking the policy area down into its component parts (where possible) this section should briefly list:*

- *The areas where UKG and the DAs will continue to need common rules and/or arrangements for working together, setting out:
 
  - *where legislation (specifying whether it is primary and/or secondary) is planned; and*
  - *the areas where non-legislative approaches are proposed, including where this will complement legislation.**
- *For each of the areas listed above, whether the common rules/arrangements are necessary according to the JMC(EN) [Frameworks Principles](#), or not necessary, but considered desirable. If there is disagreement about the distinction between necessary and desirable this should be recorded.*
- *The areas where no further action is needed, either because existing arrangements are sufficient, or because UKG and the DAs will not require common rules and/or arrangements for working together.*

*Any areas where parties do not agree on the approach, along with an outline of the reason for disagreement.*

#### **FFSH Framework analysis**

4.1 The FFSH framework proposals have been developed in accordance with the JMC(EN) principles, in line with guidance on frameworks developed jointly by UK Government and the Devolved

Administrations. Officials agreed that in considering the requirements of the FFSH framework, the following JMC(EN) principles would be of key importance<sup>1</sup>:

- enabling the functioning of the UK internal market, while acknowledging policy divergence; and
- ensuring the UK can negotiate, enter into and implement new trade agreements and international treaties and comply with international obligations;
- respecting the devolution settlements and the democratic accountability of the devolved legislatures;
- maintaining, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by the current European Union rules.

4.2 In the first UKG-DA deep dive on food safety, officials agreed that common approaches were **at least desirable** for all areas of FFSH within scope of the Framework. It was proposed in a number of areas that it was **necessary** to have a common approach according to the JMC(EN) framework principles. Colleagues from Scottish Government would only accept a common approach was *desirable*, because of a concern that agreeing a common approach was *necessary* would mean that a harmonised approach was required. It has subsequently been discussed and agreed by officials that common approaches for creating FFSH policy should be developed through the framework, noting that such approaches may still result in evidence-based divergence where this is considered appropriate.

4.3 Technical working groups (comprising of representatives from all four nations) collaboratively broke down each broad policy area (see Annex 1) into its component parts. The technical working groups developed initial proposals as to where within each policy area commonality might be needed. Officials from the four nations agreed that commonality is preferred across all areas of food & feed safety and hygiene law which are currently harmonised at a European Union level; the areas in scope of the framework and that common arrangements should be developed to deliver this. Officials from the four nations agreed that existing four nations cooperation mechanisms should be built on where possible.

### **FFSH Framework implementation**

4.4 After the end of the Transition Period, there will be a common body of FFSH law in place across the UK, put in place in GB through the European Union Exit statutory instruments. The FFSH Framework agreement itself will primarily be implemented through non-legislative agreements. It is proposed that the Framework should primarily be implemented through:

- a concordat between the four Governments (signed by Health Ministers); and
- a revised FSA-FSS MoU (setting out the elements of the Framework delivered by the food safety bodies of the UK).

<sup>1</sup> It should be noted that this is not an exhaustive list of principles agreed by JMC, but rather highlights the key principles of relevance to the FFSH framework.

This Framework Outline document will be publicly available once it has been agreed and it will set out the contents of the FFSH Framework.

4.5 These non-legislative elements to the implementation of the UK Framework will need to dovetail with each other, as well as the overarching UKG-DA MoU. The non-legislative elements of the Framework will include the:

- Scope of the Framework;
- High level principles for ways of working;
- Governance and principles for joint ways of working (including management of divergence);
- Framework review and management arrangements; and
- Governance arrangements for dispute avoidance and resolution.

#### Potential legislative requirements - concurrent powers

4.6 Officials from the four nations will undertake an exercise in 2021 to assess where within FFSH policy areas (within scope of the Framework) it would be beneficial to have concurrent powers<sup>2</sup> available so that one statutory instrument can be used to implement consistent decisions across the UK. It should be noted that UK wide SIs under FFSH legislation could only be made with the explicit consent of DA Ministers, and if considered appropriate would likely be limited to certain technical areas. The FFSH Framework will be fully functional from the end of the transition period regardless of the outcome of the assessment.

#### **Scope of the food and feed safety and hygiene framework**

*This section will be reviewed during Phase 4 of the framework development when then the UK Internal Market legislation is in place.*

4.7 Officials have agreed to take a principles-based approach to determining whether a proposed change is in scope of the Framework. The following principles should be considered when determining whether a policy change falls:

- a) In scope of the FFSH framework
- b) In scope of the FFSH framework processes and subject to notification procedures but not the full joint risk analysis processes
- c) Outside scope of the FFSH framework

#### Principles for determining scope

- a) Policy changes should be considered in scope of the FFSH framework if changes are being proposed where:
  - a decision in an area of returning powers would have an effect on any of the JMC principles.

<sup>2</sup> Concurrent power - the power for a UKG Secretary of State to make changes to retained European Union law in secondary legislation through one UK wide SI with the consent of DA Ministers.

- the requirements (both safety and hygiene) are intended to apply to establishments across the UK (or internationally) or products that are marketed across the UK and are currently harmonised at European Union level.
  - the policy area is the responsibility of food safety bodies in all four nations<sup>3</sup>.
  - the issue is not explicitly considered outside of scope.
- b) Policy changes should be considered in scope of the FFSH Framework but subject to notification processes and not the joint ways of working where:
- different requirements are proposed for establishments within one territory placing products on the market solely within the territory of that nation (i.e. establishments are based in and supplying the local market only); or
  - different requirements are proposed for products produced in and placed on the market solely within the territory of one nation (i.e. products are produced and consumed exclusively in the local market only).
- c) Policy changes should be considered outside scope of the FFSH Framework where:
- retained European Union legislation provides scope for national measures to achieve common outcomes and so divergence is already possible.
  - existing European Union legislation provides flexibility for the law to be applied in different ways i.e. this flexibility will be maintained.

#### **Areas in scope of FFSH framework**

- 4.8 The FFSH Framework applies to retained European Union food & feed safety and hygiene legislation. A detailed breakdown of the legislation is set out in Annex 1: Retained European Union FFSH Legislation. Broadly the FFSH areas currently harmonised at a European Union level where it is agreed by officials that common approaches and arrangements for working together should be developed are (see Annex 1: Retained European Union FFSH Legislation for further details):
- general food and feed law and hygiene
  - food and feed safety standards
  - official controls for food and feed
  - public health controls on imported food and feed
- 4.9 Unless explicitly ruled out of scope (see section 6) changes to the above areas that would be considered in scope of the framework include:

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<sup>3</sup> The scope of the framework for food and feed safety and hygiene (FFSH) extends only to those policy areas for which responsibility falls to food safety bodies across all four nations (i.e. frameworks / policy areas that fall within other departments' remit at UKG level will be managed by these departments, such as any replacement for Sante F, official controls for animal health and welfare, frameworks for general food labelling, food compositional standards, and nutrition etc.).

- proposals for changes to retained European Union legislation;
- proposals for new legislation in currently harmonised policy areas of retained European Union legislation;

4.10 The scope therefore includes food and feed safety requirements for products which are marketed across the UK and the harmonised rules (both safety and hygiene) under which businesses that operate across the UK produce them. The FFSH Framework will provide for a common approach to developing and making changes to UK FFSH legislation in areas where European Union law is currently harmonised, with a clear approach set out in the framework to manage divergence.

**Areas in scope and subject to notification processes within the framework but not the joint ways of working**

4.11 The changes identified within scope of this are in principle:

- different requirements proposed for establishments within one territory placing products on the market solely within the territory of that nation (i.e. establishments are based in and supplying the local market only); or
- different requirements proposed for products produced in and placed on the market solely within the territory of one nation (i.e. products are produced and consumed exclusively in the local market only).

4.12 The purpose of ensuring that each nation of the UK has the ability to make changes of this nature without having to engage the full joint risk analysis process is to ensure that where necessary Ministers can make recommendations to protect public health in response to inquests or fatal accident inquiries that have been as a result of specific circumstances within their territory and have primarily occurred only in their territory of the UK. For example, following a public enquiry after an *E. coli* outbreak associated with meat products in Wales (2005), Ministers followed recommendations from a public enquiry to apply additional requirements on establishments, food business operators (FBOs) or local authorities (such as enhanced training for enforcement officers, enhanced hygiene requirements, increased audits etc.) only within Wales.

4.13 In these instances, in the framework there would be requirements to engage as early as reasonably possible with the other nations and notify them of expected changes (i.e. so that other nations in the UK can consider whether they wish to follow the same approach), but these areas would not be subject to the full risk analysis processes outlined in the framework. This would, for example, allow Ministers to respond to serious public health incidents such as the *E. coli* outbreak in Scotland in 1996 where Ministers applied different hygiene requirements for butchers solely in Scotland. As we have seen with the recent allergens review (which is an issue that is out with the scope of the framework), even where the potential exists for different approaches to be taken now, the four nations can respond in a joint manner to key issues, where appropriate and in line with our ways of working set out in the FSS-FSA MoU.

4.14 Risk management recommendations on products produced within and placed solely on the market within one specific UK nation (i.e. the requirements apply only to producers in one nation of the UK placing the product exclusively on that market), or where structural or hygiene requirements are stipulated for establishments located in one UK nation only, would not be the



subject of the full joint working processes under the UK framework but would still be considered part of the overall framework and subject to a notification procedure. These matters will be subject to policy engagement arrangements as per the FSA-FSS MoU.

#### **Areas outside scope of FFSH framework**

- 4.15 Areas outside of scope of the framework will not be included within the formal joint policy-making and joint decision-making protocols set out in the framework. However, for these areas, officials agree that joint notification procedures and working arrangements between food safety bodies under the FSA-FSS MoU should be continued and mechanisms for sharing this information reviewed
- 4.16 Equivalent flexibility for tailoring legislation to the specific needs of each of the four UK nations as is afforded by current European Union rules will be maintained and existing areas of flexibility for different approaches will be maintained. Within food & feed safety and hygiene there are a number of areas where European Union legislation offers flexibility for the law to be applied in different ways, with scope for national measures to achieve common outcomes permitted by the legislation. Within the European Union FFSH legislation, this includes:
- a) Enforcement and execution - European Union legislation provides flexibility for Member States to develop their own enforcement and official control provisions in certain areas.
  - b) Risk management decisions currently taken at national level in areas where European Union legislation permits different approaches.
  - c) Incident management – well developed practical procedures for managing incidents and emergencies are already in place across the UK (while adhering to the broad requirements for incident management outlined in legislation which are in scope of the framework).

#### **Examples of areas outside of scope of framework**

- 4.17 Because of the complex and interlinked nature of FFSH legislation both at a European Union level and at a domestic level it is likely that in future there may be uncertainty as to whether a proposed change to food and feed safety rules falls within the scope of the FFSH Framework. To offer additional clarity, the following examples are illustrations of the areas that would be considered outside the scope of the UK framework<sup>4</sup> (meaning requirements laid out under the framework will not apply to these areas):
- **Enforcement measures:** While European Union legislation sets out the general approaches and principles that must be taken for the monitoring and enforcement of feed and food law requirements (which are in scope of the framework), it also provides considerable scope for national enforcement measures, allowing flexibility for competent authorities in setting enforcement provisions. In addition, each nation in the UK has scope to take different approaches to some enforcement measures. For example, Scotland, Wales and Northern Ireland have extended the scope of where remedial action notices (an enforcement notice) can be used to include all food businesses in comparison to only approved establishments in England.

<sup>4</sup> The FSA and FSS already have an MoU in place which governs ways of working in these areas.

- Changes in areas where national measures are permitted: Flexibility provisions in the Hygiene Package (commonly understood to consist of: Regulation (EC) No 852/2004 concerning the hygiene of foodstuffs; Regulation (EC) No 853/2004 concerning specific hygiene rules for food of animal origin; Regulation (EC) No 625/2019 with regards to requirements for the entry into the European Union of consignments of certain animals and goods intended for human consumption; and Regulation (EC) No 628/2019 concerning model official certificates for certain animals and goods) specifically exclude certain activities from the scope of the regulation, including direct supply by primary producers of small quantities of primary products to consumers (e.g. raw milk) and local retail establishments directly supplying the final consumer (e.g. eggs, honey, fruit, vegetables, wild game). Member States are obliged to adopt national rules for these activities. An example of where different national measures are already adopted in Scotland and the rest of the UK is raw drinking milk: it is an offence to place raw milk or cream on the market for direct consumption in Scotland, as per Scottish national measures, but not in the rest of the UK, where raw milk sales are permitted on a restricted basis to on-farm sales.
- Operational handling of incidents: The general requirements regarding response to food safety incidents harmonised at European Union level (Regulation EC 178/2002) will remain within the scope of the FFSH Framework. However, the operational management of incidents, where Member States currently have scope to determine their own rules for managing the practicalities of incident response, is considered outside the scope of the framework. Protocols for UK incident handling are covered by the MoU between the FSA and FSS, which refers to the FSA's and FSS' incident management plans. As per agreements set out in the MOU and incident management plans, the FSA is responsible for management of incidents with UK-wide implications, while incidents which do not have an impact extending beyond Scotland are managed under the FSS incident management plan (with requirements for information about such incidents to be shared with FSA).

## 5. Overview of proposed framework

*For each of the areas where policy teams know that a Framework is likely to be required, policy teams should set out, with reference to the Frameworks Principles:*

- *what the new framework will do/achieve - e.g. establish a common set of rules, or set out required ways of working between the different parties;*
- *to what extent will the Framework enable policy divergence between administrations;*
- *the rationale - why Framework is required, based on the Frameworks Principles; and*
- *the planned vehicle(s) - in thinking about this element, policy teams should consider whether new legislation is required or whether, for example, existing powers could be used to achieve the desired legislative outcome.*

### Overview of proposed FFSH framework

- 5.1 This section provides an overview of proposals for the FFSH Framework. Further detail on the proposed operation of the framework can be found in the later sections of this document. The FFSH Framework is intended to put in place shared ways of working between the four nations and their food safety bodies to drive for common approaches to retained European Union law (within scope of the framework), where agreed by all four nations. The intention is not to mandate harmonisation, but to recognise that businesses and consumers in all four nations (as well as international trading partners) often benefit from there being one consistent set of FFSH legislation (where those rules are considered to be in their interests), and agreed approaches for changing FFSH rules. However, the framework also allows for divergence, as there will be instances where it is appropriate for nations in the UK to take different approaches to risk-based consumer protection.
- 5.2 The FFSH Framework commits the parties to UK approaches for:
- policy development, including
    - undertaking FFSH risk assessment
    - developing risk management options and making risk management recommendations to Ministers within FFSH legislation;
  - managing UK pre-market approval and authorisation processes
  - managing divergence;
  - decision-making;
  - implementation of decisions; and
  - dispute avoidance and resolution.
- 5.3 The following principles have been established for the FFSH Framework to underpin shared ways of working while respecting and enhancing the devolution settlements and the democratic accountability of the devolved legislatures:
1. The framework for changing UK FFSH legislation should respect the JMC principles, devolved responsibilities and accountability across the UK.
  2. The four nations should work together to develop evidence based approaches for ensuring protection of public health and wider consumer interests, with the aim being to have common approaches to UK food & feed safety and hygiene policy developed and agreed by all four nations where evidence presented supports that position.
  3. Flexibility should be provided for administrations to act within the framework to meet local needs and circumstances while delivering the same outcomes.
  4. Within the framework, all four administrations should have the ability to diverge within their territory (having followed the principles set out in the framework for managing divergence) where the outputs of risk analysis<sup>5</sup> undertaken by food safety bodies

<sup>5</sup> Risk analysis is defined by the World Health Organization as a risk-based approach to the identification and management of public health hazards in food. In the UK, this will follow a structured approach developed and agreed by FSA and FSS comprising the three distinct but closely linked components of risk analysis (risk assessment, risk management and risk communication).

show that divergence is both necessary and proportionate to the risk to provide appropriate consumer protection in all nations.

5. Governance arrangements should be effective and proportionate whilst keeping administrative complexity and burdens to the minimum.
6. The framework should operate transparently: the framework's governance arrangements should be publicly available, and principles for transparency should be built into the framework where appropriate.

### **FFSH policy development**

- 5.4 The FFSH Framework agreement will set out the commitment of the four nations to deliver joint ways of working. To deliver the framework, new ways of working and governance arrangements will be needed to manage four nations input into the development of risk management advice for Ministers across FFSH policy areas. These new ways of working are being developed to manage the regulatory regime when the UK exits the European Union, building upon existing working arrangements between food safety bodies.
- 5.5 One mechanism through which the framework will be operationalised will be the new risk analysis process (comprising risk assessment, risk management and risk communication) which has been developed as a joint endeavour by the FSA and FSS through the food and feed safety risk analysis project.
- 5.6 Mechanisms will be in place throughout the process to ensure FSA and FSS have opportunity to discuss, and for matters within scope of the framework, agree the prioritisation and triage of issues and risk management proposals (particularly those triaged as "non-routine"), so risk management interventions are effective for the UK as a whole or for individual nations as needed.
- 5.7 To ensure a meaningful four nations approach and allow early and ongoing opportunities for each nation to input into the development of UK policy change it is proposed the framework agreement will include in relation to joint policy development:
  - A commitment from all four nations to engage with the other three nations at the earliest opportunity when considering any potential policy changes (For Northern Ireland, where possible this will include discussion of changes that are being discussed at the Joint Consultative Working Group and other committees established under the Northern Ireland Protocol).
  - A commitment from all four nations to notify and share consistent information in all FFSH policy areas at key stages in the policy development process through the mechanisms of engagement agreed for the risk analysis process.
  - A commitment to provide sufficient resources to joint working arrangements.
- 5.8 To deliver on these commitments, it is proposed that there will need to be:

- A consistent mechanism for policy leads in any of the four nations to identify counter parts and share information.
- Regular engagement between policy leads in all four nations.
- An administrative function to provide oversight of information sharing between the four nations and joint working arrangements.

5.9 In Northern Ireland, European Union risk management decisions will apply for food and feed safety and consequently for any food that comes into the rest of the UK from Northern Ireland. For European Union regulations that will apply only in Northern Ireland under the Protocol, full risk analysis may not be undertaken for some European Union regulations assessed as routine at triage. Those European Union regulations assessed as non-routine at triage would be prioritised for risk analysis as appropriate to the issue.

5.10 Risk assessment is a scientific process which assesses the risk associated with food or feed and consists of the following steps: (i) hazard identification, (ii) hazard characterisation, (iii) exposure assessment and (iv) risk characterisation. Having robust risk assessment principles in place is important for providing assurance to consumers, businesses, stakeholders and trading partners that risk assessments are carried out appropriately for ensuring public health protection across the UK. Although some capacity for FFSH risk assessment already exists in the UK, much of the risk assessment required for FFSH is currently carried out by the European Food Safety Authority (EFSA).

5.11 A set of FFSH Framework principles for governing risk assessment have been developed. These principles should provide assurance that risk assessments are responsive to the four nation's needs. The FFSH Framework principles proposed to govern risk assessment are:

- There is a four nations representation at each appropriate stage of the risk assessment as needed.
- Risk assessments are undertaken on a UK wide basis, but with capacity for non-UK wide risk assessments where particular issues require single nation approaches (risk assessment done on a UK wide basis could also include nation specific outputs, which would allow for comparison of risk across the four nations).
- Risk assessments are independent, free from undue influence and are carried out according to recognised international principles.
- There is a suitable challenge mechanism in the risk assessment process once we have left the European Union.
- There are appropriate governance arrangements in place for recognising devolved matters in the prioritisation, commissioning and quality assurance of risk assessments.

- The FSA will consult the relevant home nation with regard to any issues, evidence or analysis specific to that nation, with the aim of ensuring that risk assessments properly reflect the situation in the different constituent parts of the UK, as far as the evidence allows.
- There is the capacity for a number of different outputs / approaches where required – this could include:
  - RA undertaken on a UK basis with one UK output.
  - RA undertaken on a UK basis with nation specific outputs.
  - RA undertaken on a single nation basis.
  - RA undertaken for more than one nation but not all four.
- Where nation specific outputs are requested / needed risk assessments will capture any different county specific characteristics, nuances and demographics.
- Supplementary information on nation specific issues will be based on robust data sources, for example the National Diet and Nutrition Survey.
- Any difference in risk assessment conclusion for nation specific outputs are clearly set out, explained and justified.

5.12 As part of the risk analysis process, the FSA, in conjunction with FSS, is working to determine how risk assessments will be undertaken, commissioned and prioritised. The principles for risk assessment agreed within the UK framework are reflected in the FSA and FSS risk assessment process. This will ensure that risk assessments are responsive to the four nation's needs.

### **FFSH risk management**

5.13 Within the scope of the UK framework, the risk analysis process will bring together officials from across the UK to consider risk management proposals on issues in scope of the framework.

5.14 Opportunities for four nations discussion will exist at all stages of risk management to ensure that all relevant considerations are taken into account when forming risk management advice and recommendations. Discussion on issues such as terms of reference and potential membership of any joint risk management groups will take place in phase 4 of framework development.

5.15 The risk analysis process will operate transparently, enhancing trust and confidence once the UK is outside of the European Union framework. The process will seek to provide, wherever appropriate, a cohesive UK risk management opinion on matters of food and feed.

### **UK pre-market approval and authorisation processes**

5.16 Where changes are driven by businesses (for example an application for the authorisation of a new feed or food additive), the Framework commits all parties to a

single application process for businesses applying for pre-market approvals and re-authorisations for the GB market. Where applications are made by businesses for the authorisation of a new regulated food or feed product, or for renewals of existing authorisations, these can be submitted via an online portal. All information/data submitted in support of applications will be accessible to the relevant leads in each of the four nations. The operational detail of this has been developed by FSA and FSS officials.

- 5.17 Businesses applying for pre-market approvals and re-authorisations for the Northern Ireland market will submit applications to the relevant body as set out in European Union legislation (ESFA or the European Commission).

### **Managing divergence**

- 5.18 In making changes to retained European Union food & feed safety and hygiene legislation within scope of the framework, the four nations will aim to develop common policy approaches where this is appropriate. Where it is considered that a common approach is not the most suitable for taking forward changes to FFSH legislation, the following principles have been developed to manage divergence:
- Where one or more nation wishes to diverge from a four nations approach to food & feed safety and hygiene, before divergence can happen, nations must first see if they can agree a common approach that accommodates the desired outcomes of individual nations.
  - In line with normal working arrangements, proposals should be discussed on a four nations basis using existing forums in place between FSA and FSS to develop the proposed approaches.
  - Where a common approach cannot be agreed through normal policy routes, and divergence is not considered acceptable by one or more nations in the UK, then the dispute resolution mechanism can be engaged.
  - In Northern Ireland, officials and Ministers will still have the opportunity to fully participate in discussions on how potential divergence will be managed across the UK even when those issues fall within scope of the Northern Ireland Protocol.

### **Ministerial decision-making**

- 5.19 Governance arrangements are needed for how the appropriate authorities (namely UKG and DA Ministers) take decisions based on joint recommendations from food safety bodies. While Ministers will ultimately retain the right to take individual decisions for their nation, as with officials, for areas within scope of the framework a consensus should first be sought, and efforts made to resolve any disputes. Proposals for the governance around Ministerial decision-making are covered in section 7.

### **Implementation of decisions**

- 5.20 The mechanisms for joint working should provide, as part of proposed recommendations to Ministers, a recommendation on the most appropriate means for implementing decisions within scope of the framework, including whether decisions should be implemented in primary or secondary legislation or guidance, when they should come into effect. Shared processes for communicating changes to UK businesses and consumers should be used where appropriate.
- 5.21 UK-wide primary legislation will only be taken forward where consent has been sought of DA Ministers (as is the case at present) as well as Scottish and Welsh parliaments and the Northern Ireland Assembly under respective devolution settlements.
- 5.22 As noted in section 4, work will be undertaken in 2021 to assess the case for including concurrent powers in specific areas. If concurrent powers are put in place in certain areas, further consideration will be needed as to how the parties to the framework will determine the appropriate approach to take in these areas (i.e. whether to implement decisions through UK-wide legislation or separate legislation in one or more nation).

#### **Dispute resolution**

- 5.23 The process for resolving disputes at official level is expected to only be needed in a very small number of cases as the majority of the time food safety bodies are likely to agree on the recommendation for Ministers. Dispute resolution processes should only be used if resolution through normal working processes has not been possible. In some areas, commonality of approach will not be needed in order to meet the JMC principles, and in these cases divergent approaches could be recommended to Ministers. Where disputes do arise, they should be handled with adherence to the agreed principles and processes for resolution. The proposed operational detail of dispute resolution within the FFSH Framework is set out in section 12.

#### **Framework implementation**

- 5.24 As noted in section 4, the FFSH Framework will primarily be implemented through non-legislative agreements. The Framework will be implemented through:
- a concordat between the four Governments (signed by Health Ministers); and
  - a revised FSA-FSS MoU (setting out the elements of the Framework delivered by the food safety bodies of the UK).

## **6. Detailed overview of areas where no further action is thought to be needed**



*Where relevant, in this section policy teams should briefly explain why common rules or further cooperation is not required. This section should also set out where there is disagreement between administrations on whether common rules or further cooperation are required.*

- 6.1 There are areas within FFSH where European Union legislation offers flexibility for the law to be applied in different ways, with scope for national measures to achieve common outcomes permitted by the legislation. In these areas, different decisions may be taken by individual administrations across the UK. These areas will be considered explicitly outside the scope of the UK framework. Section 4 of this document provides further detail on the scope of the FFSH Framework and specifies the elements of FFSH that are outside the scope of the framework, where proposals made in this document would not apply (for example, areas such as incidents handling, risk assessment during incidents, specific elements of the hygiene package and local enforcement). It should be noted that working arrangements between the food safety bodies on some of the 'out of scope' areas are already covered in an MoU between FSS and FSA (which will be revised to reflect new ways of working as a result of the framework proposals and European Union exit projects).
- 6.2 There are no areas of retained harmonised European Union FFSH legislation where it has been identified as undesirable to maintain shared ways of working for the development of FFSH policy.

## OPERATIONAL DETAIL

### Part 3: PROPOSED OPERATIONAL ELEMENTS OF FRAMEWORK

#### 7. Decision making

*Policy teams will need to consider the following questions, reflecting on any existing structures, and set out their initial thinking in each area, where appropriate distinguishing between one-off decisions needed to establish and in due course amend/update a framework, and ongoing operational decisions made under a framework:*

- a. *What decisions will need to be taken?*
- b. *Which of these decisions will need to be taken at a UK wide level?*
  - i. *How will these joint decisions be made?*
  - ii. *Will specific criteria need to be met before joint decisions can be made?*
  - iii. *Will an evidence base be required, if so how will it be developed?*
- c. *Which decisions will need to be taken by third parties or by individual administrations?*
  - i. *If decisions are taken by individual administrations, will these be taken at an official or Ministerial level?*
- d. *How will decision making be tracked and by whom?*
- e. *How will disagreements be settled? (including any escalation process)*

*It will be helpful to consider and work through practical examples to help put these discussions into context.*

*Any disagreement between administrations on approach should be recorded.*

- 7.1 After European Union Exit, the appropriate authorities (namely UKG and DA Ministers) will need to take decisions on future changes to all areas of retained European Union FFSH law based on recommendations from officials. This will include both technical changes made through secondary legislation (of which there are likely to be many) as well as any changes to or new primary legislation that fall within scope of the framework. Annex 1 provides a detailed breakdown of the areas of European Union FFSH legislation where changes could occur. Annex 2 provides a breakdown of the retained European Union legislation.
- 7.2 Governance arrangements are needed under the framework for how Ministers will take decisions for their nations based on recommendations from food safety bodies (as jointly agreed by officials across the UK through the risk analysis process) in areas within scope of the framework. While Ministers will ultimately retain the right to take individual decisions for their nation (notwithstanding issues in scope of the Northern Ireland Protocol), as with officials, for areas within scope of the framework a consensus should first be sought on the approaches to take, and efforts made to resolve any disputes. For Ministerial decision making it is proposed that:

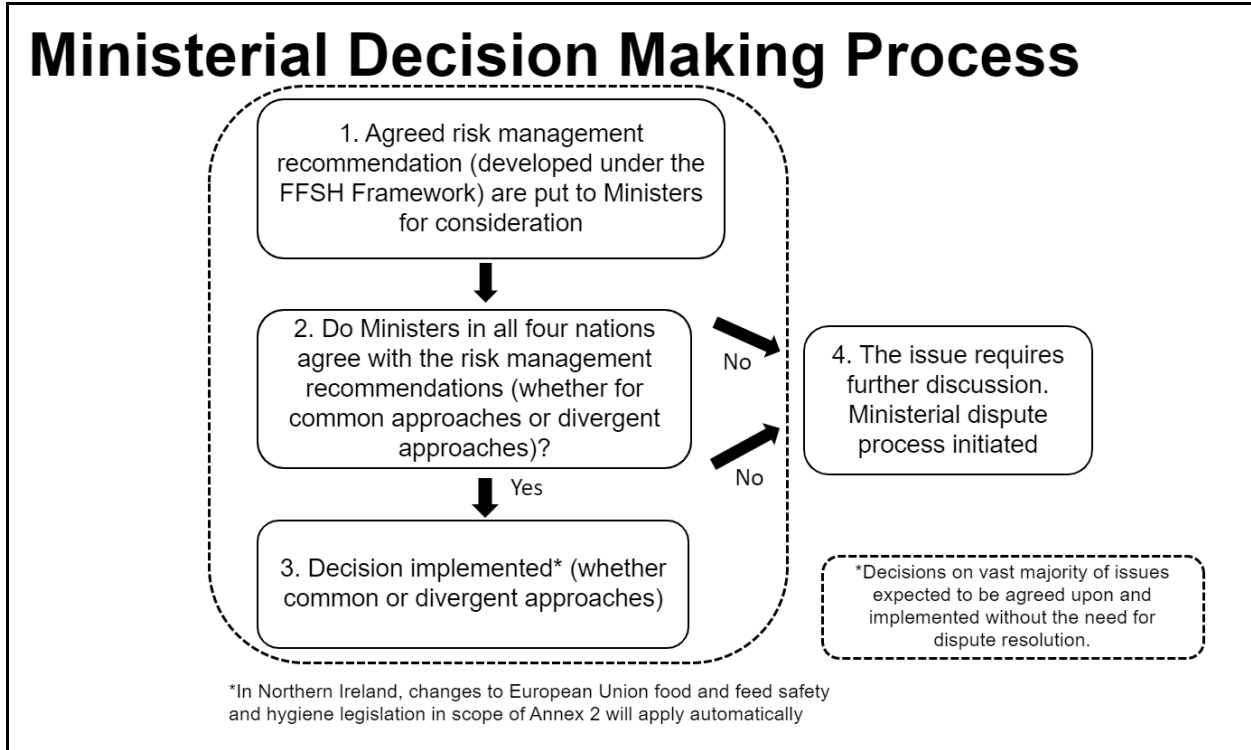
- Where timelines are prescribed in retained European Union law, decision-making processes should operate to these.
- Officials should seek decisions from Ministers at approximately the same time.
- Where Ministers do not agree on the recommendation made by food safety bodies (either for a common approach or divergent approaches across the UK) the Ministerial dispute resolution mechanism can be engaged (see section 12) to see if a consensus can be reached by portfolio Ministers (this is separate to the official level dispute resolution process, which deals with disputes arising at official level).
- Ministers' responses to recommendations should be managed and tracked, and policy officials in each of the four nations should share information on respective Ministers' responses to recommendations.

7.3 When recommendations are made to Ministers by food safety bodies, Ministers will be made aware of the recommendations being made in all four nations (whether for common or divergent approaches). Officials then provide an explanation of the underpinning rationale for the recommendations, including an explanation as to why the specific approaches are considered to be appropriate. The evidence supporting any recommendation (either for common or divergent approaches) would have been generated through a risk analysis process in which all four nations will participate. See section 5 for more information on the risk analysis process.

7.4 It is proposed that the Ministerial decision-making process would follow the process outlined in Diagram 1. Where divergent approaches are recommended to Ministers or one or more Minister is not content to proceed, Ministers have the opportunity to consider whether they are content for respective approaches to be implemented; if not they can decide to escalate the issue and engage the dispute avoidance and resolution mechanism (see section 12 for details).

7.5 There are no areas in scope of the framework where decisions will need to be taken by third parties, or by individual administrations without the issue having been considered through the risk analysis process and Ministerial decision-making process.

**Diagram 1:**



## 8. Roles and responsibilities of each party to the framework

*The agreement will need to set out clearly the responsibilities of all parties, for example:*

- a. commitments on regular meetings;*
- b. information sharing; and*
- c. Parliamentary and stakeholder communication and engagement.*

*Policy teams should set out their proposals here, including any areas of disagreement.*

See Section 9

## 9. Roles and responsibilities of existing or new bodies

*Policy teams will also need to set out the proposed responsibilities of any third parties, and think about the governance and reporting arrangements for these bodies.*

9.1 The FFSH Framework will commit the four nations to participation in ways of working set up as a result of the European Union Exit in part to deliver the framework (such as the risk analysis process) and the formalisation of existing or new working arrangements (such as the FFSH Frameworks Management group). Each of these will have specific roles and responsibilities within the framework.

### Four nations working level arrangements

- 9.2 As detailed in the risk analysis process, if one or more nation has a specific issue that they wish to discuss at a working level on a four nations basis in relation to any area within scope of the framework, all four nations are committed to engaging on the issue at a working level. When policy leads from the four nations are engaging to jointly develop risk management recommendations they will do so under agreed ways of working (which will be developed as part of the risk analysis process). These principles will strengthen existing working arrangements between the four nations of the UK.

### **FFSH Frameworks Management Group**

- 9.3 A FFSH Frameworks Management Group will be established to provide oversight of the FFSH Framework. The group would be made up of senior representatives between Grade 6 and Deputy Director level from food safety bodies from all four nations. Key responsibilities would include:

- considering amendments to the framework;
- undertaking reviews of the framework in line with the agreed Terms of Reference (noting that any recommended changes to the framework Concordat would be subject to Ministerial approval);
- reporting on the FFSH Framework to the appropriate authorities (JMC, FSA/FSS Boards, Ministers etc.); and
- resolving working level disputes on disagreements on interpretation or breaches of the agreed framework processes. See Annex 4 for Terms of Reference.

### **Four Nations Director Group**

- 9.4 The Four Nations Director Group would act as the initial stage of escalation within the official level dispute resolution process for policy disputes. This group will meet on an ad-hoc basis as and when required, and membership will comprise of the relevant directors from the food safety bodies as the dispute in hand requires. See Annex 5 for Terms of Reference.

### **FSA and FSS Boards**

- 9.5 The FSA and FSS boards have both made commitments to collaborative working on risk analysis: further information can be found in Board papers published on both organisations' websites. This will commit all four nations to being open and transparent in how risk management recommendations were reached, upholding the public interest in relation to food and protecting public health and consumers' wider interests in food. Both boards have made commitments to publishing the advice they provide and the evidence on which that advice is based, to fulfil both organisations' longstanding principles of openness and transparency.

- 9.6 The FSA and FSS Boards will play a role in assuring that the Framework is operating effectively. This assurance will be provided through the assurance processes for risk analysis (which both Boards have agreed), the annual review of the FSA-FSS MoU and the joint annual framework report carried out by the FSA-FSS Frameworks Management Group.

## 10. Monitoring and enforcement

*Policy teams should consider whether and how any rules set out will be monitored and enforced, and the role of the Ministers from each of the administrations in that process, e.g. whether the framework result in new duties for Ministers or external bodies.*

- 10.1 The FFSH Frameworks Management Group (comprising senior officials from all four nations) will monitor the functioning of the framework and assess any new needs of the framework at regular intervals (see section 11). The Frameworks Management Group should oversee the functioning of the framework, and any requests to amend any element of the framework should be raised to this group in the first instance. The group should agree what information it will need and on what frequency to provide assurance as required that the framework is operating effectively.
- 10.2 The dispute avoidance and resolution mechanisms (at both official and Ministerial level) will also be key components in ensuring the framework is adhered to. Any perceived breach of the agreed framework processes would be handled through the dispute avoidance and resolution processes (see section 12).

## 11. Review and amendment

*Policy teams should think about whether there will be a need to review the framework and, if so:*

- a. the timeline for this (including any external trigger points);*
- b. whether parties to the framework agreement should be able to call for a review;*
- c. how and by whom the review will be undertaken; and*
- d. how the outcomes of a review will feed into a decision to amend the framework.*

*Policy teams should also think about the practical arrangements to amend the framework:*

- a. how a decision to change a framework will be made;*
- b. how those changes will then be communicated to stakeholders, especially relevant committees/Parliaments.*

*They should set out their proposed approaches here.*

- 11.1 There will be a need to review the FFSH Framework after it is put into practice. It is proposed that the FFSH Frameworks Management Group (a senior officials group with representatives from all four nations) should initially meet every quarter to review the delivery and operation of the framework and assess any new needs of the framework. The first full post implementation review should be carried out one year after the framework is implemented; the group will report on the review to those with assurance responsibilities for the framework (likely to include the FSA and FSS Boards, portfolio Ministers and JMC (EN). After that the frequency on framework reviews should be proposed by the Frameworks Management Group to the relevant decision makers (taking account of departmental and wider framework Governance requirements).
- 11.2 Requests to amend any element of the framework should be raised to the Frameworks Management Group. A Terms of Reference has been developed detailing requirements and timescales (see Annex 4).

## **12. Dispute resolution**

*Policy teams should outline what they might need from a dispute resolution mechanism. In doing so, policy teams should think about:*

- a. the likely causes of a dispute;*
- b. the stages of escalation and timescales for this process;*
- c. the point at which the dispute would be raised in the wider IGR structure; and*
- d. whether third parties would need to be involved;*

- 12.1 The dispute avoidance and resolution processes should only be engaged once all normal avenues to try and resolve the dispute have been exhausted. The Framework governance provides mechanisms for good communication and cooperation, which should reduce the likelihood of disputes arising. Where disputes do occur, consensus should be sought on the approach to take and efforts made to resolve the dispute. Actions under dispute should be paused pending resolution through the dispute resolution mechanism.
- 12.2 Disputes could potentially arise at official level or at Ministerial level. Where disputes arising at official level cannot be resolved through officials' dispute avoidance and resolution process, they should be escalated to Ministerial level.
- 12.3 There is a distinction between a 'difference' and 'dispute'. Differences may arise at any level, even Ministerial, and may be resolved without being elevated to the level of 'dispute' thus avoiding the formal resolution process. For example, a clarification provided by an exchange of emails or letters between senior officials or even Ministers may resolve a concern or potential issue. It should be noted that commonality of approach will not be needed to meet the JMC principles and therefore an "agreement to diverge" would be appropriate on some issues. If an issue cannot be resolved and it is necessary to escalate the issue to ministerial level, Ministers will be informed of the dispute in their advice from the parties and it will be for Ministers to determine whether they raise the dispute with their counterparts.
- 12.4 Where disputes do arise, they should be managed with adherence to the following principles:
- Commitment to evidence-based approaches to resolving disputes
  - Transparency (auditable, open to scrutiny unless legal requirements for non-disclosure)
  - Timely resolution (meeting deadlines for actions/stages, agreement to accelerated timescale in emergencies)
  - Compliance (with process and outcome)

#### **Officials' dispute resolution**

- 12.5 At official level, disputes could either arise:



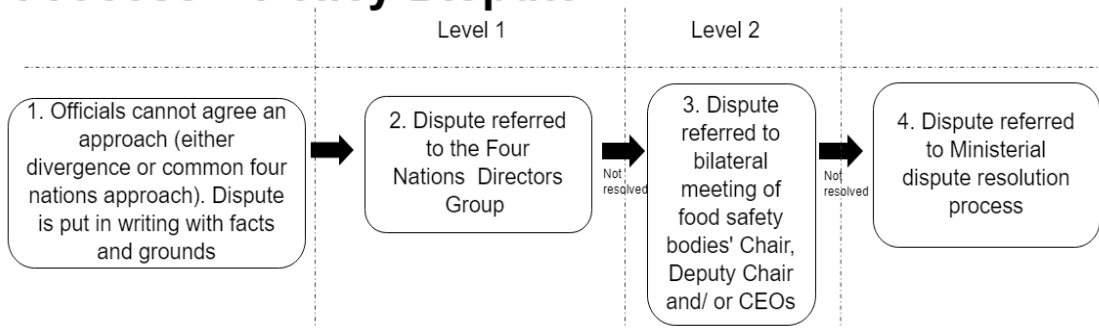
- a) Over disagreement on the approach to a policy issue, where officials cannot agree an approach (either to recommending common approaches, or to recommending that divergence is appropriate); or
- b) Over disagreement on the functioning of the framework, where officials in one or more nation consider officials in another nation/ nations to have breached an element of the agreed framework processes.

12.6 In either type of dispute, for areas within scope of the Framework, the issue should first pass through the officials' dispute avoidance and resolution processes. In the rare instances where officials cannot resolve a dispute and it is escalated to Ministers, the Ministers' dispute avoidance and resolution protocol should be engaged (see below).

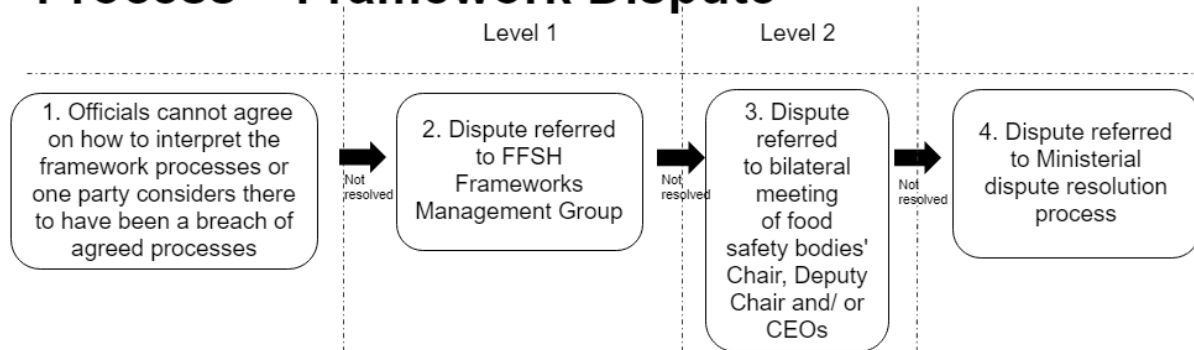
12.7 Diagram 2 sets out the different levels of escalation for different types of disputes arising at official level.

**Diagram 2:**

### Officials' Level Dispute Avoidance & Resolution Process – Policy Dispute



### Official Level Dispute Avoidance & Resolution Process – Framework Dispute



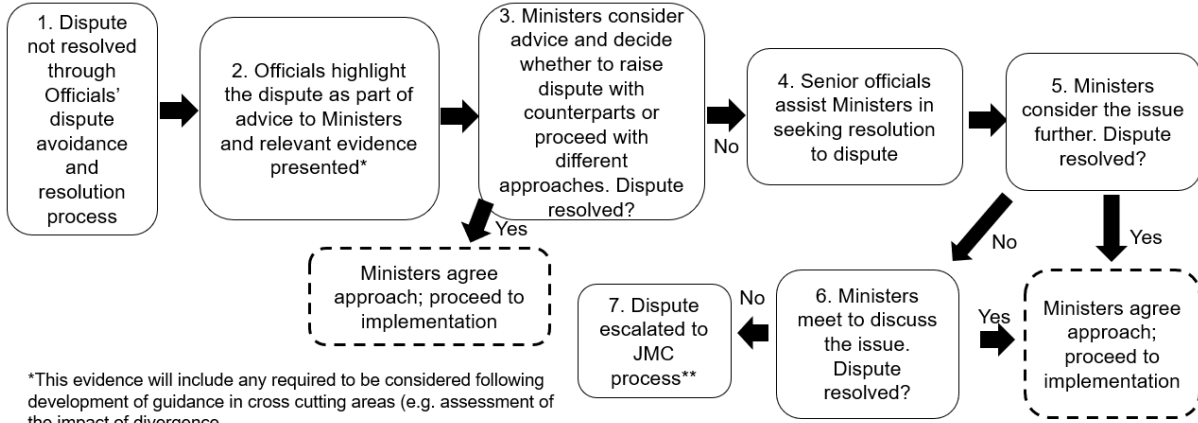
- 12.8 **Level 1:** at level 1 there are two different groups where disputes may be discussed depending on the type of dispute (either a dispute on a policy issue; or a dispute relating to the functioning of the Framework). If the dispute is around the policy recommendation, then the dispute is referred to a four nations Directors group. This group is an ad-hoc group called together only when disputes need to be resolved. The group should consist of the relevant Directors from across the food safety bodies and OGD representatives if required.
- 12.9 If the dispute is around the functioning of the framework itself, then the dispute is referred to the FFSH Frameworks Management Group. This group should consist of senior officials from food safety bodies in all parts of the UK and should have responsibility for overseeing the functioning of the Framework (for example, the annual review of the Framework) as well as seeking to resolve disputes that arise around the functioning of the Framework.
- 12.10 **Level 2:** at level 2, disputes should be handled through the same mechanism regardless of the type of dispute. Bilateral meetings already regularly happen between the FSA Chair/CEO and the FSS Chair/CEO. It is proposed that when a dispute is escalated to level two, the bilateral meeting is used as the forum for discussing the dispute and that the Deputy Chair of each food safety body should also participate in the dispute discussion.

### **Ministers' dispute resolution**

- 12.1 In rare instances where Ministers do not reach unanimous agreement on a joint recommendation from food safety bodies, and in instances where officials cannot agree an approach (having attempted to reach agreement through the officials' dispute avoidance and resolution process), then the Ministers' dispute avoidance and resolution mechanism will be used to resolve the dispute and reach agreement on appropriate approaches.
- 12.2 In either of these situations, disputes should be handled with adherence to the same principles as the officials' dispute avoidance and resolution process. Diagrams 3 and 4 set out the two different ways disputes could be escalated to Ministerial level.

**Diagram 3:**

## Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Official Level

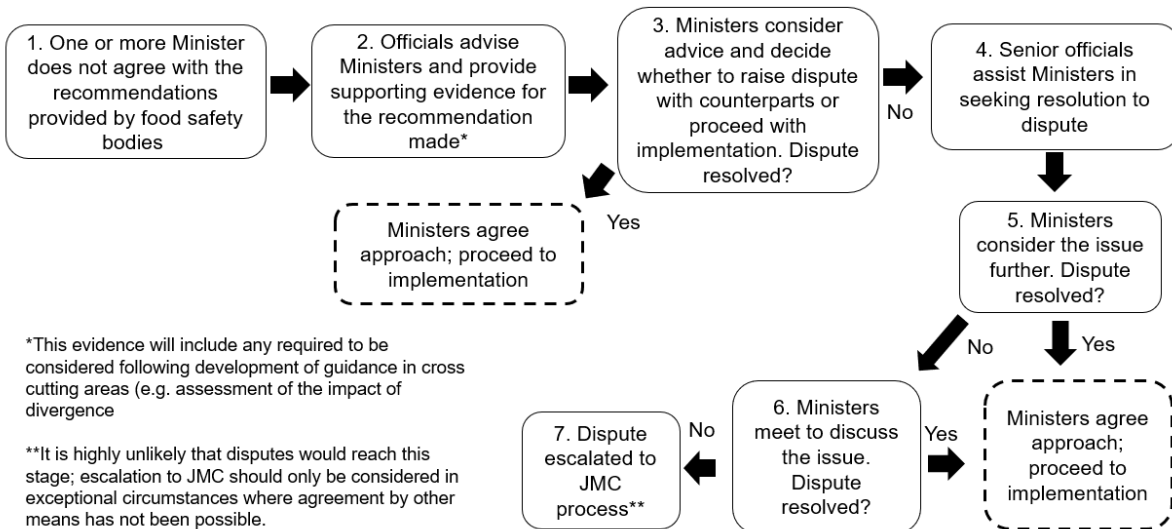


\*This evidence will include any required to be considered following development of guidance in cross cutting areas (e.g. assessment of the impact of divergence)

\*\*It is highly unlikely that disputes would reach this stage; escalation to JMC should only be considered in exceptional circumstances where agreement by other means has not been possible.

**Diagram 4:**

## Ministerial Dispute Avoidance & Resolution Process – Dispute Arising at Ministerial Level



\*This evidence will include any required to be considered following development of guidance in cross cutting areas (e.g. assessment of the impact of divergence)

\*\*It is highly unlikely that disputes would reach this stage; escalation to JMC should only be considered in exceptional circumstances where agreement by other means has not been possible.

12.11 Disputes could arise at official level if officials cannot agree either to recommending a common approach, or to recommending that divergence is appropriate. Initially, the issue should pass through the officials' dispute avoidance and resolution processes. If it is not possible to resolve the issue through official level processes, the issue would be raised to Ministerial level for a decision on how to proceed.

- 12.12 In this situation, officials would highlight the disagreement at official level alongside respective food safety bodies' advice to Ministers including any relevant evidence (including any required to be considered following development of guidance in cross cutting areas, such as an assessment of the impact of divergence). It would be for Ministers to review the impacts of the proposed approaches before taking a decision on whether to proceed, or to raise a dispute at Ministerial level.
- 12.13 If Ministers could not agree to proceed with the recommended approaches having reviewed the evidence, the issue would continue through the stages of the dispute process: officials would provide assistance to Ministers in seeking resolution as requested, and further consideration of the issue would be given by Ministers.
- 12.14 If the dispute could not be resolved during these stages, portfolio Ministers would meet in person to discuss the issue. If resolution could still not be reached, the issue would be escalated to the JMC process (though it is considered that disputes would very rarely be escalated to this level).
- 12.15 Disputes could also arise at Ministerial level in cases where one or more Minister was not content to proceed with the recommendation from food safety bodies. In these cases, the issue would come back to officials in all four nations to carry out a review of the evidence (including the impacts of decision(s) taken) and provide further advice to Ministers. If the divergence was not considered to be acceptable, a dispute could be raised, following the same stages of escalation.
- 12.16 It will be necessary to continue to discuss the interdependencies of the FFSH Framework dispute avoidance and resolution processes with cross-cutting areas such as internal market considerations and international trade implications to ensure the dispute avoidance and resolution processes of the 'vertical' policy framework joins up appropriately with any 'horizontal' cross-cutting frameworks as these are developed.
- 12.17 In Northern Ireland, for issues in scope of the Northern Ireland Protocol, officials and Ministers will still be a full participant in any four nations correspondence or discussions that take place as part of dispute resolution processes.

## Part 4: PRACTICAL NEXT STEPS AND RELATED ISSUES

### 13. Implementation

*Where possible, policy teams should set out the next steps required, following Ministerial agreement, to operationalise their proposals and outline the proposed timetable for delivery. Policy teams should also note any potential resource implications.*

*Any other relevant issues should be fed into the Frameworks Project Team. Further guidance will be issued as appropriate.*

#### **Next Steps**

- 13.1 Once Ministers' provisional agreement is given and JMC has agreed to the implementation of the FFSH Framework, preparation to implement the Framework will begin.
- 13.2 The non-legislative agreements that will implement the FFSH Framework will then be signed. These are:
- the Concordat between the four Governments (signed by Health Ministers); and
  - the revised FSA-FSS MoU (setting out the operational detail of the Framework, signed by FSA and FSS CEOs).
- 13.3 Work will also be needed to:
- ensure that the proposals set out in the framework are flexible enough to align with the outcomes of FR negotiations.
  - understand how the governance of the framework might interact with any potential commitments made to the European Union to demonstrate UK wide compliance with FR commitments.

#### **Resource requirements**

- 13.4 There will be resource requirements to develop and implement the framework and then ongoing resource requirements to support the effective functioning of the framework. Once implemented, the framework will require continued resourcing from all four nations in the policy groups, supporting Ministerial decision-making and the Frameworks Management Group.

13.5 A significant proportion of this resource would be required anyway to support delivery of FFSH after the European Union Exit and taking a four nations approach under the framework will ensure that expertise is shared and resource requirements are actually lower overall than if the four nations were taking this work forward individually. However, it is likely that ongoing resource and funding requirements will be needed to enable effective functioning of the framework.

## ANNEX 1 – DETAILED BREAKDOWN OF EUROPEAN UNION FFSH LEGISLATION

### General Food Law & Hygiene

#### Food and feed safety (as set out in General Food Law)

Regulation (EC) No 178/2002<sup>6</sup> is often referred to as ‘General Food Law’ and is the key piece of legislation laying down high-level principles underpinning the placing of safe food and feed on the market in the European Union. It establishes and describes institutions and bureaucratic functions concerning food and feed safety. The main objectives of food and feed law are to guarantee a high level of protection of human health and consumers’ interests in relation to food and to ensure free movement of food and feed manufactured and marketed in the European Union. A number of functions are provided by the Commission or other European Union bodies under food and feed law (such as the European Food Safety Authority (EFSA) and tools for sharing of food safety information (such as the Rapid Alert System for Food and Feed (RASFF)).

The main objectives of food and feed law are to:

- guarantee a high level of protection of human life and health and the protection of consumers’ interests;
- ensure free movement of food and feed manufactured and marketed in the European Union, in accordance with the General Food Law Regulation; and
- facilitate global trade of safe feed and safe, wholesome food by taking into account international standards and agreements when developing Union legislation, except where this might undermine the high level of consumer protection pursued by the European Union.

A number of functions are provided by the Commission or other European Union bodies under food and feed law:

- Standing Committee on Plants, Animals, Food and Feed (SCOPAFF) provides expertise to ensure legislation/measures are up to date, practical and effective.
- EFSA undertakes risk assessments for food and feed safety as well as providing scientific advice and support.
- Commission provides tools for sharing of food safety information (such as RASFF).

#### Food hygiene regulations

Regulation (EC) Nos 852/2004 and 853/2004 set out the requirements for the hygiene of foodstuffs and hygiene rules for food of animal origin. The hygiene package establishes the general principles for food hygiene controls and harmonised approaches. The legislation lays down the food hygiene rules for all food businesses, applying effective and proportionate controls throughout the food chain, from primary production to sale or supply to the final consumer. Commission Regulation (EC) No 2073/2005 provides that food business operators undertake sampling and testing to ensure that foodstuffs comply with the microbiological criteria set out in that Regulation.

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<sup>6</sup> Pursuant to Article 288 of the Treaty of the Functioning of the EU, EU Regulation has general application and is binding in its entirety and directly applicable on all Member States. This applies to all references to EU regulation.

Regulation (EC) No 852/2004 applies general hygiene rules for all food businesses on the hygiene of foodstuffs. Regulation (EC) No 853/2004 provides specific hygiene rules for food products of animal origin.

Commission Regulation (EC) No 2073/2005 lays down the microbiological criteria for certain microorganisms, and in certain food commodities.

### Feed hygiene requirements

Regulation (EC) No 1831/2003 lays down general rules on feed hygiene; conditions and arrangements ensuring traceability of feed; and conditions and arrangements for registration and approval of establishments to ensure a high level of consumer protection with regard to food and feed safety. Additionally, Regulation (EC) No 767/2009 the objective of which, in accordance with the general principles laid down in Regulation (EC) No 178/2002, is to harmonise the conditions for the placing on the market and the use of feed, in order to ensure a high level of feed safety and thus a high level of protection of public health, as well as to provide adequate information for users and consumers and to strengthen the effective functioning of the internal market.

There are also additional European Union Regulations and Directives relating to feed setting out restrictions on undesirable substances (Directive 2002/32/EC) and feed for particular nutritional uses (Commission Directive 2008/38/EC).

### **Food Safety Standards**

European Union regulations and directives cover requirements for:

#### Food Improvement Agents, and Feed Additives including:

- Food additives;
- Food enzymes;
- Food flavourings;
- Feed additives; and
- Extraction solvents.

Food improvement agents and feed additives are governed by harmonised rules across the European Union. Food improvements agents and feed additives require authorisation before products can be placed on the market. Proposed authorisations and withdrawals are considered at Working Group level by technical experts from all Member States following a safety assessment by the European Food Safety Authority (EFSA). The final risk management decision on authorisations and withdrawals from the market is taken by the European Commission based on qualified majority voting at Standing Committees (sub-sections of the Standing Committee on Plants, Animals, Food & Feed (SCOPAFF)) with responsibility for food and feed safety, and are brought into effect through legislation.

European Union Regulations provide for: harmonised lists of approved food improvements agents (additives and flavourings), conditions for authorisation and use for food additives, food enzymes, food flavourings; rules on the labelling of certain food improvements agents (including the so called "Southampton colours"); and specifications (purity criteria) for permitted substances. European Union Regulations list those feed additives authorised for use. In some cases, it lays down restrictions / conditions of use.



In relation to feed additives, Regulation (EC) 1831/2003 specifies the information which must appear on additive and premixture labels. It covers zootechnical additives, some categories of which are the responsibility of the Veterinary Medicines Directorate (VMD). In addition, Commission Regulation (EC) No 429/2008 sets out detailed rules for the implementation of Regulation (EC) No 1831/2003 with regard to the preparation and presentation of applications and the assessment and the authorisation of feed additives. Individual Commission Delegated Acts cover the authorisation of feed additives and any particular conditions of use. The process covers first time authorisations and renewal of existing authorisations and is a fast-moving area.

Enforcement is delegated to local authorities and powers for enforcement are provided by the Food Additives, Flavourings, Enzymes and Extraction Solvents (England) Regulations 2013; and the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015. Separate, equivalent regulations are in place in the devolved nations, and DAERA is the enforcement authority for feed in NI.

#### Food Contact materials and contaminants of food and feed, including:

- Food and feed contaminants;
- Food contact materials;
- Radioactive contamination of food and feed; and
- Feed detoxification processes.

Food contact materials and articles such as packaging, containers, cutlery, kitchenware, food handling gloves and plates etc are governed by general safety rules across the European Union and more specific rules for the manufacture, marketing and use of certain materials. In addition, specific European Union measures are in place for plastics, recycled plastics, regenerated cellulose film, lead and cadmium from ceramics and active and intelligent materials and articles. However, in areas where there are no specific European Union measures, Member States may maintain or adopt their own national provisions on other FCMs. For other materials and articles, the European Union deploys the principle of mutual recognition which guarantees that any product lawfully sold in one the European Union Member State can be sold in another, even if the product does not fully comply with the technical rules of the other nation.

European Union Regulations provide detailed requirements to ensure that any migration of chemicals from food contact materials and articles into food is at levels that will not harm human health nor detrimentally affect the nature and quality of the food. The Regulations also require operators to document both good manufacturing practice procedures and legal compliance of goods (including requirements for declarations of compliance).

Enforcement is delegated to local authorities and powers for enforcement are provided by the Materials and Articles in Contact with Food (England) Regulations 2012. Separate, equivalent regulations are in place in the devolved nations.

#### Contaminants

Contaminants in food and feed are governed by general principles and more specific harmonised rules across the European Union that aim to manage the presence of chemical contaminants in food and feed and ensure that any presence does not compromise public and animal health.

European Union Regulations establish harmonised general principles for food contaminants and provide specific maximum levels for certain foods/contaminants which take account of EFSA

risks assessments on the contaminant in question. In general, where specific maximum levels are provided at European Union level for a contaminant there are no national rules. However, national limits may exist where the European Union has not acted although this can create intracommunity trade problems.

There are some existing examples of relaxation of rules at national level (agreed at the European Union level) where local produce contains higher levels of contamination (e.g. fish from the Baltic sea). Such relaxations allow for local fishing and consumption as long as produce is not marketed outside the nation.

In addition to the European Union legislation, European Union codes of practice are also used such as for the reduction of fusarium and ochratoxin A mycotoxins in cereals which apply in the UK.

Enforcement is delegated to local authorities and powers for enforcement are provided by the Contaminants in Food (England) Regulations 2013. Separate, equivalent regulations are in place in the devolved nations.

#### Undesirable substances

Directive 2002/32/EC deals with undesirable substances in products intended for animal feed. The aim of this European Union legislation is to ensure that feed is put into circulation only if it is sound, genuine and of merchantable quality and, when correctly used, does not represent any danger to human health, animal health or the environment and does not adversely affect livestock production. This legislation prohibits the dilution of contaminated feed materials and it includes maximum limits for heavy metal presence such as arsenic, lead, mercury and cadmium as well as for arsenic, dioxin, aflatoxin, certain pesticides, and botanical impurities in certain feed materials, feed additives and feeding stuffs.

Enforcement is delegated to local authorities and powers for enforcement are provided by The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015. Separate, equivalent regulations are in place in the devolved nations.

#### Radioactive contamination of food and feed

Council Directive 2013/59/EURATOM establishes uniform basic safety standards for the protection of the health of individuals subject to occupational, medical and public exposures against the dangers arising from ionising radiation. These standards set limits and reference levels that take into account total exposure from all sources (ingestion, inhalation and external exposure). The Directive specifically prohibits the deliberate addition of radioactive substances in the production of foodstuffs, animal feeding stuffs, and even cosmetics. It also prohibits the import or export of such products.

Council Regulation (Euratom) 2016/52 sets maximum permitted levels of radioactive contaminants in food and feed following a future nuclear accident or other radiological emergency. Regulations also cover checks and controls on the import of specific foods from nations affected by the Chernobyl nuclear accident (Council Regulation (EC) No 733/2008 and Commission Regulation (EC) No 1635/2006) and from Japan following the Fukushima nuclear accident (Commission Implementing Regulation (EU) 2016/6). Enforcement powers are provided by declarations under the Official Food and Feed Controls (England) Regulations 2009 and the Trade in Animal and Related Products Regulations 2011 in England. Separate, equivalent regulations are in place in the devolved nations.

### Feed Detoxification processes

Detoxification processes can be applied to non-compliant animal feed to remove, breakdown into harmless compounds, destroy, or metabolise specific undesirable substances. Once the feed has undergone detoxification it may be placed on the market. To ensure that the detoxified feed does not endanger animal and public health and the environment and that the characteristics of the feed are not adversely altered all processes are safety assessed by EFSA.

European Union Regulations provide acceptability criteria for the authorisation of detoxification processes, whilst the substances that may be removed are listed in the European Union Directive 2002/32/EC. The Directive prohibits the use of products intended for animal feed which contain levels of undesirable substances exceeding the maximum levels laid down in Annex I of that Directive. It is down to competent authorities to authorise a company to use the process permitted at European Union level.

### GMOs (food and feed); Irradiated Food and Novel Foods, including:

- GMOs food & feed authorisations and labelling;
- GMOs traceability and labelling;
- Irradiated food; and
- Novel foods.

GMOs for use in food and feed are subject to a centralised authorisation procedure with a prior safety assessment before they can be placed on the market. European Union Regulations provide a harmonised procedure for the scientific assessment and authorisation of GMOs and GM food and feed with the European Food Safety Authority (EFSA) responsible for risk assessments.

European Union Regulations are in place for the traceability and labelling of GMOs and the traceability of food and feed products produced from GMOs. This provides a harmonised European Union system for identifying GM products throughout the supply chain that covers any products (including food or feed) consisting of or containing GMOs, food produced from GMOs and Feed produced from GMOs which are placed on the market. Responsibility for the safety of GMOs for food and feed use rests with the FSA.

Enforcement is delegated to Local Authorities and powers for enforcement are provided by the Genetically Modified Food (England) Regulations 2004 and the Genetically Modified Organisms (Traceability and Labelling) (England) Regulation 2004. Separate, equivalent regulations are in place in the devolved nations.

Policy on the cultivation of GM crops and environmental release of GMOs in England rests with Defra.

### Irradiated Food

European Union Directives 1999/2/EC and 1999/3/EC and related Commission Decisions setting out the foods and food ingredients that may be treated with ionising radiation and the establishments that are permitted to carry out food irradiation. Irradiation treatment can be used to destroy bacteria and other micro-organisms which cause food-borne illness, extend shelf-life by delaying ripening or sprouting and remove insect infestations. These Directives are

implemented in England by the Food Irradiation (England) Regulations 2009. Separate, equivalent regulations are in place in the devolved nations.

These Regulations set out the requirements and procedures for the approval (licensing) of food irradiation facilities in the UK and the restrictions on importation, storage, transport and sale of irradiated foods by other food businesses. There is one licensed facility in the UK however, at present it is not operating in this capacity.

The licensing of food irradiation facilities ensures that food is treated following international (Codex) standards. Properly irradiated food poses no food safety risk but is seen as a consumer choice issue and this legislation ensures traceability of irradiated food so that information can be made available to consumers (ultimately through labelling requirements in the Food Information Regulations 2014).

Enforcement in respect to provisions related to a licensee is the responsibility of the FSA or FSS. Enforcement of provisions other than those of a licensee is delegated to local authorities and powers for enforcement are also provided by The Food Irradiation (England) Regulations 2009. Separate, equivalent regulations are in place in the devolved nations.

### Novel Foods

Regulation (EU) 2015/2283 concerning novel foods establishes the concept of a novel food (foods that do not have a significant history of consumption in the European Union before May 1997) and sets out that these foods cannot be marketed within the European Union until they are demonstrated to be safe. The regulation provides for a centralised risk assessment process for both novel foods and a subcategory of these traditional foods from of novel foods. It provides a mechanism by which Member States can share information in order to decide on whether or not foods fall within the scope of the Regulation. Implementing regulation (EU) 2017/2470 establishes the European Union list of novel foods.

Enforcement is delegated to local authorities and powers for enforcement are provided by the Novel Foods (England) Regulations 2018. Separate, equivalent regulations are in place in the devolved nations.

It is noted that labelling requirements are an integral part of the authorisations for some products within scope (e.g. novel foods) and whilst general labelling will be picked up elsewhere, as a legitimate risk management tool specific safety labelling remains directly relevant to food safety common frameworks.

### **Official Controls for Food and Feed**

Regulation (EU) No 2017/625 (the Official Controls Regulation) applied from 14<sup>th</sup> December 2019. It sets out rules for the performance of official controls by authorities which are required to verify compliance with feed and food law, rules on animal health and welfare, plant health and plant protecting products. It repealed several older Regulations on official controls for food and feed. More detailed rules on areas including import controls and hygiene controls on products of animal origin are set out in several pieces of tertiary legislation.

Official controls legislation is deeply interlinked with the rules it is in place to verify – for example the Food Hygiene Package (Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004) and the Feed Hygiene Regulation (EC) No 183/2005.

European Union legislation in this area sets out what must be achieved by Member State – a comprehensive, risk-based, proportionate, transparent official controls system – as well as detailed rules on how this is to be achieved in certain areas.

Legislation in this area provides a balance of principles and detailed rules, allowing for a reasonable amount of subsidiarity in how controls are performed and organised at MS level. As such the legislation itself spans a number of policy areas, notably:

- General Obligations of MS – this includes operational criteria, rules for the delegation of control tasks, rules on staff training and independence, rules on transparency and confidentiality;
- High-level rules on control methods and activities to be performed, by whom and when;
- Methods of sampling and analysis;
- Rules on laboratories used for the performance of official controls and international networks of reference laboratories;
- Guidelines for crisis management plans;
- Rules on import controls on animals and goods entering from third nations (please see the Imports/Exports return for further detail in this policy area);
- Rules for financing official controls; and
- Rules for cooperation between MS' competent authorities.

### **Public Health Controls on Imported Food**

Specific requirements for imported food entering the European Union are covered by positive lists, standalone SIs and emergency declarations. Positive lists mandate increased levels of controls of feed and food of non-animal origin (FNAO). Where significant or sustained risks are identified, high-risk FNAO products may be subject to more stringent safeguard measures (including documentary checks, percentage of ID and physical checks required, health certificate requirements, sampling and analytical results, imports through designated entry points where appropriate facilities and staff are available to undertake the necessary controls, pre-notification requirements, specified time frames official controls must be completed within, onward transportation requirements and temporary suspension of a specific food or feed from a specific nation where a significant or sustained high risk has been identified). Importers are required to ensure that all listed products comply with the import requirements before they can be legally placed on the market. Standalone SIs cover specific import requirements for high-risk food (such as curry leaves and okra from India and GMOs in rice products from China). Emergency Declarations are issued when there is a serious and imminent risk to animal or public health and control measures need to be put in place rapidly.

### **European Union Decisions and Regulations**

#### **Positive lists:**

- Commission Regulation (EC) No 669/2009 – Mandates increased level of controls of feed and food of non-animal origin. Provides for controls on emerging or re-emerging risks of high-risk FNAO. Where significant or sustained risks are identified, high-risk FNAO products may be subject to more stringent safeguard measures. The import requirements on importers and enforcement bodies of both Commission Regulation (EC) No 669/2009 and various safeguard measures include the following: documentary checks, percentage of ID and physical checks required (as specified within the safeguard measure), health

certificate requirements in some cases, sampling and analytical results required from the nation of origin in some cases, imports through designated entry points where appropriate facilities and staff are available to undertake the necessary import controls, pre-notification requirements, specified time frames official controls must be completed within, onward transportation requirements and temporary suspension of a specific food or feed from a specific nation of origin where a significant or sustained high risk has been identified. Importers are required to ensure that all listed products comply with the import requirements before they can be legally placed on the market.

- Commission Implementing Regulation (EC) No 884/2014 – Controls due to contamination risk by aflatoxins.

#### Standalone SIs:

- Commission Implementing Regulation (EU) No 885/2014 – Curry leaves and okra from India.
- Commission Implementing Regulation (EU) 2016/6 – Controls following the accident at Fukushima power station.
- Commission Implementing Decision 2011/884/EU – GMOs in rice products from China.
- Commission Implementing Decision 2014/88/EU – Betel leaves from Bangladesh.
- Commission Implementing Regulation (EU) 2015/175 – Guar gum from India.
- Commission Implementing Regulation (EU) 2015/943 – Dried beans from Nigeria.
- Commission Implementing Regulation (EU) 211/2013 – Imports of sprouts and seeds.
- Commission Implementing Regulation (EU) 2017/186 – Microbiological contamination.
- Council Regulation (EC) No 733/2008 – Chernobyl.
- Kava-kava in Food (England) Regulations 2002. Separate, equivalent regulations are in place in the devolved nations.

#### Emergency Declarations

Issued when there is a serious and imminent risk to animal or public health and control measures need to be put in place rapidly. Examples include:

- Commission Implementing Regulation (EU) 2017/186 - betel leaves and sesame seeds from India;
- Commission Implementing Regulation (EU) 2017/2058 - food and animal feed from Japan;
- Commission Implementing Regulation (EU) 2016/6;
- Commission Implementing Regulation (EU) 2016/24 – groundnuts from Brazil, capsicum annum and nutmeg from India and nutmeg from Indonesia;
- Commission Implementing Regulation (EU) 2016/166 - betel leaves from India;
- Commission Implementing Regulations (EU) 2016/884 - betel leaves from Bangladesh; and
- Commission Implementing Regulation (EU) 2016/874 - dried beans from Nigeria.

The Official Controls Regulation (EU) 2017/625 and its empowered tertiary legislation is the overarching European Union legislation that provides powers for official controls at the European Union borders. It sets out the framework for verification of compliance with food and feed law, rules on animal health and welfare, plant health and plant protection products

**ANNEX 2 – SUMMARY OF RETAINED EUROPEAN UNION LEGISLATION****General food and feed law**

Regulation (EC) No 178/2002 - on General Food Law.	The General Food Law (Amendment etc.) (EU Exit) Regulations 2019 2019/641
Regulation (EC) No 852/2004 - on the hygiene of foodstuffs.	The General Food Hygiene (Amendment) (EU Exit) Regulations 2019 2019/642
Regulation (EC) No 853/2004 - laying down specific hygiene rules for food of animal origin.	The Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 2019/640
Regulation (EC) No 183/2005 - laying down requirements for feed hygiene.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 2074/2005 - laying down implementing measures for certain products under Regulation (EC) No 853/2004 and Regulation (EC) No 854/2004 and Regulation (EC) No 882/2004.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019 2019/1013

**Food and feed safety standards**

Regulation (EC) No 1829/2003 – GMOs and Food – authorisations and labelling.	The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019 2019/705
Regulation (EC) No 2283/2015– Novel foods.	The Novel Food (Amendment) (EU Exit) Regulations 2019 2019/702
Regulation (EC) No 1333/2008 – Food additives.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Regulation (EC) No 1935/2004 – Food contact materials.	The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019 2019/704
Council Regulation (EEC) No 315/1993 – Food contaminants.	The Contaminants in Food (Amendment) (EU Exit) Regulations 2019 2019/639
Commission Regulation (EC) No 2073/2005 – Microbiological criteria.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019 2019/1013
Regulation (EC) No 1831/2003 – Feed additives.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Commission Regulation (EU) No 68/2013 - Catalogue of Feed materials.	The Animal Feed (Amendment) (EU Exit) Regulations 2019 2019/654
Regulation (EC) No 1332/2008 – Food enzymes.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
Regulation (EC) No 1334/2008 – Food flavourings.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860

Commission Regulation (EU) No 234/2011 – Common Authorisation Procedure.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 2019/860
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### **Food and feed law enforcement (official controls)**

Regulation (EU) No 2017/625 - on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.	The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020
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### **Public Health Controls on Imported Food**

Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the European Union of certain goods from certain third nations	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2020
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### ANNEX 3: FULL LIST OF DEFINITIONS

#### UK Food Safety Agencies:

- The **Food Standards Agency (FSA)** is a non-ministerial UK government department. It is responsible for protecting public health in relation to food and animal feed in England, Wales and Northern Ireland. It is led by a board appointed to act in the public interest. Its headquarters are in London, with national offices in Wales and Northern Ireland. The FSA is responsible for developing and implementing policy related to general food and feed hygiene and traceability. This includes the protection of public health via import controls, labelling related to food safety (such as allergens), food and feed safety standards, and biological and chemical safety. In Wales and Northern Ireland, the FSA is also responsible for general labelling related to public health and issues regarding food composition and standards. The FSA in Northern Ireland additionally has responsibility for nutrition.
- **Food Standards Scotland (FSS)** is a devolved, non-ministerial government department of the Scottish Government. It has responsibility for food and feed safety, food standards, nutrition, food labelling and meat inspection in Scotland. Established by the Food (Scotland) Act 2015, FSS took over the responsibilities previously held by the FSA in Scotland, as well as taking responsibility for nutrition and labelling in Scotland.

#### Frameworks:

- **Devolved administrations** refers to the Scottish Parliament, the Welsh Parliament and the Northern Ireland Assembly and to their associated executive bodies the Scottish Government, the Welsh Government and the Northern Ireland Executive.
- **Common frameworks** set out processes and governance arrangements for collaboration across the four nations of the UK to maintain consistent approaches in areas that are governed by European Union law before March 2019, but are otherwise within areas of competence of the devolved administrations. Common frameworks may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.
- **'Deep dive'** meetings have formed the formal official-level engagement on common frameworks for food and feed safety and hygiene jointly undertaken by all UK Administrations (as agreed by the Joint Ministerial Committee on European Union Negotiations (JMC(EN)) as part of the wider programme of work to develop common frameworks). Three 'deep dive' sessions have taken place since February with representatives from food and feed safety bodies and governments of all four nations. The deep dives have been used to discuss work carried out by working groups comprising representatives from across the four nations of the UK which have developed proposals for how the food and feed safety and hygiene framework could operate. Working group and review meetings have taken place regularly over the last six

months, and the proposals developed by these groups have formed the basis of the framework outline.

- The **framework outline** is a template agreed by JMC(EN) which all frameworks policy areas have been required to complete, providing a suggested outline for an initial UK-wide framework agreement. It is intended to facilitate multilateral policy development and set out proposed high-level commitments for the four UK Administrations. The document will be published once it is finalised.

#### European Union Institutions, Systems and Processes:

- The **European Food Safety Authority (EFSA)** provides independent scientific advice and risk assessments covering food, animal feed, pesticides, GMO, animal health and welfare, plant health and nutrition. EFSA supports the European Commission, the European Parliament and European Union member states in taking effective and timely risk management decisions that ensure the protection of the health of European consumers and the safety of the food and feed chain.
- The **Rapid Alert System for Food and Feed (RASFF)** is an European Union IT system that provides early alerts of contaminants in food and feed from across the European Union (often foodborne diseases), enabling rapid response to serious risks to human health.
- **Comitology** is a process by which European Union law is modified, supplemented or adjusted and takes place within "comitology committees" chaired by the European Commission. Comitology committees are part of the European Union's broader system of committees that assist in the making, adoption, and implementation of European Union laws. The Standing Committee on Plants, Animals, Food and Feed (SCOPAFF) is the comitology committee that provides expertise to ensure food and feed legislation and measures are up to date, practical and effective. SCOPAFF is made up of multiple different sections (such as General Food Law, Biological Safety of the Food Chain and Novel Food and Toxicological Safety of the Food Chain), each with their own working/ expert groups which sit beneath the standing committees.
- **National measures** are measures that Member States may adopt where there is flexibility in European Union regulations for Member States to adopt local solutions (based on the principle of subsidiarity). National measures may be adopted to make exemptions from certain requirements laid down in annexes of European Union legislation. When making use of flexibility provisions, Member States must notify the European Commission.
- **The principle of subsidiarity** (outlined in Article 5 of the Treaty on European Union) guarantees that decisions are taken as closely as possible to the citizen. In areas in which the European Union does not have exclusive competence, the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions. In areas where the European Union does not have exclusive competence it will only take action in cases where it would be more effective than an action taken at the national, regional or local level.

International Institutions:

- **Codex Alimentarius** is a collection of internationally recognised standards, codes of practice, guidelines, and other recommendations relating to foods, food production, and food safety. Its texts are developed and maintained by the Codex Alimentarius Commission, whose main goals are to protect the health of consumers and ensure fair practices in the international food trade. The Codex Alimentarius is recognized by the World Trade Organisation as an international reference point for the resolution of disputes concerning food safety and consumer protection.
- The **WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee")** was established by the WTO SPS Agreement (which sets out the basic rules for food safety and animal and plant health standards) as a forum for consultations about food safety or animal and plant health measures which affect trade, and to ensure the implementation of the SPS Agreement. It is open to all WTO member nations. Governments may send appropriate officials to participate in the meetings of the SPS Committee (e.g. food safety authorities or veterinary or plant health officials). The SPS Committee usually holds three regular meetings each year.

Food and Feed Safety and Hygiene:

- **Food and feed hygiene** refers to the conditions and measures needed to ensure that the safety of food and feed is not compromised throughout the food chain from primary production to sale or supply to the final consumer. Food and feed hygiene requirements establish the general principles for food hygiene controls, including food hygiene rules for food and feed businesses, specific controls for products of animal origin, microbiological criteria for certain commodities, and conditions and arrangements for ensuring traceability.
- **Food and feed safety** refers to the handling, preparation, and storage of food and feed in ways that prevent food-borne illness. Food and feed safety requirements lay down the high-level principles underpinning the placing of safe food and feed on the market, and establish institutions and bureaucratic functions concerning food and feed safety. The main objective of food and feed law is to guarantee a high level of protection of human life and health and the protection of consumers' interests.
- **Official controls** are activities carried out by competent authorities to verify business compliance with the requirements set out in agri-food chain legislation for ensuring the safety and quality of food and feed (as well as plant health, animal health and welfare). Official controls take place across the food chain, from plants and animal production, to food manufacturing, processing and distribution. They also cover import controls on animal products from third nations. Competent authorities organise official controls systems within their territory to verify that operators' activities and goods placed on the market comply with relevant standards and requirements. A key mechanism by which the FSA and FSS influence official control activity carried out by local and port health authorities is the Framework Agreement on Official Feed and Food Controls by Local Authorities, which sets out what the

FSA and FSS expect from local authorities in their delivery of official controls on feed and food law.

- **Regulated products** are food and feed products that require an authorisation, which involves a scientific assessment to evaluate their safety, before they can be placed on the market. Regulated products include substances used in food and feed (such as additives, enzymes, flavourings), food contact materials and pesticides, genetically modified organisms, novel foods and food-related processes, and processing aids.
- **Food and feed safety enforcement:** legislation sets out the general approaches and principles that must be taken for the monitoring and enforcement of feed and food law requirements. There is also considerable scope for national enforcement measures. National legislation allows flexibility for competent authorities to organise enforcement arrangements (in line with the general principles set out in European Union law). Each nation in the UK has scope to take different approaches to some enforcement measures. Across the UK, much enforcement work is carried out by Local Authorities.
- **Food defence** refers to procedures adopted to assure the security of food and drink and their supply chains from malicious and ideologically motivated attack leading to contamination or supply disruption.
- **Food fraud** refers to dishonest act or omission, relating to the production or supply of food, which is intended for personal gain or to cause loss to another party.

#### Risk Analysis:

- **Risk** is a function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food (i.e. how likely is it that harm will be done and how severe are the health effects likely to be?).
- **Risk analysis** is a process consisting of three distinct but closely linked components: risk assessment, risk management and risk communication.
- **Risk management** is the process, distinct from risk assessment, of weighing policy, alternatives in consultation with interested parties, considering risk assessment and other factors relevant to health protection of consumers, and if needed, selecting appropriate prevention and control options.
- **Risk communication** is the interactive exchange of information and opinions throughout the risk analysis process concerns risks, risk-related factors and risk perceptions, among risk assessors, risk managers, consumers, feed and food businesses, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions.

- **Risk assessment** is a scientifically based process consisting of the following four steps: hazard identification, hazard characterisation, exposure assessment and risk characterisation.
- **A hazard** is a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.
- **Hazard (toxicological):** An inherent property of an agent or situation having the potential to cause adverse effects when an organism, system or (sub)population is exposed to that agent.
- **Other legitimate factors** refer to issues other than human health risk assessment that inform risk management and communication.

## ANNEX 4: FRAMEWORKS MANAGEMENT GROUP TERMS OF REFERENCE

### 1. Purpose and Scope

- 1.1 The Food and Feed Safety and Hygiene Frameworks Management Group (FMG)'s principal purpose is to bring together senior officials with oversight of the functioning of the Common Framework for Food and Feed Safety and Hygiene (the Framework). The Framework sets out ways of working and governance arrangements to maintain a collaborative four nations approach to food and feed safety and hygiene after the UK's exit from the European Union. The FMG will be responsible for assessing any new needs of the framework at regular intervals and will play a role in resolving disputes related to the functioning of the Framework. The FMG will be comprised of senior food safety officials from the UK Government and devolved administrations (and, on a case by case basis, other departments if necessary).
- 1.2 The scope of the FMG's responsibilities include:
- **Considering amendments to the Framework:**
    - Proposed amendments to the Framework can be put forward by officials in any nation. Proposals should be made in writing and should include rationale for the proposed change(s). Any proposed change to the framework Concordat would be subject to Ministerial agreement.
    - The FMG should respond without undue delay to any requests for Framework amendments setting out the decision of the FMG.
    - If the FMG fails to agree an approach in response to a proposed amendment to the Framework and a dispute arises, the issue should be escalated through the officials' dispute avoidance & resolution process.
  - **Undertaking Framework reviews in line with the agreed protocols:**
    - The first full post-implementation review should be carried out one year after the framework is implemented. After the first review, the frequency of framework reviews should be agreed by the FMG and included in the Terms of Reference (ToR).
    - The FMG should agree what information it needs to see to provide assurance that the framework is operating effectively.
  - **Reporting on the Framework to appropriate authorities as required:**
    - The FMG should seek to provide jointly agreed updates on the functioning of the Framework to the FSA/ FSS boards, Ministers and JMC as required.
  - **Resolving official-level disputes regarding the interpretation or breaches of framework processes (see process diagram in Diagram 2).**

- If a dispute arises over the functioning of the framework (i.e. if officials in one or more nation consider officials in another nation or nations to have breached an element of the agreed framework processes), the FMG will act as the first point of escalation; it should aim to reach a consensus on the approach to take to resolve the dispute.
- A summary of the dispute should be provided to the FMG in writing, including the background of the issue and the positions of all parties.
- A dispute can be escalated to the FMG at any time. The FMG should aim to meet within one month of the dispute being raised.
- If the FMG fails to resolve a dispute, the issue should progress through the officials' dispute avoidance & resolution process (it should be escalated to a bilateral meeting of Chairs/ CEOs).

1.3 The following areas are outside the scope of the FMG:

- Resolving policy risk management-related disputes (risk management related disputes will be escalated to a meeting of Directors, as outlined in the officials' dispute avoidance & resolution process).

**2 Representatives & Contact Details**

2.1 Group membership will consist of senior officials representing the food safety bodies in each administration.

Department	Representative	Contact Details
FSA - England	Anjali Juneja	Anjali.Juneja@food.gov.uk
FSA - Northern Ireland	Sharon Gilmore	Sharon.Gilmore@food.gov.uk
FSA - Wales	Nathan Barnhouse	Nathan.Barnhouse@food.gov.uk
Food Standards Scotland	David Johnston	David.Johnston@fss.scot

2.2 Meeting Frequency and Location

Frequency	Location	Papers Issued
<p>Initial meetings will be held quarterly in the year following the Framework's implementation.</p> <p>Thereafter, the frequency of meetings shall be determined by the FMG.</p> <p>The FMG will be required to meet within one month if a dispute is escalated to the FMG for its attempts at resolution.</p>	<p>1 meeting per year face to face; location TBC;</p>	<p>Papers issued a minimum of 1 week prior to meetings.</p>

**ANNEX 5: FOUR NATIONS DIRECTOR GROUP TERMS OF REFERENCE****1 Purpose and Scope**

- 1.1 The Food and Feed Safety and Hygiene Four Nations Director Group (FDG)'s principal purpose is to bring together senior officials with oversight of the official level dispute resolution process. The FDG is responsible for the initial stage of escalation within the official level disputes resolution process for policy issue disputes in which officials cannot agree a risk management approach. The FDG will be comprised of relevant directors from the food safety bodies as the dispute in hand requires. This group will meet on an ad-hoc basis as and when required.

Four Nations Director Group would act as the initial stage of escalation within the official level dispute resolution process for policy disputes

**2 Representatives & Contact Details**

- 2.1 Group membership will consist of senior officials representing the food safety bodies as the dispute in hand requires.

Department	Representative	Contact Details
FSA - England	Rebecca Sudworth	Rebecca.Sudworth@food.gov.uk
FSA - Northern Ireland	Maria Jennings	Maria.Jennings@food.gov.uk
FSA - Wales	Nathan Barnhouse	Nathan.Barnhouse@food.gov.uk
Food Standards Scotland	Garry Mournian	Garry.Mournian@fss.scot

- 2.2 Meeting Frequency and Location

This Four Nations Director Group will meet on an ad-hoc basis as and when required.



## Scrutiny of frameworks: Previous questions from Senedd Committees

### What the framework is

1. What form does the framework take, i.e. is it a Memorandum of Understanding, a concordat, a legislative framework or a combination of documents?

The Food and Feed Safety and Hygiene Framework will be set out in the following documents :

- A non-legislative Concordat signed by Ministers in the four nations of the UK
- the existing Memorandum of Understanding between the Food Standards Agency (FSA) and Food Standards Scotland (FSS), which has been updated to reflect the Framework

The full detail of the framework is also documented in the Framework Outline Agreement.

2. On what basis has the form for the framework been chosen?

An assessment to determine the best form for the Framework concluded that a legislative underpinning would not be needed.

Adopting a non-legislative approach allows for maximum flexibility to adapt the framework as necessary and maintains a degree of trust and goodwill between the four administrations.

The non-legislative Framework documents will provide the basis for four nation cooperation to develop approaches to food and feed safety and hygiene and maintaining commonality in approach where appropriate.

3. Have all relevant framework documents (including documents that will be used by governments to apply and interpret the framework) been published?

The framework has been provided to Ministers in all four countries and has received provisional agreement. It has now been provided at this stage to Committees in each of the four countries for scrutiny. It has not yet been published for full public access. This will follow the final Ministerial agreement that will take place after Committee scrutiny.

4. Will the framework require any further legislation in future?

The arrangements within this agreement rely on a non-legislative Concordat and as such do not require additional legislation. This Framework sets out general provisions in relation to the policy. It is not intended to constitute a legally enforceable contract or create any rights or obligations which are legally enforceable.

5. What impact will the form chosen have on the framework's operation?

The Concordat sets out high level commitments and ways of working to which Ministers in all four nations commit, while the revised MoU between FSA and FSS sets out the operational detail of working arrangements among officials across the UK.

This will allow sufficient flexibility for reviewing and amending official level processes as required once the Framework is implemented

6. How have the governments ensured the framework will be clear and accessible for citizens and Members?

The documents that make up the framework have been reviewed by senior officials in all four countries and have received provisional agreement from Ministers. Along with scrutiny by Committee, this should ensure clarity and accessibility.

### What the framework does

7. Why is a framework needed for this policy area?

All UK policy teams agreed a framework was desirable to help ensure the functioning of the UK internal market, while acknowledging policy divergence; and to ensure any future trade arrangements can be done on a UK basis and was developed in line with the common frameworks principles agreed at JMC(EN) in the Committee's communique of 16 October 2017

8. The Joint Ministerial Committee agreed principles for when frameworks would be necessary in 2017, including enabling the functioning of the UK internal market and ensuring compliance with international obligations. Which of these principles apply to this framework?

The Framework has been developed to be in line with all of the JMC (EN) principles

9. What does EU law and policy in this area currently do? Does the framework replicate this/these function(s) in full or in part?

FFSH policy is governed by harmonised EU derived legislation. The EU Regulations are directly applicable across the whole of the UK. Powers for enforcement are provided by domestic legislation in each of the four UK nations. Applicable Directives have been implemented through domestic legislation in each of the four UK nations.

FFSH can be broken down into four broad policy areas, all of which fall within devolved competence and were formerly largely harmonised at EU level and have been transferred onto the UK statute book as retained EU law. The exception to this was the limited scope provided for the adoption of national measures to achieve common outcomes where these are in-keeping with the principle of subsidiarity. The four broad policy areas within the scope of EU FFSH legislation are:

- general food law and hygiene
- food safety standards
- official controls for food and feed
- public health controls on imported food

10. What are the policy objectives of the framework?

The Framework sets out how the governments of the four nations will work together to develop policy, and aims to ensure that, where appropriate, common rules can be developed, and where this is not appropriate, there are mechanisms for four nation discussion. The Framework also delivers on the strategic objectives of both food safety bodies.

The Framework puts in place policy development and decision-making processes in a UK/GB context in order to replace those currently undertaken at an EU level. It was developed in order to reflect existing EU policy flexibilities (in terms of scope) and does not introduce any new obligations or requirements.

11. In what ways does the framework change the Welsh Government's executive competence? How is this different from the position under EU law?

Responsibilities, powers, and or functions currently held by Member States or EU bodies will be transferred to Welsh Ministers in all areas of FFSH where there is currently devolved competence.

12. In what ways does the framework change the Senedd's legislative competence? How is this different from the position under EU law?

The Senedd will retain its current level of scrutiny of changes made to domestic legislation, whether by affirmative or negative procedure.

13. What scope for divergence will the framework allow? Is this wider or narrower than the scope for divergence under EU law?

The Framework puts in place processes for managing divergence (where the outcomes of joint risk analysis demonstrate that it is appropriate). Each of the four UK nations will continue to make domestic legislation as they currently do under EU rules. Existing areas of flexibility for different approaches will be maintained.

14. If the scope for divergence is different from the scope for divergence under EU law, why is that?

See above (Q13).

15. Will the framework have any impact on existing or planned Welsh legislation and/or policies?

No direct impact on current policies or legislation is envisaged as a result of the operation of the framework.

16. What will the financial implications of the framework be?

The framework in itself will not impose any specific financial burdens.

The operation of the dispute mechanisms will involve the time of officials and, in exceptional circumstances, Ministers, but discussions on implementing EU Regulations between the four countries of the UK already happens in most areas, so the cost to FSA and FSS budgets in operation of the framework will be largely offset by the continuation of existing less formal cooperation.

The operation of functions currently carried out by EU bodies, including risk assessment and risk management will have an impact as these functions will need to be carried out by the appropriate UK or Welsh bodies, but this would be the case whether or not the operation of such functions were covered by a common framework.

### How the framework was developed

17. How did the governments engage with stakeholders in preparing the outline framework?

An online engagement event was held with representation from the food industry, including representation from Wales. Attendees were provided with a copy of the draft framework outline and were invited to comment.

18. As part of that process, how did the Welsh Government itself engage with stakeholders?

FSA has policy competence in this area, and its officials had direct involvement in the planning and delivery of the stakeholder engagement and was represented by officials at the event itself.

19. How does the framework reflect the responses of stakeholders, including stakeholders in Wales?

Stakeholders were supportive of the purpose and principles of the framework. Stakeholders advised that they also felt reassured by the proposals for joint decision making and dispute resolution mechanisms.

20. Are there any ongoing negotiations in relation to any elements of the framework?

Reference to international obligations is still under consideration. WG has provided alternative wording to that currently in the concordat - this is agreeable to policy departments across the UK but has not been agreed by Cabinet Office.

There will be interaction between the framework and the UK Internal Market Bill, which is not yet finalised. This interaction is detailed at Q31 below.

## Interaction with domestic law and policy

21. How does the framework interact with existing domestic legislation?

FFSH policy is governed by harmonised EU derived legislation . The EU Regulations are directly applicable across the whole of the UK. Powers for enforcement are provided by domestic legislation in each of the four UK nations. Applicable Directives have been implemented through domestic legislation in each of the four UK nations.

While FFSH policy is an area of devolved competence, in accordance with the devolution settlements (Scotland Act 1998, Wales Act 2006 and Northern Ireland Act 1998), negotiation of international trade agreements remains reserved. This creates an area of overlapping interests where the negotiation of trade agreements may intersect with aspects of devolved policy areas

22. How does the framework interact with retained EU law in this policy area?

The framework sets out new mechanisms and processes put in place to replace those previously set out and delivered by the EU.

23. Does the framework interact with any existing intergovernmental agreements?

Lead competence for FFSH policy is held by FSA in Wales, England and Northern Ireland, and by FSS in Scotland. An existing Memorandum of Understanding operates on the interaction at official level between FSA and FSS. This MoU will be revised to reflect the operation of the framework. The framework will be reviewed against any outcomes from the intergovernmental relations review once these are available.

## Interaction with international law and international agreements

24. Does the framework interact with any existing international obligations or agreements?

It is not thought that the FFSH framework interacts with existing international obligations or agreements, but ongoing discussions with Cabinet Office are intended to resolve on an agreed wording of specific sections in relation to international policy

25. If so, does the framework 'ensure compliance with international obligations'? How?

See above (Q24)

26. How will the framework interact with or be impacted by any future UK negotiations on trade or in other areas?

See above (Q24)

27. How does the framework interact with the Ireland and Northern Ireland Protocol?

Northern Ireland will continue to follow EU FFSH law at the end of the transition period. However, Northern Ireland will continue to participate fully in policy development under the framework. Issues will continue to be considered on a four-country basis: officials and Ministers in Northern Ireland will continue to have the opportunity to be involved in policy development and discussions to resolve disputes.

Areas where provisions have been made for NI include: how potential policy changes will be discussed (subsection 5.7); how risk management decisions will be implemented (5.9); how businesses will apply for pre-market approvals and reauthorisations (5.17) and how discussions regarding divergence will take place (5.18) and how disputes will be managed (12.19).

28. What would happen if the framework conflicted with an international agreement?

The Framework sets out, through non-legislative agreements, mechanisms for developing and agreeing FFSH policy and as such cannot conflict with international agreements.

29. If the framework needs to be amended to reflect a new international agreement, what revision process will be engaged?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.

30. How will the Senedd be able to contribute to that revision process?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.

## Interaction with the Internal Market Bill

31. What impact would the UK Government's Internal Market Bill (i.e. to enshrine in law the principles of mutual recognition and non-discrimination) have on the framework?

The UK Internal Market Bill will be based on the principles of mutual recognition and non-discrimination and will to goods, including food. These principles will act alongside the Framework to ensure the effective functioning of the UK Internal Market where these standards differ.

## Operation

32. What will the roles of the different governments in the operation of the framework be?

All Governments across the UK will have equal roles in the delivery of the framework. Policy teams will work together to develop approaches for changes to FFSH policy within scope of this framework and agree common recommendations. Where consensus cannot be reached at official level regarding a common recommendation (whether that is agreement to a UK wide approach or to diverge) the dispute resolution process would be triggered and Minister's involved as necessary.

33. Will any other bodies, public or otherwise, be involved in the operation of the framework?

Food Standards Agency and Food Standards Scotland will oversee the official level operation of the framework

### Governance and dispute resolution

34. What will the roles of the governments be in the oversight and governance of the framework?

A detailed governance and dispute resolution structure is set out in the framework.

Governance arrangements at a Ministerial level will be subject to approaches agreed under the Inter-governmental Review which is currently underway

35. What will the roles of any other bodies be in the oversight and governance of the framework?

FSA and FFS will maintain day-to-day governance of the framework

36. What is the dispute resolution mechanism for the framework? How does it compare to dispute resolution mechanisms in other frameworks?

A detailed dispute resolution mechanism is included in the Framework outline

37. Do you consider the dispute resolution mechanism to be robust enough for its intended purpose?

Yes

### Review and revision

38. What arrangements for regular review and revision of the framework will there be?

After implementation, a review and amendment mechanism will ensure that the framework can adapt to subsequent policy developments. This periodic review is designed to focus on the governance structures and operational aspects of a framework and should take place every 3 years at a minimum.

An annual review of the FSA-FSS MoU will be carried out and a joint annual framework report produced by FSA and FSS officials under the governance arrangements the framework sets out.

39. How will continued adherence to the framework principles be measured?

Adherence will be considered as part of the framework's governance processes.

40. How will the Senedd be able to contribute to the review and revision process for the framework?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.

41. How will stakeholders be able to contribute to the review and revision process for the framework?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.

42. What is the process for discussing and agreeing any future changes to the framework?

Officials across the UK will formally review both the framework and concordat six months, one year, and three years after implementation; and thereafter at three-yearly intervals from the end of the transition period.

43. If changes are made in future, how will the Senedd be notified? What scrutiny procedures will apply to the changes?

This framework will follow the procedures for review and revision of all common frameworks. This process will be devised centrally.



**Jeremy Miles AS/MS**  
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition

**Agenda Item 3.4**



Llywodraeth Cymru  
Welsh Government

Mick Antoniw MS  
Chair, Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

1 December 2020

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement that on Thursday 03 December, the next Joint Ministerial Committee (EU Negotiations) will again take place virtually. The meeting will discuss the UK-EU Future Relationship, the Withdrawal Agreement Joint Committee and Specialised Committees. There will also be an update on transition matters including UK Readiness, the Northern Ireland Protocol and the legislative timetable. There will also be discussions on the Common Frameworks programme and on the UK Internal Market Bill. We will also reflect on the work of the joint Review of intergovernmental relations to date.

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee.

Yours sincerely,



**Jeremy Miles AS/MS**  
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel General and Minister for  
European Transition

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

# Agenda Item 6

By virtue of paragraph(s) iv of Standing Order 17.42

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# Agenda Item 7

By virtue of paragraph(s) ix of Standing Order 17.42

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