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Llywodraethiant Cymru  
Wales Governance  
Centre



# **Brexit, Devolution and Wales**

**Autumn 2018**

## **Contents**

<b>Introduction</b>		<b>3</b>
<b>Brexit : the Constitutional and Legal Challenges for Devolution</b>	<b>Professor Jo Hunt</b>	<b>4</b>
<b>Brexit and intra-state intergovernmental relations</b>	<b>Dr Rosanne Palmer</b>	<b>7</b>
<b>Regional economic development – what next?</b>	<b>Dr Jayne Woolford</b>	<b>10</b>
<b>Meanwhile, in Brussels...</b>	<b>Dr Rachel Minto</b>	<b>14</b>
<b>Welsh Public Opinion and Brexit</b>	<b>Professor Roger Awan-Scully</b>	<b>18</b>
<b>Brexit and the Welsh Economy: Time to Play a Poor Hand Well</b>	<b>Dr Ed Gareth Poole</b>	<b>21</b>

## Introduction

On 23rd June 2016, 52.5% of voters in Wales opted to leave the European Union (EU), the only one of the three devolved territories to vote in this way, alongside England. Since that date, when 51.9% of voters across the UK opted for Leave, the process of withdrawing the UK from the EU has been unfolding, although more than two years on from the referendum, the shape of the final outcome remains unclear.

The process and outcome of Brexit are of fundamental significance for Wales, for the shape of Welsh devolution, and its place in the wider United Kingdom. EU membership predates the devolution of powers to Wales under the 1999 and successor settlements, and has set a framework for how devolved powers are exercised – both in terms of the rules that apply and the way they are made. Questions about who will decide the rules, and how, in these policy areas post- Brexit have been an ongoing point of controversy.

This report seeks to provide insight into the dynamic interplay between Brexit and devolution in Wales. It begins by considering the constitutional implications of Brexit. It then looks into what the Brexit process has revealed about the management of relations between the devolved and UK levels of government and what Brexit means for Wales' relations with the rest of the EU in future. It then explores the future of economic development in the absence of EU cohesion policy. Finally it examines public attitudes and the potential implications of Brexit for the Welsh economy.

This report has been supported by the ESRC Senior Fellowship awarded to Professor Jo Hunt, Cardiff School of Law and Politics, under the UK in a Changing EU programme. The contributors to the report all have connections to the Wales Governance Centre at Cardiff University, and the report showcases the breadth of work being done across the centre on the implications of Brexit for Wales.

For more information about the work of the Wales Governance Centre, and details of regular public events, see <http://sites.cardiff.ac.uk/wgc/>

For more information on the ESRC's UK in a Changing Europe initiative, see <http://ukandeu.ac.uk>

## Brexit : the Constitutional and Legal Challenges for Devolution

Professor Jo Hunt

It is now twenty years since the adoption of the original devolution settlement for Wales,<sup>1</sup> and in the intervening period, the deal has been returned to with reliable regularity. Successive legislative interventions have brought about a steady expansion in the powers of the Welsh institutions, and a progressive embedding of Wales' place in the UK's territorial constitution. Step by step, the Assembly has gained the power to make its own primary legislation,<sup>2</sup> alongside the Welsh Government's executive law-making powers; the permanence of the Government and Assembly has been affirmed;<sup>3</sup> and its relationship with the Westminster Parliament defined in legislation – with Westminster's self-limiting edict that it will not normally legislate in devolved areas without the Assembly's consent.<sup>4</sup> The most recent step has seen Wales move from the model of conferred powers to the reserved powers model akin to that operating for Scotland.<sup>5</sup> On one reading, these progressive steps, when seen in combination with the developing devolution stories in Scotland and Northern Ireland, may be seen as taking the UK ever further away from being a unitary state. The dominance of a model founded on Westminster Parliamentary sovereignty appears under challenge, with moves towards a constitutional conception of the UK in which sovereignty is less absolutely held in one place, and more dispersed across the UK's constituent parts. Whilst not (yet) a federal state, the term 'union state' appears inappropriate to apply to the UK.

However, this particular reading of the UK constitutional order has been directly challenged by processes surrounding the departure of the UK from the EU. Brexit has repeatedly revealed the very fragile constitutional status of devolution, and not just for Wales, which trails Scotland and Northern Ireland in the extent and depth of its powers. The UK Government's approach presents a considerable challenge to the devolved view of their place in the UK constitutional order, and the parity of esteem they believe should form the basis of intergovernmental and interparliamentary relations. As each step in the withdrawal process has been taken, from the date of the referendum vote (felt to be too close to Assembly elections), to notification of the intention to withdraw under Article 50, and the determination of the form of Brexit being sought and the outlines of a new relationship with the EU, the involvement and preferences of the devolved administrations have been side-lined. The overriding dominance of the UK Government, acting through the channels of the Westminster Parliament has been strongly reasserted, with little in the way of any guarantee for the effective participation by the devolved institutions.

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<sup>1</sup> Government of Wales Act 1998, subsequently replaced with Government of Wales Act 2006, which has itself been amended in turn by Wales Act 2014, and Wales Act 2017.

<sup>2</sup> Primary law-making powers for the Assembly, enabling it to make legislative Acts in devolved areas were introduced in 2014, following the positive vote in the 2011 referendum.

<sup>3</sup> GOWA 2006, S A1, introduced by Wales Act 2017.

<sup>4</sup> The so-called Sewel Convention, now found in Government of Wales Act 2006 s 107 (6).

<sup>5</sup> The Wales Act 2017 introduces changes to the GOWA 2006, with the listing of areas which are fully or partially reserved to the UK Government and/or Westminster Parliament.

This strong assertion of a centralised, unitary constitutional order, with Westminster Parliamentary sovereignty at its heart, was given support by the UK Supreme Court in the 2017 *Miller* case.<sup>6</sup> Amongst other things, the Court confirmed the need under UK constitutional principles for the Parliament to give its support to triggering the withdrawal process. The Court determined that the UK Government did not have the necessary powers to act alone to decide whether the process under Article 50 EU Treaty should be launched, through formal notification by the Member State. The Supreme Court additionally, and significantly, held that the Westminster Parliament was under no legal obligation to gain the consent of the devolved assemblies and parliaments before proceeding to give notification to the European Council. Though the Sewel convention had passed into legislation, with recent changes to both the Scotland Act and the Government of Wales Act providing that 'it is recognised that the Parliament will not normally legislate with regard to devolved matters without the consent of the Assembly',<sup>7</sup> the Court determined that this rule operated as a political, and not a legal constraint. The Westminster Parliament may seek the consent of the devolved legislatures to it acting across devolved areas, but if that consent is not forthcoming, there is no legal impediment to the Westminster Parliament proceeding with its preferred course. Westminster supremacy is, according to this view, undiminished.

Coming so soon after the promises made to Scotland to see increased Scottish parliamentary powers as part of the cross-party Scottish independence referendum vow,<sup>8</sup> and layered onto the majority vote to remain there, the approach taken to devolution strikes a particularly discordant note. In Wales of course, the majority of those voting were in favour of leave. However, the Welsh Government squared this with a position which is in support of continued participation in the customs union and single market. It has also stated a clear commitment to maintaining the regulatory rights and protections in respect of employment, social and environmental matters guaranteed by EU law.<sup>9</sup> On this, and on many other matters, the Welsh and Scottish governments have found common cause, and have united to present their joint interests to the UK Government and UK Parliament.

In particular, a carefully choreographed joint response was made to the moves by the U.K. government to determine the issue of where powers go when they return from Brussels. The controversial provisions of the 2018 EU (Withdrawal) Act as originally drafted saw a significant new restriction on devolved competence – the devolved legislatures (but not the Westminster Parliament) would be precluded from legislating where there is existing EU law. With a considerable body of EU law applying across devolved fields including agriculture and the environment, the restrictions would have made deep inroads into areas falling within devolved responsibility, and made coherent devolved policy making all but impossible. A series of coordinated steps by the Governments and assemblies of Scotland and Wales were taken, which included the tabling of jointly agreed proposed amendments, refusals to grant legislative consent to the Westminster withdrawal legislation, and the introduction of parallel devolved

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<sup>6</sup> *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

<sup>7</sup> Government of Wales Act 2006, s 107 (6).

<sup>8</sup> <https://www.dailyrecord.co.uk/news/politics/david-cameron-ed-miliband-nick-4265992>

<sup>9</sup> Welsh Government, *Securing Wales' Future*, 2017.

'continuity' legislation, shields to defend the devolution settlements, and sidestep the Withdrawal Act's initial attempts to restrain devolved competence.

In response to these pressures, changes were made to the Withdrawal Act provisions which ultimately, the Welsh Government and a majority in the Assembly felt satisfied enough with to give their consent to, and to agree to repeal its continuity Law Derived from European Union (Wales) Act. The Withdrawal Act, and an associated Intergovernmental Agreement, signed by the Welsh and UK governments, but not the Scottish Government, foresees the need for the creation of U.K. wide common frameworks. These are needed to replace the work previously done by EU law to ensure a sufficient degree of commonality in rules to maintain a level playing field within the U.K..

The Withdrawal Act provides now for a fixing, by UK ministers, of those EU law measures that may need to be maintained ahead of the agreement of new UK wide rules. The process provides for input – but no veto - from the devolved legislatures in the decision to fix, and the resultant freeze will apply to all – including a political commitment not to change the law for England alongside the legal obligation not to change the law in Wales, Scotland or Northern Ireland. But nothing achieved so far has grappled with the more fundamental issue of how effective shared governance will take place in the future – about how the different legislatures will come together to make law for the UK.

So, the process of withdrawing from the EU throws up fundamental questions about what a common core of UK wide rules should be, and how the process of determining that should take place. There will be a need for cooperation and common working which will involve compromise from both the centre and the devolveds as the replacement UK wide frameworks are created, and the challenge will arise of how to fairly accommodate the different perspectives of the constituent parts of the UK, given the relative size of England, and the lack of a separate England-only administration. Legislating for common frameworks for the whole UK may be through Acts of Parliament, though that raises concerns about the weakness of the Sewel convention. Alternatively, it might be through coordinated legislation from the different legislative bodies, but there will be concerns there that the approach adopted for England might, in practical terms, become the default for the UK as a whole. Devolution in the UK has to date been anchored within an EU constitutional system that counterbalances the drive to a single market with respect for the rights of the local and regional level, through the legal and political principle of subsidiarity (that decisions should be taken at the lowest effective level). If the Sewel Convention is the closest the UK order can offer to the subsidiarity principle, there will be concerns for the rights and interests of the devolved nations in post-Brexit UK governance.

## Brexit and intra-state intergovernmental relations

Dr Rosanne Palmer

Brexit inevitably, represents a significant test of the mechanisms for managing relations between the levels of government in the UK. As we know, whilst majorities in Wales and England voted to Leave the EU, Scotland and Northern Ireland voted to Remain. The referendum outcome in Wales has led to concerns being expressed that Wales' interests would be "overlooked", particularly as Wales is not seen as representing such "immediate constitutional and political dilemmas" as Scotland and Northern Ireland.<sup>10</sup>

The formal mechanism for managing relations between the central and devolved governments is the Joint Ministerial Committee (JMC), established in 1999 by a Memorandum of Understanding between the governments<sup>11</sup>. The original intention was to create a multilateral forum for discussing issues reserved to central government which impacted devolved responsibilities and other matters of mutual interest, as well as acting as a mechanism for dispute resolution. The JMC plenary comprises of the Prime Minister and their devolved counterparts, which is supposed to meet annually although it did not meet between 2002 and 2008. A number of sub-committees have also been established to deal with specific issues.

One such sub-committee was JMC (E), chaired initially by the Foreign Secretary then by the Minister of State for Europe, intended to discuss issues relating to the European Union (EU). JMC(E) represented a pragmatic acknowledgement on the part of the UK government of the devolved interest in EU affairs. Whilst EU affairs were, technically speaking, a reserved competence of the UK government, the overlap between EU and devolved competences, and the role of the devolved institutions in implementing EU legislation, ensured substantial devolved interest in EU policy issues where they held domestic responsibility.

JMC(E) was only one channel for engagement between the two levels of government on EU issues. Domestic devolved engagement with the development of the UK's EU policy positions predominantly took place through bilateral contacts at official level, as anticipated in the 1999 Concordat on the Coordination of European Union Policy Issues. Such bilateral relations relied heavily on goodwill, trust, and the upholding of the principle of confidentiality. Most intergovernmental coordination has taken place through these channels, rather than through the JMC (E). The Brexit process has highlighted strains within both the formal and informal mechanisms for managing intra-UK intergovernmental relations.

In recognition of the Leave vote in Wales, Welsh Government has made attempts to engage constructively with the UK Government on the process of Brexit. It has published a series of position papers. The first of these, *Securing Wales' Future*, was produced jointly with Plaid Cymru in January 2017. This was followed by *Brexit and Devolution* in June 2017, which dealt with the constitutional challenges the Welsh

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<sup>10</sup> House of Lords European Union Committee: *Brexit. Devolution*, 19 July 2017, HL Paper 9, 2017-19, para 8

<sup>11</sup> The original Memorandum of Understanding has subsequently been revised.

Government has identified as emerging, or being exacerbated, by the Brexit process, and *Brexit and Fair Movement of People* in September 2017. Further papers have covered the topics of regional investment and trade policy. This pragmatic approach has not been consistently reciprocated by the UK Government, with the First Minister noting in evidence to the External Affairs and Additional Legislation Committee (EAAL) in November 2017 that there had been no formal response to these papers by the UK Government<sup>12</sup>.

Initial signs of UK Government engagement with the devolved executives appeared positive. A new JMC forum, JMC (EN)<sup>13</sup>, was established as a channel for discussing matters relating to Brexit. Despite this positive indication, JMC (EN) has appeared to suffer from the same weaknesses that had previously been identified in the JMC machinery. Its meetings were intermittent until late in 2017. It lacked a forward work programme per se, and was supported only by a virtual secretariat, provided by UK Government officials. Crucially, the JMC (EN) has no decision-making authority<sup>14</sup>. According to Welsh Cabinet Secretary for Finance Mark Drakeford, who has a special responsibility for Brexit issues alongside the First Minister, it has been a place for airing views not reaching agreement<sup>15</sup>.

Consequently, there have been repeated calls to make the JMC a more effective mechanism for managing intergovernmental relations<sup>16</sup>. This issue is perceived as increasingly important in light of the need to introduce common frameworks to underpin the UK's internal market following Brexit to replace those currently provided by membership of the EU Single Market. A particular problem is that the JMC (EN) is not viewed as a meeting of equals by the devolved executives and has apparently not been treated as such by the UK central government.

Poor communication has also been an issue. For example, JMC (EN) did not provide an opportunity to discuss the letter which triggered Article 50 TEU, beginning the negotiations over the UK's departure from the EU. Good communication has been seen as central to maintaining good relations between the two levels of government on the development of EU policy positions in the past. This UK Government approach may have been informed by the position evident in the Repeal Bill White Paper that EU affairs are a reserved competence of the UK Government and that discussions with the devolved will be handled "in parallel"<sup>17</sup>. Adoption of this position overlooks, whether deliberately or not, the substantial interest that the devolved institutions have in the outcome of Brexit and the terms on which the United Kingdom leaves the European Union.

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<sup>12</sup> External Affairs and Additional Legislation Committee, Evidence Session, 27 November 2017, para 43 (First Minister Carwyn Jones)

<sup>13</sup> European Negotiations

<sup>14</sup> HL Paper 9, 19 July 2017, paras 276 - 294

<sup>15</sup> *ibid*, para 279

<sup>16</sup> For example, HL Paper 9, 19 July 2017; House of Commons Public Administration and Constitutional Affairs Committee: *Devolution and Exiting the EU and Clause 11 of the EU (Withdrawal) Bill. Issues for Consideration*, HC484, 29 November 2017, Session 2017-19; National Assembly for Wales External Affairs and Additional Legislation Committee: *Implications for Wales of leaving the European Union*, January 2017

<sup>17</sup> Department for Exiting the EU: *Legislating for the United Kingdom's withdrawal from the European Union* (Cm 9446), March 2017, para 4.4

Both the Welsh and Scottish Governments have stressed an urgent need to develop more effective consultation mechanisms in light of both the Brexit process and the future need for common UK frameworks to be agreed. The House of Lords European Committee and the House of Commons Public Administration and Constitutional Affairs Committee have also called upon the UK Government to make the JMC machinery more effective, with the External Affairs and Additional Legislation Committee of the National Assembly has also called for more equitable arrangements for facilitating intergovernmental relations within the UK<sup>18</sup>.

In May 2018, a new body, the Ministerial Forum (EU Negotiations) was established. Its first meeting was held in Edinburgh, although it was chaired by members of the UK Government in the shape of the Minister for the Constitution and the Parliamentary Under-Secretary of State at the Department for Exiting the EU. The Ministerial Forum sits under the JMC, although it is not yet clear after only one meeting at the time of writing, how it will differ from JMC (EN). Its first agenda consisted of discussion on the UK Government's White Paper on the Framework for the UK's Future Relationship with the EU and the role of the Ministerial Forum in practice and its Forward Plan<sup>19</sup>.

The Welsh First Minister has called for a Constitutional Convention to look at broader issues with regard to the way in which devolution and intergovernmental relations in the UK are managed with the Welsh Government consistently arguing that the process of Brexit must not be allowed to undermine devolution, but rather that there should be "deeper and more sustained cooperation"<sup>20</sup> between the different levels of government post-Brexit. In particular, Welsh Government has stressed that "[n]ew arrangements for consultation, joint decision-making and joint delivery will be needed"<sup>21</sup> and has suggested establishing a UK Council of Ministers. This means either strengthening the existing mechanisms or replacing them with something that is more robust, though opinions differ on whether such mechanisms should be placed on a statutory footing.

At a meeting of the JMC plenary, chaired by the Prime Minister, on 14 March 2018, discussions were held with regard to the work conducted by JMC (EN) to date and the role of the devolved negotiations in the next phase of the exit negotiations. There was also an agreement that officials should review and report to Ministers on the existing intergovernmental structures, including the MoU, to ensure they are fit for purpose in light of EU withdrawal<sup>22</sup>. It is unclear what timescale has been attached to this commitment, nor has there been any agreement to implement any consequent recommendations. Without reform or replacement of the existing mechanisms, however, it is difficult to see how the devolved institutions can be confident of ensuring that their interests are taken into account, either in the Brexit process or the development of post-Brexit common frameworks.

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<sup>18</sup> EAAL, January 2017, para 220

<sup>19</sup> <https://www.gov.uk/government/publications/ministerial-forum-communique-24-may-2018>

<sup>20</sup> Welsh Government: *Brexit and Devolution*, (Welsh Government, Cardiff, 15 June 2017): p6

<sup>21</sup> *ibid*

<sup>22</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690527/Joint\\_Ministerial\\_Committee\\_communique-14\\_March\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690527/Joint_Ministerial_Committee_communique-14_March_2018.pdf)

## Regional economic development – what next?

Dr Jayne Woolford

An aspect of key importance to Wales in relation to Brexit will be the end of EU regional policy and the development of a replacement policy to deal with regional disparity. Wales has enjoyed far higher levels of funding under EU Cohesion Policy – or regional policy – than other parts of the UK and is one of only two UK ‘regions’ that has been a net beneficiary of EU membership.<sup>23</sup> In the run up to the referendum the then Prime Minister David Cameron made it clear that Wales could not expect to receive the same levels of funding in the event of a Brexit; key figures in the Leave campaign contradicted this line claiming that equivalent replacement funding would be made available.<sup>24</sup>

### UK or EU-funded?

At the mid-way point of the two-year Article 50 process and at the end of phase 1 of the negotiations, there remained a lack of clarity around where future funding would originate in the period immediately following the UK’s withdrawal from the EU in March 2019.<sup>25</sup> In October 2016 Her Majesty’s Treasury (HMT) announced that all projects contracted under the European Structural and Investment Funds (ESIF) *prior to the UK’s departure from the EU* would be guaranteed funding; this would “ensure projects are not disrupted (and that) no community misses out.”<sup>26</sup> Subsequently, a successor to EU Cohesion Funding was announced in May 2017 in the form of the UK ‘Shared Prosperity Fund’ (SPF) which would use “the structural fund money that comes back to the UK following Brexit” to replace EU funds in poorer parts of the UK.<sup>27</sup>

However, the first phase of Brexit negotiations completed in December 2017 included agreement to the UK’s continued participation in EU annual budgets until the end of 2020 and in ESIF programmes until their closure (beyond 2023).<sup>28</sup> The ‘joint report’ also allowed for the possibility of UK participation in EU funding programmes post-2020 on a non-Member State basis, specifically stating that future support under PEACE and INTERREG – both of which involve regional cooperation between authorities in Ireland and the UK (and wider) – will be ‘examined favourably’.<sup>29</sup>

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<sup>23</sup> Wales benefits to the tune of £79 per person per year from EU membership.

<http://sites.cardiff.ac.uk/wgc/files/2016/05/Estimating-Wales%E2%80%99-Net-Contribution-to-the-European-Union.pdf>

<sup>24</sup> [http://www.voteleavetakecontrol.org/leave\\_ministers\\_commit\\_to\\_maintain\\_eu\\_funding.html](http://www.voteleavetakecontrol.org/leave_ministers_commit_to_maintain_eu_funding.html);  
<http://gov.wales/newsroom/firstminister/2016/160627cabinetstatement/?lang=en>

<sup>25</sup> For a fuller analysis please see: Woolford, J, 2018, Uncertainty in ESIF Programming and Regional Policy in the UK: An Article 50 Half-Time Analysis, *European Structural and Investment Funds Journal*, Vol 6(2) (forthcoming).

<sup>26</sup> <https://www.gov.uk/government/news/further-certainty-on-eu-funding-for-hundreds-of-british-projects>; <https://www.gov.uk/government/news/chancellor-philip-hammond-guarantees-eu-funding-beyond-date-uk-leaves-the-eu>, <https://www.theguardian.com/politics/2017/jul/28/treasury-eu-regeneration-funds-brexit-uk-eu>

<sup>27</sup> <http://www.bbc.co.uk/news/uk-wales-politics-39965358>

<sup>28</sup> <https://www.gov.uk/government/publications/joint-report-on-progress-during-phase-1-of-negotiations-under-article-50-teu-on-the-uks-orderly-withdrawal-from-the-eu>

<sup>29</sup> The EU’s INTERREG programmes or European Territorial Cooperation objective dates back to the early 1990s and covers cross-border, transnational and inter-regional cooperation. The PEACE programme was

### **UK participation as a Third Country**

However, whilst, under this scenario, the UK will contribute financially to the Multiannual Financial Framework (MFF)<sup>30</sup> as if it were still a Member State and be required to comply with all relevant EU legislation around the programmes (and more widely), the UK's status from 30<sup>th</sup> March 2019 will be that of a Third Country. The EU guidelines from December 2017 state “the UK as a Third Country will no longer ... participate in the decision-making of the Union bodies, offices and agencies.”<sup>31</sup> The Council negotiation directives from January 2018 further state that the UK will be bound by any legal obligations but unable to participate in bodies, meetings and committees where Member States are represented, although “exceptionally on a case-by-case basis, the United Kingdom could be invited to attend *without voting rights* [my italics] such meetings provided that: the discussion concerns individual acts to be addressed to the United Kingdom or to United Kingdom natural or legal persons; or – the presence of the United Kingdom is necessary and in the interest of the Union”.<sup>32</sup> This raises questions around the legal status of UK programme decision-making structures, such as Programme Monitoring Committees (PMC), under the ESIF regulatory framework post March 2019. Will UK partners involved in European Territorial Cooperation (ETC) programmes be relegated to Third Country status in PMCs in the transitional period and voting rights be distributed amongst the other Member State partners? What about where UK organisations act as programme Managing Authorities (MA)? The Welsh European Funding Office (WEFO) acts as MA for the Ireland-Wales programme yet could end up geographically located in a Third Country before the end of the programming period and hence seemingly unable to participate and vote on projects submitted for funding and at meetings it is responsible for organising. There is no precedent for Third Country participation with equal eligibility status – Third Countries normally participate using their own ERDF-equivalent funding, and financial support from ERDF implemented in Third Countries must be primarily for the benefit of the EU regions.

### **Nothing is agreed ....**

The agreement in December 2017 is based on the principle ‘*nothing is agreed until everything is agreed*’ meaning that negotiations are conducted as a ‘single package’ and ‘individual items cannot be settled separately’<sup>33</sup>. This implies a certain fragility around the agreement, none of which will be effective should subsequent rounds break down. Similarly, second phase negotiations on transitional arrangements and the framework for the UK-EU future relationship will not be allowed to progress if first phase commitments are not seen to be ‘respected in full and translated faithfully’ in the Withdrawal

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established in the mid-1990s as a cross-border cooperation programme between Ireland and the UK to support cohesion between communities involved in the conflict in Northern Ireland and the border counties of Ireland; and promote economic and social stability.

<sup>30</sup> The Multiannual Financial Framework is the EU's long-term budget, usually covering a seven-year-period. The current one runs from 2014-2020.

<sup>31</sup> <http://www.consilium.europa.eu/media/32236/15-euco-art50-guidelines-en.pdf>

<sup>32</sup> <http://www.consilium.europa.eu//media/32504/xt21004-ad01re02en18.pdf>

<sup>33</sup> <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexite-guidelines-22017/>

Agreement.<sup>34</sup> Any potential breakdown in the agreement carries risks that regional policy will be unable to continue under an EU framework and require fallback on the HMT guarantee.

### **Programming risks with a shortened programming period**

Despite HMT insistence that no community will miss out under its guarantee, it would be virtually impossible for Wales to receive the same level of funding with the prospect of a reduced programme length. The guarantee would cover funds *contracted to projects* up until the day the UK leaves the EU. Any other funds allocated to the programme but not committed at that point would be lost, leaving a shortfall between the amount committed at individual project level and the full amount originally allocated under the 7-year programme. The accelerated programming that resulted is, unsurprisingly, not on track to meet targets. WEFO was aiming to commit 80% of the funds by end 2017 and 100% by end 2018<sup>35</sup>, yet in December 2017 commitment was at 63% for European Regional Development Fund (ERDF) programmes in Wales and 73% for European Social Fund (ESF). Commitment had increased very little in the previous 12 months percentage-wise as exchange rate fluctuations took their toll<sup>36</sup> and increased the overall value of the euro-denominated programmes.

In terms of process, it is questionable whether HMT will be able to put replacement funding systems in place by 30<sup>th</sup> March 2019. Would the current contractual agreements with projects entered into by ESIF MAs - *legally designated under an EU regulatory framework* – be taken over by HMT, or would MAs be given the legal authority to pay out HMT monies within a UK legal framework? Other technical aspects add further complications – UK lead partners under ETC programmes are responsible for receiving funding from the EC and dispersing the funds to partners – how will these funding flows be adjusted post-Brexit under the HMT guarantee scenario? The continued operation of the programmes under EU rules therefore considerably reduces the risk of Welsh communities and projects losing their funding or having it disrupted.

There is also a concern that if negotiations are not handled sensitively by the UK government and a ‘bad-tempered’ ‘no deal’ causes these programmes or projects to fail as a result of Brexit, will the UK, or UK organisations, be responsible for any future liabilities or compensation? In the interests of diplomatic good will, it is surely advisable for the UK government to seek minimal disruption to EU partners’ ESIF programming, as suggested in the Prime Minister’s Florence speech in October 2017, where she promised EU partners would not receive less or pay more during the current budget period.

### **UK Shared Prosperity Fund**

Post 2020, the ‘Shared Prosperity Fund’ is expected to be the vehicle to reduce inequalities across the four nations and increase productivity: it is heralded to be cheaper

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<sup>34</sup> [https://ec.europa.eu/commission/sites/beta-political/files/annex\\_commissions\\_recommendation\\_20-12-2017.pdf](https://ec.europa.eu/commission/sites/beta-political/files/annex_commissions_recommendation_20-12-2017.pdf)

<sup>35</sup> <http://gov.wales/docs/wefo/publications/170914-pmc-minutes-sept-17-en.pdf>

<sup>36</sup> The exchange rate used by WEFO as MA for planning purposes up until mid- 2017 was €1.25/£1 and it was subsequently reduced to €1.17/£1 (WEFO PMC papers). The November exchange rate used by the European Commission is €1.13662/£1.

to administer, lower in bureaucracy and better targeted.<sup>37</sup> To date the objectives to be funded, mechanisms and designation of eligible areas and activities as well as governance arrangements remain nebulous however, and it is unclear when this fund might come into existence and which “structural fund money” coming back to the UK will fund it.

A key consideration from a Welsh perspective must be whether the fund will be devolved in line with current EU programmes or designed and administered from Whitehall. Will Wales lose out under the new fund and strategy which seem to suggest funding for ‘every region’ and ‘all parts of the country’ rather than a geographically targeted approach to reducing inequalities? Welsh Secretary of State, Alun Cairns, has said Wales will get its ‘fair share’ but has previously argued that to simply replace one source of funding with another i.e. using domestic funds to substitute EU funds, missed the point.<sup>38</sup> Further clarity is needed around institutional and financial aspects of future policy in this area including how it will build upon and learn from the 30+ years of EU regional policy investment in Wales.<sup>39</sup>

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<sup>37</sup> <http://www.bbc.co.uk/news/uk-wales-politics-39965358> The fund will “deliver sustainable, inclusive growth based on the UK Government’s ‘Industrial Strategy’ launched on 27<sup>th</sup> November 2017. ‘Place’ is one of the strategy’s five foundations in recognition that the UK has a higher level of regional disparity than other European countries.

<sup>38</sup> <https://hansard.parliament.uk/commons/2016-07-13/debates/16071330000005/OralAnswersToQuestions>

<sup>39</sup> [https://www.bevanfoundation.org/commentary/life\\_after\\_eu\\_funding/](https://www.bevanfoundation.org/commentary/life_after_eu_funding/) identifies the first EU programmes in Wales from 1987.

## Meanwhile, in Brussels...

Dr Rachel Minto

### **Flying the Welsh flag in Brussels**

At the very heart of the European Quarter in Brussels, in offices overlooking the European Commission, sits Wales House. This is Wales' outpost in Brussels: home to the Welsh Government, the National Assembly for Wales, Welsh Higher Education Brussels and, until recently, the Welsh Local Government Association. The first Welsh flag was formally planted in Brussels with the official opening of the Wales European Centre in Brussels in 1992. Since then, representatives from different organisations in Wales have worked to establish a distinctive Welsh – and distinctively Welsh – presence in Brussels. This objective has been pursued to great effect.

Today, the organisations in Wales House undertake a range of roles – including intelligence and data gathering; policy influence; networking and partnership building; seeking inward investment to Wales; and profile raising – and they are deeply embedded within networks of regional actors based in Brussels. This work complements the activity of Welsh representatives within the institutional architecture of the European Union (EU) itself: specifically, the European Parliament (where there are four MEPs for Wales), the Committee of the Regions (with representatives from the National Assembly for Wales and the Welsh Local Government Association), and the European Economic and Social Committee (known as the 'bridge' between the EU and European civil society). Whilst the impact of this institutional representation ought not to be over-stated, such access does provide the opportunity for some policy influence as well as for networking, partnership building and raising the profile of Wales in Europe.

Notably, this Welsh footprint in Europe has been developed in the context of the UK's EU membership, and is premised on Welsh sympathy with the European project and (although it pre-dates devolution) the distinctive policy priorities of Welsh organisations. Indeed, given the financial, economic and political relationship between Wales and the EU,<sup>40</sup> Brussels has become an increasingly important site for the promotion of Welsh interests.

Now on countdown to the UK's departure from the EU – a decision supported by a majority Leave vote in Wales – two key questions arise. Firstly, what scope is there for Wales to use its distinctive voice in Europe to defend its interests in the context of Brexit?

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<sup>40</sup> Hunt, J., Minto, R. and Woolford, J. (2016) '[Winners and losers: the EU Referendum vote and its consequences for Wales](https://www.jcer.net/index.php/jcer/article/view/812)', *Journal of Contemporary European Research* 12(4): 824-834, available here: <https://www.jcer.net/index.php/jcer/article/view/812>

Secondly, when the dust has finally settled following the UK's withdrawal from the EU, will we see a continued Welsh presence in Brussels or will it be lights out?<sup>41</sup>

### **Promoting a 'Welsh Brexit' in Brussels?**

Wales has its own priorities and interests to protect in the context of Brexit; some of which contrast clearly with the UK Government's 'red lines'. In its January 2016 White Paper on 'Securing Wales' Future', the Welsh Government and Plaid Cymru asserted their desire to see the UK's continued participation in the Single Market and Customs Union, as well as within a number of European projects, including ERASMUS+ (providing opportunities for work and study abroad), Creative Europe (supporting the cultural and creative sectors) and Horizon 2020 (for research and science funding).

As a sub-state (or 'Region' in EU parlance) Wales does not enjoy any formal role in the Brexit negotiations. It is the UK that is the member state. However, that has not prevented Wales from mobilising around Brexit in Brussels.

Looking to the Welsh Government, it is the spirit of both a 'Good Unionist' and a 'Good European' that has characterised its approach, which is one focused on raising awareness of Wales' specific position on Brexit through more low-key, personal communications, as opposed to high profile, public proclamations. Ministerial meetings have taken place with (amongst others) the European Commission's chief negotiator, Michel Barnier, the European Parliament's Brexit lead, Guy Verhofstadt, and the Chair of the European Parliament's Constitutional Affairs Committee, Danuta Hübner. Meanwhile, the Brussels Office continues to foster a wide range of relationships in Brussels, including with a number of embassies, MEPs and officials from other regional offices, and emphasises its active participation in European regional networks. The National Assembly for Wales has also been busy. As part of data-gathering and highlighting Welsh interests in the Brexit negotiations, its Brexit Committee (the External Affairs and Additional Legislation Committee [EAAL]) has met with (amongst others) Guy Verhofstadt, Michel Barnier, and Danuta Hübner, and its Chair has met with the lead official from the EU Council's Article 50 Taskforce. Beyond this, EAAL has held meetings with the former president of the Committee of the Regions, other regional and sectoral actors in Brussels, and a range of embassies.

Whilst Brexit is a clear assertion of state sovereignty, the efforts of these sub-state actors are not entirely in vain. There is certainly a sensitivity in Brussels to the regional implications of Brexit. Various regional actors from across the remaining EU27 member states have asserted that Brexit will have a particular impact upon them, and the

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<sup>41</sup> This contribution is part based on the following article: Hunt, J. and Minto, R. (2017) 'Between intergovernmental relations and paradiplomacy: Wales and the Brexit of the Regions', *British Journal of Politics and International Relations* 19(4): 647-662, available here: <http://journals.sagepub.com/doi/pdf/10.1177/1369148117725027>

Committee of the Regions has also highlighted this territorial differentiation. Of course, Brussels will prioritise the Regions of the EU27 – not those of the UK – however, at the very least, there is literacy and a certain sensitivity around regional politics, and voices from Wales are being heard.

### **What future for Wales in Europe?**

From the outset of the Brexit process, the Welsh Government has held firm to the mantle of “European nation”, clearly intent on shoring up Wales’ economic, political and cultural future in Europe (although outside the EU). In a bid to secure its European future, the Welsh Government has continued to participate in European networks as well as engaging in collaborative projects – seeking to maximise the benefits of its current position – and 16 November 2017 saw it signing the Cardiff Declaration on Brexit, reaffirming *inter alia* the Welsh Government’s commitment to cross-regional working in Europe following the UK’s withdrawal from the EU.<sup>42</sup>

Notwithstanding these clear commitments to Wales’ European future, the reality is that the presence of Wales in Brussels is set to change. When the UK is no longer an EU member state, Wales will not have representatives in the institutions of the EU and will have a reconfigured status within European and international networks.

Against the backdrop of a new UK-EU relationship, Welsh organisations will have to decide what level of resource to invest in Europe. The National Assembly for Wales has already diminished and re-purposed its Brussels-based representation, and the WLGA closed its Brussels office in March 2018. The decision of the WLGA was met with both surprise and disappointment, coming as it does prior to the UK’s exit and before there is any clarity about the future UK-EU relationship. However, it was perhaps a reflection of political pressures coming to bear in the context of continued resource constraints on local authorities.

Despite the vote to Leave the EU, it may be that Brexit results in a reinforced presence of Wales in Brussels, as the Welsh Government and other organisations will likely have to work even harder to influence and engage with Europe. Importantly, this assessment will take place in the context of the Welsh Government’s broader international strategy that, in November 2017, saw the First Minister announce the opening of new offices in Canada, France, Germany and Qatar, to boost trade and inward investment post-Brexit. Both the ‘Wales in Europe’ and ‘Wales in the World’ strategies will be forged for a new post-Brexit landscape, which must surely take account of the UK Government’s efforts around ‘Global Britain’.

### **The Welsh flag will continue to fly in Brussels**

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<sup>42</sup> Conference of Peripheral and Maritime Regions, ‘Cardiff Declaration on Brexit’ 2017, available here: <http://cpmr.org/wpdm-package/cardiff-declaration-on-brexit/>

As the negotiations unfold, Brussels is set to remain an important site for the promotion of Welsh interests, particularly as attention turns more squarely to the future UK-EU relationship. Notwithstanding Brexit, the Welsh Government has expressed its commitment to Wales' European future: Wales is leaving the European Union; it is not leaving Europe. However, in the context of many moving parts, competing priorities and limited resource, it will be some time before the shape of this European future comes clearly into view.

## Welsh Public Opinion and Brexit

Professor Roger Awan-Scully

In the course of 2017, much happened in relation to Brexit. Article 50 has been formally triggered by the UK government; we had a Brexit-focussed general election; and the formal UK-EU negotiations have now been underway for some months.

What impact has all of this had on public attitudes in Wales towards Brexit? Cardiff University's Wales Governance Centre has conducted detailed research on this since the referendum. In our frequent Welsh Political Barometer polls (carried out jointly with YouGov and with ITV Wales) we have tracked public opinion at regular intervals since the June 2016 referendum. We have also conducted a major academic survey of the public to explore knowledge and attitudes in much greater depth. In summer 2017 we also carried out some qualitative focus group work, which looked at working-class Leave voters in the valleys that voted so heavily for Brexit.

Our regular polls have shown very little sign of any significant shift in public attitudes thus far. The final poll of 2017 did suggest a modest move against Brexit: in a regular question about how people would vote in any second referendum Remain was now five points ahead of Leave.<sup>43</sup> But the general picture throughout the last eighteen months has been one of little change; an overall stability which reflects very few people on either side of the Remain/Leave divide having changed their minds since last year. This picture was reinforced by the first Welsh poll of 2018, which once more placed Remain and Leave neck-and-neck in a hypothetical second referendum.<sup>44</sup>

These divisions between Remainers and Leavers run deep. Our detailed academic survey showed stark differences between the two groups along several dimensions. Remainers and Leavers differ on what they *want* to happen. There is no consensus on what kind of deal the UK should seek with the EU. The majority of Leave voters (78%) would like to see the UK regain full control over how Britain is governed and who can live in the UK, even if that means not having a free trade relationship with the EU. By contrast, some 63% of Remain voters either wish for Britain to remain in the EU after all (41%) or to retain close ties through associate membership (22%).

The two sides also differ starkly in terms of what they *expect* to be the consequences of Brexit. When asked if they would personally be better or worse off as a result of Brexit, an unsurprising 73% of Remainers believed they would be worse off, compared to only 17% of Leavers. Most Leavers (53%) feel that there will be no perceivable difference, though nearly a third (30%) believe they will be personally better off after Brexit. Similar findings can be seen when asked about the consequences of Brexit for Wales, with 82% of Remainers believing that the nation will be worse off, compared with only 24% of Leavers. The majority of Leavers (52%) again expect there to be no marked difference, with 24% thinking Wales will be better off.

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<sup>43</sup> Published on 27 November 2017

<sup>44</sup> Published on 19 March 2018; details available at

<http://blogs.cardiff.ac.uk/electionsinwales/2018/03/19/the-new-welsh-political-barometer-poll-the-latest-on-brexit/>.

We also asked respondents about what they believed the impact of leaving the EU would be on key policy areas including unemployment, immigration, Britain's global influence and the amount government spends on the NHS. The data showed that:

- On the question of unemployment, the majority of Leave voters (60%) expect unemployment to stay around about the same as now, but some 30% believe that it will fall after Brexit. Almost no Remain voters think that unemployment will fall: the majority (54%) think it will be higher, and another 39% think that it will stay at about the same level.
- When it comes to immigration into the UK, the majority of Leavers (70%) expect to see immigration fall, whereas only 30% of Remainers believe immigration will lower – 63% of them expect it to remain about the same.
- On the issue of Britain's global influence, very few Leave voters (10%) think that Britain will have less influence after Brexit, compared with 68% of Remain voters who expect that Britain's place in the world will be diminished.
- And when it comes to whether there will be more or less money spent on the NHS when the UK leaves the EU, only 11% of Leave voters thought that this would fall, compared to fully 50% of Remain voters. Very few Remainers believe more money will come to the NHS after Brexit (6%, compared to 35% of Leave voters).

But Remain/Leave voter differences even go as far as matters of political process: *how* Brexit should be done. When asked what they would like to see happen once the talks are concluded, there is again no consensus among voters. Most Leave voters thought that any agreement struck between the UK and EU should either be implemented immediately (40%) or implemented after a ratification vote in the UK parliament. By contrast, a majority of those who voted Remain in 2016 either wish for a second referendum to endorse an agreement (33%), or think that both the UK parliament and the devolved parliaments in Scotland, Wales and Northern Ireland should have to ratify any deal.

To try to understand some of these attitudes more fully, we conducted five lengthy focus groups with working-class Leave voters in the south Wales valleys in summer 2017. The valleys have been solidly Labour for decades; they have also received large amounts of EU Structural Fund aid in recent times. Yet all of them voted Leave, most by substantial margins, against the advice of the Welsh Labour party and against their own apparent economic self-interest. So why did they do it?

Three key points came out of our group discussions. A first was continuing and substantial hostility among many of these voters towards immigration. Several participants articulated specifically working-class objections to immigration: that immigrants were taking jobs from locals and driving down wages – to the benefit of employers rather than ordinary workers. A second prominent theme in the discussions was that participants struggled to see how their communities had benefitted from EU membership. Much EU spending in the valleys was viewed as being wasteful 'vanity projects' that had been carried out without much consultation with local communities. A final point was that many Leave voters expected that Brexit may cause short-term problems – this appears to have already been 'priced in' to some extent – but they expect it to be worth it in the longer-term.

This research has provided us with the most detailed understanding yet of public thinking about Brexit in Wales. The picture it paints is not a very positive one. There is little sign of public consensus emerging on Brexit: we are not coming together, as the Prime Minister has suggested, but continue to be deeply divided.

*Regular updates on public opinion in Wales can be found at Professor Roger Awan-Scully's 'Elections in Wales' blog <https://blogs.cardiff.ac.uk/electionsinwales/>*

## **Brexit and the Welsh Economy: Time to Play a Poor Hand Well**

Dr Ed Gareth Poole

*“Life is not a matter of holding good cards, but of playing a poor hand well” - Robert Louis Stevenson.*

In a result that will vex Welsh politicians and political analysts for decades to come, Wales was the only devolved country to vote to Leave the European Union in June 2016. In separating from voting patterns in Scotland and Northern Ireland, and despite the many hundreds of millions of pounds in received annually from European funds, Welsh voters expressed their disinclination to follow the essentially united urgings of the Welsh political class to remain in the EU. Wales’ devolved institutions therefore entered intra-UK Brexit negotiations from a position of significant weakness, and it is in this weakened position that they will remain for the duration of the process. Given the long-term structural economic weakness of the Welsh economy, this lack of influence is a major cause for concern as UK and EU negotiators try to navigate a path to a Brexit settlement.

Given longstanding (and misplaced) assumptions about Welsh voters’ proclivity towards the European project (at least in relation to their English counterparts), the Welsh political class’ reconciliation of their strong preference for continued membership with voters’ preference for withdrawal has been demanding and protracted. Perhaps recognising the limits of Wales’ intra-UK bargaining position and Welsh Labour’s particular difficulty in this post-referendum reconciliation, the Welsh Government’s Brexit policy has been jointly developed with an opposition party (Plaid Cymru) through their participation in a formal liaison committee. This cross-party policy development has not been replicated elsewhere in the United Kingdom, with the exception of the Democratic Unionist Party’s direct influence on UK Government policy since the 2017 General Election.

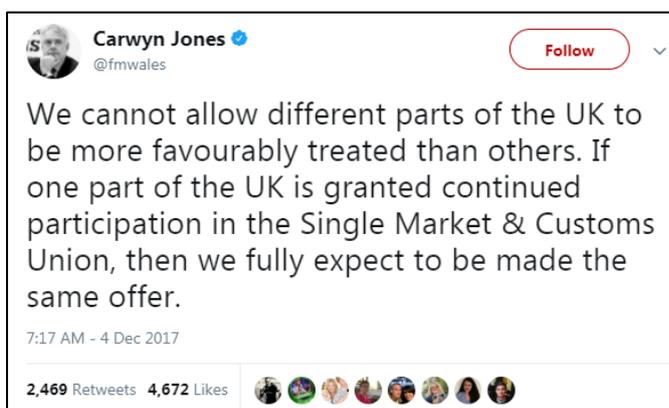
This Welsh Government’s Brexit policy document, *‘Securing Wales’ Future: Transition from the European Union to a new relationship with Europe’*, proposes a Soft Brexit on an EEA model that is at odds with much of the UK Government’s approach. Wales would continue to participate in the Single Market and the Customs Union and would broadly retain freedom of movement – albeit with tighter employment requirements – to address longstanding recruitment challenges in public services, particularly the Welsh NHS. However, there is little evidence that this document has influenced UK government Brexit policy since the Prime Minister’s Lancaster House speech.

The Welsh Government’s Soft Brexit objectives are motivated primarily by a deep concern about Wales’ likely economic performance under a Hard Exit scenario. In particular, single market and customs union access have been prioritised because of the relative orientation of the Welsh economy towards goods and manufacturing: Over two-thirds of Welsh exports outside the UK currently are to the EU, compared with fewer than half of exports from the UK as a whole. Wales is also home to small number of large manufacturing firms with an outsized influence on the economy, including Ford (Bridgend), Airbus (Flintshire) and GE Aviation (Rhondda Cynon Taf). Each of these employers have highly-integrated supply chains that are dependent on regulatory convergence (or at the very least, electronic border management systems) to prevent

costly customs holdups. For example, Airbus' north Wales plant employs 6,000 workers and draws from a company-wide supply chain of 7,700 contractors to manufacture wings that are transported for assembly in France or Germany (Airbus 2017). Trans-European R&D programmes and visa flexibility also facilitate the movement of skilled labour between manufacturers' plants at extremely short notice. A Hard Brexit requiring extensive customs checks and regulatory divergence would impose very severe strains on such an integrated operating model.

Regulatory convergence has become a Welsh Government priority for other reasons. With 77% of HGV traffic between the Republic of Ireland and the rest of the EU currently passing through Welsh ports, local economies in Holyhead and western Pembrokeshire are highly dependent on their continued patronage by Irish exporters after Brexit. Convergence is also more conducive to continued Foreign Direct Investment, which has been a staple economic development priority since the establishment of the Welsh Development Agency in 1976.

Given an alignment of economic interests and Wales' weak bargaining position, the Welsh Government has repeatedly found common cause with the Scottish Government's advocacy on Brexit policy. For example, when it appeared that a proposed UK-EU agreement to proceed to Phase II of Exit negotiations would commit the UK to "no regulatory divergence"/"continued alignment" on the island of Ireland, Nicola Sturgeon's statement that "If one part of UK can retain regulatory alignment with EU and effectively stay in the single market... there is surely no good practical reason why others can't" was echoed just two hours later by Carwyn Jones: "If one part of the UK is granted continued participation in the Single Market & Customs Union, then we fully expect to be made the same offer." (4/12/2017).



Wales' post-Brexit interests also different significantly from those in other parts of the UK in agriculture. Wales' small-scale, upland and low-profit agricultural industry is far more suited to the objectives of the Common Agricultural Policy than larger arable farming interests in the south and east of England; indeed, 90.7% of total Welsh food and drink exports are to the EU (2014 data) and more than 80% of Welsh farm income is derived from CAP payments. While opportunities exist for wider marketing of agricultural produce beyond the EU, new trade deals with New Zealand and Australia that facilitate no-quota lamb imports could render small-scale Welsh upland sheep farming unviable.

Finally, although the UK as a whole is a large net contributor to the EU budget, Wales is a net beneficiary of approximately £245 million per year (Wales Governance Centre 2016). Wales has been allocated more than €2.2 billion in Common Agricultural Policy funding between 2014 and 2020, representing £96 per head compared with just £31 per head in England. Likewise, Wales receives more than £250 million per year (£83 per head) from the Structural Funds, compared with just £13 per head in England. The Welsh Government has a particular interest in ensuring that its interests are represented in distributions from the proposed post-Brexit United Kingdom Shared Prosperity Fund that is "specifically designed to reduce inequalities between communities across our four nations" (Conservative Party Manifesto 2017: 37). Although the size of future distributions to the four countries of the UK are currently unknown, in their confidence and supply agreement the DUP secured a commitment from the UK Government to ensure "the needs of Northern Ireland are properly reflected in the future UK Shared Prosperity Fund" (*UK Government Financial Support for Northern Ireland*, 26 June 2017). With structural fund spending per head in Wales almost three times that of Northern Ireland, the Welsh Government will be seeking for a similar funding protection as post-Brexit regional policy begins to take shape.

#### Average receipts from major EU programmes per year, 2014-2020

	England	Northern Ireland	Scotland	Wales
Common Agricultural Policy - total spending	£2,184 m	£317 m	£614 m	£353 m
<b>CAP spending per head</b>	<b>£31</b>	<b>£145</b>	<b>£96</b>	<b>£96</b>
Structural funds total spending	£735 m	£54 m	£95 m	£255 m
<b>Structural funds spending per head</b>	<b>£13</b>	<b>£30</b>	<b>£18</b>	<b>£83</b>

Source: Centre for European Reform (CER) 2014

Attracting attention for these particular interests from a UK cabinet riven with disagreement over Brexit in a highly fraught and truncated process would be hard enough even if Wales had a credible threat relating to independence (as in Scotland) or land border or peace process concerns (as in Northern Ireland). The decision of Welsh voters to leave the EU dealt an even weaker set of cards to their political class. As a result, defending a structurally-weak economy from further economic damage will be the first –

and most important – test for the post-Brexit generation of politicians, industrial leaders, academics, trade unions and policy makers in Wales.