

Cytûn – Eglwysi ynghyd yng Nghymru

Papur briffio byr am ddeddfwriaeth Brexit a datganoli yng Nghymru

Ar 17 Hydref 2019, fe gyhoeddwyd [Cytundeb Ymadael diwygiedig](#) i'r Deyrnas Unedig ymadael â'r Undeb Ewropeaidd, ynghyd â datganiad gwleidyddol am fwriadau negodi perthynas y DU a'r UE i'r dyfodol, a threfniadau ar gyfer derbyn cydsyniad y Cynulliad yng Ngogledd Iwerddon ar gyfer trefniadau arbennig ar gyfer y dalaith honno. Ar 19 Hydref, penderfynodd Tŷ'r Cyffredin ohirio cymeradwyo'r Cytundeb hyd nes y byddai [Deddf yr Undeb Ewropeaidd \(Cytundeb Ymadael\)](#) wedi ei chymeradwyo. Cyflwynwyd y Bil hwnnw i'r Tŷ ar 21 Hydref ac fe dderbyniodd Ail Ddarlleniad (cytundeb mewn egwyddor) ar 22 Hydref. Fe gollir y Bil pan ddiddymir y Senedd ar gyfer yr Etholiad Cyffredinol, ond os yw'r Blaid Geidwadol yn ennill yr etholiad hwnnw disgwylir iddo gael ei ail-gyflwyno gyda'r bwriad o'i basio cyn ymadael â'r Undeb Ewropeaidd ar 31 Ionawr 2020. Gellir darllen esboniad llawnach o'r broses ddeddfu [fan hyn](#).

Mae'r Cytundeb newydd hwn yn debyg mewn llawer ffordd i'r Cytundeb blaenorol na lwyddodd San Steffan i'w dderbyn pan oedd Theresa May yn Brif Weinidog, ond mae wedi'i lunio y tro hwn gan ragweld perthynas rhwng y Deyrnas Unedig a'r Undeb Ewropeaidd yn y dyfodol ar sail Cytundeb Masnach Rydd a chyfres o gytundebau eraill mewn meysydd megis diogelwch a phlisma, addysg uwch ac ymchwil, cydweithredu ar atomfeydd, ayb, yn hytrach nag ar sail un bartneriaeth "ddofn ac arbennig" fel y rhagwelwyd gan lywodraeth Mrs May.

Y gwahaniaeth ddenodd fwyaf o sylw yw trin yr Iwerddon gyfan (y Gogledd a'r Weriniaeth) fel parth rheoleiddiol ar gyfer bwyd, diod, anifeiliaid a nwyddau, ac i greu ffin tollau gweinyddol rhwng yr ynys a gweddill y Deyrnas Unedig. Fe fydd gan hyn oblygiadau ymarferol sylweddol i borthladdoedd Caerdybi, Doc Penfro, Abergwaun ac Abertawe o ran llongau sy'n teithio rhyngddynt â'r Iwerddon. Mae'r porthladdoedd hyn wedi eu datganoli i Lywodraeth Cymru, ac fe ddywedodd Prif Weinidog Cymru, Mark Drakeford ar [Sunday Politics Wales](#) ar 20 Hydref, fod y Llywodraeth yn gweithio ar hyn, ond bod hynny'n anodd gan fod hwn yn newid polisi sydyn gan Lywodraeth y DU. Bydd gohirio ymadael tan 31 Ionawr 2020 yn rhoi rhywfaint mwy o gyfle i osod trefniadau yn eu lle.

Mae'r Bil yn cynnwys pwerau i Lywodraeth Cymru weithredu'r Cytundeb Ymadael mewn meysydd datganoledig, a bydd angen Cydsyniad Deddfwriaethol y Cynulliad ar gyfer nifer o'i gymalau. (Gellir gweld rhestr gyflawn o'r cymalau hyn ar dudalennau 118-119 o [Nodiadau Eglurhaol Llywodraeth y DU](#) am y Bil). Ni chafwyd amser i gynnig Cynnig Cydsyniad Deddfwriaethol ffurfiol i'r Cynulliad hyd yma, ond fe bleidleisiodd y Cynulliad ar Hydref 22 o 37-16 pleidlais i beidio â rhoi cydsyniad i'r Bil ar ei ffurf bresennol. Hyd yn oed pe na cheid cydsyniad, fe allai Senedd San Steffan weithredu'r Bil – fel y gwnaed gyda Deddf yr Undeb Ewropeaidd (Ymadael) 2018 wedi iddo fethu â derbyn cydsyniad Senedd yr Alban.

Gydag addoedi Senedd San Steffan ar 8 Hydref, fe gollwyd nifer o ddeddfau angenrheidiol eraill ar gyfer sicrhau trefniadau cyfreithiol llawn i'r Deyrnas Unedig ar ôl ymadael â'r Undeb Ewropeaidd. Ymhlith y rhain oedd y Bil Amaeth a'r Bil Pysgodfeydd, a oedd yn cynnwys rhoi pwerau angenrheidiol i Weinidogion Cymru i weinyddu yn y meysydd hyn hyd nes y gall Cynulliad Cenedlaethol Cymru gytuno deddfau Cymreig. Os cadarnheir y Cytundeb Ymadael maes o law gan San Steffan, fe fydd yna Gyfnod Gweithredu (neu Gyfnod Trosiannol) tan Ragfyr 2020 a fyddai'n rhoi cyfle i basio'r ddeddfwriaeth hon, er y byddai'r amser yn dynn iawn ar gyfer craffu effeithiol ar ddeddfwriaeth fanwl a chymhleth. Mae'n bosibl y gellid ymestyn y Cyfnod hwn tan Ragfyr 2021 neu Ragfyr 2022 trwy gytundeb o'r ddeutu rhwng y DU a'r UE erbyn diwedd Gorffennaf 2020.

Pe na byddai'r ddeddfwriaeth hon yn cael ei phasio'n gyflawn cyn y dyddiad ymadael, nid yw'n eglur sut y byddai Llywodraeth Cymru yn gweithredu heb y pwerau angenrheidiol yn y meysydd hyn. Mae yna berygl sylweddol y byddai raid i Lywodraeth Cymru a/neu Lywodraeth y DU weithredu ar frys trwy is-ddeddfwriaeth dan [Ddeddf yr Undeb Ewropeaidd \(Ymadael\) 2018](#). Prin yw'r cyfle i'r seneddau graffu ar is-ddeddfwriaeth frys, ac nid oes posibl ei gwella yn seneddol. Os gwneir is-ddeddfwriaeth o ran materion datganoledig yn San Steffan, yna ni bydd cyfle gan y Cynulliad graffu arni o gwbl.

Collwyd hefyd y Bil Masnach, a oedd ar ei gyfnod trafod olaf yn San Steffan, a oedd yn rhoi pwerau craffu i San Steffan ac yn gwarantu ymgynghori â Llywodraeth Cymru, am faterion – gan gynnwys materion

datganoledig – allai gael eu heffeithio gan gytundebau masnach yr Undeb Ewropeaidd fyddai'n cael eu cymhwyso hefyd i'r Deyrnas Unedig ar ôl ymadael. Deëllir nad yw'n fwriad ail-gyflwyno'r Bil hwn ac y bydd y cytundebau hyn yn cael eu cadarnhau bellach trwy bwerau Llywodraeth y DU dan y Rhagorffaint Frenhinol. Prin yw gallu San Steffan, ac nid oes unrhyw allu gan y Cynulliad, i graffu ar y defnydd o'r pwerau hyn. Fe ymddengys hefyd y gall fod yna fwriad i negodi a chadarnhau cytundebau masnach cwbl newydd, a fyddai bron yn sicr yn effeithio ar faterion datganoledig, gan ddefnyddio pwerau rhagorffreiniol.

Yn y sesiwn fer o Senedd San Steffan a gychwynwyd ar Hydref 14, fe gyflwynwyd am y tro cyntaf [Bil yr Amgylchedd](#). Mae hwn hefyd yn cynnwys trefniadau newydd ar reolaeth amgylcheddol yn y DU, gan gynnwys yng Nghymru. Mae'r Bil yn gymhleth, gyda chlytwaith o gymalau sy'n ymwneud â materion datganoledig a rhai nad ydynt. Bydd angen i'r Cynulliad gydsynio â'r Bil hwn, ond yn San Steffan y bydd y prif drafod. Fe gollir y Bil hwn hefyd gyda difodi'r Senedd erbyn yr Etholiad Cyffredinol. Disgwylir i Lywodraeth Cymru gyflwyno deddfwriaeth benodol Gymreig maes o law. Heb honno, bydd y Bil hwn hefyd yn angenrheidiol i Lywodraeth Cymru weithredu ar ôl ymadael â'r Undeb Ewropeaidd.

Gethin Rhys, Swyddog Polisi 31.10.2019

Cytûn – Churches together in Wales

Short briefing paper on Brexit legislation and devolution in Wales

On 17 October 2019, a [revised Withdrawal Agreement](#) was published, to allow the UK to leave the EU, together with a political declaration regarding negotiating intentions for the future UK-EU relationship, and arrangements for obtaining the consent of the Northern Ireland Assembly for special arrangements for that province. On 19 October, the House of Commons resolved to postpone ratification of the Agreement until the [European Union \(Withdrawal Agreement\) Bill](#) is passed. This Bill was laid before the House on 21 October, and passed its Second Reading (agreement in principle) on 22 October. The Bill will be lost when Parliament is dissolved for the General Election, but if the Conservative Party win that election it is expected to be reintroduced with the intention that it be passed in time to allow departure from the European Union on 31 January 2020. An explanation of the legislative process can be read [here](#).

This new Agreement is similar in many ways to the previous Agreement which failed to receive Parliamentary approval when Theresa May was Prime Minister, but drawn up this time on the basis that the future relationship between the UK and the EU will be based on a Free Trade Agreement and a series of other agreements in areas such as security and policing, higher education and research, co-operation regarding nuclear power, etc., rather than on the basis of a single “deep and special partnership” as suggested by Mrs May’s Government.

The difference which has attracted most attention is treating Ireland as a whole (the North and the Republic) as a single regulatory zone for food, drink, animals and goods, and creating an administrative customs border between the island and the remainder of the UK. This will have significant practical implications for the ports of Holyhead, Pembroke Dock, Fishguard and Swansea with regard to sailings between them and Ireland. The ports are devolved to the Welsh Government, and the First Minister of Wales, Mark Drakeford, said on [Sunday Politics Wales](#) on 20 October that the Government is working on this, but that this is difficult due to the UK Government’s sudden policy change in this matter. The delay in departure until 31 January 2020 will give some greater opportunity to put arrangements in place.

The Bill includes powers for Welsh Government to implement the Withdrawal Agreement in devolved policy areas, and a number of its clauses require Legislative consent from the Welsh Assembly. (A full list of these clauses can be found on pages 118-199 of the [UK Government’s Explanatory Notes](#) on the Bill). There has so far not been time to table a formal Legislative Consent Motion before the Assembly, but the Assembly on October 22 voted by 37-16 not to consent to the Bill in its current form. Even if no legislative consent is forthcoming, Westminster could enact the Bill – as was done in the case of the European Union (Withdrawal) Act 2018 when the Scottish Parliament failed to consent.

When the Westminster Parliament was prorogued on 8 October, a number of other laws essential for securing full legal arrangements for the UK following exit from the EU. Amongst these was the Agriculture Bill and the Fisheries Bill, which included powers needed by Welsh Ministers to administer these areas until the National Assembly for Wales can pass Welsh legislation. If the Withdrawal Agreement is in due course ratified at Westminster, there will be an Implementation (or Transition) Period until December 2020 which would give the opportunity to pass this legislation, although scrutiny time would be constricted for such complex and important legislation. It would be possible, by mutual agreement between the UK and the EU by July 2020, to extend this Period until December 2021 or December 2022.

Should this legislation not be passed in its entirety prior to exit day, it is not clear how the Welsh Government could proceed without the necessary powers in these areas. There is a significant risk that the Welsh Government and/or the UK Government might have to operate swiftly using secondary legislation under the [European Union \(Withdrawal\) Act 2018](#). Accelerated secondary legislation receives little parliamentary scrutiny, and parliamentary amendment is impossible. If secondary legislation regarding devolved matters is made in Westminster, the Assembly will have no opportunity at all to scrutinise it.

Also lost at prorogation was the Trade Bill, which was at its final stage in Westminster. It would have given Westminster scrutiny powers and guaranteed consultation with Welsh Government regarding matters – some devolved – which might be affected by EU trade agreements which will be ‘rolled over’ to relate also

to the United Kingdom following exit. It is understood that it is not intended to reintroduce this Bill and that these agreements will instead be ratified by the UK Government using the Royal Prerogative. Westminster's ability to scrutinise use of these powers is very limited, and the Assembly has no such ability. It appears also that there may be an intention to negotiate and ratify wholly new trade agreements, which would almost certainly affect devolved matters, using prerogative powers.

In the brief session of the Westminster Parliament which began on October 14, an [Environment Bill](#) was introduced for the first time. This includes new arrangements for environmental regulation in the UK, including Wales. The Bill is complex, interweaving clauses relating to devolved matters with those that do not. The Assembly will need to consent to this Bill, but the principal debates will be held in Westminster. This Bill will also be lost with the dissolution of Parliament prior to the General Election. It is expected that Welsh Government will introduce specific Welsh legislation in due course. Until Welsh legislation is passed, this Westminster Bill will also be essential for Welsh Government to operate after leaving the European Union.

Gethin Rhys, Policy Officer 31.10.2019