

**CODE07 Dr Elin Royles, Dr Carolyn Rowe and Dr Rachel Minto**

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Senedd Cymru | Welsh Parliament

Adolygiad o weithrediad y Cytundeb Masnach a Chydweithredu rhwng y DU a'r UE | UK-EU implementation review of the Trade and Cooperation Agreement

Ymateb gan: Dr Elin Royles, Dr Carolyn Rowe a Dr Rachel Minto | Evidence from: Dr Elin Royles, Dr Carolyn Rowe and Dr Rachel Minto

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## Written evidence of the Welsh Senedd UK-EU implementation review of the Trade and Cooperation Agreement consultation

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### Context

This evidence is being submitted jointly based on our ongoing research investigating the new machinery of domestic intergovernmental relations and focusing on IGR in relation to UK-EU relations following the UK's withdrawal from the EU. Our research is examining relations between the UK Government and the Scottish and Welsh Governments in the context of these arrangements. Our emerging findings are based on semi-structured interviews with officials in the Welsh and Scottish Governments and in Whitehall, complemented by expert interviews and documentary analysis.<sup>1</sup>

### 1 Experiences of the TCA since its entry into force

1.1 In terms of the involvement of UK devolved governments in the governance of the TCA as established by the Trade and Cooperation Agreement (TCA), devolved government ministers have observer status on the UK-EU Partnership Council, with devolved government officials involved in preparations and also able to attend these council meetings as observers. Devolved government officials also have observer status on other related structures, the Trade Partnership Committee, the Trade Specialised Committees, non-trade Specialised Committees and Working Groups. Beyond this, the UK-EU Interministerial Group (IMG) established by the Review of Intergovernmental Relations in 2022 is the main ministerial-level forum for discussions between central and devolved governments regarding this UK-EU structure.

1.2 Given the extensive policy reach of the TCA and its implications for the policy competence of devolved governments, a regularised arrangement for the engagement of devolved governments had to be engineered. Domestic intergovernmental relations in relation to the TCA structures were outlined in the Lord Frost letter, dated 27.5.2021. It explains that when 'items of devolved competence are on the agenda' of a TCA structure body, the UK Government 'expect to facilitate attendance by Devolved Administrations at the appropriate level'. However, it places the discretion in determining attendance with the UK co-chair of the relevant body, depending on the nature of the discussion. The text therefore suggests some fluidity to the attendance of devolved government ministers. The letter is firmer in stipulating that the involvement of representatives in discussions preparing for TCA structure meetings 'should happen as normal practice', with devolved government officials likely to be involved as opposed to ministers.<sup>2</sup>

1.3 In practice, the experience of the TCA arrangements has underlined the limited role of UK devolved governments on the UK-EU Partnership Council (PC), the main TCA oversight body. This contrasts to the UK's pre-Brexit arrangements that formalised devolved government participation in UK delegations to the EU Council of Ministers and provided them with the opportunity to be lead minister on matters of key devolved competence, with a requirement to adhere to a single UK position. With respect to the UK-EU PC, in addition to their observer status, devolved government ministers have no formal role in decision-making, and no role in any decision-making that occurs between meetings.<sup>3</sup> As a

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<sup>1</sup> Current research in this area, 'Assessing the UK's new intergovernmental relations architecture post-Brexit' Carolyn Rowe, Rachel Minto and Elin Royles, supported by the James Madison Trust.

<sup>2</sup> See Lord Frost, 'Letter from Lord Frost on engagement regarding EU matters' (UK Government, Cabinet Office, 2021).

<sup>3</sup> UK Parliament, 'Welsh Parliament Legislation, Justice and Constitution Committee: Submission to the House of Lords, European Affairs Committee' (2022).

consequence, a Welsh Government minister attended the first council meeting with officials subsequently attending on behalf of the Welsh Government. The Welsh Government have advocated for being full / active participants where issues related to devolved competences are discussed.<sup>4</sup> A Welsh Minister also called for developing joint positions across the four governments of the UK in areas of devolved competence or in areas affecting devolved competence and advocating these joint UK positions to the EU.<sup>5</sup> They also directly referred to the EU Council of Ministers devolved government input as a proven model of how to more actively engage devolved governments and as a 'valuable exercise of ministerial time'.<sup>6</sup>

1.4 As regards the Trade Partnership Committees and Specialised Committees, early evidence suggested that the Welsh Government was 'not routinely invited to all meetings and its request to join others has been rejected'.<sup>7</sup> However, as the arrangements have bedded in, their attendance seems in line with the guidance: 'UK and EU co-chairs of each TCA Committee and Working Group determine their respective delegations to each meeting. Numbers in each delegation will vary between meetings, depending on what agenda items are scheduled for discussion'.<sup>8</sup> On the basis that their attendance should be facilitated at an appropriate level when devolved matters are considered, from the evidence of the minutes published by the European Commission, the Welsh Government have attended the following committees:<sup>9</sup>

Specialised Committee on Social Security Coordination  
Specialised Committee on Energy  
Specialised Committee on Fisheries,  
Specialised Committee on Road Transport  
Specialised Committee on Participation in Union Programmes  
Trade Specialised Committee on Goods  
Trade Specialised Committee on customs cooperation and rules of origin  
Trade Specialised Committee on Sanitary and Phytosanitary measures  
Specialised Committee on Technical Barriers to Trade  
Trade Specialised Committee on Services, Investment and Digital Trade  
Trade Specialised Committee on Public Procurement  
Trade Specialised Committee on Regulatory Cooperation  
Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development

Under the Specialised Committee on Technical Barriers to Trade, the Welsh Government also attended three working groups that were established in and met in 2024: Working group on Organic Products, Working Group on Motor Vehicles and Parts,<sup>10</sup> and the Working Group on Medicinal Products.

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<sup>4</sup> This is expressed most strongly in Vaughan Gething's letter to Lord Frost, Gething, V, Letter to Lord Frost following Partnership Council (Welsh Government, 2021).

<sup>5</sup> Gething, V, Letter to Lord Frost following Partnership Council (Welsh Government, 2021).

<sup>6</sup> Welsh Parliament, 'The Record, Plenary 1 February 2022, 6. Statement by the Minister for Economy: Wales and Europe - managing a new relationship' (2022a).

<sup>7</sup> Moran, S., Wilkes, J., Lugonia, B., 'The room where it happens: Wales in UK-EU relations, Senedd Research, Welsh Parliament (2022).

<sup>8</sup> UK Parliament, 'Procurement: UK-EU Trade and Cooperation Agreement: Questions for Cabinet Office, UIN 25876, tabled on 1 July 2021' (2021).

<sup>9</sup> Information available at: [https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/meetings-eu-uk-partnership-council-and-specialised-committees-under-trade-and-cooperation-agreement\\_en](https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/meetings-eu-uk-partnership-council-and-specialised-committees-under-trade-and-cooperation-agreement_en)

<sup>10</sup> It is not entirely clear whether the Welsh Government attended this working group as it is not listed as a participant in the 16.5.24 meeting but the minutes do refer to representatives from the UK devolved governments attending.

The evidence on Scottish Government and in some cases Northern Ireland Executive representation on Specialised Committees and Trade Specialised Committees points to their engagement in a broader range of committees than those attended by the Welsh Government. This is likely to reflect their more enhanced devolved competences. Their attendance therefore also extends to the Specialised Committee on Law Enforcement and Judicial Cooperation, the Specialised Committee on Air Transport, the Specialised Committee on Aviation Safety, the Trade Specialised Committee on VAT Administrative Cooperation and Recovery of Taxes, and to the Specialised Committee on Intellectual Property.

1.5 Our emerging evidence suggests that the official-level arrangements for devolved input into the TCA committees are working relatively well, also facilitated by general alignment on policy preferences between devolved and central government. Efforts are being made to develop positive official working relations and value was placed on proactive, close working between different levels of government. The arrangements are at their strongest when they build on routine policy engagement and operational discussions between different governments. Efforts to take devolved policy considerations into account in the UK Government positions are more substantive when they are considered to be ‘in direct scope’, as opposed to examples where the focus of the committee or an agenda issue is a reserved area, though has implications for devolved competences. Another example of good practice emerging from our research that could be expanded was to increase devolved government engagement in preparing the agendas of TCA meetings as opposed to having first sight when agendas are nearly finalised. There were some suggestions that greater formalisation of the multilateral fora between officials often developed based on interpersonal relationships could be beneficial to the operation of the structures and would put in place an arrangement that facilitates dialogue and engagement between the governments.

1.6 As mentioned under 1.1, the UK-EU Interministerial Group (IMG) is the main ministerial-level forum for discussions between central and devolved governments regarding the TCA structures. Whereas the UK-EU Inter-Ministerial Group had met since 17 February 2022 and held 6 meetings up to early March 2024, its Terms of Reference (ToR) were only published in March 2024. No information regarding the committee was included in the list of Interministerial Groups on the UK Government website and no communiqués issued by the UK Government on the IMG until the 6 March 2024 meeting.<sup>11</sup> Our understanding is that the reason for lack of formal adoption of the terms of reference and communication vacuum prior to this point was the absence of a functioning government in Northern Ireland and no consequently no NI ministerial representation on the committee.

1.7 The UK-EU Interministerial Group’s Terms of Reference, confirmed in 2024, recognises UK devolved governments’ ‘active role in, and in places devolved responsibility for, the implementation of the Trade and Cooperation Agreement. The IMG aims to ‘support constructive intergovernmental relations on these matters’ and to ‘facilitate meaningful ministerial engagement [on the TCA and WA]’. It is to ‘include understanding where common approaches may be taken and where views differ, in order to promote effective intergovernmental working, respect areas of devolved competence, strengthen existing communication and improve transparency. Ministerial engagement will be supported by ongoing official-level engagement’.<sup>12</sup> These ToR effectively incorporate the principles and approach of the Review of Intergovernmental Relations. In addition, our research identified that the UK-EU IMG is considered in practice as the forum for escalating any issues that require ministerial-level involvement from engagement between the UK and devolved governments within the TCA committee structure.

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<sup>11</sup> See <https://www.gov.uk/government/collections/intergovernmental-relations#interministerial-group-on-uk-eu-relations>

<sup>12</sup> See <https://www.gov.uk/government/publications/interministerial-group-on-uk-eu-relations-terms-of-reference/interministerial-group-on-uk-eu-relations-terms-of-reference>

1.8 Our emerging findings suggest that it is helpful to differentiate between three periods in evaluating the role being played by the UK-EU IMG in relation to the TCA: February 2022 to September 2023, September 2023 to March 2024 and the period since July 2024 when Labour came into government at the UK level.

1.9 During the first period, there was no clear alignment between how the UK-EU IMG operated and the recently confirmed Terms of Reference. Ample examples suggest that the structure was not used to effectively consult devolved governments. Examples include UK-EU Interministerial Group (IMG) being postponed, or meetings being held at very short notice (sometimes a few hours), making it difficult for devolved government ministers to attend. Furthermore, the meetings were not always well planned in advance with little opportunity for devolved governments to inform the agenda. When they were held, they tended to be organised very close to key UK-EU meetings, thus providing limited opportunities for effective consultation or providing devolved governments with an opportunity to input into the UK's position in those discussions. Instead, they seemed to have operated largely as an information sharing exercise on the part of the UK Government.

1.10 Subsequent operation of the UK-EU IMG from September 2023 onwards is more in line with its ToR and in the direction of providing a means to more effectively consult devolved government, promote collaboration and the avoidance of disagreements. A number of interviewees suggested that from the 11 September 2023 meeting, communication regarding the practical details of the meeting beforehand has been more effective, including greater prior discussion of the agenda between the different governments. In addition, the more forward-looking content of the discussion focused on forthcoming UK-EU meetings, including TCA structures, provided greater opportunity for devolved governments to share their points of view for those discussions and to explore different positions prior to the meetings taking place.

1.11 We plan to conduct interviews in the near future to gain a better understanding of how IGR is being organised in UK-EU relations under a Labour Government. In practice, there is no public evidence of any of the main IMG structures having been utilised since July 2024. Whilst early usage of these structures would not be expected, it is somewhat surprising that UK-EU Interministerial Group has not met from September 2024 onwards. Between 4 September and 7 November 2024, 11 of the 18 TCA Specialised and Trade Specialised Committees have met in line with the legal requirement for them to meet at least once a year.<sup>13</sup> It signals that the operation of the UK-EU structures has resumed following elections in the UK, a new European Parliament elected and consequently the appointment of a new European Commission. Whilst the minutes of these meetings are not yet available, devolved government officials are likely to have attended these meetings in line with the arrangements set out in the Frost letter in 2021. From our emerging findings, it is also likely that official-level working will have functioned well prior to these meetings. However, as mentioned above under 1.7, the UK-EU IMG is viewed as the main ministerial-level forum in this context, including for the purpose of escalating

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<sup>13</sup> The European Commission website information points that the committees met as follows: Specialised Committee on Air Transport (SCAT) 4 September 2024, Trade Specialised Committee on VAT Administrative Cooperation and Recovery of Taxes 30 September 2024, Trade Specialised Committee on Public Procurement 3 October 2024, Trade Specialised Committee on Technical Barriers to Trade 7 October 2024, Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development 9 October 2024, Trade Specialised Committee on customs cooperation and rules of origin 17 October 2024, Trade Specialised Committee on Sanitary and Phytosanitary measures 21 October 2024, Trade Specialised Committee on Goods 23 October 2024, Trade Specialised Committee on Services, Investment and Digital Trade 24 October 2024, Trade Specialised Committee on Regulatory Cooperation 4 November 2024, Specialised Committee on Energy under the EU-UK Trade and Cooperation Agreement 7 November 2024.

matters in the context of UK and devolved governments engagement with the TCA committee structure. What role is it therefore playing under a new Labour Government?

## 2. Potential changes to the UK-EU relationship

Given our research, we focus on outlining potential for changes on the UK domestic intergovernmental relations context of the TCA dimension of the UK-EU relationship.

2.1 The Partnership Committee forms an important part of TCA governance and there is scope to increase the status of devolved government ministers within this forum and also to ensure stronger integration between this UK-EU Partnership Council structure and the UK-EU IMG.

2.2 There is a need to address the lack of clarity regarding the relative status of various intergovernmental statements in determining way in which IGR functions in the context of the TCA structures. For instance, does the Frost letter remain the basis for the operation of domestic intergovernmental relations in relation to the TCA structures? To what extent are these arrangements informed by the five principles of the review of intergovernmental relations beyond now being embedded in the ToR of the UK-EU IMG?

2.3 It would also be beneficial to ensure that there is sufficient recognition of the impact of areas covered by TCA structures on devolved competences, even if the specific focus of a TCA committee / working group is a reserved area. It is encouraging in this respect to see Welsh Government involvement in working groups in areas covered by the TCA that tend to be more associated with powers reserved to the UK Government but have a high impact on Wales, for instance due their repercussions for sectors of the Welsh economy. The wording of the Concordat on Co-ordination of European Union Policy Issues was more comprehensive in this respect in its awareness of the implications for devolved governments. For instance it committed to engage devolved ministers 'in decision-making on EU matters which touch on devolved areas (including non-devolved matters which impact on devolved areas and non-devolved matters which will have a distinctive impact of importance to Wales).'<sup>14</sup>

2.4 It is important to make full use of the formal intergovernmental structures that form part of the architecture surrounding the TCA structures, including the UK-EU IMG.

2.5 Intergovernmental would also benefit from greater formalisation of currently informal structures of multilateral engagement between officials in the context of the TCA structures.

### **Other information requested:**

We confirm that we are all over 18 years old.

Our names can be published alongside our evidence. There is no need to treat this written evidence as confidential

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<sup>14</sup> UK Government, *Devolution: Memorandum of Understanding and Supplementary Agreements* (2013) p. 25.