



Llywodraeth Cymru
Welsh Government

The **New** Relationship with the EU

What it means for **Wales**

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Foreword

The Welsh Government has always advocated the closest relationship with the European Union that negotiations were capable of delivering. So we welcomed the announcement on 24 December that the UK had reached an agreement on our future relationship with the EU.

After months of making contingency plans for what would, if the agreement had not been reached, have been a disastrous outcome, we were able to start planning on the basis of a firm understanding of the way forward. The Trade and Cooperation Agreement (TCA), despite failing to meet the ambition which the Welsh Government wanted for the relationship, at least provides stability and the basis for future development of the relationship without the acrimony which would have arisen from a breakdown of the negotiations.

The TCA is nothing like the agreement the Welsh Government would have wished to see. Our views on how to respect the results of the 2016 referendum while minimising the damage to our economic and social well-being were set out in a series of documents starting with *Securing Wales' Future* (2017).

At the beginning of last year, we set out our aspirations in *The Future EU – UK Relationship: Negotiating Priorities for Wales*, recognising the mandate which the current UK Government had received in the 2019 General Election and its decision to leave both the Single Market and the Customs Union.

Unfortunately, the TCA falls well short even by that yardstick and, in our view, the reason for this rests squarely with the UK Government's determination to put ideology before the economic well-being of the people of this country.

Given the lack of any real influence we and the other Devolved Governments were able to exert over the negotiations process, we have been absolutely clear that the Prime Minister and his Government must own this Agreement and its consequences.

It is irresponsible for the UK Government to claim that some of the many disadvantages which have already begun to emerge – the massive increase in bureaucracy and non-tariff barriers, the difficulties faced by the arts and creative sector in touring in Europe, the immediate damage to our seafood industry, and the very obvious border in the Irish Sea – as 'unexpected' or 'teething troubles'. They reflect in large part the UK Government's political choices, coupled with the natural outcome of a negotiation in which both sides seek to protect their interests.

However, notwithstanding our serious concerns with the agreement, we have always prioritised our work of making sure Wales is able to respond to these new realities. This document tries to set out in an objective way what has changed since we left the transition period at the end of December 2020 and to signpost businesses and citizens to further information, including that available on our **Preparing Wales** webpages (gov.wales/preparing-wales). Inevitably, it cannot cover all of the ground but we hope and believe it will form a useful high-level overview of the most important issues from a Welsh perspective.

The TCA is the base which we have to work from and look to the future – to maintaining and developing our ties within Europe as well as building new ones further afield. While the Welsh Government will continue to argue for a stronger and closer relationship with the EU in the medium to long term, it would be unwise to allow ourselves to believe that the new barriers and increased friction which we face in trading with and travelling to our European neighbours are simply inadvertent ‘mistakes’ which can quickly be ironed out. The TCA is the new reality of our place in Europe and the world.

Finally, I want to assure you that the Welsh Government will continue to provide information, help, guidance and support to our citizens, businesses, organisations and communities in dealing with this new reality. We will also continue to advocate for a pragmatic approach to the UK’s relationships with the wider world, putting the well-being of our people at its very heart.



Jeremy Miles, MS
Counsel General and
Minister for European Transition

Introduction

The Trade and Cooperation Agreement (TCA) between the UK and the EU was agreed on 24 December 2020, just days before the transition period ended on 31 December bringing in a new relationship between the UK and the EU. In addition to the TCA, future relationship agreements were also made on Security Procedures for Exchanging and Protecting Classified Information and on Nuclear Cooperation. There were also a series of Joint Declarations on a range of issues where further cooperation is to be agreed. These included matters related to financial services regulations and the declaration of the adoption of data adequacy decisions.

Whilst the UK technically left the EU on 31 January 2020, the UK-EU Withdrawal Agreement introduced a transition period until 31 December 2020 during which time the UK remained within the EU Single Market and Customs Union and retained the associated rights and obligations. In practice, there was little perceptible difference to the ways of doing business and moving around the EU as a result of that formality.

By contrast the end of the transition period saw much more significant changes in practical terms to our relationship with our nearest neighbours: the end of barrier-free access to the Single Market, ending participation in the Customs Union and the application to the UK of the EU's rules and international agreements. The TCA provides a framework for a fundamentally changed relationship from 1 January 2021 and while the TCA brings much-needed clarity to our new trading relationship, a number of new complexities now exist and uncertainty remains in a number of key areas.

Since the start of the EU exit process, the Welsh Government has sought to work constructively towards a future relationship that would be in the best interests of our citizens and businesses. This has been clearly set out in publications since the EU Referendum, in particular *Securing Wales Future and The future UK/EU relationship: negotiating priorities for Wales*. The evidence has been clear that the least disruptive way in which to implement the 2016 referendum result would have been to reserve the greatest possible access to the EU Single Market, continue to participate in a Customs Union, and minimise divergence in regulatory terms from the EU.

While the TCA is not the deal the Welsh Government advocated, when given the binary choice between this agreement and leaving the transition without the framework of an agreement on the future relationship, we supported the choice that would provide the closest possible relationship with the EU and therefore the least disruption - as we have done throughout the last four and a half years. At the same time, while negotiations were underway we invested significant resources in planning and preparing for all possible outcomes (as described in our End of Transition Action Plan published in November 2020) and providing guidance to citizens, businesses and organisations via our Preparing Wales webpages.

In summary, the fundamental difference in our relations with the EU in 2021 as compared to 2020 is that we no longer participate in the free movement of people, goods, services and capital between the UK and the 27 Member States of the EU and consequently, face new barriers to trade in goods and services and to our rights to travel, live and work elsewhere in Europe. The implications will be far reaching for the economy. Indeed, the Bank of England's Monetary Policy Committee estimate that: "The effects of the agreement have been estimated using models and empirical relationships similar to those set out in EU withdrawal scenarios

and monetary and financial stability. Based on these, and in comparison to a frictionless arrangement, UK trade is projected to be around 10½% lower in the long run under the new agreement, and productivity and GDP around 3¼% lower”¹

As well as new arrangements for trade in goods and services, the TCA also covers a range of other areas such as investment, competition, energy and sustainability, fisheries, data protection and social security. Whilst the key achievement of the agreement is that it provides for zero tariffs and zero quotas on all goods produced in the UK and EU, this does not mean we have the same sort of access to the EU markets which we previously enjoyed; there are significant new non-tariff barriers and new restrictions on what goods can benefit from the tariff and quota-free market access through the restrictive rules of origin (see the What it means for Welsh businesses and employees section) These trade restrictions will all have very real-world implications for the economy, businesses and people’s jobs.

Indeed, in the view of the Welsh Government and many independent analysts, the TCA only provides a framework for a relationship that will need to evolve further. In many areas there are substantial agreements and arrangements still to be put in place and it does not currently reflect the full complexity of the range of areas of collaboration which are needed between the UK and the EU.

The relationship between the UK and the EU will now be governed by a complex set of arrangements. The Welsh Government will continue in our commitment to working constructively on building a new relationship with our European neighbours and to working constructively with the UK Government to ensure Wales has a voice in those governance arrangements. It is now more important than ever that the voice of the Devolved Governments is heard to enable us to fulfil our new international obligations.

This document sets out the implications of the new relationship between the UK and the EU as set out in the TCA and related documents for citizens, business, and communities in Wales as well as for our future security.

The consequences of the agreement are broad-ranging and the actions being taken to prepare for them, were described in our End of Transition Action Plan. Many of these are day one –week one issues with some actions needed to prepare our businesses and communities for the changes at the beginning of this year and actions in place to ensure we maintain a smooth supply of critical goods. But many other actions are required to prepare Wales for a fundamentally different relationship with the EU. This includes the significant programme of investment required at ports in Wales to be ready for the phasing in of new import controls. These changes will have implications for our communities around Holyhead and the ports in south west Wales but also for the businesses that trade through them.

Our priority has been and will continue to be focused on supporting citizens in Wales and the Welsh economy to react to the inevitable change and challenges the TCA has delivered. An important part of this was to rapidly update our **Preparing Wales** website – which provides advice to businesses, other stakeholders and the public, and signposts to further sources of information. We urge anyone with questions about the impact of the end of transition and the TCA to make use of this resource. We have also ensured that our advice services had sufficient capacity to respond to requests for advice.

¹ www.bankofengland.co.uk/-/media/boe/files/monetary-policy-report/2021/february/monetary-policy-report-february-2021.pdf?la=en&hash=3638A7091B34164428A54277B55BD6901709AA44

Summary of key changes

What it means for people living in Wales

UK nationals have enjoyed certain rights and freedoms afforded to them through our membership of the EU which have not been secured in the TCA.

UK citizens no longer have any automatic right to work, study, start a business or live in any country within the EU. The new arrangements in some of these areas are complex, falling outside the scope of the TCA and left to be determined by each of the 27 Member States.

Whilst some of the citizens' rights are protected by the UK-EU Withdrawal Agreement (and in the case of citizens in Northern Ireland, the Northern Ireland Protocol) or new bilateral arrangements which have been agreed between the UK and individual Member States, in relation to others UK citizens in Wales will now be treated in the same way as citizens from any other 'third country'.

Specifically:

- Travellers from Wales to the EU will need to be aware of new rules and restrictions which will apply to them;
- For Healthcare the TCA includes a scheme similar to the the current European Health Insurance Card for travellers;
- Travellers from Great Britain will no longer able to take full advantage of the EU's Pet Travel scheme;
- UK nationals no longer have an automatic right to live or work in the EU;
- The UK Government has decided not to participate in Erasmus+.

What it means for Welsh businesses and employees

As part of the Single Market and Customs Union, our businesses have benefited from the free movement of goods, services, people and capital within the EU. The end of transition brought about the greatest change in our trading relationships in decades and the internal market rules which ensured barriers to trade were eliminated and the harmonisation of standards between nations are no longer applicable.

The TCA now provides the framework for our trading relationship with the EU, and as a result there are a number of new rules which our businesses need to understand and barriers which they need to navigate through.

The changes are complex and the implications for businesses in Wales will depend on which sector and the nature of the business processes which an individual business uses.

Practical changes businesses and employers need include:

- For traded goods:
 - To benefit from tariff free trade, businesses must have proof that goods originate within the UK or the EU according to the rules of origin requirements in the TCA;
 - Businesses that trade with the EU will need to have a GB Economic Operator Registration and Identification (EORI) number in order to be able to make customs declarations;

- Businesses trading across the EU's borders need to agree with each other which party is responsible for each step in the chain of supply including customs clearance;
- Businesses might be faced with needing to meet two sets of standards and regulations for their products in the future;
- Even where standards are the same, when trading goods, businesses will need to follow conformity assessment procedures.
- For traded services:
 - Businesses exporting services to the EU have to satisfy rules for third countries made by each Member State – meaning up to 27 different sets of regulations to navigate.

What it means for our security

The European Union seeks to protect the safety and security of all EU citizens, primarily through its well-developed structures for supporting law enforcement and judicial cooperation between Member States, structures in which the UK played a prominent role whilst it was a member.

In relation to foreign policy and defence, the EU's Common Foreign and Security Policy (CFSP) sets the framework for EU political and military structures, and military and civilian missions and operations abroad. Its aims are to preserve peace, strengthen international security, promote international cooperation, and develop and consolidate democracy, the rule of law and respect for human rights and fundamental freedoms.

In leaving the EU, the UK will no longer participate in many of these initiatives, although the TCA and associated agreements contain provisions which enable ongoing co-operation in some. Undoubtedly the TCA weakens the structures of law enforcement and security that help protect citizens in Wales and across the EU.

What it means for our communities and our society

Welsh communities have benefited from membership of the EU in a number of ways, including legal protections in important policy areas including workers' rights and environmental standards.

For decades Wales has benefited from significant EU programme funding, which in recent years has amounted to well over £700m a year. Despite the promises which were made during the 2016 referendum campaign that Wales would not be left worse off as a result of leaving the European Union, the decisions from the UK Government have short-changed Wales and our communities.

EEA and EFTA citizens who have come to live and work in Wales play a crucial role in our society – they are employed in our key business sectors, deliver vital public services and strengthen the academic excellence in our universities. With free movement ceasing to apply, EEA and EFTA citizens (with the exception of those from the Republic of Ireland) no longer have the automatic right to live and work in the UK. The UK Government has introduced a new points-based immigration system which now applies to all individuals who wish to move to the UK.

What it means for people living in Wales

UK nationals enjoyed certain rights and freedoms afforded to them through the UK's membership of the EU which have not been secured in the TCA. In this section, we consider the main areas where different arrangements have come into force.

UK nationals no longer have any automatic right to work, study, start a business or live in any country within the EU. The new arrangements in some of these areas are complex, falling outside the scope of the TCA and left to be determined by each of the 27 Member States. Whilst some of the citizens' rights are protected by the UK-EU Withdrawal Agreement (and in the case of citizens in Northern Ireland, the Northern Ireland Protocol) or new bilateral arrangements which have been agreed between the UK and individual Member States², in other respects UK nationals will now be treated in the same way as citizens from any other 'third country'.

The rights of **EU citizens living in the UK** have been protected by the Withdrawal Agreement. We have taken every opportunity to make it clear that those from the EU who have chosen to make Wales their home are welcome here and we value the contribution that they make to our society (discussed further under the What it means for our communities and society section).

Travelling to the EU^{3,4}

Travellers from the UK to the EU will need to be aware of new rules and restrictions which will apply to them.

UK nationals visiting or travelling within the so-called Schengen Area⁵ (all countries of the EU except Bulgaria, Croatia, Cyprus and Romania as well as Norway and Switzerland, Iceland and Lichtenstein) require a passport valid for at least 3 months after the date they intend to leave the Schengen area⁶, and which was issued within the previous 10 years. **Short-term visa-free visits**⁷ of up to 90 days within any 180-day period are allowed, as long as the UK continues to allow visa-free travel for short-term visits for EU citizens of all EU Member States. For **longer visits** to the EU (over 90 days), UK citizens will need to apply to individual countries for a visa. These rules are the same for second home owners - so UK nationals who reside in the UK and own a holiday property in an EU country may not be able to spend as much time there as they have previously.

From 2022, the EU will introduce the European Travel Information and Authorisation System (**ETIAS**)⁸. This system is intended to improve the security of the EU's Schengen area by pre-screening travellers who do not otherwise require a visa in order to identify terrorism or migration risks. As a third country, UK travellers will be required to complete an ETIAS application prior to travelling: this will include travellers who are only transiting en route to other destinations.

2 There are separate agreements between the UK and the EEA/EFTA States

3 This section does not apply to the Republic of Ireland. UK and Irish citizens can continue to live, work and move freely between the Republic of Ireland and the UK, as well as access free health services and social welfare benefits as a result of the Common Travel Area between the UK and Ireland.

4 www.gov.uk/visit-europe-1-january-2021

5 www.schengenvisainfo.com/

6 The passport must be valid for at least 6 months to travel to any of these countries.

7 ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/etias_en.

8 ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/etias_en

For Healthcare⁹ the TCA includes a scheme similar to current European Healthcare Insurance Card¹⁰ (EHIC), meaning, a UK national on a temporary stay in an EU country (as a tourist, student, or business person) will continue to benefit from necessary (such as emergency) healthcare.

Travellers from Great Britain¹¹ will have to meet new requirements when travelling with pets¹² to the EU and Northern Ireland. People travelling from GB with their pets and assistance dogs will need to follow new requirements in order to travel to the EU and Northern Ireland, including obtaining an animal health certificate within 10 days of travel to each trip taken to the EU (or Northern Ireland)¹³. EU pet passports issued in Great Britain before 1 Jan 2021 are no longer valid for travel to the EU or Northern Ireland, though these remain valid for entering or returning to Great Britain.

Since 2017 the EU abolished roaming charges for any traveller from one EU or European Economic Area (EEA) Member State using their **mobile phones**¹⁴ in another state meaning in practice they can continue use their domestic allowance of minutes, text messages and data without incurring additional charges.

Whilst the TCA does include a commitment to “cooperate on promoting transparent and reasonable rates” for international roaming services, from the end of the transition period there is no longer any obligation on UK mobile operators to guarantee surcharge-free roaming. Consumers travelling to an EU or EEA country will need to check the roaming policies of their mobile operator before they go abroad. Whilst some mobile network operators have stated that they had no current plans to change their mobile roaming policies, this will be a decision taken by individual businesses and not by government.

Living in the EU¹⁵

UK nationals no longer have an automatic right to live or work¹⁶ in the EU. The migration rules in respect of third country nationals are a responsibility for each Member State, so UK nationals will need to check an individual country’s immigration rules and apply for a visa or resident permit in accordance with that country’s existing rules. This also applies to UK nationals moving from one Member State where they have residence to another Member State: in practice, while the Withdrawal Agreement gave UK nationals the right to continue to live in the country which they resided in prior to 31 December 2020 to enjoy all the same rights within that country, they have lost the ‘free movement rights’ to settle and work anywhere in the EU.

A UK national who moved to an EU country before 31 December 2020 must register as a resident in that country by 30 June 2021 in order to be sure of continuing to enjoy those rights. The exact terms and procedures for settlement residency applications vary between EU countries.

9 www.gov.uk/guidance/foreign-travel-insurance

10 Not all reciprocal healthcare arrangements continue to apply under the TCA for example the Cross Border Directive treatment route has ceased.

11 This only applies to England, Scotland and Wales.

12 See www.gov.uk/guidance/pet-travel-to-and-from-great-britain

13 To allow time for travellers time to prepare for the new documentary and health requirements, there will be no routine checks carried out on those travelling with pets from GB to NI until 1 July 2021. Officials reserve the right to undertake checks should there be a suspicion of illegal activity or welfare concerns.

14 www.gov.uk/guidance/using-your-mobile-in-eu-and-eea-countries

15 www.gov.uk/uk-nationals-living-eu

16 There are limited exceptions for travel for business purposes. These are described in the Services section of the What it means for Businesses chapter.

While close family members continue to be able to join UK nationals living in the EU (applying to spouses or registered partners, durable partners, dependent children and grandchildren, and dependent parents and grandparents), the relationship must have begun before 31 December 2020.

UK nationals looking to work in the EU will need to make sure that their professional qualifications are recognised in the country where they plan to work: this is no longer automatic because the TCA does not replicate the Mutual Recognition of Professional Qualifications arrangement we benefited from as part of the EU¹⁷. The TCA does provide a mechanism for the EU and the UK to agree at a later date, on a case-by-case basis and for specific professions, on additional arrangements for the mutual recognition of qualifications but there is no clarity as to if or when this will be taken forward.

If UK nationals wish to buy property within the EU, they will now be treated as nationals from any other third country. Some EU Member States have different property acquisition rules for EU and non-EU nationals so UK nationals may not be able to purchase property at all or may have to pay for additional investment visas, higher stamp duty prices, or even additional tax liabilities.

Links to sites for further advice and support.

gov.wales/preparing-wales-brexite/transport

www.gov.uk/visit-europe-1-january-2021

www.gov.uk/guidance/visiting-the-uk-as-an-eu-eea-or-swiss-citizen

www.gov.uk/guidance/foreign-travel-insurance

www.gov.uk/government/publications/common-travel-area-guidance

ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/etias_en

ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/schengen_visa_en

www.gov.uk/guidance/pet-travel-to-and-from-great-britain

www.gov.uk/guidance/using-your-mobile-in-eu-and-eea-countries

www.gov.uk/government/collections/helping-british-people-overseas-travelling-and-living-abroad

www.gov.uk/uk-nationals-living-eu

www.gov.uk/guidance/living-in-europe

www.gov.uk/guidance/get-your-eu-professional-qualification-recognised-in-the-uk

www.gov.uk/buying-europe-1-jan-2021

¹⁷ www.gov.uk/guidance/get-your-eu-professional-qualification-recognised-in-the-uk

Buying from the EU¹⁸

At the end of the transition period, Single Market rules ceased to apply and the UK no longer benefits from Customs Union arrangements. Welsh consumers therefore need to be aware of the customs arrangements when receiving goods or gifts sent from the EU. Before the end of the transition period, UK citizens could generally buy items online from the EU at no extra cost (aside from delivery fees), however they may now be liable for paying additional charges.

There are specific charges¹⁹ made to a wide range of goods when buying from the EU. For example, when receiving a gift worth more than £39 individuals may face a bill for import VAT, and for customs duty on goods or gifts worth more than £135 if it has not been paid by the sender. If you are returning from the EU and bringing back goods you may also face new customs duty fees on products worth more than £390. Those sending goods from the UK to the EU will need to be aware of new customs and VAT requirements. We have already been hearing reports of consumers facing unexpected charges and businesses facing difficulties sending good to their customers.

In addition, seeking redress if consumer rights are breached will be more complicated for customers buying from EU based companies.

Loss of Erasmus+

While we were in the EU, Erasmus+ provided valuable life-skills and international experience to students and young people helping them to develop personally, professionally and academically. As well as boosting skills, employability and salary prospects for participants, the international experience gained through studying, volunteering or working aboard provided a boost to participants' self-confidence, helping them to stand out and succeed in the job market. Erasmus+ also funded strategic partnerships to support staff, helping educational organisations build links, share good practice, and encouraging innovation across the education sector. In addition to providing substantial funding, Erasmus+ provided significant wider benefits including increased cultural awareness and enrichment.

While the TCA provides a general set of rules which form the basis for UK participation in EU programmes and while Erasmus+ is open to third countries, the UK Government has taken the decision to only participate in five programmes and, significantly for young people in Wales and our institutions, these do not include Erasmus+. The UK Government's domestic alternative, the Turing programme, is being funded for one year only (initially at least) at a much lower level of spending²⁰ and excludes many of the opportunities Erasmus+ provided. Under the proposals, funding and opportunities for further education and schools will be significantly reduced, while the youth and sport sector are having their opportunities taken away completely. No funding has been provided for inward mobility without which achieving balance in partnership agreements, a key component of the Erasmus+ programme's success, is impossible. Similarly, opportunities for staff to travel and learn from experiences in partner countries has been excluded.

The loss will be most keenly felt by those from disadvantaged backgrounds, who are more likely to benefit the most of these opportunities, yet often have the least access to them.

¹⁸ www.gov.uk/buying-europe-1-jan-2021

¹⁹ www.royalmail.com/brexit

²⁰ The budget for the Turing Scheme has been announced to be £105m for the whole UK. In 2019, the UK received €198.4m (approximately £180m) from Erasmus+, and €144.6m a year on average between 2014 and 2019.

Access to civil justice

Civil judicial cooperation is the legal framework that governs the interaction between different legal systems in cross-border situations. Judicial cooperation in civil matters is enshrined within the EU treaties and successive EU regulations have sought to help citizens and businesses resolve administrative or legal obstacles across Member State borders, overcoming the complexity of different or incompatible legal systems. This can include for example disputes over fulfilments of contracts, monetary claims by citizens or companies, divorce decisions and decisions on child custody.

Civil judicial cooperation enables a judgment obtained in one country to be recognised and enforced in another, meaning citizens can seek redress in their own country's courts and have those judgements enforced in another Member State. It also allows people to be able to approach courts and authorities in any EU country as easily as in their own.

Whilst the TCA covers judicial cooperation in criminal matters [covered in the What it means for our security section of this document], it is silent on judicial cooperation in civil and commercial matters and the UK is now treated as any other third country, making it complicated to seek redress for civil and commercial matters which occurred after the end of the transition period.

The UK Government has applied to re-join the 2007 Lugano Convention (an international treaty between EU Member States and Norway, Iceland and Switzerland, which provides reciprocal rules on jurisdiction and recognition and enforcement in many cross-border disputes) in its own right, but it has not yet been approved. In any case that Convention does not include exactly the same rights as UK citizens had within the EU.

What it means for Welsh businesses and employees

As part of the Single Market and Customs Union, our businesses have benefited from the free movement of goods, services, people and capital within the EU. The end of transition brought about the greatest change in our trading relationships in decades and the Internal Market rules which ensured barriers to trade were eliminated and the harmonisation of standards between nations are no longer applicable.

The TCA now provides the framework for our trading relationship with the EU, and as a result there are a number of new rules which our businesses need to understand and barriers which they need to navigate around.

The changes are complex and the implications for businesses in Wales will depend on which sector the business is in and the nature of the business processes it uses. The following provides a guide of the main changes and throughout further information sources are provided. More detailed information can be found in our publication for Welsh businesses.

Trade in Goods

Tariffs, quotas and rules of origin

The UK and the EU have agreed there will not be any **tariffs or quotas** on goods which move between the UK and the EU. On the face of it this means that goods being exported to the EU should not have tariffs applied or face restrictions on the volume of any type of goods that can be traded. However, these rules only apply if the goods concerned qualify as 'originating'. This means goods that benefit from these arrangements must have proof that they originate within the UK or the EU.

Non-originating goods from within the UK or EU will be subjected to the tariff rates imposed respectively by the EU (Common External Tariff) and the UK (the UK Global Tariff).

These tariffs vary between products and can be quite high, especially for agri-food products.

For goods to qualify as originating they must now meet the rules as set out in the Rules of Origin (RoO) chapter of the TCA. In summary this means: your product must be 'wholly obtained' in the UK and the EU; or your product must be produced/manufactured in the UK or EU exclusively from originating materials; or if you use non-originating materials then you must then meet certain rules - known as product-specific rules of origin (PSR).

To help smooth the move to these new rules of origin requirements, the UK and the EU have agreed that supplier declarations on Rules of Origin do not need to be in place for the first 12 months. Supplier declarations will need to be available if requested for goods imported during that 12-month period, but a request would only be made after the 12 months.

According to Make UK, a quarter of manufacturing companies (25%) have no experience with declarations (certificates) of origin but are aware of the process, and a further 8% have no experience and not aware of what the process entails.²¹

²¹ www.makeuk.org/insights/blogs/manufacturers-face-disruption-as-new-eu-uk-arrangements-kick-in



Practical example: the Steel industry

Previously, as a Member State, the UK was not subjected to any quotas or tariff increases the EU put in place as part of their safeguard measures. This meant that the UK could still trade freely across the EU without needing to worry about higher tariffs or quotas put in place by the EU for specific products. However, as a third country, the UK will now be subjected to the EU's safeguard measures, and will need now need to abide with the quotas and/or pay the higher tariffs as a result.

A safeguard measure is a temporary import restriction (for example a quota or a tariff increase) that a country/region is allowed to impose on a product, if imports of that product are high and judged to cause, or threaten to cause, serious injury to a domestic industry that produces the same or similar product. Safeguard measures are still in effect even when the TCA has provided for zero tariffs and zero quotas in the trade of goods (when rules of origin are met).

Currently the EU has safeguard measures in place for the import of steel in the region. These were put in place by the EU in response to other countries diverting steel into the region as a result

of the United States' high increase of tariffs on steel. As part of these steel safeguard measures, the EU has allocated third countries a Tariff Rate Quota (TRQ) for the amount of steel that can be imported into the EU at lower tariff rates (where applicable). Once this quota has been reached, any further steel imported into the EU will be subjected to much higher tariff rates.

The EU agreed to a Tariff Rate Quota for the UK steel exports into the EU from 1st January 2021. Without this UK allocation of tariff-free quota, according to UK Steel the sector could have faced an £80 million bill from EU Steel Safeguard tariffs in the first half of 2021 as all steel exports to the EU would have been subject to a 25% tariff. The tariff-free quota only lasts until June 2021 when it will be reviewed along with the safeguarding tariffs. Furthermore steel exports from Great Britain to Northern Ireland count towards this tariff-free quota, meaning that steel sent to Northern Ireland from Wales would use up some of the quota allocation. Whilst welcoming the initial grace period, the UK steel sector urgently needs clarity about the long-term trading arrangements with the EU.

What does this all mean for Welsh businesses?

Purchase and sales of goods from / to the EU are now considered as imports and exports and are subject to the same overall controls and processes as purchases and sales from / to other overseas markets. This means a lot of additional information is required before a business can move goods between the UK and the EU.

Businesses that trade with the EU will need to have a GB **Economic Operator Registration and Identification (EORI) number** in order to be able to make customs declarations. In some circumstances, they will also require an EU EORI number.

The provisions of the TCA will not apply to trade in goods between the EU and Northern Ireland, where instead the provisions of the Protocol on Ireland and Northern Ireland included in the Withdrawal Agreement will apply.

Businesses moving goods between Great Britain (GB) and Northern Ireland will also require additional paper work– in particular an ‘XI EORI’ – though this is different from that required for EU countries. Goods moving GB-NI will need to use one of a number of options to get tariff free access to NI, including either by using the UK-EU TCA or declaring their goods ‘not at risk’. Whilst the Trader Support Service has been put in place to help by making declarations on behalf of businesses and their hauliers, the process is complicated and the cause of significant delays in getting goods from GB to Northern Ireland.

In respect of trade between GB and NI, temporary measures have been agreed between the EU and the UK to allow for adaption to the new rules. Despite the UK Government having agreed to specific end points for these measures, a request has been made to the EU to extend these measures to help ease the supply of goods²². In the longer term, agri-food goods in particular will need Export Health Certificates and the sale of some goods, such as some forms of processed raw meats (e.g. sausages) to Northern Ireland as well as the EU will be banned.

Contract Terms and Conditions

Businesses trading across the EU’s borders need to agree with each other which party is responsible for each step in the chain of supply including customs clearance. These are called Incoterms®.

Incoterms rules are created and published by the International Chamber of Commerce (ICC) and are revised from time to time. The most recent revision is Incoterms 2020 which came into force on 1st January 2020.

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957996/2020_02_02_-_Letter_from_CD_L_to_VP_Šefčovič.pdf

Commodity Codes

Correct classification of goods is important as this determines the duties that may be payable and the controls that might apply to the import or export of your goods. Incorrect classification may result in delays at the border, goods being seized and, in some cases, fines and penalties being imposed on the exporting business.

Export and Import Licenses / Authorisations

These are important new considerations for businesses as the controls now apply to trade with the EU.

Importers and exporters will also need to consider EU controls, including whether their suppliers / customers will need a license to export / import the goods.

Customs Declarations

These are made (electronically) for both imports and exports – either by the trader or via an intermediary such as a freight forwarder, Chamber of Commerce or other approved intermediaries. These include safety and security declarations.

This process is complex and requires specialist software and trained personnel. Hence, businesses have been encouraged by the UK Government to use an appropriate intermediary.

While the UK Government has staged the introduction of most declarations for imports, full export declarations are needed from day one.

VAT

Rules for exports changed significantly on 1 January 2021 as the UK will be a third country for VAT purposes (with the exception of goods supplied to and from Northern Ireland). Previously, the co-ordinated administration of value-added tax within the EU VAT area was an important part of the Single Market. Cross-border VAT was declared in the same way as domestic VAT, which facilitated the elimination of border controls between Member States, saving costs and reducing delays. It also simplified administrative work for freight forwarders.

From 1 January 2021, sales of goods to the EU will be treated as “exports” from the UK and invoices will be “zero-rated” for VAT purposes. However, special rules will apply for goods moved between Northern Ireland and Great Britain, and Northern Ireland and the EU.

While businesses will generally not charge VAT on goods exported to the EU, VAT may be chargeable in the country where the customer is based and agreement will be needed as to who is liable to pay this²³. Moreover, in 19 of the EU’s 27 Member States require businesses from third countries (as the UK now is) who sell direct to customers to nominate a Fiscal Representative to charge and account for the VAT due (which can generally be reclaimed). It is important to remember that although all EU countries have VAT, the requirements and obligations differ between each Member State. UK companies should not assume that what applies in one EU country applies to them all²⁴.

23 Incoterms® determine the responsibility for paying VAT in the destination market – for example, if a company trades on Delivery Duty Paid (DDP) terms, the UK exporter becomes the EU importer too and will be responsible for any duties and VAT in the EU.

24 The relevant VAT notice which explains zero-rating VAT on goods exports is: VAT on goods exported from the UK (VAT Notice 703). How and when you can apply zero-rated VAT to exported goods. www.gov.uk/guidance/vat-on-goods-exported-from-the-uk-notice-703?step-by-step-nav=b9347000-c726-4c3c-b76a-e52b6cebb3eb

Rules of Origin

Every business exporting to the EU will need to ensure that it is adhering to the Rules of Origin described above. Businesses in the agri-food sector or which handle the export of live animals or products of animal origin may face additional Sanitary and Phytosanitary (SPS) measures. They will be detailed in the SPS section.

Geographical Indications (GIs) (Withdrawal Agreement applies)

There will be no impact on any product names which were protected as Geographical Indications in the EU on 31 December 2020 following a successful registration with the EU GI scheme. A new UK Geographical Indication (UK GI) Scheme has been introduced that will replace the EU's Scheme in the UK²⁵. UK product names which were successfully registered in the EU by 31 December 2020 should retain their protection in the EU and these products will also automatically join the new UK scheme.

Technical Barriers to Trade (Regulations, Standards and Conformity Assessments)

When the UK was within the EU Single Market, most goods produced in the UK and the EU were manufactured and traded under a single, common set of rules and standards. If the goods met the technical regulatory requirements in Country A, they automatically met the standards in Country B and were free to move between the two without the need for additional checks. With the UK leaving the EU Single Market this is no longer the case. The UK and the EU now have independent regulatory regimes which may bring additional technical barriers to trade. The following provides a summary with a more detailed overview provided in additional information for businesses to be published alongside this document.

While the TCA commits both the UK and the EU to follow 'good regulatory practices' when developing regulation, this does not prevent a divergence in regulations between the EU and UK going forward. Therefore, there is a risk that businesses might be faced with needing to meet different regulatory requirements and regulations for their products in the future.

Moreover, even where regulatory requirements are the same, when trading goods, businesses will need to follow **conformity assessment procedures**. These are used to provide assurances that the product produced and supplied meets the relevant expectations specified and (legally) required of it, and involve procedures such as testing, inspection and certification.

The TCA has allowed that some products – such as toys, electronic devices, medical devices, machinery, personal protection equipment – can be self-certified by the originating business as meeting the appropriate conformity requirements. This effectively allows for a continuation of existing self-certifying arrangements for low risk and less regulated goods to be traded between the UK and EU.

For high risk and more heavily regulated goods – they must undergo a number of specific conformity assessment procedures involving third parties. This involves Conformity Assessment Bodies (CABs), known also as Notified or Approved Bodies in the EU and UK, or approval by relevant authorities such as the MHRA (Medicines & Healthcare products Regulatory Agency) or VCA (Vehicle Certification Agency), before the manufacturer can declare conformity.

²⁵ www.gov.uk/guidance/protected-geographical-food-and-drink-names-uk-gi-schemes

The TCA puts in place commitments that the UK and EU will both uphold when it comes to the requirements and application of conformity assessment procedures, such as that conformity assessment procedures will be applied proportionately based on the risks involved. However, it puts in place only one specific case of mutual recognition, of Good Manufacturing Practice (GMP) certificates for medicinal products. This means that sites making human and veterinary medicines in the UK will not need to be inspected by EU inspectors and vice versa.

This will mean that when conformity assessment procedures are required, UK CABs cannot certify that UK products meet EU standards, and EU CABs cannot certify that EU products meet UK standards²⁶. This will represent a very significant change for manufacturers in Wales and elsewhere in the UK.

Make UK states that 75% of companies have not transferred certificates and authorisations issued by a UK-based body to an EU 27-based body, in order for them to continue to trade with the EU.²⁷

The well-known CE mark will no longer²⁸ be applied to goods manufactured in the UK unless they have been certified by an EU based CAB. The UK Conformity Assessment (UKCA) mark will be used to demonstrate compliance of products in the UK, whilst the CE mark will continue to be used to demonstrate compliance of products in the EU.

The TCA also sets out some specific rules for the following goods: motor vehicles; medicinal products; chemicals and organic products and wines.

What does this all mean for Welsh businesses?

Conformity assessments

Where conformity assessment procedures require approval from a third party CAB, a business will need to obtain certification in both the UK and the EU if it wishes to sell its products in both markets using the UKCA and CE marks.

However, the agreement does allow for businesses to use supplier's declarations of conformity (SDOC) as a way to self-certify that their goods meet the relevant UK or EU standards. This practice is reserved for low-risk products and in areas where this practice is already allowed. This means that where manufacturers were previously able to self-declare for the CE marking, then they will be able to continue to self-declare for the CE marking (in order to access the EU and NI market) and UKCA marking (in order to access the GB market).

²⁶ To support business in adjusting to this change, the UK has taken action to reduce disruption by allowing most CE marked goods to continue to be placed on the GB market until 1 January 2022. This includes goods that have been assessed by an EU CAB.

²⁷ www.makeuk.org/insights/blogs/manufacturers-face-disruption-as-new-eu-uk-arrangements-kick-in

²⁸ The CE mark is still recognised until 31 December 2021.

Sector specific

High-risk products, such as medicinal products, will need to be certified by a third party or a government authority within the EU.

Motor vehicles: there may be the need for future automotive goods to undergo two sets of approval/conformity assessment.

Medicinal products: there is no mutual recognition of additional regulatory areas, such as batch testing or qualified person release recognition. Previously, approval of batch testing by a UK qualified person meant that the relevant medicinal products could be exported (sold) in the EU market, without having to undergo a separate set of approvals by an EU counterpart. However, now businesses will need to undergo two regulatory processes for those areas not covered by the TCA. We are already hearing from Welsh companies that the lack of mutual recognition for medicinal products is causing significant difficulties for their operations.

Chemicals: businesses selling products in both the UK and the EU will now need to comply with two separate legal and regulatory regimes. They will therefore, need to ensure that they have the relevant processes and procedures in place to meet with two sets of compliance requirements – one for each market.

Organics: exports to the EU will now need to be accompanied by a certificate of inspection issued by a control body recognised by the United Kingdom. This currently includes all UK organic certification bodies.

Wine: the agreement provides for simplified import certification arrangement thereby reducing additional cost and burden to the minimum necessary. Business will need to comply with the V11 certification but the exports arrangements simplify the process. It also provides safeguards which ensure that wine moved between the UK and the EU continues to meet the expectation of consumers in both markets.



Practical Example: Distribution Hubs

As a member of the EU Customs Union, UK distributors were able to receive and transport goods across the UK and throughout the EU Member States (such as Republic of Ireland and France) as frequently as they needed, without paying tariffs or proving rules of origin requirements.

However, now that the UK is no longer part of the EU Customs Union, UK distributors can no longer move goods from Great Britain to the EU, and vice versa, without adhering to the new customs arrangements, including

paying any relevant duties and taxes. To avoid tariffs when importing goods from Great Britain into the EU, traders must be able to demonstrate that their goods meet the rules of origin, or make use of a relevant customs procedure or relief (for example using the transit procedure, or claiming relief on goods being returned to the EU). Simple activities such as packing and labelling will not count as having met the rules of origin under the TCA.

Sanitary and Phytosanitary (SPS) measures

SPS measures are in place to protect humans, animals, and plants from diseases, pests, or contaminants. The key considerations for businesses are laid out below.

What does this all mean for Welsh businesses?

As the UK is no longer in the EU Single Market, plants and Products of Animal Origin (POAO) will be subject to new import checks when exporting to the EU.

Live Animal Imports and Exports

Businesses (or individuals) exporting live animals will now require the relevant Export Health Certificate (EHC) and will need to be registered as an 'Approved Establishment'. There are 1,900 model EHCs for various products and destinations.

A breed society wishing to trade purebred breeding animals or germinal products with organisations in the EU on the same terms as previously will need to be listed as a 'third country breeding body' by the EU. The European Commission has already granted the majority of Welsh studbooks Third Country Listing, however not all of those wishing to trade with the EU currently meet the requirements for Third Country Listing.

Aside from Third Country Listing, individuals or businesses moving horses across borders will require additional paperwork and veterinary checks. In addition to this, all equines must be microchipped by 12 February 2021.

Food imports and exports

All businesses exporting food goods containing 'Products of Animal Origin' (POAO) should seek to ensure that they are registered as 'Approved Establishments'.

The EU does not recognise the equivalence of UK SPS standards meaning that businesses exporting POAO will be subject to checks by the EU and may be delayed at the border.

Businesses importing POAO, will also find that such goods will be subject to checks in the UK, although checks at the UK Border will be phased in according to risk, with a lower frequency of checks for lower-risk goods. For a more detailed explanation of the phasing of UK border controls see the UK Border Operating Model publication²⁹.

All POAO for import or export will now require the relevant EHC, which must be signed off by an Official Veterinarian or Inspector.

As the UK is now treated as a 'third country' by the EU, a number of UK exports are subject to prohibitions and restrictions. This means that some products will no longer be eligible for export to the EU. UK businesses must assess whether their products will be subject to prohibitions and restrictions and plan accordingly. These restrictions are still under negotiation and the UK Government will release updates on this³⁰.

²⁹ www.gov.uk/government/publications/the-border-operating-model

³⁰ Please refer to the Gov.UK Website for updates

Plant trade and plant health

Applications for new active substance approvals, Plant Protection Products (PPP) authorisations and Maximum Residue Levels (MRL) in GB should continue to be submitted to the Health and Safety Executive in the same format. A new active substance must be approved in GB before it can be included in any PPP authorised for use in GB³¹.

Applicants will need to make separate applications under the GB and EU regimes to obtain access to both markets. New authorisations issued after 31 December 2020 will specify whether they are valid in GB or NI only, or both.

Trade with Northern Ireland

Supermarkets and trusted suppliers, who have been identified on a list agreed with the EU, will benefit from a 'grace period' until 1 April 2021 where they will not have to provide SPS paperwork (e.g. EHCs) when moving agri-food goods from GB to NI. During this period, UK and EU rules will remain aligned. This will mean that goods prohibited in the prohibitions and restrictions section of the TCA could still move between GB-NI for three months.

There are separate arrangements for meat products which are subject to a grace period of six months until 1 July 2021. Again, these arrangements only apply to supermarkets. As set out above the UK Government requested that the EU extends these grace periods.

The grace periods in relation to prohibited or restricted products and export health certificates will **not apply** for goods travelling to Northern Ireland via Holyhead and the Republic of Ireland.

31 www.hse.gov.uk/pesticides/pesticides-registration/general/introduction.htm

Welsh Government Support for Exporters

We published our Export Action Plan in December 2020 and this sets out the practical steps we are taking to support Welsh exporters, including how we will help them to adapt and respond to the challenges of new trading relationships with the EU. We have increased our capacity to support businesses to respond to the challenges that EU Transition has brought and streamlined our processes to ensure that support can be in place quickly and effectively.

Our support centres on the 'export journey' for businesses in Wales and is tailored to suit all types of exporters. Beginning with a drive to inspire businesses to start or grow their exports, we have a range of online events and webinars to highlight the benefits of exporting and to raise awareness of markets and opportunities.

For the next step of the journey, our support is focussed on building capability by supporting businesses to develop the knowledge, skills and know-how to export successfully. This is particularly relevant to SMEs that are entering new markets and to those businesses that have untapped export potential. Services include one-to-one tailored advice and support; an export hub with access to market reports, tariff calculator and a range of other tools; advice and guidance webinars; financial support for training and development.

For 'export-ready' businesses we have a full range of support to help businesses to find customers in overseas markets using a worldwide network of partners and contacts including the Department for International Trade and our own overseas offices.

We also assist companies to get to market. Whilst many events and trade missions have been cancelled or postponed as a result of the pandemic, we have developed an online trade events programme to ensure that Welsh companies are able to access markets and showcase their products to customers virtually.

Contact: 03000 6 03000 /
<https://businesswales.gov.wales/contact-us>

Export Hub:
<https://export.businesswales.gov.wales/en>



Trade in Services

The UK is no longer part of the EU Single Market and this means that UK service suppliers will lose their automatic right to offer services across the EU. Access is still allowed, but the suppliers will have fewer rights than an EU Member State competitor. Businesses exporting services to the EU have to satisfy rules for third countries made by each Member State – meaning up to 27 different sets of regulations to navigate.

Even where positive provisions are included in the TCA, these provisions are subject to significant exceptions outlined both in the articles of the TCA and in the Annexes.

In addition there are a number of separate agreements between the UK and the European Economic Area (EEA) / European Free Trade Agreement (EFTA) states (Iceland, Liechtenstein and Norway) and between the UK and Switzerland relating to trade in goods, Citizens' Rights and Fisheries and for people crossing borders for short term business reasons, known as mobility.

This section provides a summary of the main changes covering: financial equivalence; trade in services; professional qualifications and foreign direct investment. A fuller analysis including details for specific sectors is provided in additional information for businesses published alongside this document.

Financial equivalence

It is important to note that the agreement does not include “passporting” for financial services which was previously available under the terms of the EU Single Market. Passporting allowed firms authorised in one EEA state to conduct business within other EEA states based on their ‘home’ Member State authorisation. Passporting is no longer possible between the UK and the EU/EEA.

This means that the financial sector has no certainty on long term arrangements for UK-EU trade. Decisions on access to each other’s markets in financial services will be based on each side declaring unilaterally that they regard the other side’s regulatory systems are equivalent. This is known as an equivalence decision.

This is especially important for financial services companies that do not already have a presence in the EU (through a subsidiary or related company). In this case the uncertainty of financial equivalence decisions, which can change at short notice could have a serious impact on UK-EU financial services trade.

At the time of publication of this document, the EU had granted the UK time-limited equivalence on two of the roughly 40 different financial areas where the UK Government is seeking market access. The EU has given no further indication on if and when it will take more equivalence decisions.

Even in the event of the maximum scope of financial equivalence being awarded to the UK by the EU, this would still exclude many core banking and financial activities e.g. accepting deposits, providing investment services to retail (non-professional) investors or payment services.

Cross Border Trade in Services

Like most Free Trade Agreements (FTAs) that include services the TCA uses the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) as the baseline. The TCA has gone beyond this minimum baseline in terms of reducing barriers to trade in sectors such as professional and business services, financial services, legal services and transport services. This includes mutual commitments to exclude limitations such as economic needs tests, restrictions on corporate forms and foreign equity caps.

The TCA includes commitments on non-discriminatory treatment between UK and EU services suppliers and investors. This means that if a UK services supplier working in an EU Member State should be treated in the same way as a services supplier from that Member State (provided the business meets the same regulatory standards and requirements). It also applies vice versa to EU services suppliers delivering services in the UK.

The TCA has secured agreement to allow lawyers from each party to provide legal services relating specifically to the practice of public international law and the law of the country where they are authorised under their “home” title.

What does this all mean for Welsh businesses?

Whilst the TCA contains general principles and rules regarding trade in services, as a consequence of leaving the EU Single Market the individual Member State regulations now apply in addition to those in the TCA. The Member State regulations, applying domestically within each state, are another set of rules that service suppliers need to fulfil in order to trade compliantly with each EU Member State. These domestic regulations are not consistent across all Member States and can be more restrictive than the general principles and rules laid out in the TCA.

Temporary Entry and Stay for Business Purposes^{32,33}

As of 1 January 2021, UK nationals no longer have an automatic right to work in an EU Member State.³⁴ The TCA provides for the temporary entry and stay of individuals who are carrying out business-related activities between the UK and the EU under certain conditions. Each category of business visitor is subject to a distinct set of provisions in the TCA.

To travel to a Member State for business purposes on a temporary basis, an individual will need to fall within one of the following categories of business visitor:

- undertaking a business visit to the EU for the establishment of an enterprise;
- a contractual service supplier;
- an independent professional;
- an intra-corporate transferee;
- a short-term business visitor.

³² This section does not apply to the Republic of Ireland. UK nationals and Irish citizens can continue to live, work and move between the Republic of Ireland and the UK as a result of the Common Travel Area between the UK and Ireland.

³³ www.gov.uk/visit-europe-1-january-2021/business-travel-extra-requirements

³⁴ For further details see the “Living in the EU” section of the “What it means for UK nationals resident in Wales” chapter.

The EU and the UK have agreed not to impose work permits on business visitors who are in the process of setting up a business although this is also subject to exceptions in the annexes to the TCA, meaning that there could be some variation in the national rules that apply to individual Member States. The TCA also includes measures on transparency when applying for a visa or work permit and procedural facilitations (visa and work permit applicants).

The TCA allows certain business activities to be undertaken by short term business visitors without work permit, up to a maximum of 90 days in any six-month period. This includes such activities as attending conferences or internal company meetings. Travel for leisure purposes also counts towards the 90 day limit. However, as there are some exceptions in the annexes to the TCA, the exact conditions of entry will need to be checked for the Member State in question³⁵.

What does this all mean for Welsh businesses?

Business visits for establishment purposes means that UK and EU nationals working in a senior position can travel to the each other's territory in order to set up an enterprise in that territory (for example completing legal and regulatory requirements, recruiting staff etc), provided that they do not offer or provide services or engage in any economic activity other than that required for the purposes of establishment of that enterprise while visiting and do not receive remuneration from a source located within that territory. There are some restrictions to this outlined in the Annex SERVIN-3 with regards to Austria, Czech Republic, Slovak Republic and Cyprus.

Intra-company transferees covers temporary transfers of employees or partners in a business entity located in the UK to another branch in a Member State. In order to qualify the individual must be either a manager, specialist employee or a trainee. Managers and specialists must have either been an employee of, or a partner in a business entity within the UK for a period of 12 months before the date of transfer. For trainee employees, the relevant period is six-months. The maximum length of the transfer is three years for managers and specialists and up to one year for trainees.

Contractual service suppliers covers employees of a business entity in the UK that has signed a contract to supply services to a consumer in a Member State. The service contract entered into by the employer must be for a maximum period of 12 months and require the employee to work in the territory of a Member State on a temporary basis. There are minimum eligibility conditions that any employee using this right must satisfy. For example, at least three years professional experience and a relevant degree level qualification (or a qualification of an equivalent level).

Independent professionals covers self-employed professionals who are established within the UK. In order to qualify, the individual must have concluded a contract to provide services to a consumer in a Member State for a maximum period of 12 months which requires their presence in that territory on a temporary basis. They must not already be established in that Member State and there are other minimum eligibility conditions that must be satisfied, for example, six years professional experience and a relevant degree level qualification (or a qualification of an equivalent level).

³⁵ For more information see <https://www.gov.uk/guidance/structuring-your-business-from-1-january-2021>; www.gov.uk/government/collections/providing-services-to-eea-and-efta-countries-after-eu-exit

It is important to note that a number of Member States have placed additional restrictions on the conditions of entry in the annexes to the TCA. It will be important that businesses, employees and the self-employed check the exact rules that apply to the relevant Member State that are involved before making any arrangements.

Short term business visits under the TCA are limited to specified activities which may be undertaken during visits of up to 90 days in any six-month period without a work permit. Personal leisure trips may also count towards the 90 day limit. However, as there is some variation in the approach taken by individual Member States, the exact entry requirements will need to be checked for the particular country in question. For example, in some Member States certain activities may require a permit and/or an economic needs test.

In order to benefit from visa free travel for short-term business visits, businesses and individuals will need to:

- Track who's going where;
- Check the conditions of entry that apply to the Member States it is proposed to visit;
- Track how long they're staying for (while noting that tourism will count in the 90 day within six-month allowance even if subsequent trips are for business purposes);
- Check that all activities it is proposed to undertake are consistent with the permitted activities that apply to short term business visitors in that Member State;
- Record what activities are being undertaken while there;
- Dedicate time and money to secure the relevant visa applications in situations where the nature and/or length of the proposed business visit does not meet the requirements of a short term business visit.

Potential penalties for falling foul of the rules include fines, refused entry or denied future visa applications.

Individuals and businesses should consult the UK Government website and any supporting trade or profession organisation. Restrictions and different entry requirements within the 27 Member States can change at short notice, although there is a commitment for at least three months' notice for visa changes.

Businesses in Wales have reported problems with gaining work permits and visas for consulting work in both the EU and EEA since the end of the transition period. The additional time required to apply for visas will have a material adverse impact of services work delivery.

Professional qualifications

Whilst a member of the EU, UK nationals and EU citizens holding a qualification, such as doctors, nurses, dental practitioners, pharmacists, veterinary surgeons, lawyers, architects or engineers from the UK benefitted from a streamlined recognition regime in other EU countries, including automatic recognition for some professions³⁶. This regime provided

³⁶ Before leaving the EU, the UK was part of an EU wide system of mutual recognition of professional qualifications (MRPQ) under the EU MRPQ Directive (2005/36/EC). The Directive enabled a wide number of professionals to benefit from a streamlined system of recognition enabling them to work in a professional capacity

a route for the recognition of professional qualifications which supported the ability of professionals to supply services across the EU and was an integral part of the freedom of movement. This will no longer be the case.

The TCA does not contain any formal commitments by the UK and the EU to recognise professional qualifications awarded by bodies in the other territory, however, the TCA does contain a framework process to enable the future recognition of professional qualifications – as outlined below.

With the TCA, UK nationals are still able to supply services across the EU. However, they will be subject to individual Member State domestic regulations which could make it more difficult to gain recognition for UK obtained qualifications or in some cases could prevent them practising their profession in some EU Member States.

The TCA has established a framework for mutual recognition of professional qualifications through the EU – UK Partnership Council³⁷. This agreement allows (but does not require) the UK and EU Member States in the future to submit joint recommendations to the Partnership Council for profession-specific arrangements. These arrangements can provide routes for UK professionals to have their qualifications recognised in the jurisdiction of an EU Member State, and vice versa.

The Withdrawal Agreement protects the mutual recognition of professional qualifications for UK citizens living in the EU, or EU citizens living in the UK, before the end of the transition period (subject to restrictions). These arrangements do not apply to UK citizens moving to the EU or EU citizens moving to the UK after 1 January 2021. The Withdrawal Agreement and Common Travel Area also protect the rights of UK citizens to travel and work in Ireland (the Republic and Northern Ireland) and vice versa.

The lack of agreement with the EU on MRPQ has led to some immediate impacts relating to the highly regulated professions e.g. legal, accountancy, auditors and more widely in sectors such as life science.

What does this all mean for Welsh businesses?

If a self-employed professional or a qualified professional employee of a business wants to work in the EU they will need to have their qualification recognised by the appropriate regulator for the profession in each relevant country. This could involve passing additional professional examinations and/or a needing to demonstrate work experience.

³⁷ A new body established by the TCA



Practical Example: Pharmaceuticals – Batch Testing and Qualified Persons for Pharmacovigilance (QPPV)

Prior to the UK leaving the EU, UK based QPPV were able to provide batch testing certification for certain pharmaceuticals to allow them to be transported directly from UK sites to other EU Member States.

However, the lack of mutual recognition of batch testing and QPPV release in the TCA will mean that UK QPPVs are no longer recognised by the EU (under EU legislation, QPPVs must reside and carry out his/her

tasks in a Member State, which no longer includes the UK). This means that although certain pharmaceuticals have already received the appropriate certification by a UK QPPV, those same products will require another certification to be carried out by a EU QPPV, in order to access the EU market. This increased bureaucracy has the potential of making UK pharmaceutical businesses less competitive compared to their EU counterparts.

Practical Example: Education and Training

Education sector

The education sector in Wales is worth £4.143m GVA and employs 124,000 people [Source: StatsWales]. The TCA impacts on the educational sector in Wales across a number of areas – the cross border trade in services, mutual recognition of professional qualifications and mode 4 provisions (the movement of natural persons) affecting all parts of this sector. Digital and intellectual property will impact on some education sub sectors and there may be an indirect impact via subsidies and competition articles in the agreement on private sector educational services.

Overall the TCA has resulted in significant additional administrative burden for organisations in this sector.

Higher Education sector

The impacts of the TCA will be felt both directly through those services identified as education exports and indirectly through changes to immigration rules, visa requirements etc.

Private sector training services – Mode 5

We are aware of problems for Welsh providers of training services into the EU. There are significant delays with consignments (even small consignments) of supporting materials being stopped at the UK border. When consignments do get through they are not being released without payment of additional costs by the course delegates or employers. As a result companies have made the decision to source and ship training manuals within the EU rather than cross border from the UK for the foreseeable future.

This mode 5 issue – is an important area of focus for Wales – in that it is a goods export linked to a service – in this case cross border logistical services linked to delivering training in the EU.

Foreign Direct Investment in Wales

Foreign Direct Investment (FDI) plays an important role in Wales' economy. Existing company expansions, new businesses locating in Wales and acquisitions across all sectors from advanced manufacturing through to life sciences have contributed to a positive investment environment over recent years. Prior to the 2016 EU referendum, the number of FDI projects recorded in Wales reached record levels³⁸. However, overall investor confidence in the UK fell after the 2016 referendum, predominantly fuelled by the uncertainty around EU exit and what it could mean for the UK's future trading relationship with the EU.

The agreement of the TCA has alleviated much of the uncertainty that has been at the forefront of potential investors' decision-making in recent years.

Future investors are now able to reconsider the UK, and Wales, as a stable investment environment. The Research, Development & Innovation ecosystem, strong skills base, stable taxation laws and regulatory framework that have historically driven FDI in the UK can be used as tools to promote investment in Wales.

Some of the uncertainty around the possible imposition of tariffs on exports and imports has been addressed. On the other hand, potential investors will, be aware of the cost and the requirements of doing business from the UK with the EU (and particularly the impact of non-tariff barriers), which was seen as a potential barrier to investment decisions in the period leading up to the publication of the TCA.

There are still some uncertainties that exist as a result of the deal that could have an impact on future investments. Services in Wales, in particular the financial services sector, will be affected by the lack of equivalence as set out in the TCA. Financial services companies from countries seeking to invest in the UK in order to access the Single Market will no longer have this automatic access until equivalence is agreed across all areas through further assessment.

The supply chain for current and future investors will have to comply with the rules pertaining to Rules of Origin. As already noted, if claiming preference under the TCA, businesses will need to declare that their goods are originating by determining whether the supply and processing chains used in the production of their goods will fulfil the relevant rules of origin arrangements for their specific products.

There is uncertainty about how the TCA will affect decisions made by foreign headquarters of companies who are currently operating in Wales. Foreign investors with multiple sites within the EU and the UK may consider the above issues, and those mentioned elsewhere in this document, when it comes to assessing existing sites for reinvestment and/or expansion. On occasion when all parameters are equal, EU sites may be favoured above those in the UK whereas, previously, this would not have been a factor as all sites in the EU and UK would have had the same Rules of Origin and administrative costs associated with doing business within the EU.

³⁸ In the two years prior to the referendum, Wales recorded its two highest ever numbers of FDI projects since records began in 1984. (WG / UKTI)

Sectors, such as food processing and construction as well as some areas of manufacturing, which rely on low-skilled or a transient workforce will also be affected by migration provisions set out in the TCA and its impact on the free movement of workers. Existing foreign investors in these sectors could find that their existing labour market is affected which could impact on future reinvestment plans for Welsh sites. Further information on the movement of people is provided elsewhere in this paper.

What does this all mean for businesses in Wales?

It is too early to say what the future will look like for FDI in Wales following the TCA. There are potential long-term impacts from the last few years of uncertainty, which have been compounded by the COVID-19 pandemic currently affecting global economies and halting investment decisions.

The TCA sets out that the UK Government and Devolved Governments have the ability to set their own subsidies within the parameters of any domestic legislation, other FTAs and the WTO rules, and that they are no longer bound by EU State Aid rules. The level of subsidy is unclear at the moment; however, this flexibility may be an attractive selling point for Wales to promote to potential investors.

What it means for our security

The European Union seeks to protect the safety and security of all EU citizens, primarily through its well-developed structures for supporting law enforcement and judicial cooperation between Member States, structures in which the UK played a prominent role whilst it was a member. Cooperation has existed for decades, but has increased and become more structured since the establishment in the 1990s of the Schengen Area.³⁹

As an example, Europol (the EU's law enforcement agency) supports Member States in their fight against terrorism, cybercrime and other serious and organised forms of crime. Headquartered in The Hague, it has more than 1,000 staff and supports over 40,000 international investigations per year. It does not investigate autonomously or lead police operations, as this remains the responsibility of Member States.

In relation to foreign policy and defence, the EU's Common Foreign and Security Policy (CFSP) sets the framework for EU political and military structures, and military and civilian missions and operations abroad. Its aims are to preserve peace, strengthen international security, promote international cooperation, and develop and consolidate democracy, the rule of law and respect for human rights and fundamental freedoms. The Common Security and Defence Policy (CSDP) is a key component of the CFSP, but decision making remains with Member States; decisions on missions initiated under the CFSP are made by the Council of Ministers and almost always require unanimity.

In leaving the EU, the UK will no longer participate in many of these initiatives, although the TCA and associated agreements contain provisions which enable ongoing co-operation in some of them.

Had no agreement been reached, cooperation between the UK and the EU and its Member States would have been based only on international cooperation mechanisms, such as Interpol, or the relevant Council of Europe Conventions, such as that in relation to extradition and through organisations such as the Council of Europe and NATO.

Protecting the safety and security of citizens: law enforcement and judicial cooperation

The TCA includes provisions on law enforcement and judicial cooperation between the EU its Member States and the UK, for the prevention, investigation, detection and prosecution of criminal offences; and the prevention of money laundering and terrorism financing.

The provisions of the agreements fall broadly into three areas:

- The sharing of data and information
- Cooperation between law enforcement and criminal justice authorities
- Arrangements for the surrender of wanted persons

³⁹ The border-free Schengen Area ('Schengen') guarantees free movement for citizens of 26 EU Member States, plus some non-EU states, by enabling them to cross internal borders without being subjected to border checks. The UK (and Ireland) are not part of Schengen.

Protection of fundamental rights

The agreements on law enforcement and judicial cooperation are based on the UK and the EU's long standing respect for the protection of the fundamental rights and individual freedoms of UK and EU citizens. Because the agreement includes extradition arrangements and the exchange of sensitive information that impact on human rights, and potentially lives, the UK, EU and Member States all want to have confidence that human rights will be upheld, as well as a common understanding on how those rights will be protected. This part of the agreement will cease to have effect if the UK or EU denounces from the European Convention on Human Rights (ECHR). In signing the agreement, the UK and the EU and its Member States reaffirm their commitment to continue to respect democracy and the rule of law, and protect and give domestic effect to fundamental rights.

The sharing of data and information

The most significant change in data sharing arrangements relates to the Schengen Information System (SIS II). SIS II is the largest and most widely used information-sharing system for security and border management in Europe. It enables authorities to enter and consult 'real time' alerts on missing and wanted individuals and lost and stolen objects, and which can be accessed through the domestic police computer systems of EU Member States and Schengen⁴⁰ states. It has been said that UK police forces accessed the database around 603 million times in one year.

Recognising its value to operational policing, the UK Government sought a mechanism in the agreement that would enable the UK and EU Member States to share and act on real time alerts, as currently provided by SIS II. However, the EU has taken a consistent position that the UK's decision to leave the EU and become a third country outside of the Schengen zone means that there is no legal basis for the UK to have any access to SIS II. As a result, the UK's access to SIS II was 'switched off' on 31 December 2020.

Instead, the agreement provides another legal base for information exchange, including in relation to wanted and missing persons and objects and information sharing in response to requests and the spontaneous provision of information. The UK will also make more use of Interpol channels, and the agreement contains arrangements for UK cooperation with Europol and Eurojust as a third country (see below). However, these are not likely to be able to plug fully the gaps created by the absence of SIS II access.

The TCA does allow for the continuation of reciprocal exchange of DNA, fingerprint and vehicle registration data (commonly referred to as 'Prüm' data). The UK and EU already exchange data on DNA and fingerprints, and the agreement also enables the exchange of vehicle registration data. The agreement is based on existing precedents for exchange of 'Prüm' data between the EU and Norway, Iceland, Liechtenstein and Switzerland.

Where a search of another country's database under the mechanisms leads to additional steps will be taken to obtain the relevant data, consistent with the applicable laws of the country that holds the data.

⁴⁰ National Police Chiefs' Council (NPCC) lead for Brexit, Deputy Assistant Commissioner Richard Martin given evidence before the House of Lords Select Committee on the European Union EU Security and Justice Sub-Committee.
<https://committees.parliament.uk/oralevidence/1150/html/>

The agreement also provides for the continued exchange of air passenger data (known as Passenger Name Records data or PNR). Again, the agreement is based on precedents between the EU and third countries, such as Australia and the US. It provides for more frequent transfers of PNR data from airlines to the UK prior to flights taking off between the EU and the UK than the previous arrangements. The agreement provides for specific data protection safeguards, and there will be an implementation period (of a maximum three years) during which the UK will make some technical changes to its systems to enable the safeguards relating to the deletion of PNR data of passengers following their departure from the country to operate effectively.

The agreement provides for the continued exchange of criminal records data between the UK and individual EU Member States. The arrangements include streamlined and time-limited processes for exchanging criminal records information and specify that information can be exchanged for both crime prevention and safeguarding purposes. Criminal records will continue to be exchanged between the UK and EU Member States through shared technical infrastructure.

Cooperation between law enforcement and criminal justice authorities

Europol and Eurojust are the two main EU agencies facilitating cooperation between law enforcement and criminal justice authorities. Europol is the EU's law enforcement agency, which provides support and coordination to Member States and non-EU partners in preventing and combating organised crime and terrorism. Eurojust supports the coordination of investigations and prosecutions and cooperation between Member States, with the aim of assisting Member States to investigate and prosecute cross-border crime more effectively.

Membership of Europol and Eurojust is limited to Member States, so the end of the transition period meant that the UK's membership of these agencies has also ended. However, the agreement provides for cooperation between the UK and Europol/Eurojust, in line with the rules for third countries (including those in the Schengen Zone), as established in EU legislation.

In practice, this means that the UK is able to take part in common operations, and to participate in joint investigation teams continue to be associated to Europol analysis projects on specific crime areas. It will be able to access analytical support from Europol, and use common secure communication channels such as the Europol's Secure Information Exchange Network Application (SIENA) system. The UK will also be able to second liaison officers to Europol: these officers will sit in the Europol headquarters alongside their EU counterparts to facilitate cross-border cooperation. The UK will also be able to second a liaison prosecutor and their assistants to Eurojust.

However, the UK will no longer have a role in the governance of the agencies, and it will not have access to the Europol Information System.

In addition to cooperation with Europol and Eurojust, the agreement includes commitments to combat money laundering and terrorist financing and to maintain anti-money laundering and counter-terrorist financing regimes; and supports cooperation on asset freezing and confiscation.

The agreement sets out the specific circumstances in which either party can suspend or terminate this area of cooperation. For example, in addition to being able to terminate the law enforcement part for any reason, either party may suspend cooperation where it considers there are serious and systemic deficiencies in the way the other party is protecting fundamental rights, the rule of law or data protection.

Arrangements for the surrender of wanted persons

The end of the transition period also meant that the UK ceased to be part of the European Arrest Warrant (EAW) arrangements. The EAW is a streamlined system for extradition, based upon the principle of mutual recognition of judicial decisions. It allows Member States to issue warrants requesting a suspect's surrender within 90 days and evidence suggests that the average time taken to extradite a suspect who objects to extradition is 48 days, making it a far quicker process than the Council of Europe Convention arrangements.

Member States must surrender persons suspected of any of 32 listed categories of offences, regardless of whether the offence of which they are accused is an offence in the country in which they are located. Extradition cannot be refused on the grounds that the State regards the offence as political rather than criminal, and the EAW overrides any constitutional bans on extradition of a country's own nationals a Member State might have.

In developing its negotiating positions on law enforcement and judicial cooperation, the EU consistently linked the EAW to the free movement of people, to respect for fundamental rights, and common enforcement and application of the rules across Member States, under the jurisdiction of the European Court of Justice. As such, the EU's position was that because the UK no longer wished to accept the free movement of people or the jurisdiction of the ECJ, it could not take part in the EAW and the UK Government did not seek to join the EAW.

Both the UK and the EU sought streamlined surrender arrangements based on the EU's agreement in this area with Norway and Iceland. The UK is therefore no longer part of the EAW, but the agreement contains provisions for the surrender of criminals which include streamlined processes (including direct transmission between judicial authorities), strict deadlines, robust safeguards, procedural rights and judicial control. Even so, the new agreement provides additional safeguards for individuals beyond those in the European Arrest Warrant. These additional safeguards make clear that surrender can be refused where a person's fundamental rights are at risk, where extradition would be disproportionate/unnecessary, or where they are likely to face long periods of pre-trial detention. Under the agreement, the UK or EU Member States can refuse surrender or ask for additional safeguards in a number of specific cases, namely in respect of own nationals. Unlike the EAW, the agreement does not override any constitutional bans on extradition of a country's own nationals which a Member State might have. But where such extradition is forbidden, the agreement obliges Member States to consider referring cases to their own prosecution authorities.

Euratom and Nuclear Safeguards

The UK is no longer a member of the European Atomic Energy Community (Euratom), the Single Market for trade in nuclear materials and technology. Instead, the UK has entered into a separate agreement with Euratom, in the form of a Nuclear Cooperation Agreement (NCA). NCAs are a commonly used form of international treaty which provide a legal underpinning to civil nuclear cooperation. Both the UK and Euratom have similar agreements with other countries.

This agreement provides for the supply and transfer of nuclear material, non-nuclear material, technology and equipment; and for trade and cooperation relating to the nuclear fuel cycle. It also covers nuclear safety (including a commitment not to reduce current standards), radiation protection, and the management of spent fuel and radioactive waste. It provides a legal basis for future cooperation on research and development in nuclear fission and nuclear fusion, and for cooperation on the supply and availability of medical radioisotopes.

Foreign and Security Policy

As noted above, the EU's Common Foreign and Security Policy (CFSP) sets the framework for EU political and military structures, and military and civilian missions and operations abroad. The CFSP aims are to preserve peace; strengthen international security; promote international cooperation; and develop and consolidate democracy, the rule of law and respect for human rights and fundamental freedoms. A Common Security and Defence Policy (CSDP) is an integral part of the CFSP.

The EU had proposed to establish a framework for cooperation on foreign policy, security and defence to address external security threats, but the UK Government did not wish to negotiate provisions in these areas, so no such framework is in place. Any future participation of the UK in the CFSP and the CSDP would be subject to the EU's rules on the participation of third countries (a number of which currently participate in CSDP missions and operations).

What it means for our communities and our society

Welsh communities have benefited from membership of the EU in a number of ways, including legal protections in important policy areas including workers' rights and environmental standards, funding provided to support our most disadvantaged communities and farmers, and ensuring that a number of public services (notably in health and social care) and economic sectors have had access to the range of skills needed to function effectively. The change in our relationship with the EU will bring about a number of consequences to our communities and to our society.

Labour and Environmental Standards

The TCA includes a principle of non-regression, requiring both the EU, and the UK not to weaken existing labour and social, environmental and climate protections, either by reducing them or through insufficient enforcement. The intention is to eliminate any possible competitive advantage by either party through a reduction in the costs of production as a result of such changes. As a concept, it has precedents in other trade agreements. However, the nature of the high and complex regulatory standards of the EU Single Market, combined with the very large volume of existing EU-UK trade in goods, including integrated cross-border supply chains, makes this a particularly difficult issue to address. It is not immediately clear how this will operate in practice or how it will be enforced. The TCA provides for further work between the EU and the UK to oversee this issue.

In any event, the legal nature and enforcement of these issues is now of a more complex nature. The precise nature of legal obligations in either jurisdiction may diverge over time. This could cause a lack of clarity and ultimately discrepancies, in interpreting issues such as social and environmental rights.

In any event, the whole TCA has an inherent vulnerability because of this. It provides for so-called "rebalancing", when either party believes that regulatory changes have led to divergence in a manner that gives one party a competitive advantage in trade or investment. This could lead to either party taking remedial action to address such imbalances, pending their review by an independent arbitration panel; and could ultimately lead to the termination of the trade provisions in the TCA.

Many of those who supported the UK's exit from the EU argued for it because it would restore sovereignty to the UK. The UK Government has asserted that the TCA does indeed restore UK sovereignty by taking the UK out of the direct scope of EU legislation. However, the nature of the TCA provisions on this aspect means that this sovereignty is almost wholly theoretical if the benefits of the TCA are to remain. Any significant deviation by the UK that resulted in a weakening of standards relative to those in force at the time in the EU (even where this is the result of changes to EU regulations) would be likely to be challenged in some way by the EU. In that way, there are still very significant constraints on the exercise of sovereignty if the economic trading benefits with the EU are to be maintained.

Loss of EU Funding

Something which is far less theoretical is the loss of funding flowing into Wales as a result of leaving the EU, despite the promises which were made during the 2016 referendum campaign that Wales would not be left worse off as a result of leaving the EU.

For decades Wales has benefited from significant EU programme funding, which in recent years has amounted to well over £700m a year. The vast majority of this funding was comprised of the European Structural and Investment Funds (ESIF) and Common Agricultural Policy funding, but significant benefit was also derived from our participation in a range of competitively funded such as Horizon 2020 and Erasmus+.

EU Structural Funds have had a particularly important role in supporting disadvantaged communities across Wales. This includes support and financial assistance to Small and Medium Sized Enterprises (SMEs), employment and skills support through apprenticeships and traineeships, and targeted programmes to help people affected by long-term unemployment. Funding has also supported the roll-out of superfast broadband and the modernisation of local infrastructure including tourism destinations, community assets, business sites, roads and railways including substantial investment in the South Wales Metro project.

The UK Government made commitments to provide domestic replacement funding in full for farming, fisheries and regional investment (structural funds). The November 2020 Spending Review included announcements related to these funds, but the funding announced fell far short of those commitments.

Since the EU Referendum, the Welsh Government has been working with stakeholders across Wales to develop a new approach to regional investment post-EU funding. This has involved engagement with hundreds of organisations, a public consultation and a two-year project with the OECD to integrate international best practice. In November 2020, a new co-produced Framework for Regional Investment was published setting out investment priorities and delivery structures for replacement EU funds including significant decentralisation of funding and decision-making to local and regional areas. The four broad investment areas within the Framework are:

- More productive and competitive businesses;
- Reducing the factors that lead to economic inequality;
- Supporting the transition to a zero-carbon economy;
- Healthier, fairer, more sustainable communities.

Re-starting investment programmes through the Framework is now dependent on the UK Government honouring long-term financial commitments through its Shared Prosperity Fund and respecting Wales' devolved autonomy in this area. Its absence will result in important interventions supporting the economy coming to an end without replacement when they are needed most recovering from COVID-19.

Structural Funds / Shared Prosperity Fund

The UK Government announced that the replacement for Structural Funds – the Shared Prosperity Fund – would be financed initially as a whole-UK pilot, with £220m available UK-wide for 2021-22, with an expectation this would move up towards £1.5bn in the years thereafter. The figure for 2021-22 is far below the £375m annually from which Wales alone previously benefited through the European Structural and Investment Funds.

For over 20 years, EU funding has helped support people into work and provided the conditions for new and better jobs. It has been vital in modernising our economy and providing investment in businesses, R&D, science, infrastructure and skills. With immediate and longer-term arrangements for the Shared Prosperity Fund still unclear, ongoing support for projects in these areas that are ending this and next year is at risk. This would affect a range of organisations and sectors whose work has been supported by EU funds particularly local authorities, universities and colleges, businesses, and the third sector.

Farm and Rural Development Funding

The UK Government committed to replacement funding for farming, maintaining the annual budget for farmers and for rural development. Again, however, their approach in reality falls far short of this as they have deducted ongoing funding available through the EU Rural Development Plan (RDP) from the settlement, which would not be the case were we still in the EU. As a result of this and other unjustified changes, the replacement provided via the Spending Review for funding in 2021/22 is £137m less than the £337m that had been expected.

EU funding has helped support a wide range of rural sectors such as farming, food, land management and the wider rural economy to provide a range of social, economic and environmental benefits. Given the uncertainty caused by the ongoing pandemic and EU exit, the Welsh Government committed to maintaining the annual budget for farmers through the Basic Payment Scheme. However, with this commitment, the funding settlement leaves very limited scope for new rural development activity responding to domestic priorities – such as responding to the climate emergency and the threat to biodiversity. Should the UK Government adopt the same approach in future spending reviews, this will continue to have an impact on the funding available for farmers and rural development until the EU RDP ends in 2023.

Programmes

Prior to and during the EU-UK negotiations, the Welsh Government held a consistent view that the UK should negotiate for the possibility to access the whole range of EU programmes in which Wales had previously participated. We also asked that the UK Government negotiate for the possibility for Wales to be able to participate on its own in these programmes, should they not want this access for England.

Beyond the financial benefits, participating in these programmes at an EU level has provided a framework for international engagement and co-operation which cannot be replaced easily with domestic alternatives.

We were therefore disappointed that the UK Government's mandate for negotiations excluded a large number of programmes in which Wales currently participates, including Creative Europe, the LIFE+ Environment fund and the European Territorial Co-operation programmes, including funding for cross-border co-operation between Wales and Ireland.

The TCA provides for the UK's continued participation in five programmes:

- Horizon Europe programme for Research and Innovation;
- Euratom nuclear research programme;
- International Thermonuclear Experimental Reactor (ITER) ("The Way" in Latin) project to build the world's first functioning nuclear fusion system;
- The earth monitoring project Copernicus; and
- EU satellite surveillance and tracking services.

We are pleased that the UK will be associated to the Horizon Europe programme. Horizon Europe will offer over €95 billion of funding over the next seven years, with opportunities both for individual researchers and for collaboration, and potential to make significant advances in areas such as health and climate change. Horizon Europe's predecessor has provided a platform for Welsh researchers and businesses to take part in projects to the value of over €2.4 billion, involving 78 countries and bringing grant of €141 million to Wales to date. Now that the uncertainty of the UK's status has been resolved we look forward to a surge of interest in this global programme.

While applicants will be able to apply as if they were from an EU Member State with only very limited exceptions, the UK's association to the programme does not provide all the benefits that the UK previously enjoyed as an EU Member State. For example, UK representatives will no longer have a vote in the programme's governance committees. Furthermore, a "financial correction mechanism" will also ensure that the UK cannot benefit disproportionately from the excellence of its research.

Culture and arts

Wales is a nation which is rightly proud of our culture and arts and arts professionals and artists have a very real role to play in helping to build bridges within and between countries and cultures, delivering new and further developing relationships already in existence.

There has been significant concern raised about new barriers which are emerging which are hindering the sector's ability to continue to survive and thrive. There have been concerns raised with the sector that those who are planning festival and concert tours are suffering from a lack of clarity and additional complexities.

The changes to the freedom of movement of goods affects artists and companies' touring sets, carrying musical instruments and transporting pieces of art between the UK and EU Member States. This means that, depending on the circumstances, Admission Temporaire or Temporary Admission (ATA) Carnets, EORI numbers and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) certificates may be needed. In addition, there are new restrictions on the amount of stops that a haulage vehicle can make from the UK to the EU (cabotage) which will severely restrict EU touring.

The changes to freedom of movement of people affects venues, festivals and companies in Wales booking or inviting over EU artists; and Wales based artists and companies working or touring in the EU. The situation regarding visas, work permits and other documentation, required can be different in each Member State and the UK. For example, EU artists coming for short term work to the UK may now be required to enter through the Permitted Paid Engagement (PPE) route, or through the Tier 5 Creative and Sporting Visa. Companies and venues in Wales may need to apply to become sponsors in order to issue Certificates of Sponsorship. This new complexity involves significant additional resources, time and money.

Access to skills

EU citizens have been of significant benefit to Wales, both to our economy and our communities. Those who live and work in Wales play a crucial role in our society – they are employed in our key business sectors, deliver vital public services and strengthen the academic excellence in our universities.

With free movement ceasing to apply, EEA and EFTA citizens (with the exception of those from the Republic of Ireland) no longer have the automatic right to live and work in the UK⁴¹. The UK Government has introduced a new points-based immigration system which now applies to all individuals who wish to move to the UK.

The overall effects of the new system could be to reduce levels of immigration, the size of the UK population and the total GDP of the UK. Depending on how much migration into the UK is reduced, this could worsen the demographic trends in Wales of a falling and an increasingly aging population.

These effects could exacerbate existing workforce pressures and challenges faced by a number of different sectors that have historically been reliant on EU workers. In Wales this includes the care sector, parts of manufacturing including food processing, tourism, hospitality and the retail sector with some occupations in these sectors no longer qualifying under the new points-based system. The COVID-19 pandemic crisis has thrown into sharp relief our reliance on key workers, many of whom came originally from the EEA/ EFTA. Without their support essential front-line services and industries, which we are depending on now more than ever, would not be sustainable.

Under the new system, occupations that are considered to be in shortage will face a lower salary threshold to work in the UK. Following a call for evidence from the Migration Advisory Committee (MAC) the Welsh Government worked with Welsh stakeholders to determine what occupations should be included on a Shortage Occupational List (SOL) in Wales. This was based on applying the MAC's own methodology supplemented with evidence of shortages from Welsh Government's external stakeholders from a wide range of sectors across Wales. The Welsh Government highlighted a number of key occupations which need to be included to ensure we meet the skill needs of our health and social care system and for manufacturing, digital, trade and creative industries, the food and drink industry including vets, professional and business services, and construction. Unfortunately, despite the clear supporting evidence base, the UK Government has not taken forward the MAC recommendation to establish a Welsh SOL which recognises the specific labour market needs in Wales, particularly in social care and this poses real problems for our public sector and for employers who have relied on workers from the EU to fill skills shortage jobs.

41 This section does not apply to the Republic of Ireland due to Common Travel Area arrangements.

What needs to happen next?

We must look forward. This is the new reality of our relationship with the EU. As set out in this document leaving the EU and resetting a relationship that has been built up over 40 years does bring significant implications for individuals, businesses and our communities. While the TCA is not the kind of relationship that we advocated, the Welsh Government will do all we can to support society navigate these changes to minimise negative impacts and maximise the opportunities that may arise.

We all need to adapt to the new future and build on Wales' incredible strengths. Wales thrived inside the EU and will continue to be an outward looking global nation.

Our International Strategy set out our primary goals to raise Wales' international profile, grow the economy through exports and inward investment and establish Wales as a globally responsible nation. In December we published our Export Action Plan which sets out the practical steps we are taking to support Welsh exporters, including how we will help them to adapt and respond to the challenges of new trading relationships with the EU.

Crucially, the TCA must provide a platform from which better arrangements can be negotiated in the future. While the TCA represents the future we currently face, it must not be the end point for the UK's relationship with the EU. Our priority is to support the implementation of the TCA working constructively with the UK Government and the other Devolved Governments.

The TCA is a basis for a significant range of necessary further work, in the shorter- and longer-term, between the EU and the UK for three main reasons⁴²:

- because of the time limited nature of some of the arrangements on the face of the agreement, e.g. fisheries adjustment period which ends in June 2026;
- because further decisions need to be taken soon within the framework of the agreements, e.g. participation in EU programmes, such as Horizon Europe; and
- to ensure the implementation of the agreement.

The TCA will be overseen by a Ministerial-level Partnership Council between the EU and the UK. There are also 18 subject specific "Specialised Committees" and four technical "Working Groups" on particular issues, which will assist with its implementation and operation and support that Partnership Council. The precise impact of the TCA will take time to become clear in many areas as issues are worked through in those fora.

Recognising our devolved interests, it is important that the Welsh Government is represented in the governance structure set out in the agreement. The Welsh Government and the other Devolved Governments will need to be able to make a substantive and effective input to those processes on matters devolved to them, and on other matters which have a material impact on their devolved responsibilities. There is a helpful precedent in the evolving arrangements that had been in place since 2000 for devolved government input to EU Council of Ministers business, when the UK was an EU Member State. The basic principles of that should be replicated for the UK's engagement in the TCA mechanisms.

⁴² There is also a recognition, in a joint declaration, of the need for an agreement on data adequacy, with a view to this being negotiated within six months.

All of this needs to take into account the internal UK devolution settlement. At present there is instability and lack of parity in the relationship between the UK Government and the Devolved Governments. The UK Government has asked Parliament to legislate through the UK Internal Market Act in a way which creates unprecedented ambiguity about the scope of the devolved settlements reached in successive Acts of Parliament; Acts which were painstakingly negotiated between governments and carefully considered by national Parliaments. The Welsh Government has submitted an application for judicial review of the Act.

Wales has been an outward-looking, European nation since its formation over a thousand years ago. We will continue to be so as our economic, social and cultural histories are intertwined with Europe's and predate the creation of the modern United Kingdom by many centuries. Over the last few centuries that has been complemented by a more global engagement and connectivity. Our distinctive identity is founded upon that history.

Wales shares fundamental values with the EU of human dignity, freedom, democracy, equality, the rule of law and a commitment to human rights.

We remain committed to a very close working relationship with the EU, its Member States and regions. The First Minister wrote to the President of the European Commission, Ursula Von der Leyen, in January to set this out clearly⁴³. We look forward to continuing and developing those relationships. We will do so in line with the principles of our International Strategy⁴⁴:

- We will raise Wales' profile on the international stage
- We will grow the economy by increasing exports and attracting inward investment
- We will establish Wales as a globally responsible nation.

43 <https://gov.wales/written-statement-wales-future-relationship-european-union>

44 <https://gov.wales/international-strategy-for-wales.html>