Community Housing Cymru

In-depth Briefings

Brexit update February 2020

Background:

The UK government introduced the European Union (Withdrawal Agreement) Bill to Parliament on the 21st October 2019, detailing the arrangements of the UK's exit from the EU.

Refusal by Parliament of the government's initial timetable for approving the Bill resulted in a second extension of the Brexit deadline to the 31st January 2020.

The Withdrawal Agreement Bill passed through Parliament on the 22nd January 2020 and received royal ascent into UK law the following day**.** This final hurdle enabled the UK to leave the European Union on the scheduled second extension date.

The following briefing outlines key information as part of the European Union (Withdrawal Agreement) Act 2020 in relevance to the housing sector.

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Transition period

The Withdrawal Agreement and its associated legislation transposes all existing EU legislation into UK law, and allows for a transition period until the 31st December 2020 which ensures that the UK enjoys the benefits of European Union membership while negotiating a future trade agreement.

Practical implications to the housing sector are not anticipated during this time, but negotiations with the EU may pose changeable circumstances over the course of the year and potentially present challenges to the housing sector post-transition.

An extension of the transition period can be agreed upon before July 2020, but only once and only for a period of one to two years. However, Prime Minister Boris Johnson has indicated he does not support an extension, and with the Withdrawal Agreement requiring further primary legislation before any extension, it seems unlikely that transition will be extended.

Political declaration

The Political Declaration accompanies the Withdrawal Agreement, and sets out the framework for the future relationship between the EU and the UK. It is not legally binding but will set the direction of the future relationship negotiations, which are expected to begin once the UK has formally left the EU.

It establishes the parameters of a partnership across a variety of areas, with a Free Trade Agreement at its core.

The Declaration also states that safeguards on a level playing field should ensure a future relationship based on open and fair competition.

Amendments

All five amendments proposed to the Withdrawal Agreement Bill by the House of Lords were rejected by MPs. This included; EU citizens' rights, the power of UK courts to diverge from EU law, the independence of the judiciary after Brexit and guaranteed rights for refugee children.

The fifth rejected Amendment called for consent on the legislation of devolved issues by the Scottish Parliament, the Welsh Assembly and the Stormont Assembly in Northern Ireland.

All three devolved governments voted against the Bill, but as it was not a legally binding vote, it did not prevent the Bill from becoming law.

The First Minister Mark Drakeford AM expressed concern that Welsh interests had been ignored and that the Bill undermines the devolution settlement.

No Deal Brexit

The possibility of a 'No Deal' Brexit has not been removed entirely, but previously referred to the UK leaving the EU without a Withdrawal Agreement in place.

Now that a Withdrawal Agreement has been enacted, a No Deal situation now refers to not having agreed details of the UK and EU's future trading relationship by the end of the transition period. The UK Government has begun referring to this situation as an "Australia style deal". There is no guaranteed success of these negotiations given the complex nature of the breadth of issues to be discussed.

The Welsh Government's policy has been to oppose leaving the European Union without a deal, and they have regularly outlined the impact they believe a No Deal situation would have on the economy and public services more widely. The Welsh Government's "Preparing Wales for a no deal Brexit" website outlines the impact across a number of sectors.

The impact of No Deal presents challenges across a number of areas of a housing associations' business, and the impact will be felt across a range of industries in Wales. While the housing sector is unlikely to be the hardest hit, Welsh Government and colleagues in local government are keen to work with the sector to understand the impact and how we may mitigate challenges that arise.

The UK Government's 'Operation Yellowhammer' document outlines what the UK Government foresees as worst-case scenarios in the event of a No Deal Brexit.

Subsequently, the Welsh Government published its own No Deal action plan, presenting the actions being taken to manage the main risks for Wales, and responds to the assumptions set out in Operation Yellowhammer. Full details of the action plan can be found here.

Citizens' rights

Under the Agreement, EU citizens, EEA and Swiss nationals and their family members residing in the UK can apply to the EU Settlement Scheme until the 31st December 2020 (in the event of a No Deal Brexit) or by the 30th June 2021 (in the event a Brexit deal is agreed).

Those who have resided in the UK for five or more years are eligible for 'indefinite leave to remain' continuing living and working in the UK. Those who have resided in the UK for less than five years will be eligible for 'limited leave to remain' and can apply for 'indefinite leave to remain' once five years of continuous residence in the UK has been completed.

Under the terms of the Withdrawal Agreement, citizens' rights would continue to be protected under current EU law on free movement even if a deal is not agreed by the end of December.

The Home Office has devised a toolkit for employers about the EU Settlement Scheme which can be found here. There is also a similar toolkit for community leaders which may be helpful when advising tenants. This is available here.

It is very important that tenants and employees from EU countries check their current status in relation to the EU settlement scheme as soon as possible.

To raise awareness of the Settlement Scheme, funding has been provided for a 'Settled' Wales coordinator, as well as an immigration law service to provide legal Welsh Government advice in complex cases. Furthermore, Citizens Advice have also been awarded funding recently to provide both specialist and generalist advice in the area of Settled Status requests, and are keen to work with housing associations to reach those in need of support. Further information on this can be found here.

Labour and workforce

During the transitional period, citizens of EU member states are still eligible to move to the UK to live and work, but need to apply for a UK immigration status granting them permission to stay.

Once the transition period begins (from 1st February 2020), the Home Office will open a new voluntary immigration scheme – the European temporary leave to remain (Euro TLR) Scheme – to provide an online service to apply for this immigration status.

Successful applicants to the Euro TLR scheme will be granted a period of three years leave to remain in the UK, running from the date the leave is granted. This is intended to provide EU citizens who move to the UK during the transition period and their employers with greater confidence and certainty and ensure that they have a secure legal status in the UK before the new immigration system is introduced from January 2021. The new system will be modelled on the Australian-style points-based immigration system and aims to prioritise skillsets.

However, future insecurity around the application process may mean that residents choose not to stay in the UK, and there has been some anecdotal evidence of those in low paid jobs returning to other EU countries already. Furthermore, the Withdrawal Agreement no longer contains clauses on the protection of EU workers' rights and instead intends to include these in a forthcoming Employment Bill. It is not yet clear how the Government intends to protect workers' rights in the proposed Bill, which increases concerns further amongst EU workers.

Within Wales, EU migrants have a higher overall employment rate (79%) than the general working age population (71%) and most work in occupations such as administration, social care or skilled trades (e.g. in construction) which means that housing associations staff are likely to be affected by a No Deal situation. A reduction in migration into the country is likely to impact on the workforce in two key areas for housing associations:

- **Construction:**

The construction workforce in Wales currently already has a significant number of unfilled or hard-to-fill vacancies, which are as of a result of skills shortages and an ageing workforce. The gaps in the workforce are likely to be worsened by the impact of a No Deal Brexit, with 2% of the workforce being of EU nationality.

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However, it is worth noting that Wales has a lower overall proportion of EU construction workers than other parts of the UK, which due to the typically mobile nature of construction workers means that there is a significant risk of losing substantial proportions of the workforce to more lucrative jobs in South East England as has been seen in previous economic downturns. Further to this, delays and rejections to a number of large infrastructure projects in Wales, including Wylfa Newydd, the Swansea Bay Tidal Lagoon and the M4 relief road which has created significant uncertainty in the availability of work in this sector.

- **Social Care and Support Workers:**

In March 2019, the Welsh Government published research on the implications of Brexit on the social care and childcare workforce. An estimated 6.4% (3,730 maximum) of staff within registered social care settings and 4.5% (1,100 maximum) of staff within registered childcare services in Wales are non-UK EU nationals.

While this is likely to be at a lower level than some areas of the UK, due to lower overall levels of EU migration in Wales, these sectors already face significant recruitment and skills challenges which will be exacerbated by any restrictions on migration. The research highlights that 58% of registered social care respondents and 47% of childcare respondents expressed difficulties in recruitment within the last year.

There are currently approximately 43,000 EU workers overall in Wales, which is less than 2% of the approximately 2.3m in the whole of the UK. However, similarly to the construction industry, reliance on EU migrant workers is likely to be at a lower level in Wales than in some areas of England due to lower overall levels of EU migration to Wales which may mean that many of the same issues apply to health and social care workers.

Wales isn't overly reliant on EU workers to maintain care and support services but there is concern that both British and EU workers who currently work in Wales may be drawn elsewhere by better wages and other prospects which may be on offer in the rest of the UK. However, according to the NHS Confederation there is currently no evidence that EU nationals employed by the Welsh NHS are leaving the workforce due to Brexit.

For an already financially fragile sector, a No Deal Brexit worst case scenario indicates that any rise in inflation will increase staff and supply costs to adult social care. This may lead to provider failure from anything between 2 to 6 months, due to an increase in staffing and supply costs.

The impact of this may be that housing associations struggle to maintain the staffing levels which allow them to provide the additional services, such as care, that are so vital to tenants, especially the elderly or vulnerable

The Welsh Government's EU Transition Fund has given funding to projects to support health and care in Wales, including research into the social care workforce. Further information on how health and social care may be affected during the transition period can be found here.

Trade

The Withdrawal Agreement provides that goods lawfully placed on the market in the EU or the United Kingdom before the end of the transition period may continue to freely circulate in and between these two markets, until they reach their end-users.

This means that goods that will still be in the distribution chain at the end of the transition period can reach their end-users in the EU or the United Kingdom without having to comply with any additional product requirements.

In the event of No Deal, the default position is that trade with the EU would revert to the World Trade Organisation arrangement, meaning that there would immediately be tariffs and charges in place when importing goods from the EU to the UK rather than the free trade that is currently in place.

However, recent reports have suggested that the UK Government is considering cutting its tariffs to zero in the event of a No Deal Brexit. Under WTO rules, this would mean that all trade (not just that with EU nations) would be subject to zero tariffs, and there are concerns that this would significantly damage UK markets.

Yellowhammer details the EU mandatory controls imposed by France on UK goods on Day 1 of No Deal (D1ND) across the channel strait route. The flow rate of HGV's could decline to 40-60% of current levels due to the lack of readiness by traders and the inability of French ports to 'hold' goods in French ports. An improvement to 50-70% would be expected after 3 months.
A worst case scenario is a 1.5 – 2.5 days delay in HGV's crossing into Europe.

- **Construction:**

The Welsh construction industry has long been reliant on EU imports, in particular bricks from Belgium and Denmark, timber from Sweden and Estonia, glass from Italy and materials for pre-fabricated housing from Germany and the Netherlands. Of construction imports to the UK, 59% come from within the EU, so any change in trading relationship is likely to bring significant challenges to supply chains. We have already become aware of individual construction companies increasing the cost of materials.

Housing market

It is difficult to state to what extent Brexit has influenced house price activity. In saying this, as the first Brexit extension date approached, the rate of growth in Wales slowed to 2.6% in September 2019 (compared to 3.98% in June 2019).

The Bank of England's assumptions for a chaotic No Deal Brexit include a 35% decrease in house prices over a three year period.

There is some evidence to suggest that were house prices to drop by a third or more, a grant rate of at least 50% of building costs would be required to ensure viability. While current grant rates for social rented homes in Wales stands at 58%, discussions over a more flexible system for calculating grant funding levels continue following the Independent Review of Affordable Housing. A number of other factors, including the costs and availability of finance, would also impact on the viability and ambition of developments and will require ongoing monitoring in the event of any economic downturn. Further, the overall availability of grant and any subsequent pressures on public finances as a result of an economic downturn should feature heavily in the consideration of housing association boards around development.

English housing associations have reported increased incidences of private developers selling homes to them at a discount as a result of a market downturn, with some reporting discounts of up to 15%, and *Sovereign Housing Group* reporting up to eight deals of this type. This comes alongside reports that London's largest housing association - *L&Q* - has reduced its surplus projections by more than 50% (£170m) as a result of market downturn and cost rises.

While housing associations in Wales have considerably less exposure to outright sales, a number of associations deliver a range of home ownership options which would be impacted by any changes to the market. Wider market conditions are also likely to impact on the confidence of contractors and lenders to invest in homes.

Funding for Housing Associations

The current debt level of Welsh housing associations stands at £2.9bn, with a productive ongoing relationship between housing associations and a number of lenders, including banks and institutional investors.

However, one of the premier credit ratings agencies – *S&P* – has indicated that most associations rated by the agency would be downgraded by one notch post-Brexit, with those which are more reliant on income from market sales likely to be downgraded a further notch. While the majority of Welsh housing associations have not sought ratings from external ratings agencies due to their scale, this is indicative of the concern in the financial sector of the impact of Brexit on the funding environment.

The Bank of England's No Deal scenario planning for a *Disruptive Brexit* and a *Disorderly Brexit* envisage inflation reaching 6.25% and sector interest rates (with increased bank margins) reaching 9% combined with a fall in house prices of up to 35%.

Such scenarios are likely to see increased emphasis from the regulator on the need for stress testing and contingency plans.

Further to this, Welsh housing associations currently have access to a number of existing funds made available by the European Union:

- **European Investment Bank:**

In the decade before the referendum, the EIB had pumped over £1bn into Wales, across a range of sectors including social housing. Loans from the EIB offer significantly lower interest rates than many commercial banks, meaning that housing associations ultimately have more funding available to invest in building and providing services. However, following lengthy negotiations, an ongoing negotiation to secure significant funding for Welsh housing associations stalled in 2017 following the triggering of Article 50.

From the beginning of the transition period, the UK will not be eligible for further EIB funding, as this is a right mostly reserved for Member States of the EU. However, any EU project funding that has been allocated to housing associations under the current Multiannual Financial Framework (2014-2020) will be financed as foreseen. This provides certainty to all beneficiaries of EU programmes, including housing associations, who will continue to benefit from EU programmes until their closure.

At the end of the transition period in the event of a No Deal, a House of Commons sub-committee on EU Financial Affairs found that any existing "privileges and immunities" that apply to EIB lending shall continue to apply to loans made before the end of any transition period and that that "existing project contracts should be protected and organisations do not need to take any action."

- **European Structural Funds:**

In the 2014–20 European Structural Funding cycle, Wales was eligible to receive around £2.1bn. When the UK leaves the EU, it will no longer be eligible for future funding. There have been assurances that existing contracts will be honoured and the UK Treasury has provided a guarantee for projects approved before the end of the transition period.

During the December 2019 General Election, the Conservative Party stated that the Government will set up a UK Shared Prosperity Fund to ensure that the people of the UK do not lose out from the removal of EU funding.

A debate took place on the 5th February 2020 on what the UK government's proposals are for replacing the European Structural Funds currently administered by the Welsh Government. The debate reiterated the 2019 Conservative manifesto's commitment to match the current allocation of structural funds in each of the four nations. It was also stated that final decisions on the overall allocation of the UK shared prosperity fund will be taken by the Treasury during a cross-government spending review, with the timetable due to be announced by the Chancellor in his Budget speech on the 11th March 2020.

- **State Aid:**

State Aid is a public authority granted advantage to organisations that have the potential to distort competition and trade within the EU. The rules can be applied to anybody that is involved in commercial activities, including not-for-profit organisations (including housing associations) and work to encourage growth.

A statement by the European Commission explains that, “In respect of aid granted before the end of the transition period, for a period of four years after the end of the transition period, the European Commission shall be competent to initiate new administrative procedures on State aid concerning the United Kingdom. The Commission shall be competent after the end of that four year period for procedures initiated before the end of that period.”

Further Information

Housing has been a key priority in the Welsh Government’s 2020/21Draft Budget, with a £133m increase from the previous spending round. Allocations include:

- £48m Social Housing Grant
- £50m Housing Loans (for new developments and to begin decarbonising homes)
- £5m Land release funds
- £10m Town Centre Regeneration
- £10m Modular building

Further detail can be found here.

Funding for Wales

Welsh Government confirmed that it will provide an extra £1.2 million funding to the WLGA to continue their Brexit programmes. This will mean up to £45,000 will be available to each Local Authority in Wales, as well as an additional £200,000 from the WLGA. This money ensures that each local authority is able to undertake the preparatory work for Brexit, including planning for a No Deal scenario.

In addition to this pre-Brexit funding, on the 4th of March, UK Secretary of State for Housing, Communities and Local Government, James Brokenshire MP announced £1.6bn for a “Stronger Towns Fund” to create new jobs, help train local people and boost growth in English towns after the UK leaves the EU. He has since confirmed that there will be a Barnett consequential for this money, but there is still no confirmation over the timescales or the amount to be received by Welsh Government.

The UK Government funding is intended to help develop the towns most affected by No Deal, as well as working to mitigate some of the impact of a reduction in EU funding in this areas. Alongside this, the UK Government is also planning to deliver a UK Shared Prosperity Fund, with promises before the referendum that Wales would not receive a lower amount of funding in the event of a vote to leave.

Data transfer

The Withdrawal Agreement protects EU data protection rules after the end of the transition period, until the UK can provide a personal data protection regime which is essentially equivalent to those in the EU.

After the UK's exit from the EU, data transfer of information (e.g. employee information) would be deemed as a 'restricted' transfer in any instance where:

- The UK version of the GDPR applies to the processing of the personal data you are transferring
- The UK GDPR does not apply to the importer of the data, usually because they are located in a country outside the UK (which may be in the EU, the EEA or elsewhere).
- The sender of the personal data and the receiver of the data are separate organisations (even if you are both companies within the same group).

Restricted transfers can be made when an adequate data protection regime is in place. The UK Government intends to recognise the EU adequacy decisions which have been made by the European Commission prior to the exit date. This will allow restricted transfers to continue to be made to most organisations, countries, territories or sectors covered by an EU adequacy decision.

If there is no adequacy decision for a restricted transfer, the transfer may be able to occur subject to 'appropriate safeguards', which are listed in the GDPR.

Food supplies

There are no anticipated effects to food supplies during the transition period, with the UK and devolved governments urging people not to unnecessarily stockpile.

Due to the complex nature of securing a free trade deal with the EU, there are major uncertainties regarding what a trade deal could look like with alternative markets and whether this will counteract the effects to food supplies in a No Deal scenario.

There have been numerous warnings over food supplies in relation to a No Deal Brexit, with any delays on key trade routes likely to impact on the import of food from the European Union and further afield. Furthermore, any additional tariffs are likely to increase the price of food supplies for both commercial customers and everyday consumers.

The Yellowhammer document states that there will be a likely decrease in fresh food supplies, but that this will not cause a UK food shortage. As a result of this, costs will increase on products in short supply and negatively impact those on lower incomes the most.

Depending on negotiations over the course of the year, the action plans by local agencies that support tenants and clients (such as food banks) will need to be regularly monitored and reviewed.

Medical supplies

Similarly to food supplies, people have been urged not to stockpile medicines themselves.

With 75% of medicines entering the UK via the Channel strait route, there could be up to six months disruption to supplies in a No Deal scenario, with HGV flow rate as low as 40%. However in this instance, industries will not be able to match the level of stockpiling that took place earlier last year. Action has already been taken by the Welsh Government to increase resilience in the Welsh NHS and social care services by procuring additional storage capacity with a 12 to 15 week supply of products.

Community cohesion

Although a transition period has ensued, the fact that the UK has now officially left the EU may prolong or exasperate existing community tensions

To improve community cohesion, The Welsh Government's EU Transition Fund has helped to expand the regional community cohesion programme and the network of coordinators to help identify potential problems and arising tensions.

Housing associations should consider accessing or replicating such programmes if there is an increase in demand to services.

Further information about the Welsh Government is working with others to mitigate community tensions can be found here.