

Research Briefing
**Negotiations on the UK's
Withdrawal from the EU:
Monitoring Report -
17 January 2018**

Produced for the External Affairs Committee



National Assembly for Wales
Research Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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Date: **January 2018**

Paper Number: **18-005**

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1. Introduction

This report provides an update on developments relating to the Article 50 Negotiations on the UK's withdrawal from the EU since 15 November. Since this report was last produced the European Council concluded in its meeting on 15 December 2017 that sufficient progress had been made to allow the negotiations to move on from discussing the terms of the Withdrawal Agreement to the terms of a transitional period and future relationship.

This paper provides:

- A summary of the latest developments, documents and legislation published;
- An analysis of the key issues of interest to the External Affairs Committee ('the Committee'); and
- A summary of the Welsh Government's response to the latest developments.

Summary of developments

On 20 October 2017, following what was supposed to be the final round of negotiations for phase one withdrawal discussions, **the European Council concluded** that insufficient progress had been made to allow discussions to begin on possible transitional agreements and the future relationship. As a result, a sixth round of talks on the terms of the withdrawal agreement took place between the UK and EU on 9-10 November 2017.

On 17 November 2017 **David Davis** updated the House of Commons on negotiations with the European Union.

On 29 November 2017 at the Berlin Security Conference, the EU chief negotiator **Michel Barnier** said that sufficient progress had not yet been made to move on to phase two discussions.

On 4 December 2017 Prime Minister Theresa May met with European Commission President Jean-Claude Juncker in Brussels.

On 5 December 2017 the **Secretary of State for Exiting the European Union David Davis** told the House of Commons that the two sides were close to concluding the first phase of the negotiations.

On 8 December 2017 an agreement in principle on the three priority issues in phase one (citizens' rights, a financial settlement and Northern Ireland) was reached. A **joint report** by Jean-Claude Juncker and Theresa May was published setting out a common understanding on the future withdrawal agreement. The joint report forms the basis on which both the European Commission and the European Parliament recommended that the European Council conclude that there had been sufficient progress in the negotiations.

On 8 December 2017 a **communication** from the Commission to the European Council (Article 50) on the state of progress of the negotiations was also published. This provided the Council with the European Commission's assessment that sufficient progress had been made in view of its meeting on 15 December.

On 11 December 2017 Prime Minister Theresa May made a **statement** in the Commons on the Joint Report and the Commission's assessment that sufficient progress had been made.

On 13 December 2017 MEPs adopted a **resolution** on the state of play of negotiations with the UK and recommended that the EU27 agree to move to phase two. However they also highlighted issues that are yet to be resolved.

On 15 December 2017 the European Council (Article 50) decided that 'sufficient progress' had been achieved on the first-phase priority issues and that negotiations could move to the second phase talks on transitional arrangements and the future EU-UK relationship. On this basis, they adopted the draft guidelines to move to the second phase.

2. Latest developments and documents published

The Negotiations

The **joint report** from the negotiators of the EU and the UK Government published on 8 December 2017 records the progress made in the first phase of negotiations under Article 50 and details the agreed positions of both sides subject to the caveat "that nothing is agreed until everything is agreed". The UK's agreement to the report is on the condition that an overall agreement under Article 50 is reached which accounts for the future relationship and that an agreement is obtained as early as possible in 2018 on transitional arrangements.

In terms of **citizens' rights**, the common understanding reflected in the joint report enables both Union citizens and UK nationals, as well as their respective family members to continue to exercise their rights derived from Union law in each other's territories, where those rights are based on life choices made before the date which the joint report calls the 'specified date'.

On the **Ireland and Northern Ireland** issue, the UK committed to protecting the operation and institutions of the Good Friday Agreement, and avoid a hard border, including physical infrastructure or related checks and controls. The UK also committed to respecting Ireland's ongoing EU membership and affirmed its commitment to continued operation of operating the Common Travel Area.

In terms of the **financial settlement**, the UK agreed to honour its share of all the financial obligations undertaken while it was a member of the Union, in relation to the EU budget, the European Investment Bank, the European Central Bank, the Facility for Refugees in Turkey, EU Trust Funds, Council agencies and also the European Development Fund. The negotiators have also agreed on a methodology to be followed to calculate the final sum. During a plenary session on 13 December 2017 the European Parliament adopted its **resolution** on the state of play of negotiations with the UK and recommended that the EU27 agree to move to phase two. The resolution states that negotiations can only progress during the second phase if the UK government fully respects the commitments in the joint report and if they are fully translated into the draft withdrawal agreement. This condition is also included in the European Council **guidelines** for the second phase talks adopted on 15 December. The European Parliament's resolution also pointed to a number of outstanding issues with respect to the UK's withdrawal from the EU. These include:

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- *extending coverage of citizens' rights to future partners,*
 - *ensuring that the administrative procedure is light-touch, declaratory in nature and free of charge, placing the burden of proof on the UK authorities to challenge the declaration, and enabling families to initiate the procedure by means of a single form,*
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- *providing for the binding character of the CJEU decisions in relation to the interpretation of citizens' rights provisions, as well as for the role of the future independent national authority (ombudsman) created to act on citizens' complaints,*
 - *guaranteeing future free movement rights across the whole EU for UK citizens currently resident in an EU-27 Member State,*
 - *ensuring that the commitments made with respect to Northern Ireland / Ireland are fully enforceable.*
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Guidelines for the second phase of the negotiations were adopted by the European Council on 15 December. As regards transitional arrangements, the European Council "agrees to negotiate a transition period covering the whole of the EU acquis, while the United Kingdom, as a third country, will no longer participate in or nominate or elect members of the EU institutions, nor participate in the decision-making of the Union bodies, offices and agencies." The guidelines also state that during the transition "all existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will also apply, including the competence of the Court of Justice of the European Union". In addition, as a result of continued participation in the Customs Union and the Single Market during the transition, the UK will have to continue "to comply with EU trade policy, to apply EU customs tariff and collect EU customs duties, and to ensure all EU checks are being performed on the border vis-à-vis other third countries." This means that the UK will formally leave the EU on 29 March 2019 and will not be able to participate in the EU decision-making process but will remain bound by EU law as if it were a Member State.

According to the Commission's Brexit **timeline**, negotiations need to be finalised by autumn 2018 to allow for the UK's withdrawal from the EU by the end of March 2019, as the proposed withdrawal agreement requires the consent of the European Parliament.

On 20 December 2017 the European Commission published a set of **negotiating directives** for the second phase of the negotiations, which supplement the first set adopted on 22 May 2017. According to negotiating directives the transitional arrangements should not last beyond 31 December 2020.

On 8 January 2018 former justice secretary David Lidington was appointed Minister for the Cabinet Office.

On 16 January 2018 **President Donald Tusk** told the European Parliament that more clarity on the UK's vision for future relations is needed.

On 16 January 2018 the House of Lords debated the EU Select Committee's report **Brexit: deal or no deal**. The report outlines the potential impact on the UK of leaving the EU without a deal, and examines the feasibility of a transition period immediately post-Brexit.

UK legislation

On 7 November 2017, the **Trade Bill** was introduced to the House of Commons. The Bill passed its second reading on Tuesday 9 January 2018 and is currently in Committee Stage. **The Taxation (Cross-border Trade) Bill** is also in Committee stage. Together with the Trade Bill, the Bill is intended to allow the UK to continue its existing trade policy as far as possible immediately after Brexit by allowing the Government to create a functioning customs, VAT and excise regime for the UK. On 17 January 2018 **the Sanctions and Anti-Money Laundering Bill**, which is necessary to ensure that the

UK can implement international sanctions after Brexit, concluded its Report Stage in the House of Lords.

On **14 November the Committee stages of the EU (Withdrawal) Bill** began in the House of Commons. The Bill revokes the European Communities Act 1972; provides that EU law will no longer apply in the UK; and converts most existing EU law into domestic law. More than 400 amendments and 90 new clauses were tabled and considered by a Committee of the Whole House over eight days.

The Secretary of State for Exiting the EU, David Davis MP, announced to the House of Commons on 13 November 2017 that once an agreement relating to the UK's exit from the EU has been agreed, primary legislation will be introduced to implement the agreement. The **Withdrawal Agreement and Implementation Bill** will provide that "the major policies set out in the withdrawal agreement will be directly implemented into UK law by primary legislation, and not by secondary legislation under the withdrawal Bill".

On 13 December 2017 amendments to the Withdrawal Bill tabled by the Chair of the Procedure Committee to establish a sifting committee in the House of Commons to consider whether regulations made under the Bill should be subject to the affirmative or negative procedure were accepted. A Government amendment requiring Ministers of the Crown to make explanatory statements in relation to regulations or draft regulations under the Bill was also accepted.

On 13 December 2017 Dominic Grieve's amendment requiring the final deal with the EU to be approved by statute was accepted. As a result, the UK Government lost their first vote on the European Union (Withdrawal) Bill.

On the last day of committee stage on 20 December, the UK Government's amendment specifying exit day to be "29 March 2019 at 11.00pm" was passed. However, backbench MPs tabled an amendment in response which would allow ministers to use delegated powers to change the time and date of exit day if the UK ends up leaving the EU on a different date to the one specified. This was accepted by the UK Government.

Documents and Position Papers

Since the last monitoring report was published both the EU and the UK Government have reached agreement in principle in the areas under consideration during the first phase of negotiations.

Table 1 Position Papers and key documents published by the EU and UK

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
Essential Principles on Citizens Rights 29 May 2017 to EU 27 12 June to UK	Sets out the EU's position on rights of UK citizens in the EU and EU citizens in the UK.	Safeguarding the position of EU citizens in the UK and UK nationals in the EU: Position Paper. 26 June 2017	Sets out the UK position on the rights EU citizens should enjoy in the UK and that UK nationals should enjoy in the EU. See Research Service blog post for further detail.
Essential Principles on the financial settlement 29 May 2017 to EU 27 12 June to UK	Sets out the EU's proposals for a methodology that should be agreed during the Phase 1 negotiations on how the UK's financial obligations to the EU should be calculated. Annex 1 contains a list of agencies, bodies and financial instruments to be included in the methodology.	None.	UK Secretary of State for DEXEU has outlined that the UK will 'interrogate' the EU's position rather than set out its own.
Nuclear material and safeguard equipment (Euratom) 23 June 2017 to EU27 13 July to UK	Sets out the EU's proposals for the treatment and transfer of ownership of special fissile materials. Covers less areas than proposed by UK in equivalent paper.	Nuclear material and safeguards issues.	The UK Government sets out six principles it wants negotiations on these matters to achieve. It covers some additional areas to those covered by the European Commission including existing contracts for the supply of nuclear material and spent fuel and radioactive waste. The UK states that spent fuel and radioactive waste should remain the responsibility of the State in

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
			which it was generated post withdrawal.
Judicial cooperation in civil and commercial matters 29 June 2017 to EU 27 13 July to UK	Sets out proposals for procedures to be put in place for cases pending at time of UK withdrawal.	Providing a cross-border civil judicial framework: a future partnership paper 22 August 2017	The UK Government has set out its position for the procedures that should apply to cases pending at time of UK withdrawal and proposals for on-going cooperation in this area in a single paper. The paper states that Annex A of the paper responds directly to the EU's paper and sets out the UK Government's priorities should no agreement be reached on a future partnership. It states that no agreement on future cooperation is not however its preference. The paper states that leaving the EU will bring an end to the direct jurisdiction of the European Court of Justice but that the UK will seek an agreement with the EU that allows for close and comprehensive cross-border civil judicial cooperation.

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
Ongoing Police and Judicial cooperation in criminal matters 29 June 2017 to EU 27 13 July to UK	Proposals for the procedures that will apply to on-going procedures such as European investigation orders and European Arrest Warrants procedures at the date of withdrawal and the treatment of information obtained by these procedures.	Security law enforcement and criminal justice: Future Partnership Paper	Annex A of the paper provides a direct response to the issues raised by the EU in its paper. However, the UK advocates that discussions on the withdrawal issues on criminal matters take place with reference to discussions on a future partnership. The paper calls for a deeper relationship and cooperation on law enforcement and criminal justice issues between the UK and EU than the EU currently has with third party countries. It states that it should be read in conjunction with other future partnership papers on security and data protection.
Ongoing Union and Judicial Procedures 29 June 2017 to EU 27 13 July to UK	Sets out the proposals for procedures to be put in place for cases before the European Court of Justice involving the UK or UK residents/legal persons on-going at the time of withdrawal and for proposals for on-going administrative procedures before Union institutions, bodies, offices and agencies concerning the UK	Ongoing union judicial and administrative proceedings: Position Paper. 13 July 2017	The UK Government recognises that there will be some cases pending at the point of withdrawal that should continue to fall within the jurisdiction of the European Court of Justice and seeks agreed criteria on the definition of 'pending'. It also seeks clarification of the role of the UK Advocate General and UK

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
	or UK residents/legal persons. The EU proposed that the European Court of Justice should retain some competence to adjudicate in cases brought after the withdrawal against the UK about matters that happened when the UK was still a Member State.		lawyers in the Court for a transitional period whilst cases are still pending. It does not agree that the European Court of Justice should retain some competence over cases brought after the withdrawal date relating to actions that took place before the withdrawal date.
Issues relating to the functioning of EU Institutions, Agencies and Bodies 29 June 2017 to EU 27 13 July 2017 TO UK	The paper sets out the EU's position on what protections and immunities will apply to EU institutions and agencies in the UK at after withdrawal whilst the activities of the EU's bodies in the UK are being wound-up.	Privileges and Immunities 13 July 2017	The UK's position paper agrees that protections and immunities should be offered to EU property, assets and operations in the UK for a transitional period after withdrawal. Negotiators on both sides have indicated that they are close to reaching agreement on this issue.
Governance 29 June 2017 to EU 27 13 July 2017 to UK	The paper sets out the EU's proposals for a dispute resolution mechanism for the Withdrawal Agreement, including that a Joint Committee be established to consider disputes. It states that the Joint Committee should make references to the European Court of Justice for binding decisions	Enforcement and Dispute resolution: Future Partnership Paper 23 August 2017	The paper includes proposals for a new enforcement and dispute resolution mechanism for both the Withdrawal Agreement and any future partnership. The paper states that a new mechanism will be needed as the jurisdiction of the European Court of Justice will come to an

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
	where agreement cannot be reached in the Committee. It states that the European Commission should retain full powers for the monitoring and implementation of the agreement on citizen's rights.		end. The UK's position is that where the Withdrawal Agreement or any future partnership arrangements give rise to rights or obligations for individuals and business operating in the UK these will be given effect in UK law and enforced by UK courts. The position paper argues there is no precedent or imperative in EU or UK law which states that enforcement or dispute resolution has to fall under the direct jurisdiction of the European Court of Justice.
Goods placed on the market under Union law before the withdrawal date 29 June 2017 to EU 13 July 2017 to UK	The paper sets out proposals for the procedures that should apply to goods that comply all Union rules and are placed on the market for sale before withdrawal date but have not been sold at the time of withdrawal.	Continuity in the availability of goods for the EU and the UK: Position Paper 21 August 2017	The UK Government states that this issue should be resolved with reference to any future partnership. The UK seeks further discussion on the meaning of "placed on the market" and suggests it should include services associated with the supply of goods.
Customs related matters needed for an orderly withdrawal of the UK from the	Proposals for the customs procedures that should apply to goods whose movement started	Continuity in the availability of goods for the EU and the UK: Position Paper	The UK position paper on the continuity of goods acknowledges that customs

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
Union 7 September 2017 to EU 27	before the date of withdrawal but ends on or after.	21 August 2017 Future customs arrangements: Future Partnership Paper 15 August 2017	issues related to goods on the market at time of withdrawal will need addressing but does so with reference to its proposals for a future customs relationship and states that the issue should be addressed with reference to a future partnership.
Guiding Principles transmitted to EU 27 for the Dialogue on Ireland/Northern Ireland. 7 September to EU 27	Principles set out for the basis of discussions of the relationship between Ireland and Northern Ireland. No solutions are proposed for the Irish border and the paper places the onus on the UK to propose solutions.	Northern Ireland and Ireland: Position Paper 16 August 2017	The position paper states that the Common Travel Area (CTA) between Ireland and the UK should remain, that swift progress should be made on the issue and that the rights of EU citizens in Ireland will not be affected by the CTA's continuance. The paper does not propose specific options for the land border but sets out principles to test models against. It cross-references the UK Government's proposals for future customs arrangements. It states that no solution agreed should require a new customs border between Northern Ireland and Great Britain. It makes specific proposals on

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
			agri-food products. It suggests that separate to the broader discussions on the financial settlement there should be an agreement to continue PEACE funding to Northern Ireland and border counties of Ireland.
Public Procurement 7 September to EU 27	Proposals for the rules and procedures on public procurement that should apply to procurement procedures and contracts on-going at the date of withdrawal.	None	
Intellectual Property Rights (including geographical indications) 7 September 2017 to EU 27	Proposals for the continuation of the protection of intellectual property rights agreed before the date of withdrawal including the protection of protected food names. The EU suggests that the UK will need new domestic legislation to be in place before the date of withdrawal on protected food names.	None	
Use of Data and Protection of Information Obtained or Processed before the Withdrawal Date	Proposals to the reciprocal rules and protections that should apply to data held or processed in the UK and the EU after the date of	Confidentiality and access to documents: Position Paper 21 August 2017	The paper states that the aim should be for the Withdrawal Agreement to ensure that the UK and EU have equivalent

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
7 September to EU 27	withdrawal.		protections and obligations on information and access to documents as it currently the case under existing EU legislation.
None		Future Customs Arrangements: Future partnership paper 15 August 2017	The position paper proposes two possible options for a future customs relationship. A highly streamlined customs arrangement between the UK and EU or a new customs partnership with the EU where the UK would align its border with the EU in such a way that it would remove the need for the UK-EU customs border. The UK would leave the customs union and be able to negotiate its own trade deals under both options. Under the second option the position paper proposes that the UK would mirror EU requirements for goods from the rest of the world where their final destination is the EU. It states that this would be unprecedented and could be challenging to implement but

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
			wishes to explore it with the EU. The paper proposes a time limited model of close association with the EU Customs union for a transitional period to avoid a cliff-edge for business and individuals on both sides.
None		The exchange and protection of personal data: Future partnership paper 24 August 2017	Sets out the UK Government's proposals for a new UK-EU model for the exchanging and protection of personal data based on the current EU approach. It suggests the Information Commissioner's Office could continue to cooperate with EU regulators.
None		Collaboration on Science and innovation: Future partnership paper 6 September 2017	It sets out the UK Government's proposals for a science and innovation agreement with the EU. It states the agreement should be broad and make room for new areas of research. It states that the UK's continued access to EU research and innovation programmes will need to be negotiated along with the size of any financial contribution the UK would have

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
			to make to participate in them. It states that this contribution would need to be weighed against the UK Government's other spending priorities. Reference to the participation of Welsh Universities in existing programmes and networks is made.
None		Foreign Policy, defence and development: Future partnership paper 12 September 2017	The paper proposes a future partnership with the EU on security and defence which is broader than any agreement the EU currently has with a third-party country. It sets out the areas where there is currently cooperation on defence, security and international development.
None		Customs Bill White Paper: legislating for UK's future customs, VAT and excise regimes 9 October 2017	The White Paper on the Customs Bill sets out the UK Government's initial proposals for a standalone customs, VAT and excise regime following the UK's exit from the EU. The White Paper includes proposals for a contingency scenario should no deal be reached with the EU on a

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
			future trading relationship.
None		Preparing for our future UK trade policy 9 October 2017	The trade policy white paper sets out the UK Government's preferred positions for a new trade policy and indicates what legislation will be needed to implement that policy. The paper sets out five priorities for a new trading policy.
European Council Conclusions on progress made in the negotiations- 20 October	The Council concluded that insufficient progress has been made in the discussions on the Withdrawal Agreement to begin negotiations on the future relationship. It provided detail on where further progress is needed. It also stated that internal preparations between the 27 remaining Member States for discussions on a future trade relationship would begin.	None	
None		Sanctions and Anti-Money Laundering Bill 19 October	The Bill is considered necessary to ensure that the UK can implement an international sanctions regime following its exit from the EU.
None		Technical Note: citizen's rights administrative	The UK Government published further details on how the

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
		procedures in the UK 7 November	system for EU Citizens to apply for permanent UK residency will work. This was sent as a technical paper to the European Commission.
None		Trade Bill 2018 7 November	The Bill provides ministers with powers to make changes to domestic UK law to implement the WTO's Agreement on Government Procurement and any necessary changes if the UK replicates some of the EU's existing deals with third party countries. It also provides for the establishment of a new Trade Remedies Authority and gives HMRC new data and information powers and duties in relation to export and trade.
Joint Report from the negotiators of the European Union and the UK Government on progress during Phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU 8 December 2017	Both the EU and the UK Government reached agreement in principle in the areas under consideration during the first phase of negotiations, enabling talks to move to the next phase. The report sets out their agreed position on protecting the rights of Union citizens in the UK and UK	Joint Report 8 December 2017	

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
	citizens in the Union; the framework for addressing the unique circumstances in Northern Ireland; and the financial settlement.		
Communication from the Commission to the European Council (Article 50) on the state of progress of the negotiations with the UK under Article 50 of the Treaty on European Union 8 December 2017	Based on the Joint Report from the negotiators of the EU and the UK Government, the Commission recommended to the European Council (Article 50) to conclude that sufficient progress had been made in the first phase of the negotiations.		
None		Prime Minister's commitments to Northern Ireland 8 December 2017	Prime Minister Theresa May set out six key commitments to Northern Ireland that guided her in the negotiations with the EU.
European Council Guidelines 15 December 2017	Following the decision that sufficient progress had been made, the European Council (Article 50) issued draft guidelines to move to the second phase of negotiations where a transition period and the framework for the future relationship will be discussed.	None	
Supplementary negotiating directives	Supplementary directives for the negotiation of an agreement with	None	

EU Paper	Contents EU Paper	UK Paper	Contents UK Paper
20 December 2017	the UK setting out the arrangements for its withdrawal from the EU.		

3. Key areas of interest to the External Affairs Committee

The second phase of the negotiations will be of particular interest to the External Affairs Committee, especially the future relations between the UK and the EU. The Committee recently launched an inquiry into **Wales' future relationship with the European Union**. In a **written statement** on 11 December 2017 First Minister stated that it is vital that the Devolved Administrations are “fully and properly involved” in the phase 2 talks, stating:

Phase 2 talks will involve questions which come directly within the remit of devolved institutions, such as engagement with EU programmes during the transition period, participation in programmes like Horizon 2020 and Erasmus+ after Brexit and the extent of alignment of devolved powers with EU regulation as part of a future UK-EU deal.

In terms of the Withdrawal Bill, the fate of Clause 11 and other clauses about devolution will be of particular interest to the Committee. Before the fifth day of Committee Stage debate on the Bill it was announced that amendments would be tabled to Clause 11 at Report Stage. However, no UK Government amendments to Clause 11 were tabled at this stage. The **Prime Minister** told the House of Commons on Wednesday 10 January 2018:

The right hon. Gentleman knows full well that we have said we will look to improve clause 11 [...] However, as I discussed with the First Minister before Christmas, we are looking to work with the devolved Administrations to ensure that we put the right frameworks in place so that, when we come to bring forward any amendment, it is done in the best possible way in the interests of all concerned. I thought that had been accepted by the Scottish National party, but we will be looking to bring forward amendments in the Lords.

The UK Government tabled amendments for Report Stage consideration which did not include an amendment to Clause 11. In terms of provisions about devolution, the UK Government tabled amendments to Clause 10 to change the requirement for Welsh Ministers to seek the consent of the UK Government in exercising the correcting power to a consult requirement and also to enable Welsh Minister to correct deficiencies in direct retained EU law but only in areas where a common framework is not required. The UK Government also tabled amendments to Clause 7 to restrict the scope of ministerial powers in retained EU law by making the list of deficiencies in the Bill exhaustive rather than illustrative. These amendments were accepted at Report Stage.

The opposition amendment removing the Bill's proposed restrictions in Clause 11 on the ability of the devolved legislatures to legislate on devolved matters and also to create new collaborative procedures for the creation of UK-wide frameworks for retained EU law was negatived on division 297 – 321.

The Report Stage of the Bill concluded on 17 January 2018. The Bill was approved by the House of Commons on Third Reading and will now pass to the House of Lords.

4. Welsh Government Response

On 11 December 2017, the First Minister published a **written statement** welcoming the progress made on phase one of the negotiations. The First Minister said that “reaching this agreement took longer than should have been necessary, owing to a lack of clarity and realism on the part of the UK

Government”. The First Minister also stated that it is vital that the devolved administrations are “fully and properly involved” in the phase 2 talks, stating:

It is essential that the Devolved Administrations are represented directly in these talks. We have raised this many times with the UK Government and now is the time for them to deliver. As we have seen, it is vital that the United Kingdom’s negotiating position genuinely reflects the interests of Wales and the whole of the UK.

In relation to the phase one agreement the **Cabinet Secretary for Finance** said on 13 December 2017:

The Welsh Government is pleased that both the UK and the EU accept the rationale for a transition period after the UK’s formal exit from the EU. Again, this is a position we have argued for consistently, although we think it is a mistake to constrain this artificially to a two year period. We believe, based on available evidence, that detailed trade talks will take longer and that creating as much certainty for business as possible is what should drive the transition period. We further believe that the UK risks being placed in a disadvantageous position in negotiations if it is tied to an inflexible transition date.

On 12 December 2017 the **Cabinet Secretary** for Finance attended the Joint Ministerial Committee (European Negotiation) in London. According to the **Communiqué** published following the meeting:

The Chair opened the meeting by summarising the engagement and political developments that had taken place since JMC(EN) last met. The Secretary of State for Exiting the EU provided an update on negotiations with the EU and the Committee looked forwards to the December European Council and discussion on the future relationship with the European Union.

An open discussion was held on matters relating to migration, led by the Minister of State for Immigration, in which the devolved administrations engagement with the Migration Advisory Committee was noted. The committee discussed progress on frameworks and priorities moving forwards.

During this meeting the **Cabinet Secretary** emphasised that the Welsh Government remains committed to retaining “full and unfettered participation in the Single Market and to remaining part of a Customs Union with the EU”.

In his **written statement** following the JMC (EN) meeting the Cabinet Secretary said:

Progress has been made on UK Frameworks, and I welcomed this. Core principles have been agreed and officials have done useful scoping work. I registered concern, in the light of some suggestions about differential approaches for Northern Ireland, that this approach can only work if it is underpinned by a shared commitment from all administrations to regard frameworks as binding over the longer term. Agreeing governance processes for implementing, reviewing and updating frameworks is a crucial part of the work which now needs to happen.

On 14 December 2017 the Welsh Government published its policy paper on **Regional Investment in Wales after Brexit** which forms part of the series of Securing Wales' Future papers. The paper sets out the Welsh Government's approach to developing a regional investment policy after Brexit.

According to the Welsh Government's **written statement**, the papers draws on this External Affairs and Additional Legislation Committee's report on the **future of regional policy**.

The Welsh Government's **proposals** include:

- simplifying the rules, administration and systems for regional investment funds;
- developing plans for the regions of Wales led by partnerships involving local authorities, businesses and communities in those areas;
- regional investment focussed on places where it is needed and not according to an artificial map;
- continuing the ability to provide state aid to businesses;
- the four national governments of the UK agreeing rules on regional support to avoid a race-to-the-bottom that could damage communities;
- creation of a Council of Economic Ministers from all four nations to ensure co-ordination of policy across the UK;
- the UK government to replace the £370m needs-based EU funds currently allocated annually to Wales for regional development to be added to the Welsh Government's budget as a minimum post-Brexit with no constraints or top-slicing.

In relation to the EU (Withdrawal) Bill, a **Legislative Consent Memorandum** laid by the Welsh Government in September 2017 stated that it would not be able to recommend to the Assembly that it gives consent to the Bill as currently drafted. The Welsh Government subsequently published **amendments to the Withdrawal Bill** jointly with the Scottish Government. However, none of these amendments were accepted during the eight days of committee stage in the House of Commons. **Suggested amendments** prepared by the Assembly's External Affairs and Additional Legislation Committee to support **six objectives** for improving the Withdrawal Bill were also rejected during committee stage.

According to a Welsh Government **written statement** published on 13 December 2017 following the last JMC (EN) meeting, the Cabinet Secretary for Finance made clear:

that the Welsh Government cannot recommend that the National Assembly gives legislative consent to the EU (Withdrawal) Bill unless issues surrounding the devolved powers of the Welsh Government and National Assembly for Wales are resolved in amendments which should be agreed before the Bill leaves the House of Commons. The UK Government agreed there should be further specific discussion at official level around potential solutions. On 15 December the External Affairs and Additional Legislation and Constitutional and Legislative Affairs committees both published reports on the Withdrawal Bill Legislative Consent Memorandum. Both Committees concluded, at the time of reporting, that the Assembly withhold its consent for the Bill in its current form.

On 10 January 2018, it was announced that the Scottish Government is likely to **introduce a Continuity Bill in February** unless and until changes are made to the Withdrawal Bill. The Scottish Government's position is set out in a joint letter from Minister for Scotland's Place in Europe, Michael

Russell, and Minister for Parliamentary Business, Joe Fitzpatrick, to Scottish Parliament Presiding Officer, Ken Macintosh.

A Continuity Bill would provide an alternative to the European Union (Withdrawal) Bill by transposing EU law that falls within the Assembly's competence into Welsh law. As a result, a Withdrawal Bill would be unnecessary as far as devolved policy areas in Wales are concerned.

As the Withdrawal Bill started Report Stage on 16 January 2018, the First Minister published a **written statement** stating that:

It is a matter of considerable regret that the Government has not, despite the undertaking of the Secretary of State for Scotland, introduced any amendment to Clause 11 which, as it stands, is wholly unacceptable to us.

The First Minister concluded that should discussions between the Welsh and UK Government not result in the necessary amendments to Withdrawal Bill coming forward, it is his intention to submit the Welsh Government's Continuity Bill to the Presiding Officer before the end of January 2018. On 17 January 2018, the National Assembly unanimously agreed a motion to note proposals for a Welsh Continuation Bill.

Welsh and Scottish Government amendments to Clause 11 to the Bill were tabled again at report stage but were not called.