Community Housing Cymru

In-depth Briefings

Brexit update

December 2020

Background:

As of the 31st January 2020, the UK has been in a transition period ready to officially leave the European Union (EU) on the 31st December 2020.

During this period the majority of the current EU rules and trading arrangements remain in place with no significant changes in most areas. The current rules on trading with the EU have remained, as has the right to travel without visas to other EU countries.

With the prospect of a No Deal with the EU becoming increasingly likely, the following briefing provides an update to any possible changes since our last 'No Deal Brexit Briefing'.

It is important to note that the current situation is liable to change in the coming days since the publication of this briefing and therefore, some of the factual information in this briefing may become invalid.

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1. Settled Status

Citizens of the EU, EEA or Switzerland living in the UK before the 31st December 2020 can apply to the EU Settlement Scheme to continue living in the UK before the application deadline on the 30th June 2021. This means that they will have the right to remain living and working in the UK as before.

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

It is very important that current housing association tenants and employees from EU countries check their status in relation to the EU settlement scheme before the 30th June 2021 deadline. At the time of this briefing, the UK Government have not stated otherwise that this deadline will change in the event of a No-Deal Brexit.

Since our last briefing, the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 has passed, meaning that free movement will end at 11pm on 31 December 2020. Currently in Wales, housing associations house a number of EU nationals. Therefore, this Act will impact on the eligibility of many new applicants to social housing from the EU if they were not living in the UK before the 31st December 2020.

The only exception to this rule is Irish citizens, who will continue to be able to enter and live in the UK as they do now beyond the 31st December 2020 without having to apply to the Settlement Scheme.

2. Labour and workforce

As mentioned above, the free movement of people between the EU and the UK will cease to exist after the 31st December 2020 unless a settled or pre-settled status has been obtained.

The Immigration Act has enabled the UK Government to deliver on its manifesto commitment of an Australian-style points-based immigration system that aims to prioritise skillsets. It states that 'The points-based immigration system will encourage employers to focus on training and investing in the UK work force, driving productivity and improving opportunities for individuals, especially those impacted by coronavirus.'

Those wanting to come into the UK to work will need to apply for permission in advance and will be awarded points for a job offer at the appropriate skill level, if they speak English, and for meeting the appropriate salary threshold. Visas will then be awarded to those who gain enough points.

Recently published data shows that in 2019, 48% of EU citizens moving to the UK for at least a year said that work was their main reason for migrating. Most of those workers (65%) reported coming to take up a definite job rather than to look for work. However, the same data also shows that 456,000 National Insurance Numbers were allocated to EU citizens in 2019, down 28% from 2015. Long-term arrivals of EU citizens planning to spend at least 12 months in the UK fell by 34% over the same period, reaching 198,000 in 2019.

As part of the new points based immigration system, the government is introducing special schemes to enable more scientists, academics, investors, entrepreneurs, and health and care workers to come to the UK easily.

However, care workers are not listed as a ‘skilled worker’ profession in order to qualify for a Health and Care Visa. This is in addition to the minimum threshold salary of £20,480 that is required, despite a frequently lower rate of pay for many care workers. This will only serve to worsen chronic worker shortages in this sector.

On the contrary, construction trades such as builders and maintenance managers are listed as skilled worker professions, but with a minimum salary requirement of £25,600 before any reductions / prorating.
Given that labour rates vary across the UK, there is a significant risk of losing substantial proportions of the workforce in Wales to more lucrative jobs in elsewhere in the UK, as has been seen in previous economic downturns.

3. Trade

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

EU goods entering the U.K. will not face full customs administration for the first six months under a phased-in approach to allow more time to prepare. This means that full customs checks will only apply to imports from the EU from July 2021 and the majority of importers of most goods will be eligible to defer their customs declarations (and payment of any applicable customs duties) for six months from the point of import.

However, importing controlled goods into the UK (including critical goods like medicines) will be subject to import checks from the end of the year, as will traders transporting goods under the Common Transit Convention (including many hauliers transporting goods to the Republic of Ireland using the UK as a 'land bridge') or under the ATA carnet system (which allows goods to be temporarily moved across the border without having to complete full customs procedures).

The Welsh construction industry has long been reliant on EU imports, in particular bricks from Belgium and Denmark, timber from Sweden and Estonia, glass from Italy and materials for pre-fabricated housing from Germany and the Netherlands. Of construction imports to the UK, 59% come from within the EU, meaning that additional costs of tariffs and delays will likely create problems for companies, supply chains and hence the housing market.

The Institute for Government believe that the phased approach will only push these issues into next year – a problem delayed not solved. The government may have a difficult job maintaining momentum among businesses to prepare for further changes in April and July.

In the immediate impacts of a No Deal, the UK Government published its Reasonable worst case scenario for borders in September 2020. The focus is on UK goods entering the EU from the 1st January 2021, with disruption expected to be lower in the initial days and to worsen over the first two weeks as freight demand builds. A significant drop in disruption is then expected in the first three months, with COVID-19 also minimising freight demand. However, while the cause of constraint is expected to impact GB-France outbound movement initially, the document does state that this would quickly impact France-GB flow due to HGVs being stuck in queues in Kent and so may affect some EU imports as a result.

The timing of a No Deal Brexit coincides with the time of year when the UK is the most dependent on food imports. This only heightens the risk of higher food costs for consumers, with Tesco predicting an average rise of 5%. This could have a knock-on impact for tenants who have already struggled financially due to the pandemic.

On 10th December 2020, the [EU published proposals] for four contingency measures to mitigate some of the significant disruptions between the EU and the UK that will occur on 1st January 2021 in case of a No Deal. This includes a proposal for a Regulation covering basic connectivity with regard to both road freight and road passenger transport for 6 months, provided the UK assures the same to EU hauliers.

4. Housing Market

The link between Brexit and housing price activity has always been very complex. At the beginning of this year, anxiety around Brexit posed the biggest threat to house price stability, with the possibility of changes to the Bank of England base rate and No Deal after the Brexit transition period bringing uncertainty to the market.

In our last Brexit briefing, we explained how English housing associations had reported increased incidences of private developers selling homes to them at a discount as a result of a market downturn, with some reporting discounts of up to 15%, and *Sovereign Housing Group* reporting up to eight deals of this type. While housing associations in Wales have considerably less exposure to outright sales, a number of associations deliver a range of home ownership options which would be impacted by any changes to the market. Wider market conditions are also likely to impact on the confidence of contractors and lenders to invest in homes.

Then the COVID-19 outbreak happened, shutting down many industries in March. However, just a few months into the lockdown and the property market began to surge. Figures released by the ONS reveal that House price growth in Wales increased by 3.8% over the year to September 2020, up from 3.4% in August 2020, with the average house price in Wales at £171,000.

Whilst some people have lost jobs or had reduced incomes, others have actually saved money by being at home - both of these outcomes have affected the housing market.

Another factor that is likely to have driven activity is the Welsh Government's temporary increase to the nil rate band of Land Transaction Tax (LTT) on residential properties worth less than £250,000 from 27th July 2020 until March 31st 2021. The threshold for the LTT which replaced Stamp Duty in Wales in 2018 was previously set at £180,000.

However, with uncertainty yet again over the prospect of a No Deal Brexit, this rate of house price growth could be short lived. Long before the impact of the pandemic, the Bank of England’s assumptions for a chaotic No Deal Brexit in 2018 included a 35% decrease in house prices over a three year period. There is some evidence to suggest that were house prices to drop by a third or more, a grant rate of at least 50% of building costs would be required to ensure viability. While current grant rates for social rented homes in Wales stands at 58%, discussions over a more flexible system for calculating grant funding levels continue following the Independent Review of Affordable Housing.

A number of other factors, including the costs and availability of finance, would also impact on the viability and ambition of developments and will require ongoing monitoring in the event of any economic downturn. Further, the overall availability of grant and any subsequent pressures on public finances as a result of an economic downturn should feature heavily in the consideration of housing association boards around development.

5. Funding for housing associations

The current debt level of Welsh housing associations stands at around £3bn, with a productive ongoing relationship between housing associations and a number of lenders, including banks and institutional investors.

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

The Bank of England's No Deal scenario planning for a *Disruptive Brexit* and a *Disorderly Brexit* envisage inflation reaching 6.25% and sector interest rates (with increased bank margins) reaching 9% combined with a fall in house prices of up to 35%. Such scenarios are likely to see increased emphasis from the regulator on the need for stress testing and contingency plans.

Since the beginning of the transition period, Welsh housing associations have maintained access to a number of existing funds made available by the European Union (including from the European Investment Bank and European Structural funding). All funding projects that had been previously allocated to housing associations before the beginning of the transition period are being financed as foreseen.

The European Structural funding is due to be replaced by the UK Shared Prosperity Fund to match the current allocation of structural funds in each of the four nations. This is intended to be delivered through new powers by the Internal Market Bill (which is still currently being amended between the Commons and the Lords).

In the current funding cycle, Wales has received over five times more in funding per capita than England. However, the UK has always retained influence over how funding is distributed once it is allocated by the EU. For instance, the UK government decided, with the consent of the European Commission, to increase the allocation to the three devolved nations in the current funding cycle.

The government has highlighted boosting productivity and 'tackling inequalities' as two key objectives of the Shared Prosperity Fund – but detailed plans have yet to be published. This includes: information on the specific objectives of the scheme; the overall amount of funding available; how funding will be allocated between different parts of the UK and between different projects; and the rules on what funding can be spent on.

State Aid

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

In the event that no deal is reached, the government has confirmed that there will be no replacement regime in place immediately after the transition period ends. However, the UK will still be bound by the EU's state aid rules to some extent because of provisions made in the Northern Ireland protocol (as agreed with the EU in January 2020 as part of the Withdrawal Agreement). The protocol makes clear that any measure that potentially impacts trade in goods between NI and the EU would be covered by EU state aid rules. However, The UK may use the powers in the UK Internal Market Bill to refuse to recognise the legal authority of the Commission. As a result, while under international law the UK will still be bound by state aid rules, it will have chosen to breach this obligation.

6. Funding for Wales

The UK Government's 2020 Spending Review revealed that the Welsh Government will receive £16.6bn in total in the next financial year – down from £20.3bn this year as a result of the £5bn increase in COVID-19 spending, which will decrease to £0.8bn after March 2021. However, money for normal day-to-day spending will rise from £12.8bn to £13.5bn and infrastructure spending will remain the same in 2021/22 at £2.4bn.

Welsh Government's Finance Minister asked for urgent commitments for Wales on delivering post EU-funding guarantees. However, details of this are lacking in the spending review document, which fails to confirm whether Wales will receive the same amount per year from the UK's Shared Prosperity Fund as it did from the EU. Instead, it states that the new Shared Prosperity Fund will "at least match current EU receipts, on average reaching around of £1.5 billion a year" and that "this additional funding will be delivered UK-wide, using the new financial assistance powers in the UK Internal Market Bill. Further details will be published in the New Year."

The spending review also fails to offer any additional budgetary flexibility to help maximise the Welsh Government's resources to respond to the evolving pandemic, which has been continuously requested by Finance Ministers and officials across the four nations of the UK.

7. Data transfer

The below information is taken from our last No Deal Brexit Briefing:

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

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

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

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

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

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Nothing has changed on this matter since our last No Deal briefing and it will not for the foreseeable:

- All data in the UK will continue to be protected by UK DPA 2018 and GDPR; both of which are currently aligned to EU regulations.
- Businesses must continue to protect data in accordance with the current regulations.
- Data residing in the EU must continue to comply with the EU GDPR.
- EU data hosted within the UK will continue to be protected under EU law (GDPR); detailed in the withdrawal agreement.

Any changes, such as the conclusion of an agreement, amendments to or the superseding of or the redaction of the withdrawal agreement would require a further review of this position.

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