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Wales Governance
Centre



**Fforwm Cymdeithas Sifil
Cymru ar Brexit**
Wales Civil Society
Forum on Brexit

Getting Ready for the End of The Transition Period

A Guide for Third Sector Organisations in Wales

December 2020

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Executive Summary

- The difference between a deal and no deal scenario is much smaller this time around. As a result, preparations are likely to be relevant either way. However failure to secure an agreement may deepen impact in areas like the variety of food available in the short term (though no shortages are expected), price rises and future security cooperation.
- Legal continuity is to be expected due to the Withdrawal Agreement and the European Union (Withdrawal) Act 2018. However organisations are encouraged to be mindful of potential substantive changes to policy via secondary legislation. The [SIFT project](#) is tracking this.
- Organisations are encouraged to check whether they need to take any actions in the field of data protection bearing in mind that an adequacy decision on part of the EU may not be delivered before 31 December 2020.
- There are some minor changes expected in procurement – organisations may want to familiarise themselves with these by reading the UK Government guidance. A new UK e-notification service will come into use called Find A Tender and use of Sell2Wales will continue as normal.
- EU, EEA, Swiss Citizens and their close family members must apply to the European Settlement Scheme to continue to reside legally in the UK. If they haven't already, organisations may want to check with staff and also consider [signposting](#) any relevant vulnerable service users to organisations who can provide support with applications.
- From 1 January 2020 employers will want to be aware that the UK's immigration rules will change to a [new points-based immigration system](#). It may also be worthwhile look at research on the potential societal impacts of these changes in Wales. Staff members who need to travel to the EU occasionally will also need to [check the rules for travelling](#) to specific countries. Travel to the Republic of Ireland continues to be governed by the Common Travel Area.
- Beyond 2020 – the landscape within which the third sector operates in Wales will see several flashpoints in a distinctly post-Brexit context. The ongoing development of the UK Shared Prosperity Fund and reforms to judicial review and the Human Rights Act will all take place against a backdrop of recent thrusts for centralisation and legislative challenges to devolution.
- Nevertheless, these will also be opportunities for influence. As will be the likely ongoing negotiations between the UK and EU around issues for which there was insufficient time to negotiate prior to the end of transition. These may be challenging if any failure to secure a trade agreement strains the relationship between the UK and EU.

Introduction

The UK left the European Union on 31 January 2020 but has been in a transitional period that lasts until 11 PM on 31 December 2020. As a result, little has changed in the interim to give businesses, organisations and citizens time to prepare.

This guidance has been drawn up to provide further resources for civil society organisations to help consider the potential implications in the run up to, and beyond the end of this transition.

Both the Welsh and UK Government have made resources available – these are:

- [Preparing Wales](#) – which includes pages on the third sector and community cohesion.
- [The UK Government Transition page](#) – which is a question and answers-based tool

The Welsh Government has also released an [End of Transition Action Plan](#) which discusses some of the key challenges surrounding the end of transition including, Brexit legislation, replacement regional funding, EU programmes, the European Settlement Scheme, potential import and export disruptions and transport arrangements.

There are further pages on the UK Government website for some specific sectors:

- [The Civil Society Sectors](#)
- [The Art, Culture and Heritage Sectors](#)
- [The Creative Industries Sectors](#)
- [The Sports and Recreation Sectors](#)
- Or more broadly: [The DCMS Sectors](#).

These pages may not have all the answers but can be a useful starting point. For example, they do not address potential indirect impacts stemming for example from any potential increases in food prices or the wellbeing implications for vulnerable EU citizens.

1 – RUN UP TO 31 DECEMBER 2020

1.1 Deal or No Deal?

At the time of writing, we do not yet know whether the UK will exit transition with or without an agreement on the future relationship with the EU.

The Gap between these two scenarios is now much smaller however because the deal being sought is ‘thin’. As a result organisations and businesses may want to think through potential impact regardless of the outcome of the negotiations.

Any deal will likely cover little more than trade tariffs and quota free access for goods. This means there will be new border controls regardless of a deal or no deal scenario. While securing a deal may lessen the burden – **a degree of disruption is to be expected and businesses and organisations should prepare for this.** With that said, no deal does present some specific challenges, for example:

- Road haulage will likely see heavier disruptions.
- Other aspects the future relationship that should be subject to further discussions like [security cooperation](#) and EU Programmes may be more difficult.
- Other actions needed from the EU like an adequacy decision for data protection and equivalence in the field of financial services may not be as forthcoming.
- Food shortages are not expected, but there may be less variety available for a time and [some prices may increase](#).

On Covid-19 - The Institute for Government explains [here](#) that border delays may have some impact on the rollout of the Covid-19 vaccine as the Pfizer/BioNTech product will be imported from Belgium.

For further information see:

- This Institute for Government [report](#) which analyses level of governmental and business readiness for the end of the transition.
- For a more detailed analysis of the implications of a no deal scenario specifically – see [this report](#) by UK in a Changing Europe.

1.2 Legal Continuity

The European Union (Withdrawal Agreement) Act 2020 has implemented the Withdrawal Agreement reached between the UK and EU. This provided guarantees for EU citizens living in the UK and UK Citizens living in the EU so that they can continue to live broadly as they have while the UK was a member of the EU. See the following resources for more information on the citizens' rights provisions of the Agreement:

- European Commission – [Questions and Answers on the Withdrawal Agreement](#).
- UK Government – [Explainer on the Citizens' Rights provisions of the Agreement](#).

The European Union (Withdrawal) Act 2018 will also ensure a degree of legal certainty when the transition period ends by retaining most EU Law domestically, as a new category of legislation called 'EU Retained Law'. This will limit the amount of immediate substantive change, but organisations are encouraged to remain vigilant as many policy areas that were previously underpinned by EU Law could now be changed by the UK Government.

Combined, these measures should ensure some legal continuity. There is some concern about substantive changes being introduced via secondary legislation however and the [Public Law Project's SIFT](#) work is scrutinising these changes.

1.3 Ensure your organisation is ready from a data protection standpoint

GDPR will be retained in UK law after the end of the transition period.

As a result domestic aspects of data protection will stay broadly the same. As of 1 January 2021, the body of UK data protection legislation will be comprised of the UK GRPD, the amended Data Protection Act 2018 (DPA) and the Privacy and Electronic Communications Regulations (PECR).

For international data transfers there are two scenarios for data being received from the EEA to consider. There are no expected changes for outgoing data.

1. If the EU provides an '**adequacy decision**' before the end of transition – personal data will continue to flow freely.
2. If the EU does not provide an adequacy decision in time (given the amount of time left – this may prove likely):

- a. organisations must have alternative transfer mechanisms in place to keep data flowing legally (like Standard Contractual Clauses).
- b. The Withdrawal Agreement's provisions on data protection will take effect – meaning that certain 'legacy' personal data may need to be protected in line with EU data laws. Legacy data comprises of personal data of individuals outside the UK processed in the UK before the end of transition. Organisations may need to be in a position to identify which data they hold is legacy data.

For full guidance on the end of transition and data protection – see the [UK Government](#) and [ICO guidance](#).

1.4 Maintain awareness of future changes to procurement rules

The UK public procurement regime derives from EU procurement law and is therefore impacted by Brexit. The Withdrawal Act 2018 has ensured that the domestic aspects will remain broadly the same for now and the UK Government has been passing statutory instruments to reflect withdrawal from the EU. Furthermore, a consultation is expected in 2021, so organisations will want to remain alert to potential changes.

Procurement at the international level is usually covered by trade agreements, but without seeing the text of the future agreement between the UK and EU there is some uncertainty here. The UK Government has expressed a desire to depart from EU procurements rules however.

There are some changes which will take effect from 1 January 2021 as there will no longer be a requirement to advertise on the OJEU/TED – instead Find a Tender will be used.

Requirements to advertise on Sell2Wales will remain.

What about devolution?

Public Procurement was identified in the [framework analysis](#) as a policy area where powers returning from the EU may intersect with devolved competence and which may require non-legislative common ways of working. As a result the UK and devolved Governments are working on a Public Procurement Common Framework which was [reported](#) to be undergoing phase 2 review in May of 2020.

Further reading

There is UK government guidance on public procurement after 1 January 2021 [here](#).

For a simple explainer see this Institute for Government post [here](#).

1.5 Tax and VAT Rules

The rules surrounding VAT were introduced as a result of EU membership requirements. After the end of the transition period, the UK will no longer be part of the EU's harmonised VAT area. Consequently, provided that the future relationship agreement (if one is secured), does not state otherwise, the UK Government could introduce changes to VAT. In Northern Ireland however these would only be possible in line with EU rules.

The Charity Finance Group [has highlighted](#) that certain tax reforms that would be beneficial for the third sector, like creating new zero-rates and a comprehensive rebate mechanism would be possible after Brexit. However, the Government has previously indicated that it intends to keep VAT procedures as close to what they are now as possible.

For more information see this [Institute for Government](#) explainer.

Finally, as a result of the UK's withdrawal from the customs union and single market, customs and excise duties procedures will also be subject to changes, though these are more relevant for businesses with an external trading dimension.

1.6 Raise Awareness of the EU Settlement Scheme amongst staff and vulnerable service users

EU, EEA, Swiss Citizens and their close family members must apply to the EU Settlement Scheme to secure their residency rights in the UK. The **deadline to apply is 30 June 2021**, but the applicant must have been living in the UK by 31 December 2020 to be eligible.

Children must also have their own application - parents can apply for them, or they can do so themselves.

Irish citizens do not need to apply, as they will continue to benefit from the Common Travel Area. However there may be an interest in doing so, as the rights guaranteed by the EUSS are derived from the Withdrawal Agreement – a guarantee in international law which is more difficult to change.

If an Irish citizen has a non-European family member, it may help that family member's application to the EUSS if the Irish citizen applies first.

If you are a third sector organisation supporting vulnerable individuals – you can refer EU citizens to one of the organisations listed on the following website for free professional support with their application: <http://www.eusswales.com/en/index.html>.

Detailed information and the webpage for the application are located here:

<https://www.gov.uk/eussettledstatus>

1.7 As employers – maintain awareness of the post-Brexit Immigration system

From 1 January 2021, the UK will introduce a new points-based immigration system which will cover all non-UK nationals. This means there will be changes to the current Tier 2 and Tier 4 visa routes. Free movement of labour between the UK and EU will end thereby requiring EU citizens to undergo the same immigration process as non-EU immigrants.

For full information see the [UK Government guidance for employers](#).

The rules governing the travel of UK citizens to the EU will also change. For example, staff members travelling for business will need to ensure they have 6 months remaining on their passport. There may also be specific guidance on a country to country basis. [See the detailed guidance here](#).

It may also be useful in the long term to stay informed of research around the potential economic and societal impact of these changes. A [report](#) by NHS Confederation Cymru and the Wales Centre for Public Policy has found that the changes may result in a small but not insignificant impact on recruitment in the NHS. However the impact is expected to be more significant for social care as fewer roles will qualify for the Health and Care visa.

[A further report by the WCPP](#) has found that ending free movement will have a significant impact on population change in Wales which has typically been more reliant on migration than many parts of England. It also anticipates that it will become harder to fill vacancies in sectors where the average salary is below £25,600 and in rural communities with aging populations. More broadly it also finds that experts think the policy will have negative impacts on community relations and integration as well as on perceptions of the UK as a desirable place to migrate to.

2 – BEYOND THE TRANSITION PERIOD – SOME KEY FLASHPOINTS

While we do not know the exact content of the deal being negotiated, we do know that it will much 'thinner' than previously envisioned by Theresa May's government. In other words, this deal will not represent an endpoint in determining future UK / EU relations and we can reasonably expect some negotiating points to continue into 2021.

These might include topics like the mutual recognition of professional qualifications, will hopefully include participation or association with EU programmes like Erasmus+ and Horizon Europe and we almost certainly expect that no progress will have been made on supporting civil society dialogue as per the commitment in article 125 of the political declaration.

This means there may be further opportunities for influence and advocacy for third sector organisations at the devolved and central levels around many of these issues.

2.1 Future Participation in EU Programmes

The UK Government has provided a [lukewarm response](#) to requests to ensure future participation in Erasmus+ and has [rejected requests](#) to do so for international volunteering and placement opportunities through the European Solidarity Corps. This may come at a significant opportunity cost for young people from disadvantaged backgrounds given these programmes' focus on equality and access.

The UK negotiating mandate also suggested that the UK [would not seek future participation in Creative Europe](#).

Organisations, especially those supporting youth mobility, may have an interest in advocating around these issues beyond the end of the transition period. If future participation in European Union programmes proves impossible, then domestic alternatives, potentially with a remit beyond the EU will likely warrant exploration. The Welsh Government's End of Transition Action Plan indicates that it has been pressing for full participation in the range of programmes the UK currently participates in, and that if this is not possible then devolved participation should be explored. The UK

Government has so far not welcomed the idea, but there may be scope for new bespoke programmes designed and delivered at the devolved level.

The UK Government [has stated](#) that it will try to secure full association with the Horizon Research programme. However if this is not possible, it has indicated that it intends to make domestic alternatives available.

2.2 Future relationships between Welsh and EU Civil Society

The Political Declaration between the UK and EU which accompanied the withdrawal agreement contains a commitment in paragraph 125 to promote civil society dialogue as a part of the future relationship. This will likely become even more important in the future given that the UK will now be at the periphery of EU decision making which will nevertheless impact on the UK.

The Arts and culture sector also faces the specific challenge of seeing [demand for UK artists potentially diminish](#) as a result of them no longer enjoying freedom of movement, and maintaining close ties with partners may help mitigate this type of impact by maintaining and raising the profile of Wales internationally.

Given the tight time constraints and the lack of will to extend the transition period even in light of the Covid-19 crisis, it seems unlikely that progress will have been made in this area. With that said, there is appetite for a formal structured relationship on the part of the European Economic and Social Committee as well as from a variety of EU and European level civil society networks.

2.3 The UK Shared Prosperity Fund and Economic Impact of Brexit and Covid-19

Organisations have been able to continue to access EU funding allocated under the 2014-2020 multiannual cycle, for some projects this may continue up until 2023. However, organisations will not be able to access the next round of EU funding covering the 2021-2027 cycle. The UK Government has committed to replacing this funding with the UK Shared Prosperity Fund, but few details have been shared over the last three years, and it is felt that the UK Government no longer intends to issue a consultation despite previous commitments to do so.

The Welsh Affairs Committee published a [report](#) condemning this lack of progress in October 2020, highlighting a serious failure on the part of ministers to engage with stakeholders and legislatures. Meanwhile, the UK Internal Market Bill which at time of writing is still being debated in the UK Parliament, contains financial assistance powers for the UK Government in areas of devolved competence.

The UK Government has since made some announcements in the [Spending Review 2020](#), indicating that the UKSPF will:

- Operate UK wide using the spending powers in the UK Internal Market Bill (though at the time of writing this legislation and the spending powers are being contested in the House of Lords)
- Over time, the total domestic UK wide funding will at least match current EU receipts.
- Invest in people and skills tailored to local needs

- Invest in communities and places
- Invest in local businesses
- Places receiving funding will be asked to agree specific outcomes to target within a 'UK wide framework'.

There are also brief references to:

- a stakeholder group that would develop investment proposals
- a second portion of the fund that would target people most in need with employment and skills programmes
- and to £220 million in funding for pilot projects in 2021.

Further details are now expected in spring of 2021.

The announcement will likely raise alarm amongst actors in the devolved nations regarding devolved input into the design and delivery of the fund, as well as around whether skills programmes delivered by UK Government departments like the DWP for instance, would truly be accessible to people facing the biggest barriers to entry into the labour market.

It is also concerning that while there is a commitment to match the quantum of EU funding at the UK level, there is no indication of any ring-fencing to ensure that funding levels in Wales are also matched. It also unclear at this stage if or how this would link up with the Welsh Government's recently published [Framework for Regional Investment](#).

Organisations may want to reach out to the Ministry of Housing, Communities and Local Government (MHCLG) and continue working with devolved governments to remain up to date on, and to influence the ongoing design of the fund.

Further reading:

- see this [blog](#) by Ben Lloyd, WCVA Head of Policy
- and this [blog](#) by Janine Downing, WCVA Third Sector European Team Manager.

What do we know about the potential economic impact of Brexit?

It is unfortunate that uncertainty surrounding replacements for EU funding will remain in a context when Covid-19 has had an acute negative impact on the economy. Furthermore, the Office for Budget Responsibility has [highlighted](#) that the economic impact of Brexit (even with a trade agreement) will outstrip even that of Covid.

As explained by this UK in a Changing Europe [Blog](#) – the OBR forecasts a 3% hit to the UK's economy in the long run as a result of Covid, while Brexit with a trade deal is predicted to result in a 4% hit. This is in line with [other expert analyses](#).

2.4 Organisations may need to plan their advocacy in a post-Brexit context of increasing centralisation at the UK level and strained devolution.

Brexit has brought with it a significant degree of disruption for the politico-legal landscape within which third sector organisations operate. The effectiveness of the Sewel convention, by which the UK Parliament will not normally legislate with regard to devolved matters without the consent of the

devolved legislatures, has been called into question in light of the UK Government's willingness to press ahead with legislation - even when all three devolved legislatures have withheld that consent.

The developments surrounding the UK Internal Market Bill provide another illustration of how the landscape for third sector advocacy and influence is becoming increasingly challenging. It reverses devolution in some policy areas, openly violates international law, attempts to limit the scope for judicial review and provides new powers for UK ministers in areas of devolved policy.

In Wales the sector has to some degree relied on its close relationship with the Welsh Government and AM's to weather and influence the Brexit process to date. For example the Welsh Government recently established a Trade Advisory Group which includes third sector representation with information and input opportunities being cascaded through regular channels. By contrast, the UK Government advisory groups are locked behind strict non-disclosure agreements.

With that said, access and influence for devolved governments has also been very challenging and organisations may need to increase their engagement with MPs and the UK Government moving forward. Strengthening collaborative work with organisations across the other devolved nations and increasing engagement and partnerships with UK wide third sector organisations may become even more valuable than it has been in the past.

There are several flashpoints on the horizon that are taking place against the backdrop of Brexit that may require this kind of reprioritisation, for example:

- The UK Government is currently undertaking a review into administrative law and judicial review. [Liberty](#) has highlighted concerns around this and given previous UK Government action in this space, as well as recent attempts to limit judicial review in the UK Internal Market Bill, the sector will want to remain vigilant.
- There was also a commitment in the last conservative manifesto to update the Human Rights Act 1998 as part of a broader reconsideration of the constitution looking into: the relationship between the Government, Parliament and the courts; the functioning of the Royal Prerogative; the role of the House of Lords; and access to justice for ordinary people. Further details of these [plans were announced on](#) 7 December 2020. For further commentary, see [this article](#).
- Organisations will also want to maintain an awareness of the impact of the various pieces of Brexit related legislation as they are implemented. For example, depending on the outcome of the UK Internal Market Bill's passage through the UK Parliament, organisations may find themselves needing to assess whether, and understanding how, a policy area they are active within (like environmental or building standards for instance) is caught by the market access principles and what this means in practice.
- A variety of new institutional structures will also be operating including – the [Office for the Internal Market](#), the [Independent Monitoring Authority](#) (which will oversee the implementation of the citizens' rights guarantees from the withdrawal agreement), the [Trade Remedies Authority](#) (being established by the Trade Bill) and the [Office for Environmental Protection](#) (which is intended to replace the oversight of the EU Commission in holding the UK Government to account on environmental commitments). These will occupy key roles and organisations want to invest some time in understanding and scrutinising their activities.