



HOUSE OF LORDS

European Union Committee

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22nd Report of Session 2019–21

# **Beyond Brexit: food, environment, energy and health**

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### *The European Union Committee*

The European Union Select Committee and its four Sub-Committees are appointed each session to consider EU documents and draft laws; to consider other matters relating to the UK's relationship with the EU, including the implementation of the UK/EU Withdrawal Agreement, and the Government's conduct of negotiations on the United Kingdom's future relationship with the European Union; and to consider matters relating to the negotiation and conclusion of international agreements generally.

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Evidence is published online at <https://committees.parliament.uk/work/944/future-ukeu-relations-energy-environment-and-health/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

People rely on food, energy, healthcare, and a clean and safe environment every day; they are fundamental to our existence. Access to each of these, for individuals and businesses, will be shaped by the EU-UK Trade and Cooperation Agreement (TCA):

- Tariff-free access to the EU's market for food and agricultural produce was the industry's main goal and has been achieved by the TCA, but businesses nonetheless find themselves facing new structural trade barriers in the form of sanitary and phytosanitary measures, extra paperwork, increased haulage costs, and outright export bans on some products. The Trade Specialised Committee on Sanitary and Phytosanitary Measures will have a crucial role in resolving those challenges where change is possible without renegotiating the Agreement.
- The TCA's tariff-free trading arrangements are also positive for the fishing industry, but fishers face substantial barriers to exporting their produce to the EU. Many of those barriers will be long-term, despite the Government's description of them as 'teething problems'. These challenges are compounded by the industry's disappointment with the gradual fishing quota uplift set out by the TCA.
- We welcome the priority given to climate change as one of the TCA's essential elements, and the acknowledgement that it is the most serious challenge of our time. It is also encouraging that the TCA includes provisions designed to avoid limiting ambition on environment and climate change protections. But we note that the TCA requires effective domestic enforcement of environment laws, and we urge the Government to follow Scotland's lead and establish the legislative basis for the Office for Environmental Protection as a matter of urgency.
- Witnesses warned that the current and envisaged electricity trading arrangements under the TCA are likely to be less efficient than before, with a potential impact on consumer energy prices. We look to the Specialised Committee on Energy to improve arrangements for cross-border electricity trading as far as possible, and resolve the many energy matters that are still outstanding. The energy industry's main goal is for the UK and EU to link emissions trading systems, so we urge the Government to progress those negotiations swiftly.
- The benefits to the UK's chemical industry of maintaining tariff-free access to the EU market will, unfortunately, be undermined in the short-to-medium term by the costs of securing the information necessary to register with the UK's new system of chemical regulation, UK REACH. It is disappointing that the challenges facing the industry do not appear to be fully recognised by the Secretary of State. Further action may be needed to reduce the impact of the new regime on the sector.
- Patient groups welcomed the replacement healthcare arrangements for UK residents when they travel in the EU, and we are encouraged by early signs of continued UK-EU cooperation on cross-border threats to health. But we note with concern that the shortage of social care staff in the UK will be exacerbated by the Government's post-Brexit immigration policy, and see no evidence of a credible plan from the Government to address that shortage.

Across these wide-ranging policy areas, some common themes emerge. The food, fish and chemicals sectors benefit substantially from tariff-free access to the EU market, notwithstanding the significant non-tariff barriers that arise. There are welcome signals in the TCA of the intention for the UK and EU to cooperate on addressing climate change, trading emissions, and monitoring cross-border health threats. Government will need to resource a great many new systems, certifications, and ways of working with devolved administrations and enforcement bodies.

Among the new ways of working we include the Specialised Committees, which will be crucial for improving arrangements where the TCA allows for extended or deepened cooperation in the future. We regret the Government's decision to delay establishing these Committees, which should in fact be a priority in view of the benefits they could bring.

Despite the improvements that we hope to see arising from the Specialised Committees, it is incontrovertible that there are now new barriers to UK-EU relations in each of these areas, and while we acknowledge that some will be temporary as both Parties adjust, others—such as new administrative costs and burdens—will be structural and long-term. This has yet to be truly acknowledged by the Government.

Perhaps most of all, we need to recognise that in EU terms we are now a third country. In the TCA and the Protocol on Ireland/Northern Ireland we have international treaties between the UK and EU that were agreed after hard negotiation. They are done deals that cannot, at least in the short term, be renegotiated. Both the UK and EU have largely achieved their objectives; they now have to accept the consequences, both the good and the inconvenient.

# Beyond Brexit: food, environment, energy and health

## CHAPTER 1: INTRODUCTION

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### The story so far

1. On 24 December 2020, four and a half years after the people of the United Kingdom voted to leave the European Union, negotiators representing the two sides finally agreed the terms of the future UK-EU relationship and published the EU-UK Trade and Cooperation Agreement (TCA).<sup>1</sup>
2. The process that led to the publication of the TCA was long-drawn-out. On 29 March 2017 the then Prime Minister, Rt Hon Theresa May MP, formally notified the EU of the UK's intention to withdraw from the EU in accordance with Article 50 of the Treaty on European Union. This triggered a two-year period within which, according to Article 50, the two sides were to “negotiate and conclude an agreement ... setting out the arrangements for [the UK's] withdrawal, taking account of the framework for its future relationship with the Union”.<sup>2</sup> After the new Prime Minister, Rt Hon Boris Johnson MP, secured a general election victory in December 2019, a revised Withdrawal Agreement was approved and ratified, allowing the United Kingdom to leave the EU on 31 January 2020.
3. Upon ceasing to be an EU Member State, the United Kingdom entered into a transition period during which EU law continued to apply. The transition period was intended to give stability, providing reassurance to citizens and businesses while the terms of the new UK-EU relationship were negotiated and agreed. Originally envisaged as a two-year period, delays to reaching the Withdrawal Agreement meant that the transition period lasted a mere 11 months.
4. As a result, the more than 1,200 pages of the TCA were negotiated and agreed at extraordinary pace. This time pressure was compounded by intense political scrutiny, as well as the challenges of the ongoing COVID-19 pandemic. The TCA published on 24 December was therefore a draft, containing some errors, and requiring further legal checking (or ‘scrubbing’) prior to ratification.<sup>3</sup> It was also accompanied by 15 Declarations agreed by the Parties, setting out their intention to address various unresolved matters.
5. Despite its unfinished quality, the TCA marks a critical shift in UK-EU relations. From the moment Theresa May triggered the Article 50 process on 29 March 2017 there was the risk of a chaotic Brexit, without any agreement being reached on a host of issues of vital mutual interest. That is why, as long ago as December 2017, this Committee warned: “‘No deal’ would mean the abrupt cessation of over 40 years of economic, political and legal partnership. It is difficult, if not impossible, to envisage a worse outcome for the United Kingdom.”

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1 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one Part, and the United Kingdom of Great Britain and Northern Ireland, of the other Part (24 December 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK\\_Trade\\_and\\_Cooperation\\_Agreement\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf) [accessed 5 February 2021]

2 Article 50, Treaty on European Union, [OJ C 326](#) (consolidated version of 26 October 2012)

3 The Agreement was provisionally applied with effect from the end of the transition period on 31 December 2020, pending completion of ratification procedures on the EU side (which requires a vote in the European Parliament).

6. As we launched this inquiry it appeared that the publication of the TCA, along with the Withdrawal Agreement, had averted the risk of ‘no deal’. Then the Government’s announcement that it would unilaterally extend certain ‘grace periods’ provided for in the Protocol on Ireland/Northern Ireland first led the European Parliament to suspend plans to vote on the agreement—a necessary pre-condition for EU ratification—and then prompted the European Commission to announce that it would take action against the UK.<sup>4</sup> As a result, while the existence of the TCA has certainly lessened the risk of ‘no deal’, it has not wholly removed it.

### **This inquiry**

7. In this inquiry we examined aspects of the TCA that fall within the remit of the EU Environment Sub-Committee: agriculture and food, fishing, environment and climate change, energy, chemicals, and health. We sought to explore the provisions in the TCA, any challenges that arise and how they could be resolved, and where UK-EU relations should go from here. Many of those sectors benefit substantially from the tariff-free access to the EU market secured by the TCA, but, as we explore in this report, will be affected in other ways.
8. This report, and the four companion reports published in the same week, are the European Union Committee’s final contributions to almost 50 years of debate on the UK’s relationship with the European Union. As explored in the report, the institutional arrangements envisaged by the TCA have in most cases not yet been implemented, and business are still adapting to the new terms of trade, so it is too early to provide a full assessment of the Agreement’s impact; nonetheless, in analysing the TCA our aim is to look forward, not back. We have published many reports over the last four years on the Government’s conduct of the Brexit negotiations, its objectives and its red lines. Our priority now is to look beyond Brexit itself, and explore how the structures established under the Withdrawal Agreement and the TCA can be used most effectively to support good UK-EU relations in the years ahead.
9. The EU Environment Sub-Committee, whose members are listed in Appendix 1, met in January and February 2021 to take evidence for this inquiry. We are grateful to those who gave oral evidence and to those who responded to our call for evidence, all of whom are listed in Appendix 2.
10. In addition, we have drawn on the many reports published by our predecessor committee, the Energy and Environment Sub-Committee, since the referendum, as well as others where relevant:
- *Brexit: agriculture*<sup>5</sup>
  - *Brexit: chemical regulation*<sup>6</sup>

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4 On 15 March 2021 the European Commission announced that, as a result of the UK’s unilateral action, it would commence infringement proceedings against the UK, and that unless the UK entered into consultations in the Joint Committee, in good faith, with the aim of reaching a mutually agreed solution, the EU would also trigger the dispute settlement procedure contained in the Withdrawal Agreement. See European Commission, ‘Withdrawal Agreement: Commission sends letter of formal notice to the United Kingdom for breach of its obligations under the Protocol on Ireland and Northern Ireland’, 15 March 2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1132](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1132) [accessed 16 March 2021]

5 European Union Committee, *Brexit: agriculture* (20th Report, Session 2016–17, HL Paper 169)

6 European Union Committee, *Brexit: chemical regulation* (23rd Report, Session 2017–19, HL Paper 215)

- *Brexit: energy security*<sup>7</sup>
  - *Brexit: environment and climate change*<sup>8</sup>
  - *Brexit: farm animal welfare*<sup>9</sup>
  - *Brexit: fisheries*<sup>10</sup>
  - *Brexit: food prices and availability*<sup>11</sup>
  - *Brexit: plant and animal biosecurity*<sup>12</sup>
  - *Brexit: reciprocal healthcare*<sup>13</sup>
11. The Sub-Committee also drew on previous non-report inquiries on Brexit and: trade in waste,<sup>14</sup> food safety risk management,<sup>15</sup> the Office for Nuclear Regulation,<sup>16</sup> carbon pricing,<sup>17</sup> enforcement of environmental law,<sup>18</sup> access to UK fisheries,<sup>19</sup> environment and the level playing field,<sup>20</sup> and agrifood and the Protocol on Ireland/Northern Ireland.<sup>21</sup>
12. **We make this report to the House for debate.**

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7 European Union Committee, *Brexit: energy security* (10th Report, Session 2017–19, HL Paper 63)

8 European Union Committee, *Brexit: environment and climate change* (12th Report, Session 2016–17, HL Paper 109)

9 European Union Committee, *Brexit: farm animal welfare* (5th Report, Session 2017–19, HL Paper 15)

10 European Union Committee, *Brexit: fisheries* (8th Report, Session 2016–17, HL Paper 78)

11 European Union Committee, *Brexit: food prices and availability* (14th Report, Session 2017–19, HL Paper 129)

12 European Union Committee, *Brexit: plant and animal biosecurity* (21st Report, Session 2017–19, HL Paper 191)

13 European Union Committee, *Brexit: reciprocal healthcare* (13th Report, Session 2017–19, HL Paper 107)

14 EU Energy and Environment Sub-Committee, ‘Impact of Brexit on the UK’s trade in waste inquiry’: <https://old.parliament.uk/business/committees/committees-a-z/lords-select/eu-energy-environment-subcommittee/inquiries/parliament-2017/impact-of-brexit-on-the-uks-trade-in-waste/> [accessed 23 February 2021]

15 EU Energy and Environment Sub-Committee, ‘Food safety risk management post-Brexit’: <https://old.parliament.uk/business/committees/committees-a-z/lords-select/eu-energy-environment-subcommittee/inquiries/parliament-2017/food-safety-risk-management-postbrexit/> [accessed 23 February 2021]

16 EU Energy and Environment Sub-Committee, ‘The Office of Nuclear Regulation’s Brexit preparedness’: <https://old.parliament.uk/business/committees/committees-a-z/lords-select/eu-energy-environment-subcommittee/inquiries/parliament-2017/office-of-nuclear-regulation-brexit-preparedness/> [accessed 23 February 2021]

17 EU Energy and Environment Sub-Committee, ‘Post-Brexit carbon pricing inquiry’: <https://old.parliament.uk/business/committees/committees-a-z/lords-select/eu-energy-environment-subcommittee/inquiries/parliament-2017/post-brexit-carbon-pricing/> [accessed 23 February 2021]

18 EU Energy and Environment Sub-Committee, ‘Post-Brexit enforcement of environmental law’: <https://old.parliament.uk/business/committees/committees-a-z/lords-select/eu-energy-environment-subcommittee/inquiries/parliament-2017/post-brexit-enforcement-environmental-law/> [accessed 23 February 2021]

19 EU Environment Sub-Committee, ‘Access to UK fisheries post-Brexit: <https://committees.parliament.uk/work/17/access-to-uk-fisheries-postbrexit/>

20 EU Environment Sub-Committee, ‘Environment and the Level Playing Field’: <https://committees.parliament.uk/work/333/environment-and-the-level-playing-field/>

21 EU Environment Sub-Committee, ‘Agri-food and the Northern Ireland Protocol’: <https://committees.parliament.uk/work/332/agrifood-and-the-northern-ireland-protocol/>

## CHAPTER 2: FOOD AND AGRICULTURAL PRODUCE TRADE

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### Background and context

13. The EU sets standards for food, farm animal health and welfare, and plant protection products, and has put in place regulatory frameworks that govern genetically modified organisms, organic farming, plants and plant products, and the marketing of seeds and plant reproductive materials. These measures facilitate the free movement of food and agricultural produce within the EU Single Market. While a Member State, these standards and regulatory frameworks applied to the UK and it benefited from trading freely within the EU Single Market. We considered this in detail in our report *Brexit: agriculture*.<sup>22</sup>
14. In the absence of agreements with the EU, a third country<sup>23</sup> trading into the EU typically faces tariff and non-tariff barriers. Tariffs are established by the EU's Common External Tariff and apply alongside customs processes. Food and agricultural produce entering the EU market must also comply with the EU's standards and regulations, and faces specific non-tariff barriers associated with sanitary and phytosanitary (SPS) measures, which are in place to protect human, animal and plant life from risks associated with pests, diseases, additives, contaminants and toxins.<sup>24</sup>
15. By virtue of the Protocol on Ireland/Northern Ireland, EU customs legislation and product regulations continue to apply to Northern Ireland. This enables goods to be moved between Northern Ireland and Ireland and the other EU Member States without tariffs or new regulatory checks. There will be checks required on the movement of food and agricultural products from Great Britain to Northern Ireland, though in December 2020 the Government and the European Commission agreed a number of limited grace periods that took effect from the end of the transition period, during which reduced requirements for paperwork and controls will apply to those movements.<sup>25</sup>
16. During the Brexit process, the food and agricultural produce sectors emphasised the key role of the EU export market for the viability of their businesses, due to both the volume of those exports and the demand for animal products for which there is no market in the UK.<sup>26</sup> As with other sectors, the UK and EU's food manufacturing supply chains have also become closely integrated.<sup>27</sup>

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22 European Union Committee, *Brexit: agriculture* (20th Report, Session 2016–17, HL Paper 169)

23 A non-EU Member State.

24 This definition draws on the World Trade Organization's (WTO) webpage on the WTO Agreement on SPS measures: World Trade Organisation, 'Understanding the WTO Agreement on Sanitary and Phytosanitary Measures': [https://www.wto.org/english/tratop\\_e/sps\\_e/spsund\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm) [accessed 24 February 2021]

25 Unilateral declarations by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on meat products; Unilateral declarations by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on official certification. Both available at: Cabinet Office, 'The Northern Ireland Protocol': <https://www.gov.uk/government/publications/the-northern-ireland-protocol> [accessed 24 February 2021]

26 Oral evidence taken before the EU Environment Sub-Committee session on UK-EU agrifood trade, 16 December 2020 (Session 2019–21), [Q 1](#) (Martin Morgan and Helen Roberts)

27 Written evidence from the Provision Trade Federation ([EEH0023](#))

### The Trade and Cooperation Agreement

17. The EU-UK Trade and Cooperation Agreement (TCA)<sup>28</sup> provides for tariff- and quota-free trade between Great Britain and the EU if a product meets ‘rules of origin’ requirements—criteria used to determine where a product was made. The TCA allows EU components used in the manufacture of GB products, and vice versa, to count towards a product meeting rules of origin requirements and so qualifying for tariff-free trade.
18. With regard to customs, Article CUSTMS.17 requires each Party to endeavour to establish a single window through which traders can submit documentation for the import, export and transit of goods.
19. The ‘Trade in Goods’ Title of the TCA includes a chapter on SPS measures (Chapter 3), one objective of which is to ensure that the Parties’ SPS measures do not create unnecessary barriers to trade (Article SPS.1(c)). A Trade Specialised Committee on Sanitary and Phytosanitary Measures is established elsewhere in the TCA (Article INST.2(d)), and Article SPS.19(d) provides the Committee with a power to regularly review the two Parties’ SPS measures in order to facilitate trade between them.
20. The TCA also includes a specific annex on organic products, which provides for the recognition of one another’s organics regimes as equivalent (Annex TBT-4: Organic Products).
21. Organisations from across the food and agricultural produce sectors were relieved that the TCA provides for tariff-free trade. Nick von Westenholz, Director of International Trade and Business Strategy at the National Farmers’ Union, told us: “The overriding reaction from us ... was probably relief. The implications of not securing a deal between the UK and the EU were pretty serious for agriculture, primarily because of the impact tariffs would have had on trade and agrifood products.”<sup>29</sup>
22. Which? noted the implications for consumers if the Government and the EU had failed to reach an agreement: “If tariffs had been imposed consumers would have seen significant price rises, with tariffs on food especially high.”<sup>30</sup>
23. The Rt Hon George Eustice MP, Secretary of State for Environment, Food and Rural Affairs, also singled out what the TCA achieves on tariffs: “The first thing to say is that the Agreement that we have delivers tariff-free trade on all goods. It is fair to say that that will be a relief for most sectors ... It does so in a way that preserves our regulatory autonomy.”<sup>31</sup>
24. Witnesses were less positive about other aspects of the TCA, especially the SPS Chapter. James Russell, President of the British Veterinary Association (BVA), told us that the SPS Chapter is “very thin” and “essentially restates” what already exists at the World Organisation for Animal Health and World Trade Organization (WTO) level.<sup>32</sup> Dominic Goudie, Head of International Trade at the Food and Drink Federation, agreed: “For sanitary and phytosanitary checks the reality is that there is very little difference from a no-deal scenario ... We have less generous access on sanitary and phytosanitary

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28 [Trade and Cooperation Agreement, 24 December 2020](#)

29 [Q 2](#)

30 Written evidence from Which? ([EEH0032](#))

31 [Q 47](#)

32 [Q 11](#)

checks than New Zealand, who do not even have a preferential trade deal with the EU.”<sup>33</sup>

25. **Tariffs and quotas on food and agricultural produce trade would have threatened the viability of some producers and led to rises in consumer food prices. We share the relief of businesses that an agreement was reached that provides for tariff and quota-free trade.**
26. **We are disappointed that the Government and the EU did not achieve more through the sanitary and phytosanitary measures Chapter of the TCA. This has resulted in substantial barriers to trade which risk reducing the profitability of parts of Great Britain’s food and agricultural produce sectors. We recommend that the Government seeks supplementary agreements with the EU in these areas, along the lines of the EU-New Zealand agreement. We find it strange that the TCA accomplishes less on sanitary and phytosanitary measures in comparison.**

### **Making the agreement work with the EU**

#### *Trade Specialised Committee on Sanitary and Phytosanitary Measures*

27. James Russell noted that there will be a potential avenue to resolve SPS issues with the EU through one of the committees established by the TCA: “We welcome that the Trade Specialised Committee on Sanitary and Phytosanitary Measures will exist where the two sides can meet to discuss those issues and hopefully simplify things as much as they can within the deal.”<sup>34</sup> Nick von Westenholz urged the Government and the EU to set up the body quickly.<sup>35</sup>
28. Which? stressed the importance of the Trade Specialised Committee on SPS Measures reflecting consumers’ interests:

“[It] will have an important role in defining how provisions are applied and therefore the standards that UK consumers can expect ... It is important that the Committee has strong consumer interest representation from across government and operates transparently.”<sup>36</sup>

The BVA also called for the Government to engage industry and the veterinary profession on solutions to bring to the Committee.<sup>37</sup>

29. The Secretary of State explained: “On the Specialised Committee on SPS, we will be in discussion with the EU about the membership of that. It has not met yet, and the membership is not yet finally settled ... The purpose of the committee will be to work through and resolve any bilateral issues there are in the SPS field.”<sup>38</sup> In the same session on 3 February 2021, Mark Thompson, Deputy Director of EU Strategy and Negotiations at Defra, added: “None of the committees under the TCA has yet formally agreed dates to meet ... We might expect the arrangements to be made in the next few weeks.”<sup>39</sup>

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33 [Q 2](#)

34 [Q 11](#)

35 [Q 4](#)

36 Written evidence from Which? ([EEH0032](#))

37 Written evidence from the BVA ([EEH0027](#))

38 [Q 50](#)

39 [Q 50](#)

30. In a letter to the Chair of the EU Select Committee on 23 February, the Chancellor of the Duchy of Lancaster, the Rt Hon. Michael Gove MP, said, “We do not consider that the Partnership Council and other bodies established under Title III of the Agreement should begin their work formally during the period of provisional application.”<sup>40</sup> On the same day, the Government accepted the EU’s request to extend provisional application of the TCA to 30 April, pending ratification by the European Parliament.<sup>41</sup>
31. **We regret the Government’s decision to defer establishing the Partnership Council and other bodies and urge it to review this position. We are especially frustrated by the delay in setting up the Trade Specialised Committee on SPS Measures. We urge the Government to work with the European Commission to set up the Committee swiftly, and for it to operate inclusively and with transparency.**

*Future regulatory divergence*

32. Witnesses noted that the central achievement of the TCA, tariff and quota-free trade, could be put at risk by future divergence. This is because the rebalancing mechanism in the TCA could allow a Party to introduce tariffs if significant divergences in environment or climate protection, among other areas, were to affect trade or investment between the Parties.<sup>42</sup> Nick von Westenholz told us: “There is an elephant in the room. We are dealing with the here and now, but central to the Agreement is the possibility of regulatory divergence in future, maybe in the quite near future, and the potential implications of either side introducing new trade barriers, through tariffs, for example.”<sup>43</sup>
33. Regardless of the potential impact upon tariff-free trade, the National Sheep Association (NSA) noted that instances of regulatory divergence could result in increased checks on Great Britain’s exports to the EU: “Our exploration of gene editing will be seen as inflammatory so soon after leaving the EU and is likely to result in increasing safeguards and checks.”<sup>44</sup>
34. Nick von Westenholz therefore urged the Government to develop an approach to regulatory divergence that factors in the potential trade barriers that may arise as a consequence, “So that we do not find ourselves suddenly facing additional trade barriers to those that already exist and that we are trying to mitigate.”<sup>45</sup>
35. **Trade in food and agricultural produce between Great Britain and the EU will suffer if significant policy divergences on either side lead to tariffs and increased checks being introduced. Both sides should thoroughly assess potential trade barriers that may arise as they develop approaches to regulating and supporting food and agricultural production.**

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40 Letter from the Chancellor of the Duchy of Lancaster, Michael Gove to the Chair of the European Union Committee, Lord Kinnoull, dated 23 February 2021: <https://committees.parliament.uk/publications/4775/documents/48216/default/>

41 Letter from the Chancellor of the Duchy of Lancaster, Michael Gove to European Union Vice-President, Maroš Šefčovič, dated 23 February 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/963820/CDL\\_to\\_Maros\\_Sefcovic.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/963820/CDL_to_Maros_Sefcovic.pdf)

42 The rebalancing mechanism is explored in more detail in Chapter 4 of this report.

43 [Q 6](#)

44 Written evidence from the NSA ([EEH0018](#))

45 [Q 6](#)

## GB-EU trade: preparing to export

### *Listing and equivalence*

36. Non-EU states must be granted ‘third country listing’ by the EU before they can export many food and agricultural products to the EU market. This entails meeting certain regulatory requirements, which can include having systems in place that are equivalent to those that apply within the EU. Further to listing, trade partners can reach an agreement to recognise one another’s regulatory regimes for certain products as equivalent, which can reduce the levels of paperwork and border controls—a point stressed to us by Peter Alvis, Chairman of the Royal Association of British Dairy Farmers, in December.<sup>46</sup> The terms ‘listing’ and ‘equivalence’ are sometimes used interchangeably.
37. The Government secured third country listing shortly before the end of 2020,<sup>47</sup> allowing the UK to continue exporting animal products to the EU. However, Dominic Goudie highlighted that the EU had not made a positive listing decision for all products before the end of the transition period: “The list of prohibited and restricted goods that came in on 1 January means that seed potato producers and producers of certain types of fresh and processed meat products have had a hard stop to their trade with the EU and are not able to continue exporting.”<sup>48</sup> The Agricultural Industries Confederation told us that trade in seeds was affected.<sup>49</sup> Dominic Goudie said that “in the case of the seed potato industry an application has gone to the EU to try to get approval for its sector”.<sup>50</sup> At the time of writing, the European Commission has reportedly dismissed the Government’s most recent listing application for seed potatoes.<sup>51</sup>
38. More positively, the Agricultural Industries Confederation were pleased that the TCA’s organic products annex includes agreement on equivalence: “The TCA’s equivalence agreement on organics is very welcome, as it means that products certified as organic in one market can be recognised as organic in the other.”<sup>52</sup>
39. In response to our concerns over listing, the Secretary of State responded: “Although some goods are still unable to be exported, we are continuing to press for prohibitions that were not lifted in December 2020 to be removed.”<sup>53</sup> On equivalence, he said:

“We have agreed a framework that allows both the UK and the EU to take independent decisions on trade facilitations. It commits us both to avoiding unnecessary barriers overall ... Given the EU’s rejection

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46 Oral evidence taken before the EU Environment Sub-Committee session on UK-EU agrifood trade, 16 December 2020 (Session 2019–21), [Q 8](#)

47 Letter from the Secretary of State for Environment, Food and Rural Affairs, George Eustice to the Chair of the EU Environment Sub-Committee, Lord Teverson, dated 22 January 2021: <https://committees.parliament.uk/publications/4664/documents/47031/default/>

48 [Q 3](#)

49 Written evidence from the Agricultural Industries Confederation ([EEH0034](#))

50 *Ibid.*

51 Agriculture and Horticulture Development Board (AHDB) ‘EU Exit Perspectives: Seed potatoes at EU crossroads’: <https://ahdb.org.uk/news/eu-exit-perspectives-seed-potatoes-at-eu-crossroads> [accessed 24 February 2021]

52 Written evidence from the Agricultural Industries Confederation ([EEH0034](#))

53 Letter from the Chair of the EU Environment Sub-Committee, Lord Teverson to the Secretary of State for Environment, Food and Rural Affairs, George Eustice, dated 22 January 2021, p 3: <https://committees.parliament.uk/publications/4664/documents/47031/default/>

of equivalence, we have agreed an alternative approach that can deliver similar outcomes in terms of future non-tariff measure reductions.”<sup>54</sup>

40. **Some of Great Britain’s exports of food and agricultural products to the EU, such as seed potatoes, have come to a complete halt following the end of the transition period, with severe impacts on the affected sectors.**
41. **We welcome the TCA’s equivalence agreement on organics, but we are dismayed that the agrifood sector more widely is facing increased trade frictions because other equivalence agreements could not be reached.**

*A marked increase in paperwork and preparation required*

42. The Agriculture and Horticulture Development Board (AHDB) summarised the new trading arrangements and their implications for food and agricultural produce:

“The UK is now trading with the EU as a third country. As such the so called ‘trade friction’, the additional physical checks, advance notification of loads, export health certificates, labelling requirements and extra time spent crossing borders all add cost in agricultural supply chains that are designed to be ‘just in time’ with little room for slippage and where margins are already squeezed.”<sup>55</sup>

43. Alvis Bros Ltd used the example of exporting an organic product of animal origin with some third party ingredients:

“We estimate that there are now approximately 44 steps to export to EU versus the 7 steps we enjoyed when part of the single market and customs union. We move from a lead time of approximately 2 weeks to a lead time of over 4 weeks—the new arrangements are making us slower, less flexible and add cost.”<sup>56</sup>

Alvis Bros Ltd added: “We can expect that the requirements will be too much for small, niche organic producers on their own.”<sup>57</sup>

44. Dominic Goudie explained that the paperwork is not yet all online: “As far as export health certificates and rules of origin are concerned, a lot of work is still paper-based for the industry. A lot of the systems in place operate for government, but businesses have to do a lot of manual form-filling.”<sup>58</sup>
45. On top of the additional certification required, Andrew Opie, Director of Food and Sustainability at the British Retail Consortium, noted challenges associated with a requirement to provide advanced notification of export: “The other problem with ... the situation away from the border is the notification period that is required to send products of animal origin to the

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54 Letter from the Chair of the EU Environment Sub-Committee, Lord Teverson to the Secretary of State for Environment, Food and Rural Affairs, George Eustice, dated 22 January 2021, p 2: <https://committees.parliament.uk/publications/4664/documents/47031/default/>

55 Written evidence from the AHDB (EEH0006)

56 Written evidence from Alvis Bros Ltd (EEH0013)

57 *Ibid.*

58 [Q 3](#)

European Union, which currently is 24 hours. That does not suit a just-in-time delivery system, such as supermarkets.”<sup>59</sup>

46. Prior to export, some products now must undergo additional tests for the presence of disease or parasites. This is delaying trade in some cases, as illustrated by the AHDB: “Trichinella<sup>60</sup> testing is a limiting factor on our pork exports.”<sup>61</sup>
47. Organisations suggested a number of solutions to streamline trade. The NSA, British Poultry Council, and Andrew Skea, Chair of the Brexit Committee at the British Potato Trade Association, all argued that rolling-out fully electronic certification should be a top priority, and Alvis Bros Ltd emphasised that this should be integrated with the data being “seamlessly” added to the EU TRACES system.<sup>62</sup> Dairy UK highlighted that the TCA foresees a simplification of the portals through which exporters must submit documentation:
- “Dairy UK ... attach particular importance to the clause in the agreement which commits both parties to establish a single window that enables traders to submit documentation or data required for importation, exportation, or transit of goods ... This could present significant opportunities to reduce trade administration costs.”<sup>63</sup>
48. The Secretary of State told us: “The agreement allows the UK and the EU to cooperate and over time, this will help to reduce the burden on businesses from border controls and certification requirements.”<sup>64</sup> He added: “The UK is aiming to introduce the capability to exchange ePhyτος<sup>65</sup> during 2021.”<sup>66</sup>
49. **The increases in paperwork and preparation required for food and agricultural exports to the EU are presenting very difficult challenges for the sector, particularly small businesses.**
50. **We deeply regret that certification processes are not yet fully electronic nor streamlined. The Government should move quickly on these fronts, updating and integrating systems as far as possible. We call on both Parties to the TCA each to urgently establish a single window where traders can submit documentation.**

### *Veterinary capacity*

51. Export health certificates confirm that exports of live animals and animal products meet the health requirements of the destination country. They are required for exports to the EU from third countries and must be signed by a

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59 *Ibid.*

60 Worms within the genus *Trichinella* can cause a disease called trichinellosis.

61 Written evidence from the AHDB ([EEH0006](#))

62 Written evidence from the NSA ([EEH0018](#)); the British Poultry Council ([EEH0040](#)); oral evidence taken before the EU Environment Sub-Committee session on UK-EU agrifood trade, 16 December 2020 (Session 2019–21), [Q 2](#); Alvis Bros Ltd ([EEH0013](#)). TRACES is the European Commission’s online platform for sanitary and phytosanitary certification.

63 Written evidence from Dairy UK ([EEH0025](#))

64 Letter from the Chair of the EU Environment Sub-Committee, Lord Teverson to the Secretary of State for Environment, Food and Rural Affairs, George Eustice, dated 22 January 2021, p 2: <https://committees.parliament.uk/publications/4664/documents/47031/default/>

65 An ePhyto is the electronic equivalent of a phytosanitary certificate.

66 Letter from the Chair of the EU Environment Sub-Committee, Lord Teverson to the Secretary of State for Environment, Food and Rural Affairs, George Eustice, dated 22 January 2021, p 3: <https://committees.parliament.uk/publications/4664/documents/47031/default/>

vet. Helen Roberts, Development Officer of the NSA, raised concerns with us in December that the UK may not have sufficient veterinary capacity to meet the increased volume of certificates required: “We do not feel that there will be enough vets on the ground to do all this work.”<sup>67</sup>

52. There is also uncertainty around exactly how many more vets are now required for certification. The BVA explained:

“Defra estimated an additional 200 Full-Time Equivalent (FTE) [official veterinarians] will be required to certify export of [products of animal origin] from Great Britain. Businesses involved in export certification work, put the number higher requiring at least 350 FTE additional vets. Translating an FTE figure into the actual number of [official veterinarians] needed is a further complexity.”<sup>68</sup>

53. The BVA added that the end of grace periods for movements from Great Britain to Northern Ireland and the phased introduction of controls on imports to Great Britain from the EU mean that demand for vets will continue to increase.<sup>69</sup>

54. Witnesses proposed a range of possible solutions to reduce the risk that veterinary capacity becomes a limiting factor on trade. These included proposals both to reduce the demands placed on vets, and to increase the intake and retention of public health vets in the long-term.<sup>70</sup>

55. Peter Alvis and the Secretary of State said that providing certification may not be the best use of a vet’s time. They suggested respectively that the use of either technical managers or para-professionals—staff who support the work of a vet—could reduce demand on vets.<sup>71</sup> The Government has encouraged the use of Certification Support Officers to perform such a role.<sup>72</sup> James Russell suggested that apprenticeships might be developed to train para-professionals.<sup>73</sup>

56. However, James Russell also highlighted that the veterinary profession must continue to play a role, given that trade partners require certificates to carry a vet’s signature.<sup>74</sup> The Secretary of State similarly referred to this requirement.<sup>75</sup>

57. The Secretary of State also noted that the Government had taken steps to increase veterinary capacity:

“We are working hard to increase the number of official certifiers of these certificates to meet demand ... The number of vets able to sign [export health certificates] for animal products has grown from c. 600 to over 1500 since February 2019. Working with [the Animal and Plant Health

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67 Oral evidence taken before the EU Environment Sub-Committee session on UK-EU agrifood trade, 16 December 2020 (Session 2019–21), [Q 2](#)

68 Written evidence from the BVA ([EEH0027](#))

69 *Ibid.*

70 Written evidence from Alvis Bros Ltd ([EEH0013](#)); Dairy UK ([EEH0025](#)); Mandisa Greene, [Q 14](#); Professor Susan Dawson, [QQ 13-14](#) and James Russell, [Q 14](#)

71 Oral evidence taken before the EU Environment Sub-Committee session on UK-EU agrifood trade, 16 December 2020 (Session 2019–21), [Q 21](#) (Peter Alvis) and [Q 55](#) (Rt Hon George Eustice MP)

72 [Q 55](#)

73 [Q 16](#)

74 [Q 15](#)

75 [Q 55](#)

Agency] and the [Food Standards Agency] we have put in place a surge capacity function for both local authorities and veterinary certification providers as short-term support.”<sup>76</sup>

58. **It is unclear whether there will be sufficient veterinary capacity to meet the increases in demand for export health certification as the grace periods currently in place fall away. We welcome the Government’s steps to increase veterinary capacity. It is essential that the Government continues to monitor this serious issue closely and takes steps to ensure sufficient capacity is in place.**
59. **We welcome the Government’s promotion of the use of Certification Support Officers. We believe apprenticeships should be developed to improve the professional development offer for veterinary paraprofessionals like these.**
60. **Trade certification activities are important but often not the best use of a vet’s time and expertise. The Government should explore with the EU and other trade partners whether the requirement for export health certificates to carry a vet’s signature could be removed or adapted. This could take time to negotiate but ultimately would free up valuable veterinary capacity.**

### **GB-EU trade: in the truck and at the border**

#### *Haulage challenges*

61. Witnesses told us that some firms have been struggling to get food and agricultural produce into the EU market since 1 January because of the increased cost of haulage and challenges with different delivery services. Duncan Buchanan, Director of Policy for England and Wales at the Road Haulage Association, told us back in December that prices of haulage could increase after the end of the transition period.<sup>77</sup> The Provision Trade Federation more recently confirmed that higher haulage rates—arising due to the post-Brexit operating environment—are having knock-on impacts on the food and agricultural produce markets: “UK exporters, unable or unwilling to pay these higher rates, or to risk delays to their own loads, are accordingly having to divert products to the domestic market (resulting in lower returns) or to reduce output, or both, adding to cumulative impacts on profitability.”<sup>78</sup>
62. Hauliers carry different consignments together, often from smaller businesses, in a transport model known as groupage. Alvis Bros Ltd told us: “Groupage is challenging ... and is presenting hauliers with many issues.”<sup>79</sup> The Secretary of State acknowledged that “groupage has been a bit of a challenge”, and explained that there had been problems both with the paperwork for one consignment preventing a whole lorry from proceeding, and with coordinating the certification activities of vets—required now that the UK is a third country—for the different consignments.<sup>80</sup>

76 Letter from the Chair of the EU Environment Sub-Committee, Lord Teverson to the Secretary of State for Environment, Food and Rural Affairs, George Eustice, dated 22 January 2021, p 3: <https://committees.parliament.uk/publications/4664/documents/47031/default/>

77 Oral evidence taken before the EU Environment Sub-Committee session on UK-EU agrifood trade, 16 December 2020 (Session 2019–21), [Q 2](#)

78 Written evidence from the Provision Trade Federation ([EEH0023](#))

79 Written evidence from Alvis Bros Ltd ([EEH0013](#))

80 [Q 50](#)

63. Nick von Westenholz told us that small businesses who use regular parcel services are also facing challenges:

“They do not use trucks or logistic firms; they simply use well-known parcel delivery companies. We have heard that many of those are now refusing to deliver packages of products of animal origin—for example, from a small dairy company shipping high-quality cheese in single packs to EU customers. That has simply been stopped, probably because of overly zealous interpretation of the Agreement on how the SPS rules apply.”<sup>81</sup>

64. **Higher haulage rates and issues with groupage and parcel delivery services are putting further pressure on food and agricultural produce exporters, especially smaller businesses.**
65. **The Government must resolve the issues with Great Britain to EU groupage transport. We urge the Government to also promote understanding within parcel delivery companies about trade in food and agricultural produce under the TCA.**

*Delays at the border and inconsistent application of rules*

66. The British Food Importers and Distributors Association told us it was now taking longer to transport food and agricultural produce through border control posts (BCPs): “The complexity of the new rules applied to exports from the UK now that it is a third country, and the substantive amount of paperwork that is needed for example in the dairy and meat sector, means lorries take much longer clearing controls on either side of the Channel.”<sup>82</sup>
67. Perishable products can lose value due to the delays. The British Poultry Council told us: “Any delays during the export process could result in businesses losing 50–100% of the value of the product depending on the length of delay and the amount which might have to be redirected to rendering or elsewhere.”<sup>83</sup> Helen Roberts and Peter Alvis argued that the perishability of meat and dairy produce meant they should be treated as priorities at BCPs.<sup>84</sup> Seafood produce has also seen its value reduce due to export delays; we explore this in Chapter 3.
68. Andrew Opie emphasised that the impact of increased checks on the flow of goods was not yet clear because of the phased introduction of Great Britain’s controls: “We are only in the foothills of all these issues. It is important that the committee remembers that the UK has not put its own border controls in place. Our businesses, which are primarily looking at the import issue, will not face certification until April, and full border checks until July.”<sup>85</sup> The Government subsequently announced that it would delay further the introduction of border controls on incoming goods.<sup>86</sup>
69. The AHDB raised the issue of inconsistent implementation: “Currently, it would appear from anecdotal evidence that the EU is imposing the new rules enthusiastically, but not always coherently, and even experienced exporters

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81 [Q 3](#)

82 Written evidence from the British Food Importers and Distributors Association ([EEH0037](#))

83 Written evidence from the British Poultry Council ([EEH0040](#))

84 Oral evidence taken before the EU Environment Sub-Committee session on UK-EU agrifood trade, 16 December 2020 (Session 2019–21), [QQ 1-2](#)

85 [Q 3](#). Written Ministerial Statement [HCWS841](#), Session 2019–21

86 Written Ministerial Statement [HCWS841](#), Session 2019–21

are finding navigating the new regime challenging.”<sup>87</sup> The Agricultural Industries Confederation also suggested that not all staff at EU BCPs were applying SPS rules correctly.<sup>88</sup>

70. We heard that getting clarity on the new rules has sometimes been difficult. Dominic Goudie noted: “One of the particular challenges we face at the moment is HMRC’s [(Her Majesty’s Revenue and Customs’)] capacity to talk to businesses and answer the questions that many of them are raising.”<sup>89</sup>
71. For some businesses there are no EU ports that currently accept their exports. The NSA told us that for exporting live animals to the EU, “everything is currently on hold due to there being no facilities at any of the EU sea ports to take live animals from a non-EU state”.<sup>90</sup>
72. **The perishability of food and agricultural produce means that delays at the border can be particularly costly. EU exporters to Great Britain will not encounter these barriers and costs until the Government introduces its border controls. This might make EU border control officials more amenable to a change in practices on Great Britain’s exports. We urge the Government to continue monitoring the situation closely and act quickly to resolve issues that cause delays.**
73. **We recommend the Government raise two issues in the Trade Specialised Committee on Sanitary and Phytosanitary Measures: the consistent application of rules at border control posts, and the designation of EU ports to receive live animals.**
74. **The Government must ensure HMRC has sufficient resource to advise businesses on export issues, including for both back-office functions and customer-facing offices as close to traders as possible.**

### Northern Ireland

75. As noted above, distinct arrangements apply to Northern Ireland under the Protocol. Witnesses raised concerns about supplying food and agricultural produce to Northern Ireland once the grace periods have expired, and the instant application of certain SPS measures that mean some live animal trade is effectively banned for a considerable length of time.<sup>91</sup> Andrew Opie explained:

“We were given grace periods, to exempt us from export health certification for three months, and to continue to export some products that you cannot export into the rest of the European Union, such as fresh meat preparations, for six months. Currently, we do not know how we will continue to transport beyond those periods.”<sup>92</sup>

76. Dominic Goudie told us businesses have “grave concerns” about the requirements that will apply after the grace periods. He added: “I think that many suppliers will struggle to supply to Northern Ireland unless there is a

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87 Written evidence from the AHDB ([EEH0006](#))

88 Written evidence from the Agricultural Industries Confederation ([EEH0034](#))

89 [Q 6](#)

90 Written evidence from the NSA ([EEH0018](#))

91 Written evidence from the NSA ([EEH0018](#)); oral evidence taken before the EU Environment Sub-Committee session on UK-EU agrifood trade, 16 December 2020 (Session 2019–21), [Q 4](#) (Helen Roberts)

92 [Q 2](#)

long-term solution that makes things significantly easier than reverting to the full EU third country requirements that would otherwise be the case.”<sup>93</sup> Dairy UK told us of the possible implications: “The [sheer] complexity of meeting the requirements for servicing the market in Northern Ireland from Great Britain will result in some companies retreating from this market, reducing competition and consumer choice.”<sup>94</sup>

77. Which? raised concerns about Northern Ireland’s consumers: “Consumers in Northern Ireland already on average spend a higher percentage of their household expenditure on food than anywhere else in the UK, so will be hit particularly hard.”<sup>95</sup>
78. In early February the Secretary of State told us that longer-term solutions were being sought:
- “Michael Gove, as our lead negotiator on the joint committee, has written to his opposite number, [Maroš Šefčovič], to raise a number of issues and proposals about how we can replace those easements, particularly on export health certificates for large retailers but also on so-called prohibitions and restrictions on things such as processed meats, with longer-term solutions ... Those negotiations are about to commence.”<sup>96</sup>
79. At the time of writing the UK and EU had not agreed on solutions for the end of the grace periods, but on 3 March the UK Government unilaterally announced that it would extend some of them, describing this as “temporary operational steps to avoid disruptive cliff-edges”.<sup>97</sup> The EU Select Committee wrote two letters to Lord Frost on 11 March in relation to the operation of the Protocol. In the first, the Committee noted the serious concern of Northern Ireland business about the need to avoid a damaging cliff-edge effect at the end of the various grace periods.<sup>98</sup> In the second, the Committee asked the Government to set out the rationale behind making a unilateral announcement, rather than seeking to reach mutual agreement with the Commission in the Withdrawal Agreement Joint Committee.<sup>99</sup>
80. **If workable arrangements cannot be found soon for the movement of food and agricultural produce from Great Britain to Northern Ireland the potential impacts on Northern Ireland’s consumers—as well as the political implications—will be acute. All parties should continue to focus on finding solutions so that goods can be moved**

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93 [Q 7](#)

94 Written evidence from Dairy UK ([EEH0025](#))

95 Written evidence from Which? ([EEH0032](#))

96 [Q 51](#)

97 Written Ministerial Statement [HCSW819](#), Session 2019–21

98 Letter from Lord Kinnoull, Chair of the European Union Committee to Lord Frost, Minister of State at the Cabinet Office, dated 11 March 2021: <https://committees.parliament.uk/publications/5055/documents/50169/default/>

99 Letter from Lord Kinnoull, Chair of the European Union Committee to Lord Frost, Minister of State at the Cabinet Office, dated 11 March 2021: <https://committees.parliament.uk/publications/5056/documents/50170/default/>. On 15 March 2021 the European Commission announced that, as a result of the UK’s unilateral action, it would commence infringement proceedings against the UK, and that unless the UK entered into consultations in the Joint Committee, in good faith, with the aim of reaching a mutually agreed solution, the EU would also trigger the dispute settlement procedure contained in the Withdrawal Agreement. See European Commission, ‘Withdrawal Agreement: Commission sends letter of formal notice to the United Kingdom for breach of its obligations under the Protocol on Ireland and Northern Ireland’, 15 March 2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1132](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1132) [accessed 16 March 2021]

**as smoothly as possible. We trust that Lord Frost will recognise the urgency of the situation for Northern Ireland.**

## CHAPTER 3: FISHING

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### Background and context

81. The EU's Common Fisheries Policy (CFP) was developed during the 1970s and early 1980s. Its stated objective is to ensure that fishing is environmentally, economically and socially sustainable, and to harmonise competition between fishers in the EU.
82. The CFP manages fisheries in Member States through measures that control how many fish can be harvested each year (quotas), and through technical Regulations on, for instance, gear types. The CFP also provides some structural funding to fishing communities and fishers and regulates marketing standards for fish products.
83. Fish species that move in and out of national waters are typically managed using catch limitations in the form of Total Allowable Catches (TACs) and quotas, to ensure that the number of fish caught in any given year does not undermine the sustainability of that stock. TACs and quotas are also used as fisheries management tools outside the CFP.
84. Once a species' TAC has been agreed, on the basis of scientific advice from the International Council for the Exploration of the Sea (ICES), it is divided among countries with a relevant fishing interest. Within the EU this is done by reference to 'relative stability', which was established in 1983 on the basis of historic catches. The relative stability share has remained constant over time.<sup>100</sup>
85. For stocks that are shared<sup>101</sup> and jointly managed with non-EU countries, the TACs are agreed with those countries bilaterally or in coastal state negotiations.<sup>102</sup> The European Commission negotiates the TACs, the proportion of the TAC that the Parties receive, and mutual fishing access in EU and third party waters, on behalf of Member States.
86. The CFP regulates fishing activities within its members' Exclusive Economic Zones (EEZs),<sup>103</sup> though Member States retain competence over the regulation of fishing activities in inshore waters (defined as the 0–12 nautical mile zone off the baseline of the coast). The 0–6 nautical mile limit is preserved for domestic fishing activities, whereas some Member State fishers have historic rights to fish in the 6–12 nautical mile zones belonging to other EU countries. This was the case in UK inshore waters while the UK was a Member State.
87. As we noted in our report *Brexit: fisheries*, many in the fishing industry felt that the EU, and the CFP, had disadvantaged UK fishing ever since the UK's accession to the EU in 1973, and therefore saw the UK's withdrawal from the EU as an opportunity to rejuvenate the sector. They looked forward

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100 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union Fisheries Report*, (Summer 2014), para 1.7: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/335033/fisheries-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/335033/fisheries-final-report.pdf) [accessed 10 February 2021]

101 Shared stocks are fish that move between two or more coastal state EEZs in their lifecycle.

102 European Commission, 'The Common Fisheries Policy—Management of EU Fisheries': [http://ec.europa.eu/fisheries/cfp\\_en](http://ec.europa.eu/fisheries/cfp_en) [accessed 10 February 2021]

103 EEZs are defined as the area of sea between 12 nautical miles and 200 nautical miles from a country's coast. Where the waters of two adjacent territories overlap, a median line between their coastlines is used as the boundary.

to a new fisheries management regime tailored to UK conditions, and to increased fishing opportunities as EU access to UK waters was cut.<sup>104</sup>

88. During the UK-EU future relationship negotiations, Ministers emphasised that from the point of withdrawal the UK would become an “independent coastal state”, “taking back control of fisheries in the UK’s exclusive economic zone”.<sup>105</sup> In December 2019, the Prime Minister spoke of “[restoring] to this country the advantages of its spectacular marine wealth, and that is exactly what we will do, once we become an independent coastal state”.<sup>106</sup>

### The Trade and Cooperation Agreement

89. The EU-UK Trade and Cooperation Agreement (TCA)<sup>107</sup> gradually reduces the EU’s quotas to fish in UK waters by approximately 25 per cent between January 2021 and June 2026 (‘the adjustment period’). These changes are set out in Annex FISH.1 and Annex FISH.2.
90. Article FISH.8(4c) and Annex FISH.4 Article 2 of the TCA preserve EU fishing access to the 6–12 mile zone as it stood on 31 December 2020 for the duration of the adjustment period, in certain areas of English and Welsh inshore waters.
91. Article FISH.16 establishes a Specialised Committee on Fisheries whose role will include (but not be limited to):
- preparing for annual TAC consultations;
  - providing a forum for consulting on compensatory and remedial measures in the event of non-compliance;
  - developing guidelines to support the application of the TCA in respect to fisheries; and
  - developing a mechanism for voluntary in-year transfers of fishing opportunities.

The same Article provides for both Parties to grant licences for the other Party’s vessels to fish in their waters.

92. In addition, Article INST.36 states that if either Party experiences “serious economic, societal or environmental difficulties of a sectorial or regional nature, including in relation to fishing activities and their dependent communities, that are liable to persist”, it may unilaterally take appropriate safeguard measures. These must be restricted in scope and duration “to what is strictly necessary in order to remedy the situation”, and should, as far as possible not disturb the functioning of the Agreement. The Article is not time-limited, so it will remain in force even after the initial five-year adjustment period on fish quotas has come to an end in 2026—for instance, if the UK were then to take unilateral action that caused serious difficulties for EU fishing communities or vice versa.

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104 European Union Committee, *Brexit: fisheries* (8th Report, Session 2016–17, HL Paper 78), para 24

105 HL Deb, 1 September 2020, [col 67](#)

106 HC Deb, 20 December 2019, [col 148](#)

107 [Trade and Cooperation Agreement, 24 December 2020](#)

93. The reaction to the TCA from the fishing industry was not positive. The Scottish Fishermen's Federation (SFF) described it as "very disappointing",<sup>108</sup> while the National Federation of Fishermen's Organisations (NFFO) told us: "[We] want to state strongly that [we disagree] with the Government's presentation of the UK-EU Trade and Cooperation Agreement as a major success when it is clear to the industry that it is not."<sup>109</sup>
94. The evaluation from Fergus Ewing MSP, Scottish Cabinet Secretary for Rural Economy, was as follows:
- "The gap between UK Government rhetoric on the Trade and Cooperation Agreement, and reality, is vast ... The reality is that [the Prime Minister's] government, and Theresa May's before that, committed to delivering frictionless trade, full control over access to waters and a 'sea of opportunity' and they failed on all counts."<sup>110</sup>
95. Fishing Minister Victoria Prentis MP told us that the TCA's protection of tariff-free exports of fish products from the UK to the EU was "very important to our fishermen", but also acknowledged the disappointment we heard from the sector: "It is true to say that we had, as an industry, dreamed some pretty big dreams ... It is also true to say that we did not get everything we asked for".<sup>111</sup>

### Fishing access and quota

96. Regarding the quota redistribution, the Minister told us: "We have a 25 per cent uplift. That is undoubtedly a gain. It means that we will have, after five and a half years, 25 per cent more than we have at the moment."<sup>112</sup>
97. Fergus Ewing MSP countered that "there is clear confusion over the 25% increase claim which obviously isn't correct either in tonnage or value terms".<sup>113</sup> The SFF criticised the 25 per cent figure, arguing that for some species Government had used the relative stability share as the baseline rather than the year-end outcome after mid-year quota swaps, and thus "in some cases, the UK will actually have fewer 'fishing opportunities' for some demersal species than it had under the Common Fisheries Policy".<sup>114</sup>
98. On 20 January 2021 the BBC radio programme *More or Less* conducted a fact-check of ministerial claims regarding the quota uplift, and concluded that because the EU-27 had about a third of the fishing rights in UK waters prior to 1 January while the UK had approximately half, the TCA settlement means that, by value, "the UK's share of the quota in UK waters rises from 50 per cent to 58.3 per cent".<sup>115</sup> While the UK will, over five years, gain 25

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108 Written evidence from the SFF ([EEH0015](#))

109 Written evidence from the National Federation of Fishermen's Organisations ([EEH0031](#)) and the SFF ([EEH0015](#))

110 Written evidence from Mr Fergus Ewing to the inquiry on Access to UK fisheries (Session 2019–21) ([ZAU0002](#))

111 Oral evidence taken before the EU Environment Sub-Committee session on Access to UK fisheries post Brexit, 13 January 2021 (Session 2019–21), [Q 44](#)

112 *Ibid.*

113 Written evidence from Mr Fergus Ewing to the inquiry on Access to UK fisheries (Session 2019–21) ([ZAU0002](#))

114 Written evidence from the SFF ([EEH0015](#))

115 BBC Sounds, 'More or Less, Will the vaccine bring back normal life? GDP and Fishing': <https://www.bbc.co.uk/sounds/play/m000rccm> [accessed 10 February 2021]

per cent of the EU's fishing quota in UK waters, the UK's share of the quota in its own waters will thus increase by 16.6 per cent.

99. Witnesses also argued that the species whose quota will increase are not necessarily of value to the UK fishing industry. According to the SFF, "There is an element of what are often referred to as 'paper fish' in the agreement where the value in the uplift of a quota, such as North Sea sole, is largely meaningless given its historical underutilisation by the UK fleet."<sup>116</sup> Professor Richard Barnes, Chris Williams and Griffin Carpenter noted in a joint submission that "of the increase in value across 56 fish stocks that undergo a change, 41% comes from just one mackerel stock. Some stocks like cod in the English Channel do not undergo any change at all despite the UK fishing industry prioritising them."<sup>117</sup> And the New Under Ten Fishermen's Association (NUTFA) argued that "new gains are largely for pelagic and North Sea species (Norway Pout, Horse Mackerel, Hake, Sprat) that are unsuitable for the under ten sector".<sup>118</sup>
100. The Rt Hon George Eustice MP, Secretary of State for the Environment, Food and Rural Affairs, told us: "Although I appreciate that it is probably short of what the industry would have hoped in terms of a sharing arrangement after five years, it nevertheless represents a big step in the right direction."<sup>119</sup>
101. **The ability to export fish and seafood products to the EU tariff-free is vital to the prosperity of the UK's seafood sector, and we welcome the fact that the TCA achieves this. But this outcome is undermined by other serious shortcomings.**
102. **The Government asserts that UK fishers will have access to 25 per cent more quota in five and a half years' time: independent analysis suggests that the UK's share of the quota in its own waters will in fact increase by 16.6 per cent.**
103. **The species whose quota will increase are not necessarily those of value to the UK fishing industry, and will benefit some parts of the sector more than others. The industry will need to adapt as the quota adjustments take effect.**
104. **When conducting future quota negotiations with the EU, the Government should consult with industry and devolved administrations to ensure that they are prioritising appropriate stocks. In the meantime, the quota gained through the TCA settlement should, as far as possible, be distributed to support those parts of the sector that would otherwise benefit less from the overall deal, such as inshore fishers.**

#### *6–12 mile zone*

105. In a letter to the Secretary of State on access to UK fisheries post-Brexit, dated 13 March 2020, we noted that there were "significant potential benefits for the inshore fleet to be gained from significantly reducing non-UK access to

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116 Written evidence from the SFF ([EEH0015](#))

117 Written evidence from Professor Richard Barnes, Chris Williams and Griffin Carpenter ([EEH0033](#))

118 Written evidence from NUTFA ([EEH0041](#)). "Under ten" refers to small fishing vessels, i.e. those shorter than 10 meters.

119 [Q 48](#)

the 6–12 mile zone”.<sup>120</sup> On 13 October 2020 Victoria Prentis MP informed the House of Commons that “any access negotiated with the EU will cover only the UK’s exclusive economic zone, and not the 0 to 12-mile zone”.<sup>121</sup>

106. As a result, according to NUTFA, “probably the most damaging outcome from the TCA, and certainly the one that has produced the majority of calls from fishermen to our offices is the failure to secure exclusive access to the 6–12 mile zone of our own waters.”<sup>122</sup> The NFFO also expressed disappointment at this outcome, particularly as the EU fleet “could easily catch its quotas outside the UK’s coastal zone”.<sup>123</sup>
107. **In light of ministerial statements during the future relationship negotiations, we were surprised that the TCA grants EU vessels fishing access to parts of the UK’s 6–12 mile zone. We acknowledge this is a politically contentious subject, but urge the Government to explore ways to reduce EU fishers’ access to the UK’s coastal waters while ensuring they are still able to catch their full quota.**

*End of the adjustment period*

108. Prof Richard Barnes *et al* told us:

“It is possible to argue that Annex FISH1 only sets quota shares until the end of 2026. However, this would be a difficult argument to make because it runs counter to the ordinary reading of the text. The use of the term ‘onwards’ means that the level of catch at 2026 will continue as long as the agreement remains in force or until the Parties agree to change the terms of the agreement. It also runs counter to the wider objective of stabilizing fishing and trading rights after an adjustment period ... There is no provision that supports any unilateral changing of quota beyond 2026. The TCA envisages that each Party may unilaterally notify the other Party of changes to the level and conditions of access (FISH8(5)). However, this is subject to retaliatory and remedial measures under the TCA.”<sup>124</sup>

109. The fishing industry wants to see a change of approach after the adjustment period, despite the potential for retaliatory action. The SFF acknowledged that a change of course would potentially trigger “what appear to be very punitive sanctions and penalties”, but added, “That is not to say however that we shouldn’t take this path.”<sup>125</sup> The NFFO concurred: “It is crucial that the Government works with the industry to increase quota and change access arrangements at the end of the adjustment period.”<sup>126</sup>

110. The Secretary of State told us:

“After the five and a half years we are free to change those access arrangements ... The TCA provides that in such a circumstance it would also be open to the EU to start to introduce some tariffs on some areas

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120 Letter from the Chair of the EU Energy and Environment Sub-Committee, Lord Teverson to the Secretary of State Department for Environment, Food and Rural Affairs, George Eustice, dated 13 March 2020: <https://committees.parliament.uk/publications/346/documents/1366/default/>

121 HC Deb, 13 October 2020, [col 265](#)

122 Written evidence from NUTFA ([EEH0041](#))

123 Written evidence from the National Federation of Fishermen’s Organisations ([EEH0031](#))

124 Written evidence from Professor Richard Barnes, Chris Williams and Griffin Carpenter ([EEH0033](#))

125 Written evidence from the SFF ([EEH0015](#))

126 Written evidence from the National Federation of Fishermen’s Organisations ([EEH0031](#))

of fish exports, if it wanted. However, we have always had the view that, if the choice was really between having control of your fishing grounds and the ability to change sharing arrangements or tariff-free access on fish, you would probably opt for the former rather than the latter.”<sup>127</sup>

111. **The UK fishing fleet is heavily dependent on exporting to the EU market, and thus has to balance its need to export with its desire to acquire more fishing rights.**
112. **While the Fisheries Minister highlighted the importance of tariff-free access for the fisheries sector, the Secretary of State prioritised control over the UK’s fishing waters. Both are important considerations, but their juxtaposition contributes to mixed messages being received by the fishing industry over whether the Government will seek to further reduce the EU’s ability to fish in UK waters after the adjustment period.**
113. **There is no doubt that the safeguarding measures in the TCA will be a serious barrier to any unilateral reform of access to UK fishing waters. No reform should be considered without full consultation with the whole fishing supply chain, including fishers and those who process, market and export their produce, and with the devolved administrations.**

#### *Quota swaps*

114. Fishing quotas can be swapped between EU Member States mid-year to help avoid ‘choke’.<sup>128</sup> The Fisheries Minister told us that these quota swaps will now be conducted “Government to Government”, rather than between fishing organisations and overseen by regulators as was previously the case.<sup>129</sup> Neil Hornby, Director of Marine and Fisheries at the Department for Environment, Food and Rural Affairs, acknowledged: “I do not think it will be as flexible as it was before. We will have set points in the year when we do the exchanges, rather than the ongoing system we had before.”<sup>130</sup>
115. SFF told us:
 

“The TCA does make provision for in-year exchanges of quota between the EU and UK, but these mechanisms have not yet been developed or agreed, and the Specialised Committee on Fisheries, a new body set up under the TCA, will have a role in overseeing this. It is imperative that this is progressed urgently to avoid very significant harm to our demersal sector in 2021 and beyond.”<sup>131</sup>
116. Fergus Ewing MSP added: “The loss of International quota swaps has proven to be a critical weakness. The options of in year exchanges, as envisaged in the Specialised Committee, is of course a welcome element. But let’s be

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127 [Q 48](#)

128 Choke occurs when a fisher has to stop fishing in an area after running out of quota for one species found there, even though they still have quota remaining for other fish in that area.

129 Oral evidence taken before the EU Environment Sub-Committee session on Access to UK fisheries post Brexit, 13 January 2021 (Session 2019–21), [Q 47](#)

130 *Ibid.*

131 Written evidence from the SFF ([EEH0015](#))

clear; it cannot replace International quota swaps. Nowhere near. It cannot deliver 140 exchanges in year.”<sup>132</sup>

117. **Quota swaps have, in recent years, been an essential and mutually beneficial management tool for supporting sustainable fishing in mixed fisheries, and are vital to the functioning of both UK and EU fisheries. We greatly regret that the TCA has not maintained arrangements for swaps between producer organisations. The Government should seek to agree a process for in-year quota exchanges with the EU as a matter of urgency, and should seek to make that process as responsive and flexible as possible.**

### **Fish exports**

118. The UK Seafood Alliance told us that “the new customs and SPS procedures ... have led to major disruption to established supply routes to the EU, particularly for live and fresh products”.<sup>133</sup> NUTFA set out the new procedures in some detail:

“Despite endless promises that there would be little if any issues with exporting fish and shellfish post EU Exit, it is abundantly clear that the reverse is true. From the situation where prior to EU Exit, a consignment of live shellfish required one simple form for export, and no additional costs or delays, to the situation now where a similar consignment requires literally 100’s of forms, some reliant on an inadequate government customs system that was late in development, the presence of a vet to certify the health of the load, prior notification to the receiving member state’s customs department, very significant costs for customs clearance, massive delays resulting in the loss of income for both fishermen and exporters all underpinned by a frankly often pedantic approach by EU customs officials, to the extent that loads have been held up for a great deal of time on the basis of the use of the wrong coloured ink, to the slight misspelling of the Latin name for just one of the species aboard and so on.”<sup>134</sup>

119. Jimmy Buchan, Chief Executive Officer at the Scottish Seafood Association, told us: “No processor signed up for this. Regardless of what we think about Brexit or how we voted, no processor, including all my colleagues, signed up to have added costs for their business.”<sup>135</sup>
120. While the Secretary of State described these export challenges as “teething problems”,<sup>136</sup> Prof Richard Barnes *et al* argued: “Some are attributable to a lack of experience with the new processes and will be mitigated over time and through investment in border infrastructure and facilities. However, some are an inevitable consequence of leaving the single market and customs union.”<sup>137</sup>

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132 Written evidence from Mr Fergus Ewing to the inquiry on Access to UK fisheries (Session 2019–21) ([ZAU0002](#))

133 Written evidence from the UK Seafood Industry Alliance ([EEH0024](#))

134 Written evidence from NUTFA ([EEH0041](#))

135 Oral evidence taken before the EU Environment Sub-Committee session on UK-EU agrifood trade, 16 December 2020 (Session 2019–21), [Q 2](#)

136 [Q 49](#)

137 Written evidence from Professor Richard Barnes, Chris Williams and Griffin Carpenter ([EEH0033](#))

121. One apparently permanent consequence is a ban on the export of live bivalve molluscs from some areas of UK waters to the EU before they have been depurated. The Secretary of State informed us that the ban was “a change in position from the European Union .... We think it is legally wrong, and we are therefore working up the technical dossier to try to unblock the problem.”<sup>138</sup> He subsequently wrote to Stella Kyriakides, EU Commissioner for Health and Food Safety, to seek a solution,<sup>139</sup> but at the time of writing the export ban remained in place.
122. Speaking to us in mid-January, the Fisheries Minister described the action she was taking in an effort to resolve the export challenges. This included “a daily call with [Her Majesty’s Revenue and Customs] to deal with very granular issues”, “a lot of engagement with those in the fishing industry and those trying to export ... to feed in specific problems they are having”, and “dealing with Member States directly ... so that we can get down into the nitty gritty of what we need to do”.<sup>140</sup>
123. In addition, the Government launched a £23 million Seafood Disruption Support Scheme targeted at fishing export businesses “who can evidence a genuine loss in exporting fish and shellfish to the EU” between 1 and 31 January. The scheme was targeted at small and medium enterprises and the maximum claim available to individual operators was £100,000.<sup>141</sup>
124. **Some of the difficulties the fishing industry is experiencing with exporting products to the EU are probably ‘teething problems’ which can be solved with familiarity and guidance. We welcome the Minister’s efforts across the sector, Government and with Member States to resolve these, and urge the Government to maintain financial support for the sector while these initial challenges remain.**
125. **But other difficulties facing the fishing industry are the direct result of the UK’s withdrawal from the EU and its new status as a third country, and thus represent unavoidable, long-term impacts on the sector. These new challenges disproportionately affect smaller fishing operators.**

### Cooperation with the EU

126. Lisa McGuinness, Head of Compliance at Marine Scotland, assured us that in the lead-up to the end of the transition period, “Discussions took place with the Commission on behalf of Member States on data sharing of things such as electronic logbooks, sales information, [vessel monitoring system] and catch statistics ... Fortunately, access to the data did not stop and we

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138 [Q 49](#)

139 Letter from the Secretary of State for Environment, Food and Rural Affairs, George Eustice to the EU Commissioner for Health and Food Safety, Stella Kyriakides, dated 8 February 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/959252/bivalve-molluscs-trade-letter.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/959252/bivalve-molluscs-trade-letter.pdf) [accessed 10 February 2021]

140 Oral evidence taken before the EU Environment Sub-Committee session on Access to UK fisheries post Brexit, 13 January 2021 (Session 2019–21), [Q 46](#)

141 Department for Environment, Food and Rural Affairs, ‘New financial support for the UK’s fishing businesses that export to the EU’: <https://www.gov.uk/government/news/new-financial-support-for-the-uks-fishing-businesses-that-export-to-the-eu> [accessed 4 March 2021] and Department for Environment, Food and Rural Affairs, ‘£23 million Seafood Disruption Support Scheme now open’: <https://www.gov.uk/government/news/23-million-seafood-disruption-support-scheme-now-open> [accessed 4 March 2021]

did not lose any information post transition.”<sup>142</sup> Phil Haslam, Director of Operations at the Marine Management Organisation, agreed: “There is a very firm handshake between neighbouring fisheries authorities. If there is any non-compliant behaviour or any misunderstanding, the operational collaboration route is open and we can exchange information.”<sup>143</sup>

127. On the matter of issuing fishing licences to UK and EU vessels, Phil Haslam told us: “It was very much a joint endeavour. It had to be. [The EU] drew up a list of vessels requiring access to our waters, and we did likewise. We exchanged and ratified those lists, to make sure that they made sense, and we issued on the basis of that.”<sup>144</sup> He added: “During the period from about 11 o’clock to half-past 11 on New Year’s Eve, 1,304 EU vessels and 1,012 UK vessels were licensed to enable them to access the waters to go about their business.”
128. **Ensuring the long-term health and sustainability of fishing waters is necessarily a joint endeavour. We welcome the ongoing cooperation between UK and EU fishing regulators, and encourage all parties to maintain that cooperation to support sustainable and law-abiding fishing in both UK and EU waters.**

### Specialised Committee on Fisheries and parliamentary oversight

129. Speaking in mid-January, Neil Hornby told us: “We have started conversations on ... how [the Specialised Committee on Fisheries] will operate and how often it will meet, and planning the work programme for it over the next few months. We are at the early stage of having those conversations.”<sup>145</sup>
130. A number of witnesses had views on the make-up of UK representation on the Specialised Committee. Fergus Ewing MSP, of the Scottish Government, argued that “given importance to Scotland I would expect, without hesitation, that we are fully involved and a lead UK member”.<sup>146</sup> Prof Richard Barnes *et al* suggested that the UK team must represent “a legitimate cross section of interests that will be impacted by its mandate ... some independent scientific expertise and industry representation is desirable”.<sup>147</sup> They added that “it is essential that there is Parliamentary oversight of the Committee’s activities, especially the introduction of legally binding Decisions”.
131. While the UK was an EU Member State, the Government’s position at the annual TAC negotiations was subject to scrutiny by the relevant committees in both the House of Lords and the House of Commons, as was the eventual outcome. In recent years, much of that scrutiny has focused on the sustainability of the agreed catch limits.<sup>148</sup> When asked how Parliament will be kept informed of the Government’s position before and after the

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142 Oral evidence taken before the EU Environment Sub-Committee session on Access to UK fisheries post Brexit, 13 January 2021 (Session 2019–21), [Q 42](#)

143 *Ibid.*, [Q 40](#)

144 *Ibid.*, [Q 38](#)

145 Oral evidence taken before the EU Environment Sub-Committee session on Access to UK fisheries post Brexit, 13 January 2021 (Session 2019–21), [Q 49](#)

146 Written evidence from Mr Fergus Ewing to the inquiry on Access to UK fisheries (Session 2019–21) ([ZAU0002](#))

147 Written evidence from Professor Richard Barnes, Chris Williams and Griffin Carpenter ([EEH0033](#))

148 For example, EU Environment Sub-Committee, ‘Fishing opportunities for 2020’: <https://committees.parliament.uk/work/286/fishing-opportunities-for-2020/> and <https://old.parliament.uk/business/committees/committees-a-z/lords-select/eu-energy-environment-subcommittee/scrutiny-work/parliament-2017/fishing-opportunities-2019/>

annual TAC negotiations, the Fisheries Minister informed us that a Written Ministerial Statement was laid in both Houses setting out the “high level negotiating goals”, and that she anticipated a follow-up statement when they concluded. She added, “We will try to present them in a way that is not just for people who speak fish”.<sup>149</sup>

132. **We urge both the Government and the European Commission to establish the Specialised Committee on Fisheries swiftly, and to ensure that its work is informed by scientific expertise, the fishing industry, and civil society. It is also important that the devolved administrations have direct influence on the Committee’s work.**
133. **We welcome the Minister’s commitment to provide statements to the House both before and after the annual Total Allowable Catch (TAC) negotiations, but it is vital that such high-level statements are supplemented by expert parliamentary and select committee scrutiny.**

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149 Oral evidence taken before the EU Environment Sub-Committee session on Access to UK fisheries post Brexit, 13 January 2021 (Session 2019–21), [Q 50](#)

## CHAPTER 4: ENVIRONMENT AND CLIMATE CHANGE

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### Background and context

134. While the UK was a Member State, it was subject to EU environment and climate change legislation, ranging from laws protecting habitats and regulating chemicals and waste, to standards for the energy efficiency of household products.<sup>150</sup> The EU Emissions Trading System (EU ETS), covered in Chapter 5, is one of the EU’s key climate change policies.
135. Much of what is now regarded as EU environment legislation originated in the harmonisation of product and other standards with a view to removing substantial differences in national environment rules, thereby enabling the free movement of goods within the EU’s Single Market. There is also ‘purely’ environmental EU legislation, introduced in pursuit of objectives such as conservation and the improvement of water quality. The European Commission states that the environment *acquis*<sup>151</sup> alone comprises over 200 “major legal acts”,<sup>152</sup> though this figure excludes legislation with environmental effects in areas such as product standards, labelling, energy, agriculture and fisheries.
136. EU institutions, principally the European Commission and Court of Justice of the EU, monitor and enforce EU legislation in the Member States. As we noted in our report *Brexit: environment and climate change*, these institutions played a key role in driving improvements to the UK’s environment during the UK’s membership of the EU.<sup>153</sup>
137. Environment and climate change policies can also affect production costs. This led the EU to argue in the UK-EU future relationship negotiations that enforceable treaty provisions would be needed to ensure that regulatory divergence in these, and other areas, did not lead to unfair competition between the Parties. The term ‘level playing field’ is often used to describe such measures. The Government, on the other hand, sought to ensure that any agreement on the level playing field would not constrain the UK’s ability to choose its own policies after leaving the EU.

### The Trade and Cooperation Agreement

138. There are sector-specific environment and climate change-related commitments throughout the EU-UK Trade and Cooperation Agreement (TCA)<sup>154</sup>, and also a number of overarching provisions designed to maintain high environment and climate change standards.
139. The very first paragraph of the TCA’s preamble—which sets out the motivations and objectives of the TCA’s main text—and Article COMPROV.12 identify the fight against climate change as an “essential element” of the UK-EU partnership alongside democratic principles, the rule of law, human rights, and countering proliferation of weapons of mass

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150 Box 2 of our *Brexit: environment and climate change* report provides a non-exhaustive summary of EU environment and climate change policies.

151 *Acquis*’ means the body of EU law.

152 European Commission, ‘European Neighbourhood Policy and Enlargement Negotiations’: [http://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis\\_en](http://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en) [accessed 16 February 2021]

153 European Union Committee, *Brexit: environment and climate change* (12th Report, Session 2016–17, HL Paper 109), Summary

154 [Trade and Cooperation Agreement, 24 December 2020](#)

destruction. A Party can suspend all or part of the TCA if it considers there has been a serious and substantial failure by the other Party to fulfil related obligations (Article INST.35, Article COMPROV.5(1)). Elsewhere in the TCA the Parties also reaffirm their ambitions of achieving economy-wide climate neutrality by 2050 (Article 1.1(3) of the level playing field Title).

140. Title XI of Part Two of the TCA covers the level playing field, including in respect of environment and climate change. Article 7.2, ‘Non-regression from levels of protection’, is key, requiring the Parties not to weaken or reduce their levels of environment and climate change protection, including by failing to effectively enforce environmental law or climate change protections, in a manner that affects trade and investment between the Parties.
141. In Article 7.4 the Parties reaffirm their commitment to environment and climate change principles. There are also articles covering domestic enforcement in connection with the non-regression provisions, and cooperation on monitoring and enforcement.
142. The TCA introduces a range of dispute resolution procedures dealing with either distinct parts of the Agreement or specific areas of cooperation. In keeping with this tendency, bespoke dispute procedures apply to the various environment and climate change provisions.<sup>155</sup>
143. Article 9.4 permits either Party to take what are described as “rebalancing measures” if significant divergences arise in areas covered by the level playing field, including environment or climate change protection, and which lead to material impacts on trade and investment between the Parties. The same Article allows either Party to request a review of the operation of the trade heading of the TCA to ensure an appropriate balance between the commitments made by the Parties. In certain circumstances a Party can choose to terminate the trade aspects of the TCA following this review.
144. Reactions to the environment and climate change provisions in the TCA were mixed. Annaïg Nicol, Legal Intern, and Susan Shaw, Managing Partner, both of Living Law, were pleased that the level playing field and non-regression were covered: “The inclusion of the notion of level playing field and non-regression is broadly welcome.”<sup>156</sup>
145. But Greener UK raised an overarching concern regarding the enforceability of the environment provisions: “The majority of the environmental provisions are not enforceable and while sanctions are available in relation to disputes about non-regression, the value of this is limited by the narrow focus on trade and investment impact.”<sup>157</sup>
146. The interaction between the TCA’s provisions and the UK’s system of devolution was identified as another key challenge by witnesses. Professor Colin T Reid, Professor of Environmental Law at the University of Dundee, told us: “There is a major challenge created by the UK Government agreeing

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155 A table setting out the different dispute mechanisms for the level playing field is included as an annex in the following article: UK Trade Policy Observatory, ‘Taking Stock of the UK-EU Trade and Cooperation Agreement: Governance, State Subsidies and the Level Playing Field’: <https://blogs.sussex.ac.uk/uktpo/publications/taking-stock-of-the-uk-eu-trade-and-cooperation-agreement-governance-state-subsidies-and-the-level-playing-field/> [accessed 25 February 2021]

156 Written evidence from Annaïg Nicol and Susan Shaw (EEH0039)

157 Written evidence from Greener UK (EEH0030)

such a far-reaching Agreement when responsibility for many of the matters covered lies in the hands of the devolved administrations.”<sup>158</sup>

147. **We are glad that the Government and the EU were able to find compromises on the environment and climate change Chapter of the TCA, though we share the concerns voiced by witnesses about the enforceability of some provisions.**
148. **The TCA negotiated by the Government will affect the policy choices available to devolved administrations and legislatures in areas of devolved competence including the environment. There are already diverging environment and climate change goals across the UK, which could indicate challenges ahead. We urge the Government to address any concerns raised by the devolved administrations regarding the TCA’s environment and climate change provisions—via the Common Frameworks programme or other routes—as fully and promptly as possible.**

### Climate change

149. Several witnesses highlighted the prominent climate change provisions in the TCA. Which? told us: “[The TCA] includes strong commitments to tackling climate change and the Paris Agreements and reaffirms the ambition of both parties to reach net zero by 2050.”<sup>159</sup> Annaïg Nicol and Susan Shaw added: “The TCA is the first trade agreement to raise climate change as an essential element alongside with democracy, human rights and the rule of law and non-proliferation of weapons of mass destruction.”<sup>160</sup> Greener UK agreed and explained that this means “any serious breach can lead to the suspension or termination of all or parts of the agreement”.<sup>161</sup>
150. Emma Pinchbeck, Chief Executive of Energy UK, welcomed the way climate change is addressed in the TCA: “What was really positive about the TCA, though, was to see net zero and climate change recognised as a priority both for EU Member States and the UK.”<sup>162</sup>
151. Greener UK did, though, acknowledge that the bar for what constitutes a “serious breach” of certain climate change provisions was set high: “Article INST.35 specifies that ‘materially defeating the object and purpose of the Paris Agreement’ constitutes a serious and substantial failure to fulfil an essential element of this agreement. This is clearly a very high threshold to meet.”<sup>163</sup> Annaïg Nicol and Susan Shaw and the Law Society of Scotland made a similar point.<sup>164</sup>
152. **We welcome the inclusion of climate change as an essential element in the TCA, which reflects the fact that addressing climate change is the most serious challenge of our time. We urge the Government to seek similar commitments in the trade agreements it negotiates with other international partners.**

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158 Written evidence from Prof Colin Reid ([EEH0004](#))

159 Written evidence from Which? ([EEH0032](#))

160 Written evidence from Annaïg Nicol and Susan Shaw ([EEH0039](#))

161 Written evidence from Greener UK ([EEH0030](#))

162 [Q 36](#)

163 Written evidence from Greener UK ([EEH0030](#))

164 Written evidence from Annaïg Nicol and Susan Shaw ([EEH0039](#)) and the Law Society of Scotland ([EEH0035](#))

### Non-regression

153. Dr Mary Dobbs, Senior Lecturer at Maynooth University, and Dr Ludivine Petetin, Lecturer in Law at Cardiff University, singled out the non-regression commitments as the main provisions in the environment and climate change Chapter.<sup>165</sup> The Law Society of Scotland described the relevant provisions within Article 7.2(2): “Non-regression provisions in the agreement provide that a party shall not weaken environmental or climate levels of protection below those in place at the end of the transition period “in a manner affecting trade or investment”.”<sup>166</sup> They added: “The provisions include non-regression as a result of inadequate enforcement. This recognises that legislating for protections will not produce the desired result unless effective enforcement makes them meaningful.”<sup>167</sup>
154. Witnesses suggested that defining and proving an impact on trade or investment was likely to be challenging, potentially undermining the effectiveness of Article 7.2(2). Greener UK told us:
- “The inclusion of a trade and investment test is disappointing—providing proof of damaging economic impacts on the other party will be difficult and potentially a protracted undertaking. It is therefore not clear to what extent this provision will act as an effective safeguard against lower standards in the future.”<sup>168</sup>
155. Prof Colin T Reid similarly noted uncertainty over how the provisions will be applied: “Views will differ on when the various tests are passed and therefore on whether or not the Agreement is being fulfilled.”<sup>169</sup> The Law Society of Scotland made a similar point.<sup>170</sup>
156. The Government acknowledged that the trade and investment test sets a high bar. The Rt Hon George Eustice MP, Secretary of State for the Environment, Food and Rural Affairs, told us that in addition to needing to prove a regression in environmental protection, the EU would need to demonstrate “that it had some kind of impact on trade. It is quite a high barrier to clear, and it certainly does not amount to regulatory alignment. It really is just a statement that we will continue to abide by our other international commitments.”<sup>171</sup>
157. On the other hand, Greener UK welcomed the fact that the non-regression measures are covered by a stronger enforcement mechanism relative to some other provisions in the same part of the TCA:
- “It is welcome that the provision has a better enforcement mechanism attached, compared to the rest of the environment and sustainable development chapters. Either party can take action via temporary remedies if the other party does not conform to the assessment of a panel of experts in relation to a dispute.”<sup>172</sup>

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165 Written evidence from the British Food Importers and Distributors Association ([EEH0037](#)) and Dr Mary Dobbs and Dr Ludivine Petetin ([EEH0038](#))

166 Written evidence from the Law Society of Scotland ([EEH0035](#))

167 *Ibid.*

168 Written evidence from Greener UK ([EEH0030](#))

169 Written evidence from Prof Colin Reid ([EEH0004](#))

170 Written evidence from the Law Society of Scotland ([EEH0035](#))

171 [Q 52](#)

172 Written evidence from Greener UK ([EEH0030](#))

158. We asked the Secretary of State how the Government would monitor possible non-compliance with Article 7.2(2) in the EU. He told us:

“We will be monitoring what the EU does by way of regulatory change. We will be monitoring closely what is discussed there and what is published in the EU’s Official Journal ... We will also be monitoring the extent to which Member States adequately enforce EU law as well, with a view to escalating that to the European Commission if we think that the Member States are falling short of their legal requirements.”<sup>173</sup>

159. **It is in the UK and EU’s mutual interest that levels of environment and climate change protection are maintained. We are glad that there is provision for temporary remedies should there be breaches of the non-regression provisions. We urge the Government to dedicate appropriate resource to monitoring non-compliance with Article 7.2(2) in the EU and engage with the European Commission constructively on cases of suspected non-compliance.**

### **Domestic environmental enforcement, and cooperation on enforcement**

#### **Box 1: Office for Environmental Protection (OEP)**

Recognising the environmental enforcement gap arising from the UK’s departure from the EU, the Government intends to establish the OEP. It will provide scrutiny and advice on the implementation of environment law and will receive and investigate complaints on alleged breaches of environment law by public authorities, with the ability to take legal action in serious cases.

The Government intends to establish the OEP by means of the Environment Bill; the Bill’s delayed passage through Parliament means that the OEP has not yet been set up. An Interim Environmental Governance Secretariat hosted by the Department for Environment, Food & Rural Affairs (Defra) is able to receive complaints about failures of public authorities to comply with environment law, but cannot investigate or act on those complaints. From July, an Interim OEP will be set up in non-statutory form to progress the establishment of the OEP and to perform some of its envisaged functions.

The OEP will have a statutory role in England and in Northern Ireland, subject to the approval of the Northern Ireland Assembly. The Welsh Government intends to set up an independent commissioner to fulfil a similar function in Wales, while the Scottish Government has established Environmental Standards Scotland to take on this role.

Source: Department for Environment, Food and Rural Affairs, ‘Dame Glenys Stacey appointed as chair of the Office for Environmental Protection’: <https://www.gov.uk/government/news/dame-glenys-stacey-appointed-as-chair-of-the-office-for-environmental-protection> [accessed 16 February 2021]; Department for Environment, Food and Rural Affairs, ‘Interim Environmental Governance Secretariat’: <https://www.iegs.org.uk/> [accessed 16 February 2021] and Department for Environment, Food and Rural Affairs, ‘Interim Office for Environmental Protection to be launched’: <https://www.gov.uk/government/news/interim-office-for-environmental-protection-to-be-launched> [accessed 3 March 2021]

160. Witnesses raised concerns that there are not yet mechanisms in place across the UK to provide the domestic enforcement of environment law that is required by the TCA (see Box 1). Greener UK told us:

“The recently announced delay to the Environment Bill and the consequent delay to the [Office for Environmental Protection (OEP)] assuming its legal functions and powers does not appear compatible with the spirit of these provisions and the effective functioning of the TCA ... With no prospect of legislation to establish a governance body in Wales until after the Senedd Cymru elections in spring, there is growing concern of a lengthening accountability gap across the UK.”<sup>174</sup>

Annaïg Nicol and Susan Shaw made a similar point.<sup>175</sup> The UK Environmental Law Association agreed, and added that consistency in environmental governance requires “genuine coordination and collaboration among the [UK’s] four nations in pursuing the TCA”.<sup>176</sup>

161. Greener UK did, though, identify “useful clauses” in the TCA covering monitoring and enforcement, and referred to Article 7.6, which requires “cooperation between the European Commission and the supervisory bodies in the UK on the effective monitoring and enforcement of environmental and climate law”.<sup>177</sup>

162. The Secretary of State told us:

“It is important to note that the chair of the OEP, Dame Glenys Stacey, has already been appointed and is in post ... It is already able to receive complaints. Until it has its full legal powers, there is a limit to what it can do to act on those complaints. If the European Union wanted to have dialogue with the OEP for the purposes of that part of the agreement, which really is only about cooperating and sharing, there would be nothing to prevent that from happening in this early stage.”<sup>178</sup>

163. **Although the TCA requires arrangements to be in place for the domestic enforcement of environmental law, UK and Welsh Governments have not yet established new domestic enforcement mechanisms. We are deeply disappointed that the statutory basis for the Office for Environmental Protection is still not in place, and call on the Government to progress this as a top priority.**

164. **Environment law will be more effectively enforced if the UK’s supervisory authorities cooperate closely with one another and with the European Commission. We urge them to enter into this cooperation openly and with the goal of ensuring the maximum level of protection for the environment.**

### **Rebalancing measures**

165. The TCA’s provisions on rebalancing measures are designed to ensure the Parties can strengthen their environment and climate change protections

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174 Written evidence from Greener UK ([EEH0030](#))

175 Written evidence from Annaïg Nicol and Susan Shaw ([EEH0039](#))

176 Written evidence from UKELA ([EEH0029](#))

177 Written evidence from Greener UK ([EEH0030](#))

178 [Q 53](#)

without fear of the other Party gaining a competitive advantage. The Law Society of Scotland told us:

“The TCA provides that if material impacts on trade or investment arise as a result of significant divergences between the parties, rebalancing measures may be taken to address this. In practice, that may mean that if one party imposes higher standards of environmental or climate protection that impact on trade and investment, while the other does not, ‘rebalancing measures’ may be adopted. The measures are limited in scope and duration to what is “strictly necessary and proportionate in order to remedy the situation”. These provisions may protect a party which seeks to take higher standards from the threat of the other party gaining a competitive market advantage as a result of lower standards.”<sup>179</sup>

166. Dr Viviane Gravey, Professor Andrew Jordan and Professor Charlotte Burns, in a joint submission, described the rebalancing mechanism as “innovative”.<sup>180</sup> Greener UK added: “This process should be a useful tool given much greater environmental ambition will be needed in the coming years, although the effectiveness of this novel mechanism remains to be seen.”<sup>181</sup> CHEM Trust also noted the potential usefulness of the mechanism.<sup>182</sup>
167. Looking forward, Greener UK told us: “It is not yet clear how provisions such as rebalancing will work in practice ... Early cases will be important in determining how terms are interpreted—for example, it will be for the arbitration tribunal to decide what is a material impact, significant divergence and reliable evidence.”<sup>183</sup>
168. In our inquiry *Environment and the Level Playing Field* witnesses told us that the UK could benefit from level playing field provisions because of the binding obligations in the Climate Change Act,<sup>184</sup> and Member States being at different stages in “developing robust climate action”.<sup>185</sup>
169. **We welcome the fact that the rebalancing measures help mitigate the threat of competitive disadvantage that could otherwise have limited the Parties’ ambitions on environment and climate change protections. There are policies—especially in relation to climate change—where the UK’s progress exceeds the EU’s.**

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179 Written evidence from the Law Society of Scotland ([EEH0035](#))

180 Written evidence from Dr Viviane Gravey, Professor Andrew Jordan and Professor Charlotte Burns ([EEH0028](#))

181 Written evidence from Greener UK ([EEH0030](#))

182 Written evidence from CHEM Trust ([EEH0008](#))

183 Written evidence from Greener UK ([EEH0030](#))

184 Written evidence from Institute for European Environmental Policy to the inquiry on Environment and the Level Playing Field ([LPF0007](#))

185 Written evidence from IEMA to the inquiry on Environment and the Level Playing Field ([LPF0008](#))

## CHAPTER 5: ENERGY AND CARBON PRICING

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### Background and context

170. As an EU Member State the UK played a leading role in developing EU energy policies. These in turn shaped how the UK could pursue secure, affordable, and clean energy supplies.
171. The EU Internal Energy Market (IEM) is central to EU energy policy, and has been developed through the closer linking, or integration, of European electricity and gas markets. The IEM includes arrangements for electricity and gas to be traded efficiently over the cables and pipelines between national markets, which have helped to reduce consumer prices. In the case of electricity, the arrangements have also enabled larger amounts of intermittent renewable energy to be accommodated without affecting the stability of electricity systems. See Box 2 for an explanation of the technical terminology relating to cross-border electricity trading which is used throughout this Chapter.
172. Above and beyond integration through the IEM, since 2007 Northern Ireland and Ireland have shared a wholesale electricity market, known as the Single Electricity Market (SEM). The SEM is a single market with a common set of rules, delivering more effective competition than would be possible in two smaller, separate markets, and enabling Northern Ireland and Ireland to rely on each other's electricity generators—such as power stations—for security of supply. Despite the UK's withdrawal from the IEM, the SEM is maintained by the Withdrawal Agreement's Protocol on Ireland/Northern Ireland.

### Box 2: Cross-border electricity trading

There are different models for trading electricity over the high-voltage cables between national markets and a number of technical terms used to describe them.

The cables between markets are known as *interconnectors*, and traders pay to transmit electricity through them by buying *capacity*. Interconnectors connect Great Britain's electricity market to continental Europe and to the SEM on the island of Ireland.

Electricity can be traded across the interconnectors *explicitly*, where the electricity and capacity are bought and sold separately, and *implicitly*, where these are bought and sold together. Explicit trading tends to be inefficient because traders have access to less information when purchasing the two commodities separately. This results in interconnectors sometimes moving electricity from a more expensive market to a cheaper market, which can contribute to higher consumer electricity prices.

*Market coupling* is a way to integrate two or more electricity markets where an implicit auction is organised through the cooperation of *power exchanges*, which are commercial entities who facilitate the trade of electricity. There are different methods. In the case of *volume coupling*, the power exchanges use an algorithm to determine the flow of electricity between the markets. In the case of *price coupling*, an algorithm determines the prices of electricity in those markets as well as the flow of electricity between them. Price coupling relies on more information, is the more efficient of the two methods, and is used in the IEM.

Electricity can be traded well in advance of when it is delivered onto the system by a generator, or close to the moment of delivery. The different timescales for electricity trading are known as the *forward* (or *long-term*), *day-ahead*, *intraday*, and *balancing market timeframes*. In the IEM, the integration of European markets across these market timeframes has been led by different projects.

173. The UK was part of the IEM's price coupling arrangements for cross-border electricity trading as an EU Member State, but left the arrangements at the end of the transition period. Great Britain is currently trading electricity with continental Europe and with the SEM through less efficient arrangements.
174. The EU Emissions Trading System (EU ETS, see Box 3) is one of the EU's main policies for combating climate change, and has been a key lever for reducing carbon dioxide emissions from the generation of electricity and heavy industry. It is a market-based instrument that puts a price on emissions to encourage reductions—an approach known as 'carbon pricing'.

### **Box 3: EU Emissions Trading System (EU ETS)**

The EU ETS is a 'cap and trade' system designed to encourage emissions reductions. There is a cap set on the total amount of greenhouse gases that can be emitted by the sectors covered. Within the cap, companies receive or buy emission allowances, and each year a company must provide enough allowances to cover all its emissions.

Source: European Commission, 'EU Emissions Trading System (EU ETS)': [https://ec.europa.eu/clima/policies/ets\\_en](https://ec.europa.eu/clima/policies/ets_en) [accessed 16 February 2021]

175. The UK participated in the EU ETS while it was an EU Member State, but the 2020 scheme year—which ends on 30 April 2021—will be the last for which UK participants have obligations to the scheme. The Government has announced that the UK's post-Brexit carbon pricing policy will primarily be delivered through a UK Emissions Trading Scheme (UK ETS). The first auction of allowances for the new scheme is scheduled for 19 May 2021.<sup>186</sup>
176. The regulation of nuclear power generation is another important aspect of EU energy policy, as many Member States rely on nuclear power to meet their energy needs. The European Atomic Energy Community (Euratom) was founded to contribute to the formation and development of Europe's nuclear industries, guarantee high safety standards and prevent nuclear materials intended principally for civilian use from being diverted to military use. The UK joined Euratom on 1 January 1973 and since then the UK's use of civil nuclear material has been regulated through Euratom. Euratom is a distinct legal entity from the EU but they have a shared institutional framework. The UK left Euratom in parallel to leaving the EU.

### **The Trade and Cooperation Agreement**

177. The EU-UK Trade and Cooperation Agreement (TCA)<sup>187</sup> includes a Title on energy. There are also provisions which affect the energy sector in other parts of the TCA, and the UK and Euratom concluded a separate Nuclear Cooperation Agreement (NCA).

<sup>186</sup> Department for Business, Energy and Industrial Strategy, 'Participating in the UK Emissions Trading Scheme (UK ETS)': <https://www.gov.uk/government/publications/participating-in-the-uk-ets> [accessed 2 March 2021]

<sup>187</sup> [Trade and Cooperation Agreement, 24 December 2020](#)

178. Article ENER.14(1)<sup>188</sup> of the TCA provides for new cross-border electricity trading arrangements to be developed for the day-ahead market timeframe—that is, electricity traded one day before it is delivered—based on volume coupling. The TCA sets out a process and timeline for the new arrangements to be developed, with a key role for transmission system operators (TSOs)<sup>189</sup> and a deadline of 1 April 2022. Article ENER.14(3) provides for the review and improvement of cross-border electricity trading at the other market timeframes.
179. Article ENER.15 sets out requirements for the efficient use of gas interconnectors. Cross-border trading of gas can continue without significant change to existing arrangements.
180. The TCA also places a number of requirements on both Parties, including that they must:
- maintain the principle of non-discrimination<sup>190</sup> in the operation of electricity and gas markets (for example: Article ENER.5; Article ENER.8; Article ENER.9);
  - maintain independent regulatory authorities (Article ENER.12); and
  - prepare plans that assess risks to security of energy supply (known as ‘risk preparedness and emergency plans’) (Article ENER.18).
181. The TCA foresees technical cooperation between the UK and EU on a range of energy issues. A Specialised Committee on Energy is established by Article INST.2, which can take decisions on how certain energy aspects of the TCA should be implemented. Article ENER.23 provides for cooperation on the development of offshore renewable energy with reference to the North Sea.
182. A termination clause in Article ENER.33 means that the energy Title will cease to apply on 30 June 2026, though from then onwards the two Parties can extend the application of the Title: on the first occasion for up to nine months, and then each year but only until 31 March of the following year on each occasion.
183. Article 7.3 of the TCA’s level playing field Title requires both Parties to have effective systems of carbon pricing in place, and to seriously consider linking their respective carbon pricing systems—which at present are the UK and EU ETSs.
184. In addition to the TCA, the UK and Euratom agreed an NCA to replace the shared arrangements that had been in place under Euratom.

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188 This is Article 14 in the versions of the TCA available at the time of writing, however the preceding and succeeding articles are Article ENER.13 and Article ENER.15 respectively so the omission of ‘ENER.’ appears to be a typographical error.

189 TSOs transmit power from its generation source to local distribution system operators.

190 Non-discrimination is defined in Article ENER.2(2) as: “Treatment under terms and conditions no less favourable than that accorded to any other like entity in like situations”. The same Article also refers to the definition of non-discrimination in Article SERVIN.2.4, which states that investors of the other Party and relevant businesses should be treated no less favourably in relation to establishment and operation in a territory than the treatment given to investors and relevant businesses of a third country by the Party in comparable situations.

### Overarching reaction

185. Initial commentary on the TCA's energy and carbon pricing provisions emphasised the importance of how they are implemented. Ofgem, Great Britain's gas and electricity regulator, told us: "A lot of the detail relating to energy is still to be determined and the success of the TCA will depend on the ability to resolve these points effectively with our European partners."<sup>191</sup> Chatham House, the University of Warwick and the UK Energy Research Centre (UKERC) agreed, and added that negotiations on replacement regimes for energy and carbon pricing could last "for some years to come".<sup>192</sup>
186. Emma Pinchbeck, Chief Executive of Energy UK, raised concerns about the Government's capacity to implement the TCA: "I am particularly worried about bandwidth in Government to deliver both our domestic priorities and what is in the TCA."<sup>193</sup> She called for implementation timetables to be provided for the TCA's different energy and carbon pricing commitments: "There is only one bit of the TCA where there is an explicit implementation timetable, which is around the market coupling ideas, but we would like that for other commitments."<sup>194</sup>
187. On the NCA agreed between the UK and Euratom, she told us it includes all of the key elements her organisation had originally put forward and confirmed: "We are happy with it. The nuclear industry is happy with it."<sup>195</sup>
188. **For energy policy especially, success of the TCA depends critically on implementation and further negotiation. The UK and EU should, where possible, jointly set out their ambitions, processes and timetables for delivering the TCA's energy and carbon pricing commitments. We urge the Parties to proceed with the necessary resources and goodwill to ensure timely and positive outcomes.**
189. **We welcome the Nuclear Cooperation Agreement agreed between the UK and Euratom, which provides an underpinning for civil nuclear cooperation in the future.**

### Termination of the energy Title

190. The date specified in the termination clause on energy, 30 June 2026, is the same as that on which the transitional agreement on fisheries will come to an end. This has prompted news reports suggesting that discussions under the termination clause could be linked with future negotiations over fishing rights.<sup>196</sup> On the clause, Paul Dawson, Board Member of the European Federation of Energy Traders (EFET), told us "it clearly does not help",<sup>197</sup> and Emma Pinchbeck added: "It is worrying that that termination clause is in there ... We are not yet clear on whether that termination clause is just about the articles in the TCA that are to do with energy or whether there is

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191 Written evidence from Ofgem ([EEH0022](#))

192 Written evidence from Chatham House and UKERC ([EEH0011](#))

193 [Q 43](#)

194 [Q 42](#)

195 [Q 41](#)

196 iNews, 'Brexit deal gives EU right to cut off energy supplies if UK tries to 'take back control' of fishing in 2026', 30 December 2020: <https://inews.co.uk/news/brexit/brexit-deal-eu-energy-fishing-rights-take-back-control-812197> [accessed 16 February 2021]

197 [Q 38](#)

some relationship between that termination clause and others in the TCA for things like fisheries.”<sup>198</sup>

191. Rt Hon George Eustice MP, Secretary of State for the Environment, Food and Rural Affairs, commented: “We think it is actually highly unlikely that the EU would want to be able to [link negotiations on energy trading and fishing], since that energy trading is also in its interest. While it did introduce that as an additional feature, we think it is highly undesirable to the EU to use that.”<sup>199</sup>
192. Emma Pinchbeck also told us that “it is not yet clear whether the termination clause is undermining investor confidence in the UK”, but noted that long-term certainty is important for the energy industry.<sup>200</sup> Paul Dawson suggested that the best mitigation was to proceed with implementation:
- “The best thing that we can do is just to crack on with the cooperation promised and develop these new arrangements, including the cooperation between the regulators and TSOs. Hopefully, in five years’ time, we will have a level of cooperation that is so good that termination becomes unthinkable.”<sup>201</sup>
193. The Energy Minister, Rt Hon Anne-Marie Trevelyan MP, argued that “it is normal for free trade agreements to have termination clauses”.<sup>202</sup> She added: “The agreement on energy is mutually beneficial to the UK and the EU ... We are confident that both the UK and the EU will see the benefits of energy cooperation over the next few years.”<sup>203</sup>
194. **We share the energy industry’s concern that the termination clause could undermine investor confidence in large energy projects. It is in the interests of both the UK and EU to maintain close energy cooperation further into the future, and swiftly to implement the TCA’s energy and carbon pricing provisions in the meantime.**
195. **The Secretary of State’s assertion that the EU was unlikely to link energy and fishing negotiations in the future was somewhat undercut by his acknowledgement that the EU introduced such a linkage into the TCA.**

### Cross-border electricity and gas trading

#### *Initial effects*

196. Ofgem explained how cross-border electricity trading had changed with the end of the transition period: “GB’s electricity interconnectors to continental Europe have switched to less efficient explicit day-ahead trading arrangements. Capacity on GB’s interconnectors to the [SEM] is allocated via implicit intraday auctions only.”<sup>204</sup> Energy UK and Chatham House *et al* highlighted that these initial arrangements would be less efficient,<sup>205</sup> as did

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198 *Ibid.*

199 [Q 48](#)

200 [Q 38](#)

201 *Ibid.*

202 Written evidence from the Department of Business, Energy and Industrial Strategy ([EEH0042](#))

203 *Ibid.*

204 Written evidence from Ofgem ([EEH0022](#))

205 Written evidence from Energy UK ([EEH0009](#)) and Chatham House and UKERC ([EEH0011](#))

Matt Hinde, Head of EU Affairs at National Grid, who suggested that the reduced efficiency would have a cost for consumers.<sup>206</sup>

197. A number of organisations raised concerns that the two power exchanges in Great Britain have also uncoupled following the end of the transition period.<sup>207</sup> Energy UK explained:

“Leaving the IEM on 1 January ... [led] the legislation that supported the coupling of the Day-Ahead market in GB to fall away. This means GB power exchanges no longer share order books to deliver a single day ahead price. This has led to the two day ahead auctions often clearing at different prices, leading to additional risk for market participants (especially renewable generators) and ultimately additional cost for customers.”<sup>208</sup>

198. Ofgem noted that cross-border gas trading should continue without significant changes: “The TCA does not lead to a fundamental change in the way GB trades gas with Europe and the island of Ireland. It provides the basis for continued trade in gas with the neighbouring EU Member States.”<sup>209</sup>
199. **We are concerned that consumer electricity prices could increase due to the inefficiency of the initial cross-border electricity trading arrangements between Great Britain and continental Europe and the island of Ireland, and the uncoupling of Great Britain’s two power exchanges. The Government, Ofgem, and Northern Ireland’s Utility Regulator should monitor closely for price rises, and consider taking mitigating actions if necessary.**
200. **The Government should explore options for recoupling Great Britain’s two power exchanges while the new day-ahead trading arrangements—which should resolve this issue—are being developed.**

*New day-ahead electricity trading arrangements*

201. Ofgem described the new arrangement envisaged in the TCA for cross-border electricity trading at the day-ahead timeframe: “The TCA looks to introduce a new form of implicit coupling in the day-ahead timeframe, in the form of ‘Multi-region loose volume coupling’. This is where the volume traded between bidding zones is calculated, then the prices are calculated separately.”<sup>210</sup>
202. Witnesses told us that trading based on this model offers some promise, though it will not be as efficient the IEM’s existing trading mechanisms. Professor Silke Goldberg, partner at Herbert Smith Freehills LLP, said that while multi-region loose volume coupling “may be more efficient than no coupling at all, it will nevertheless be less efficient than the price coupling from which the GB electricity market benefited until the end of the transition period”.<sup>211</sup> Paul Dawson explained why:

“It is clearly not going to be quite the same as optimising all of the flows across European interconnections at the same time. If you are doing the UK and its interconnected parties first and then doing Europe later,

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206 Q 36

207 Q 37 and written evidence from Ofgem (EEH0022)

208 Written evidence from Energy UK (EEH0009)

209 Written evidence from Ofgem (EEH0022)

210 *Ibid.*

211 Written evidence from Silke Goldberg (EEH0036)

that gives rise to potential inefficiencies and scheduling errors, where you would have sent power in one direction rather than the other.”<sup>212</sup>

203. Witnesses raised concerns that the reduced efficiency of the arrangements could affect consumers. Paul Dawson told us: “There is no getting away from the fact ... that these are not quite as good as the arrangements that we have just left in terms of cost to consumers.”<sup>213</sup> Emma Pinchbeck said a precise estimate of the possible impact on consumer bills could not be given because “it is quite difficult to work out”.<sup>214</sup>
204. We heard that the timeline for developing the new model will be demanding. Emma Pinchbeck urged: “It is challenging, so we need to get going.”<sup>215</sup> Which? said: “It is important for consumer prices that this timetable does not slip.”<sup>216</sup>
205. The Energy Minister told us that the Government issued letters to UK TSOs on 22 January 2021 asking them to develop the draft technical procedures for calculating and allocating capacity to ensure efficient trade over electricity interconnectors. The letters had been supplemented by guidance from the Secretary of State which “provides further details on cost sharing and recovery so that TSOs and power exchanges can enter into appropriate contracts as quickly as possible”.<sup>217</sup>
206. **We welcome the fact that the TCA envisages a return to more efficient day-ahead cross-border electricity trading arrangements. It is disappointing, though perhaps expected, that these will be less efficient than the EU Internal Energy Market’s trading mechanisms and could affect consumer prices. We urge the Government and other involved parties to develop the new arrangements with urgency.**

*Trading electricity cross-border at other market timeframes*

207. Ofgem welcomed the TCA provisions on improving arrangements at two of the other electricity market timeframes: “The TCA also allows for additional harmonisation of trading rules in the long-term and intraday timeframes, which we consider important further developments, and would encourage these to be in place as soon as possible to further enhance today’s arrangements.”<sup>218</sup>
208. There does, however, appear to be uncertainty over the UK’s position with respect to the EU’s cross-border balancing services. Balancing describes actions taken close in time to the delivery of electricity to ensure that supply and demand match, and national electricity systems remain stable. Ofgem told us: “As it stands, legislation does not block GB participation in the EU standard balancing platforms, but uncertainty over future arrangements is making industry parties unwilling to put resource into continuing development of their systems to be able to participate in them.”<sup>219</sup> Ofgem set out possible solutions and stressed that the Specialised Committee on Energy should provide guidance on this issue.<sup>220</sup>

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212 [Q 37](#)

213 [Q 36](#)

214 [Q 37](#)

215 [Q 37](#)

216 Written evidence from Which? ([EEH0032](#))

217 Written evidence from the Department of Business, Energy and Industrial Strategy ([EEH0042](#))

218 Written evidence from Ofgem ([EEH0022](#))

219 *Ibid.*

220 *Ibid.*

209. **We urge the Government and the EU to focus on improving cross-border electricity trading arrangements across the market timeframes, and to provide guidance through the Specialised Committee on Energy on the current position and future plans for cross-border balancing services.**

### Linking emissions trading systems

210. Emissions trading systems (ETSs) can be linked to create a bigger market for the trading of emission allowances. Witnesses supported the UK and EU linking ETSs. Paul Dawson told us: “We see linking of the UK and EU schemes as an urgent issue.”<sup>221</sup> Emma Pinchbeck explained why: “What makes emissions trading really effective is market liquidity and a stable price. The bigger and more liquid the market, the less volatile and more efficient it is. Industry’s position was always for a linked ETS.”<sup>222</sup> Greener UK also expressed support for a UK-EU linking agreement.<sup>223</sup>
211. Linking ETSs was seen as an opportunity for the UK and EU to show global climate leadership. Paul Dawson argued: “There is a leadership issue there in that link being the signal for more linkage and more international cooperation on carbon pricing. COP26<sup>224</sup> is later this year in Glasgow, so this is a great time to do it.”<sup>225</sup>
212. Ofgem were more cautious and argued that a link could constrain the limit on emissions—otherwise known as the cap—that could be set for the UK ETS: “The UK cap would need to consider the EU market, potentially limiting UK’s ability to quickly decarbonise ... In principle, we support linking with other ETS schemes, as long as they have an emissions cap determined by a pathway to net zero.”<sup>226</sup> The EU institutions are currently discussing a proposed European Climate Law which would establish a binding ‘net zero’ objective—that is, for union-wide greenhouse gas emissions and removals to be balanced by 2050.<sup>227</sup>
213. The Government said in its recent Energy White Paper that “the UK is open to linking the UK ETS internationally in principle and we are considering a range of options, but no decision on our preferred linking partners has yet been made”.<sup>228</sup> Emma Pinchbeck questioned the logic of linking to a system other than the EU ETS: “To us, that does not make much sense ... Carbon markets vary hugely, but the UK ETS was designed to look like the EU ETS, so there is already a degree of similarity that would make linking very easy.”<sup>229</sup>
214. **We share the view of industry and environmental groups that the UK and EU should prioritise linking emissions trading systems,**

221 [Q 39](#)

222 *Ibid.*

223 Written evidence from Greener UK ([EEH0030](#))

224 COP26 is the 26th meeting of the Parties to the United Nations Framework Convention on Climate Change.

225 [Q 39](#)

226 Written evidence from Ofgem ([EEH0022](#))

227 European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) [COM\(2020\) 80](#)

228 Department for Business, Energy and Industrial Strategy, *Energy White Paper, Powering our Net Zero Future*, CP 337, December 2020, p 129: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/945899/201216\\_BEIS\\_EWP\\_Command\\_Paper\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945899/201216_BEIS_EWP_Command_Paper_Accessible.pdf) [accessed 24 February 2021]

229 [Q 39](#)

**and should jointly set out a timeline for the discussions. This is an opportunity—which the Government should take—to show global leadership on climate change ahead of COP26. We hope that the EU’s proposal for a binding ‘net zero’ objective will be passed, allowing any linkage of the two schemes to be aligned with that objective.**

### Cooperation on renewable energy in the North Sea

215. Witnesses welcomed the TCA’s provisions regarding cooperation on renewable energy in the North Sea, given the UK and EU’s plans for future development. Energy UK told us:

“The UK government has an ambition of building 40GW of offshore wind generation in the North Seas by 2030 ... The EU aims to create over 250GW of renewable energy in the northern seas. Without cooperation platforms in place between TSOs, regulators, standard bodies and energy companies, we are at risk of seeing two gigantic projects being developed in parallel and in exclusion of one another.”<sup>230</sup>

Matt Hinde agreed: “The scale of the challenge and the opportunity in the North Sea are enormous ... That needs coordination.”<sup>231</sup>

216. Emma Pinchbeck emphasised that the TCA provisions were positive but did not provide for UK participation in the existing North Seas Energy Cooperation initiative (see Box 4): “At the moment, it is a recommendation to start a new forum rather than join the existing body that is seeking to do coordination in the North Sea ... It might be better to try to get a seat back at the table of the existing forum, where there are already conversations in progress.”<sup>232</sup>

#### Box 4: North Seas Energy Cooperation initiative

The North Seas Energy Cooperation initiative facilitates the development of the offshore electricity network development and the large renewable energy potential in the region. It meets at a ministerial level, but also has working-level support groups focused on:

- hybrid and joint projects, which connect wind farms to more than one electricity market;
- maritime spatial planning;
- support framework and finance; and
- delivering 2050.

The current members of the initiative include Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Norway, Sweden and the European Commission.

Source: European Commission, ‘The North Seas Energy Cooperation’: [https://ec.europa.eu/energy/topics/infrastructure/high-level-groups/north-seas-energy-cooperation\\_en](https://ec.europa.eu/energy/topics/infrastructure/high-level-groups/north-seas-energy-cooperation_en) [accessed 16 February 2021] and European Commission, ‘Work programme 2020–2023’: <https://ec.europa.eu/energy/sites/default/files/work-programme2020-2023.pdf> [accessed 16 Feb 2021]

217. The Energy Minister described the provisions in the TCA as an agreement to “establish a specific forum for cooperation, similar to the previous North Seas

230 Written evidence from Energy UK (EEH0009)

231 Q 40

232 Ibid.

Energy Cooperation, that will cover the same workstreams”.<sup>233</sup> She added: “We are working closely with the EU to ensure cooperation mechanisms are established as soon as possible.”

218. While the relevant article in the TCA is focused on offshore renewable energy, Matt Hinde said other energy activities in the North Sea will be important in future: “Moving forward, carbon capture and storage, and potentially hydrogen, are part of the North Sea picture as well.”<sup>234</sup>
219. **We welcome the TCA’s provisions on cooperation on renewable energy in the North Sea, given the importance of this area to decarbonisation. We nonetheless regret that the TCA does not provide for UK participation in the existing North Seas Energy Cooperation initiative. We urge the Government to seek such participation, and hope the Parties will cooperate closely in the meantime. We also support close cooperation between the Parties on renewable, sustainable energy beyond the North Sea.**

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233 Written evidence from the Department of Business, Energy and Industrial Strategy ([EEH0042](#))

234 [Q 40](#)

## CHAPTER 6: CHEMICAL REGULATION

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### Background and context

220. The chemicals sector is a major manufacturing industry in the UK: in 2019, its economic output was £11.2 billion.<sup>235</sup> In 2018, 57 per cent of the UK's chemical exports went to EU Member States, and 72 per cent of chemical imports came from the EU.<sup>236</sup>
221. REACH, or Regulation (EU) 1907/2006, is the main piece of legislation covering the regulation of chemicals in the EU.<sup>237</sup> Alongside the EU Member States, three of the European Free Trade Agreement States (Norway, Iceland and Liechtenstein) participate in REACH through their membership of the European Economic Area (EEA). There are currently no other participants: although both Switzerland and Turkey have enacted legislation mirroring REACH,<sup>238</sup> their legislation was developed independently.

### Box 5: The Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

REACH aims to protect human health and the environment from the use of chemicals and allow the free movement of chemicals on the EU market. Manufacturers and importers have to register a substance if they intend to import or manufacture a tonne or more of that substance per year. This involves providing information about its properties, hazards and any appropriate risk management measures. The 'one substance, one registration' principle means that manufacturers and importers of the same substance have to submit their registration jointly and provide consistent information. If a substance poses an unacceptable risk to human health or the environment, it is subject to restrictions.

222. Following the UK's withdrawal from the EU, the Government has launched an independent regime known as UK REACH which operates in much the same way as its EU equivalent.<sup>239</sup> Despite its name it will only apply in Great Britain, as the EU REACH system will continue to apply in Northern Ireland by virtue of the Protocol on Ireland/Northern Ireland.<sup>240</sup>
223. Throughout the UK-EU future relationship negotiations, the UK chemicals sector expressed an emphatic desire for a close relationship with EU REACH to minimise barriers to UK-EU trade in chemicals. We explored the challenges facing the sector in our report *Brexit: chemical regulation*.<sup>241</sup>

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235 House of Commons Library, End of Brexit transition: chemicals regulation (REACH), Briefing Paper [CBP 8403](#), 17 December

236 *Ibid.*

237 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency [OJ L 396](#), 18 December 2006 and Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency etc, [OJ L 396](#), 18 December 2006

238 Independent Commodity Intelligence Services (ICIS), 'Reach-like regulations enacted globally': <https://www.icis.com/explore/resources/news/2010/05/31/9362538/reach-like-regulations-enacted-globally/> [accessed 13 February 2021]

239 The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 ([SI 2019/758](#))

240 [Protocol on Ireland/Northern Ireland](#), Annex 2(23)

241 European Union Committee, [Brexit: chemical regulation](#) (23rd Report, Session 2017–19, HL Paper 215)

### The Trade and Cooperation Agreement

224. As the UK Lubricants Association pointed out, the EU-UK Trade and Cooperation Agreement (TCA)<sup>242</sup> “allows for continued free trade between the UK and the EU, free of tariff and quota, which is to be welcomed”.<sup>243</sup>
225. Against this backdrop, the objectives of Annex TBT-3: Chemicals of the TCA are to facilitate the trade of chemicals, ensure high levels of protection for the environment and human and animal health, and provide for cooperation between regulators in the UK and EU (Article 3(1)). The Annex states that both Parties will participate in relevant international organisations (Article 5), and facilitate “the exchange of non-confidential information” (Article 7(2)).
226. In a joint submission, the Chemical Industries Association (CIA) and the European Chemical Industry Council (Cefic) welcomed the commitments for cooperation at international fora, but added that “the key issue of data and the absence of securing provisions relating to EU REACH data remains a significant concern for the sector”.<sup>244</sup> The Chemical Business Association (CBA) agreed:
- “Beyond the headline of ‘No tariffs and No quotas’, the Agreement heralds unwelcome non-tariff barriers that complicate trade with the UK’s largest trading partner ... The Agreement introduces logistic delays and other supply chain issues through new and complex customs processes as well as a duplicative and unaffordable UK REACH regulatory regime.”<sup>245</sup>
227. **Tariffs and trade quotas would have been a substantial barrier for the UK chemicals sector given the amount of trade it does with the EU, so we welcome their absence from the TCA.**

### UK REACH

228. To be effective, the UK REACH database needs to be populated with information about each substance’s properties and hazards. Securing access to this information could be a costly exercise for some companies. Tom Bowtell, Chief Executive Officer of the British Coatings Federation, told us that “the financial cost of tariffs is much less to us than our estimated cost of UK REACH”.<sup>246</sup> The UK Lubricants Association summarised the situation: “The underpinning principles of REACH are one substance, one registration. We are now in a situation of one substance, two registrations.”<sup>247</sup> They went on to explain why this presents a cost to chemical manufacturers:
- “The cost and ownership of the data [related to a registered substance] is shared across all companies within the consortia. Therefore to apply to use the existing EU REACH data for a further registration under UK REACH, the individual company must apply for a letter of access to allow the consortia to release the data in return for a fee. Although the individual company has already paid a share of the initial

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242 [Trade and Cooperation Agreement, 24 December 2020](#)

243 Written evidence from United Kingdom Lubricants Association Limited ([EEH0005](#))

244 Written evidence from Cefic and the CIA ([EEH0012](#))

245 Written evidence from the CBA ([EEH0001](#))

246 Oral evidence taken before the EU Environment Sub-Committee session on Chemicals regulation post-Brexit, 7 October 2020 (Session 2019–21), [Q 3](#)

247 Written evidence from United Kingdom Lubricants Association Limited ([EEH0005](#))

costs of developing the underpinning data to support an EU REACH registration, they will have to pay again to use the data to support a UK REACH registration.”<sup>248</sup>

According to the CBA, “The industry estimates the full cost of UK REACH could be up to £1 billion.”<sup>249</sup>

229. We heard that these costs could mean lower product availability in the UK. According to the UK Lubricants Association, “The average cost to a petrochemical company for a letter of access is around 10,000 euros per substance ... For a market the size of the UK which represents around 15% of the total EU market, it might well be uneconomic for all substances to be re-registered with UK REACH.”<sup>250</sup> The CIA and Cefic agreed.<sup>251</sup>

230. The Secretary of State for the Environment, Food and Rural Affairs, Rt Hon George Eustice MP, took a different view:

“There is a good prospect that the industry both here and in the EU, given that many companies are in consortia, with different companies being lead registrants on different products, may, when they finally sit down and look at it, realise that there is not much for any of them to gain by trying to hold one another to ransom over data that they might have.”<sup>252</sup>

231. Witnesses also raised concerns about the implications if UK REACH were to diverge from EU REACH. For example, the UK Lubricants Association told us: “It is important that the UK continues to align with EU chemical regulation otherwise UK companies will incur additional costs to comply with both the UK and EU regulation which will divert resources away from product, process or service innovation towards regulatory compliance.”<sup>253</sup>

232. **The Secretary of State’s suggestion that chemical companies may be willing to share substance data without significant cost ignores the situation the industry has been describing throughout the Brexit process. The Government cannot act in the interests of the chemicals industry unless it acknowledges the challenges it faces.**

233. **Divergence between the UK and EU REACH systems would increase compliance costs for the UK chemicals sector. In exercising its new sovereignty, we urge the Government to avoid divergence for divergence’s sake.**

### **Institutional data sharing**

234. Our witnesses were sceptical about the value of the TCA’s reference to exchanging non-confidential information. As CHEM Trust pointed out, “The EU REACH system has already been designed to share non-confidential information widely, for example through the substance information available on ECHA’s website.”<sup>254</sup>

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248 Written evidence from United Kingdom Lubricants Association Limited ([EEH0005](#))

249 Written evidence from the CBA ([EEH0001](#))

250 Written evidence from United Kingdom Lubricants Association Limited ([EEH0005](#))

251 Written evidence from Cefic and the CIA ([EEH0012](#))

252 [Q 54](#)

253 Written evidence from United Kingdom Lubricants Association Limited ([EEH0005](#))

254 Written evidence from CHEM Trust ([EEH0008](#))

235. The CBA therefore contended that “a novel solution is needed that ensures UK REACH does not result in an excessive regulatory burden on the UK industry and avoids duplicative substance testing”.<sup>255</sup> The Royal Society of Chemistry agreed: “There needs to be ... discussion between UK and EU about harmonised or divergent safety decision-making for chemicals centred around the same trusted set of facts.”<sup>256</sup> The CIA and Cefic, and the CBA proposed various mechanisms for how data on registered substances could be shared.<sup>257</sup>
236. However, as Dr Michael Warhurst, Executive Director of CHEM Trust, explained:
- “The first, key, thing to achieve that would be for the UK to decide to align with EU chemical controls and continue to use the outcomes of the REACH process. If it does so, it unlocks the potential that the EU will say, ‘If you are definitely going to be aligned, we will share data with you.’ ... The UK has to decide to align with REACH to achieve that.”<sup>258</sup>
- And as we heard from Secretary of State Rt Hon George Eustice MP, “It was a clear stance that we had across the board that we could not go for regulatory alignment.”<sup>259</sup>
237. Ultimately, the Secretary of State told us, “The Government tried very hard to get the EU to agree to data sharing on this, since it is in everyone’s interest ... but it was refused by the European Commission.”<sup>260</sup>
238. **The fact that institutional data sharing on chemical regulation was not agreed through the TCA is a necessary consequence of the UK’s withdrawal from the EU Single Market and the Government’s decision not to commit to aligning with EU REACH in the future. Although the chemicals industry is keen to find an alternative way towards a data sharing agreement, the positions taken by the UK and the EU suggest that such an outcome is unlikely.**
239. **We call on the Government to monitor how many substances are registered with UK REACH over the coming months, to publicly report how these registrations compare to the number of substances already registered with EU REACH, and to set out what actions it will take if it appears that the new regime will result in fewer substances being available for use in the UK.**

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255 Written evidence from the CBA ([EEH0001](#))

256 Written evidence from the Royal Society of Chemistry ([EEH0003](#))

257 Written evidence from the CBA ([EEH0001](#)), Cefic and the CIA ([EEH0012](#))

258 Oral evidence taken before the EU Environment Sub-Committee session on Chemicals regulation post-Brexit, 7 October 2020 (Session 2019–21), [Q 3](#)

259 [Q 54](#)

260 *Ibid.*

## CHAPTER 7: HEALTHCARE

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### Background and context

240. EU, European Economic Area (EEA) Member States and Switzerland coordinate the provision of social security, including healthcare, under EU Regulations (EC)883/2004<sup>261</sup> and (EC)987/2009<sup>262</sup>. This coordination has a number of features, but focuses on reciprocal healthcare provision as individuals move between Member States, and on the approval and trade of medicines.
241. As we noted in our report *Brexit: reciprocal healthcare*, there are four main ‘routes’ for EU and EEA citizens to access healthcare in Member States other than those in which they are ordinarily resident. The European Health Insurance Card (EHIC) is used for accessing healthcare during temporary stays in the EU, EEA and Switzerland (see Box 6). Other routes—the S1 Scheme, the S2 Scheme, and the Patients’ Rights Directive—are used in different scenarios, and are detailed in our previous report.<sup>263</sup>

### Box 6: The European Health Insurance Card (EHIC)

Provided for in Article 19(1) of Regulation 883/2004, the EHIC entitles EU/EEA and Swiss citizens to “needs-arising” healthcare in another Member State, as if they were an insured resident of that country. The EHIC also covers treatment for long-term conditions, such as the costs associated with dialysis. The EHIC is not valid for private treatment and only entitles the holder to access state-provided healthcare during temporary stays in the EU/EEA and Switzerland.

Source: Written evidence from the Department of Health and Social Care to the EU Home Affairs’ Sub-Committee, inquiry on *Brexit: reciprocal healthcare* ([BRH0021](#))

242. Licences are required in order to manufacture or import a medicine in the UK.<sup>264</sup> UK medicines manufacturers must meet a minimum standard of Good Manufacturing Practice (GMP) which requires the medicine to be of consistent high quality, appropriate to its intended use and meet the requirements of its authorisation.<sup>265</sup> The European Medicines Agency (EMA) coordinates licensing for medicines and medical devices in the EU. Pharmaceutical companies may choose to use the EMA’s centralised or mutual recognition procedures that allow them to sell a product throughout

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261 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, [OJL 166](#), 30 April 2004

262 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation on the coordination of social security systems [OJL 284](#), 30 October 2009

263 European Union Committee, *Brexit: reciprocal healthcare* (13th Report, Session 2017–19, HL Paper 107)

264 Medicines and Healthcare products Regulatory Agency, ‘Apply for manufacturer or wholesaler of medicines licences’: <https://www.gov.uk/guidance/apply-for-manufacturer-or-wholesaler-of-medicines-licences> [accessed 12 February 2021]

265 Department of Health and Social Care, ‘Good manufacturing practice and good distribution practice’: <https://www.gov.uk/guidance/good-manufacturing-practice-and-good-distribution-practice> [accessed 12 February 2021]

the EU:<sup>266</sup> Regulation (EC) No 726/2004<sup>267</sup> and Directive 2001/83/EC<sup>268</sup> respectively. The Medicines and Healthcare products Regulatory Agency (MHRA) is the body responsible, among other roles, for licensing and regulating medicines and medical devices in the UK. While the UK was a Member State the MHRA worked with the EMA as part of a regulatory network.<sup>269</sup>

243. Member States also cooperate on cross-border health security, for example through the Early Warning and Response System (EWRS), a tool for monitoring public health threats across the EU; the European Centre for Disease Prevention and Control, an EU agency which aims to strengthen Europe's defences against infectious diseases; and ELDSNet, the European Legionnaires' disease Surveillance Network. EU Member States also cooperate on research through EU-wide research programmes.

### The Trade and Cooperation Agreement

244. Article 5 of Annex TBT-2: Medicinal Products of the EU-UK Trade and Cooperation Agreement (TCA)<sup>270</sup> states that both Parties will recognise inspections carried out by the other and accept GMP documents issued by the other Party. This mutual recognition, however, does not extend to medical regulation processes like regulatory approvals and batch testing.
245. Article HS.1 of the TCA sets out a commitment for the two Parties to cooperate on health security, for example by informing one another of "a serious cross-border threat to health". The EU may grant the UK "ad hoc access to its Early Warning and Response System" in respect to a particular cross-border threat to health, subject to the UK making a written request for such access, and in order to "exchange relevant information, to assess public health risks, and to coordinate the measures that could be required to protect public health" (Article HS.1(3)).
246. The healthcare aspects of the TCA were welcomed by our witnesses, but with some reservations.<sup>271</sup> NHS Providers commented that the provisions give "greater clarity and certainty in a number of key areas of concern", while adding that "some measures are transitional and require further work to be undertaken".<sup>272</sup> Dr Andrew Glencross, Senior Lecturer at Aston University, observed: "It was a relief to see health security feature in the TCA because the UK government's Draft UK-EU Comprehensive Free Trade Agreement had not covered this topic ... However, the new provisions are extremely thin when compared with the nature of the previous health security arrangement."<sup>273</sup>

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266 House of Commons Library, Brexit and medicines regulation, Briefing Paper, [CBP 8148](#), 9 April 2019

267 Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, [OJ L 136](#), 31 March 2004

268 Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, [OJ L 311](#), 6 November 2001

269 House of Commons Library, Brexit and medicines regulation, Briefing Paper, [CBP 8148](#), 9 April 2019

270 [Trade and Cooperation Agreement, 24 December 2020](#)

271 The TCA's Protocol on Social Security Coordination purports to secure continuing reciprocal healthcare between the UK and EU Member States by making provision for both Parties to seek reimbursement for healthcare provided in the other's territory.

272 Written evidence from NHS Providers ([EEH0010](#))

273 Written evidence from Dr Andrew Glencross ([EEH0002](#))

247. Health Minister Edward Argar MP told us that the TCA “delivers on reciprocal healthcare, delivers continuity of supply, and delivers on health security”.<sup>274</sup>

### Reciprocal healthcare

248. While the UK was a Member State, UK residents were essentially entitled to the same healthcare in other Member States as citizens of those states. EHICs covered those staying temporarily in another EU country, such as holiday makers, and separate agreements covered other potential scenarios, such as those travelling to the EU for specialised treatment. In outline, these arrangements meant that if a UK resident required treatment in another Member State, those costs were met by the UK. Reciprocal healthcare arrangements were a key priority raised by stakeholder groups in the Brexit process, as set out in our report *Brexit: reciprocal healthcare*.<sup>275</sup>
249. Following the end of the transition period, EHICs are being superseded in the UK by the Government’s new Global Health Insurance Cards (GHICs).<sup>276</sup> The GHIC covers medically necessary state-provided healthcare either at a reduced cost until the person returns home, or free of charge. It will cover both urgent and routine medical treatment, such as dialysis or chemotherapy, for UK residents while in the EU. For pre-planned treatment, travellers will be able to arrange in advance to have it paid for by the UK.<sup>277</sup>
250. Fiona Loud, Policy Director for Kidney Care UK, gave an example of why such arrangements are important:
- “The cost of dialysis in an EU country ... can [be] up to £500 a session. That is three times a week to stay alive. The cost becomes prohibitive if you have to pay for it yourself. As a known pre-existing condition that required treatment, insurance was never going to cover it, and you could not travel without it. There has been an enormous sense of relief from patients that they will be able, when it is safe, to start to travel again.”<sup>278</sup>
251. The GHIC does not cover EEA states and Switzerland. As Kate Ling, Senior European Policy Manager for the NHS Confederation, noted: “There are some gaps ... Switzerland, Iceland and Liechtenstein are not covered, so people travelling to and from those countries will have to take out insurance, and they will be chargeable.”<sup>279</sup> The Minister told us that Government was working to “have that small gap filled”.<sup>280</sup>
252. **We welcome the replacement healthcare arrangements that the Government has established, and the reassurance this will provide for UK citizens when they travel, particularly those with long-term health conditions. We support the Government’s objective of extending those arrangements to EEA countries and Switzerland.**

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274 [Q 27](#)

275 European Union Committee, *Brexit: reciprocal healthcare* (13th Report, Session 2017–19, HL Paper 107)

276 Department of Health and Social Care, ‘UK launches Global Health Insurance Card’: <https://www.gov.uk/government/news/uk-launches-global-health-insurance-card> [accessed 12 February 2021]

277 NHS Confederation, ‘What the Brexit deal means for the NHS’: <https://www.nhsconfed.org/news/2020/12/what-the-brexit-deal-means-for-the-nhs> [accessed 12 February 2021]

278 [Q 19](#)

279 *Ibid.*

280 [Q 28](#)

### Regulatory issues and trade implications

253. Dr Richard Torbett, Chief Executive of the Association of the British Pharmaceutical Industry, told us: “The fact that we will have a tariff-free flow of trade in medicines and active pharmaceutical ingredients, which are important for manufacturing, is very welcome.”<sup>281</sup> He added, “We were very pleased to see a pharmaceutical annex to the deal that includes provisions for the mutual recognition of good manufacturing standards and inspections.” The BioIndustry Association agreed: “Mutual recognition of GMP reduces the duplication of bureaucracy for medicines manufactured by one party and exported to the other.”<sup>282</sup>
254. The main concern raised on medical regulation was over the absence of mutual recognition in other areas, particularly batch testing of medicines. The BioIndustry Association explained:
- “No mutual recognition of batch testing means that each batch of medicine manufactured will need to undergo a second test for quality and safety when being exported from one party to the other. This creates additional bureaucratic burden on companies, and additional delay in supply chains and medicinal products reaching patients.”<sup>283</sup>
255. Dr Richard Torbett told us that the Government had unilaterally decided to recognise the EU’s batch testing for two years, but noted, “After that the implication is that we would have to duplicate all those processes.”<sup>284</sup> He continued:
- “Any resource that is spent in a duplicative way—whether it is animal testing, whether it is the environmental impact of using solvents, which are certainly widely used in batch testing, or whether it is the people, resources and infrastructure required—it is all resource that could, frankly, be put to better use and some sort of benefit.”<sup>285</sup>
256. In a joint submission, Mark Dayan, Nicholas Fahy, Tamara Hervey, Martha McCarey and Matthew Wood estimated that this “low level of alignment” could “drive a cost increase of over 5% for pharmaceuticals in the UK”.<sup>286</sup>
257. Several witnesses argued that the Government should seek a mutual recognition agreement with the EU regarding medicine batch testing,<sup>287</sup> with some noting precedents for the EU reaching similar agreements with other third countries.<sup>288</sup> The Minister told us: “Our message to industry is that you need to work on the basis that what we have reached at the moment is what will happen and what will be the future state, so you need to prepare for no changes to it at the end of the period.”<sup>289</sup> He added that it would

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281 [Q 18](#)

282 Written evidence from The BioIndustry Association ([EEH0020](#))

283 *Ibid.*

284 [Q 20](#)

285 [Q 20](#)

286 Written evidence from Professor Tamara Hervey, Mark Dayan, Dr Nicholas Fahy, Martha McCarey and Dr Matthew Wood ([EEH0007](#))

287 [Q 20](#) (Prof Richard Torbett) and the NHS Confederation ([EEH0017](#))

288 Written evidence from Professor Tamara Hervey, Mark Dayan, Dr Nicholas Fahy, Martha McCarey and Dr Matthew Wood ([EEH0007](#)) and The BioIndustry Association ([EEH0020](#))

289 [Q 29](#)

be “premature” to speculate on the possibility of extending the mutual recognition arrangements.<sup>290</sup>

258. Since we concluded our evidence-gathering, European Council President Charles Michel has publicly argued that the Government has imposed “an outright ban on the export of [COVID-19] vaccines or vaccine components” produced in the UK,<sup>291</sup> indicating a deterioration of the relations around healthcare trading. The Prime Minister subsequently said: “We have not blocked the export of a single COVID-19 vaccine or vaccine components. This pandemic has put us all on the same side in the battle for global health.”<sup>292</sup>
259. **It is beneficial for the UK’s pharmaceutical and manufacturing industries that the TCA allows tariff-free export of medicines and medical devices to the EU.**
260. **While mutual recognition of Good Manufacturing Practices is helpful for the medical industry, it is disappointing that such recognition has not been extended to other regulatory processes such as batch testing. We note that the EU has reached mutual recognition agreements with other third countries, and urge the Government to seek a similar agreement.**

### Supply of medicines to Northern Ireland

261. A number of EU laws regarding medicinal products still apply in Northern Ireland by virtue of the Protocol on Ireland/Northern Ireland. One of these is Directive 2011/62/EU, the Falsified Medicines Directive (FMD, see Box 7).<sup>293</sup>

### Box 7: The Falsified Medicines Directive (FMD)

The FMD aims to prevent counterfeit medicines entering the supply chain and applies to the majority of prescription-only medicines. Any package of medicine covered by the Directive is given a unique identifying barcode, which is entered into the FMD system. Wholesalers, pharmacies and hospitals can then scan the packages on receipt to check their authenticity before dispensing them. The unique identifier is decommissioned—effectively removed from the system—when the package is supplied to a patient, or when it leaves the EU.

262. Approximately 98 per cent of the medicines used in Northern Ireland are imported either from or via Great Britain.<sup>294</sup> Often originating in the EU, they are placed in warehousing in Great Britain before being exported to Northern Ireland.

<sup>290</sup> *Ibid.*

<sup>291</sup> European Council, ‘A Word from the President’: <https://nsl.consilium.europa.eu/104100/Newsletter/jzdp1bo3pahrrhalxxvpfysnmodokddwig74ibwkwjke5i37yyrq?culture=en-GB> [accessed 16 March 2021]

<sup>292</sup> HC Deb, 10 March 2021, [col 853](#)

<sup>293</sup> Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products, [OJ L 174](#), 8 June 2011

<sup>294</sup> Northern Ireland Assembly, ‘Official Report: Minutes of Evidence Committee for Health, meeting on Thursday, 17 September 2020’: <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=23334&eveID=12194> [accessed 12 February 2021]

263. Under the terms of the FMD, applicable medicines which travelled from the EU to Northern Ireland via Great Britain would be decommissioned, causing significant disruption to the supply chain. In autumn 2020 the pharmaceutical industry was expressing uncertainty and concerns about the supply of medicines to Northern Ireland after the transition period.<sup>295</sup> On 5 November the Government announced that the European Commission had agreed to a 12-month grace period before the FMD will be enforced in Northern Ireland,<sup>296</sup> providing businesses with additional time to adjust,<sup>297</sup> and this was subsequently agreed via unilateral declarations in the Withdrawal Agreement Joint Committee.<sup>298</sup> On 11 December the MHRA published guidance on the supply of medicines to Northern Ireland both before and after 31 December 2021.<sup>299</sup>

264. Dr Richard Torbett told us:

“I think we are now much clearer on how the Falsified Medicines Directive will work. The 12-month period will have to be used to good effect by companies to re-engineer their supply chains so that they will be able to comply. Often that will mean companies redirecting supply away from GB so that it goes only through the European Union.”<sup>300</sup>

265. In addition, the Minister informed us:

“There are options either around supply chain re-routing ... or, for example, around bonded warehouses and cabotage, and whether a route to explore might be that, technically, something has not left the EU if it is sealed in one of those warehouses before it carries on. We continue to discuss those things with industry.”<sup>301</sup>

**266. We welcome the grace period that the Government has secured to allow businesses time to adjust their supply routes to accommodate the post-Brexit application of the Falsified Medicines Directive in Northern Ireland. We also welcome the Government’s continuing engagement with the sector: if disruption once the grace period has elapsed is to be minimised, it will be essential to explore the alternative possibilities mentioned by the Minister, such as bonded warehouses and cabotage.**

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295 Letter from the Chair of the EU Environment Sub-Committee, Lord Teverson to Minister for Health at the Department for Health and Social Care, Edward Argar, dated 28 October 2020: <https://committees.parliament.uk/publications/3212/documents/29751/default/>

296 Cabinet Office, ‘UK statement following the meeting of the Ireland/Northern Ireland Specialised Committee 5 November 2020’: <https://www.gov.uk/government/news/irelandnorthern-ireland-specialised-committee-05-november-2020> [accessed 12 February 2021]

297 *Ibid.*

298 Cabinet Office, ‘Unilateral declarations by the European Union and the United Kingdom of Great Britain and Northern Ireland in the Withdrawal Agreement Joint Committee on human and veterinary medicines’ (17 December 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/946659/Unilateral\\_declarations\\_by\\_the\\_European\\_Union\\_and\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_in\\_the\\_Withdrawal\\_Agreement\\_Joint\\_Committee\\_on\\_human\\_and\\_veterinary\\_medicines.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/946659/Unilateral_declarations_by_the_European_Union_and_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_in_the_Withdrawal_Agreement_Joint_Committee_on_human_and_veterinary_medicines.pdf) [accessed 23 February 2021]

299 Medicines and Healthcare Products Regulatory Agency, ‘Supplying authorised medicines to Northern Ireland’, (31 December 2020): <https://www.gov.uk/guidance/supplying-authorised-medicines-to-northern-ireland> [accessed 12 February 2021]

300 [Q 21](#)

301 [Q 30](#)

## Information sharing and research

### *Early Warning and Response System*

267. Kate Ling welcomed the ability for the UK to request access to the EWRS,<sup>302</sup> as did NHS Providers.<sup>303</sup> Dr Andrew Glencross, however, raised some concerns:

“There is ... no automatic access to the EWRS. Temporary access is at the discretion of the EU and pursuant to a case-by-case request by the UK. Hence the two-way sharing of epidemiological and other public health data will be much more limited, while the ability to coordinate a cross-border response in a crisis will be similarly impaired.”<sup>304</sup>

Mark Dayan *et al* suggested that, as well as making “such requests as are necessary for ad-hoc participation in cooperation against cross-border threats to health”, the UK “should seek over time to establish such participation on a more regular footing”.<sup>305</sup>

268. When we asked the Health Minister whether the Government had requested access to EWRS in relation to the COVID-19 pandemic, he told us:

“On 30 December, I instructed my officials to request that access, and I have to say that it was granted and approved seamlessly within a matter of hours, if not minutes, by the Commission and by the EU. I take that as a reflection of the common sense and mutual interest that is being applied, and that I would expect to see in any future health pandemics or serious health challenges.”<sup>306</sup>

269. **We are encouraged that the Government was prompt to request access to the Early Warning and Response System in relation to the COVID-19 pandemic, and that the EU was equally swift to grant that access. This bodes well for future cooperation on monitoring cross-border health threats. To ensure transparency on the use of this measure, we urge the Government to make a statement to both Houses whenever such a request is made, and to confirm whether or not it has been granted.**

### *Research*

270. The TCA secures the UK’s ability to continue participating in a number of EU research programmes. The Bioindustry Association told us that “the key benefit is that involvement will allow the UK to continue to be able to join and coordinate collaborations, working more closely on research with countries around Europe”.<sup>307</sup> Emlyn Samuel, Director of Policy at Cancer Research UK, explained why that coordination is important:

“About a third of the clinical trials that Cancer Research UK funds involve patients from EU Member States. That is primarily in rare and childhood cancers, where we simply do not have the patient numbers in the UK to run the trials ourselves, so we absolutely need to collaborate

302 [Q 22](#)

303 Written evidence from NHS Providers ([EEH0010](#))

304 Written evidence from Dr Andrew Glencross ([EEH0002](#))

305 Written evidence from Professor Tamara Hervey, Mark Dayan, Dr Nicholas Fahy, Martha McCarey and Dr Matthew Wood ([EEH0007](#))

306 [Q 31](#)

307 Written evidence from The BioIndustry Association ([EEH0020](#))

with our European neighbours on research endeavours to produce new medicines and treatments for those patient groups.”<sup>308</sup>

271. However, he went on to highlight that “if you have a trial that is led from the UK but needs to recruit patients across the EU, at the moment the UK sponsor will have to set up legal representation in the EU”.<sup>309</sup> This has significant financial implications, as Cancer Research UK explained:

“EU-based legal representation for multi-state trials can cost between £20,000 to £300,000 per year. This would be prohibitively expensive for many non-commercial Sponsors (e.g. universities). Cancer research is particularly vulnerable to these costs, as approximately 40% of all UK cancer trials have non-commercial Sponsors.”<sup>310</sup>

272. Cancer Research UK also told us that “the UK has unilaterally agreed to recognise EU/EEA Sponsors of clinical trials, meaning UK researchers will face minimal legal and administrative barriers when participating in EU-led clinical trials”.<sup>311</sup> Emlyn Samuel asked that the Government seek mutual recognition of clinical trial sponsors, to better enable UK-led clinical trials to recruit patients from the EU.<sup>312</sup>

273. **The UK’s recognition of EU-based clinical trial sponsors is helpful, but the lack of mutual recognition risks both significantly harming the UK’s ability to conduct clinical research and reducing UK patients’ access to clinical trials on rare diseases and children’s cancers. We recommend that the Government seek EU recognition of UK-based clinical trial sponsors, and in the meantime take steps to ensure UK-based researchers have the funds available to establish EU-based legal representatives.**

#### *Data adequacy*

274. In the EU, the handling of personal data by individuals and organisations, and data transfers to a third country, are governed by the 2016 General Data Protection Regulation (GDPR).<sup>313</sup> Under the GDPR, the European Commission may issue an ‘adequacy’ decision confirming that a third country provides a level of data protection comparable to that in EU law. The practical effect of an adequacy decision is that cross-border data transfers to the relevant third country can take place without any further safeguards.<sup>314</sup>
275. On 19 February the European Commission published a draft data adequacy decision indicating that the UK should be found ‘adequate’. That decision will be shared with the European Data Protection Board for a ‘non-binding

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308 [Q 18](#)

309 [Q 23](#)

310 Written evidence from Cancer Research UK ([EEH0014](#))

311 *Ibid.*

312 [Q 23](#)

313 Regulation (EU) of 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), [OJL 119/1](#), 27 April 2016

314 European Union Committee, *Brexit: the EU data protection package*, (3rd Report, Session 2017–19, HL Paper 7)

opinion’, before being presented to EU Member States for formal approval.<sup>315</sup> The UK and EU have reached an agreement that allows the temporary flow of data in the interim.

276. Many of our witnesses spoke about the importance of a positive data adequacy decision to the healthcare sector. According to Fiona Loud, “Detailed patient data has to be exchanged between the person in the UK and the unit or facility that will be giving treatment in an EU country. All sorts of details about blood groups and medicines and things need to be shared for the re-charge, and for the treatment. That needs to be as easy as possible.”<sup>316</sup> And Emlyn Samuel highlighted that “it is absolutely crucial that a data adequacy agreement is put in place to ensure that the data flows for clinical trials can continue”.<sup>317</sup>
277. The NHS Confederation told us that “failure to reach a positive decision on data adequacy would result in burdensome and costly alternatives for the processing and transfer of personal data”,<sup>318</sup> while the BioIndustry Association argued that any alternative approaches would “add additional bureaucracy and the need for safeguarding checks”.<sup>319</sup>
278. On 3 December 2020 the EU Services Sub-Committee wrote to the Rt Hon Gavin Williamson CBE MP, Secretary of State for Education, warning that many universities and third sector organisations engaged in research and education were unaware of the possibility and consequences of no adequacy decision.<sup>320</sup>
279. **The flow of data between the UK and EU is important for enabling both patient treatment and clinical research. In the absence of a positive data adequacy decision from the EU, the Government will need to provide advice on data protection to the healthcare industry and researchers, and support them in forming alternative arrangements for data sharing.**

### Workforce

280. Since freedom of movement between the UK and EU ended on 31 December 2020, the Government has implemented a points-based immigration system that grants a visa only to those individuals who meet the scheme’s requirements.<sup>321</sup>

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315 Department for Culture, Media and Sport, ‘UK government welcomes the European Commission’s draft data adequacy decisions’, (19 February 2021): <https://www.gov.uk/government/news/uk-government-welcomes-the-european-commissions-draft-data-adequacy-decisions> [accessed 16 March 2021]

316 [Q 19](#)

317 [Q 23](#)

318 Written evidence from the NHS Confederation ([EEH0017](#))

319 Written evidence from The BioIndustry Association ([EEH0020](#))

320 Letter from the Chair of the EU Services Sub-Committee, Baroness Donaghy to the Secretary of State for Education at the Department for Education and Skills, Gavin Williamson, dated 3 December 2020: <https://committees.parliament.uk/publications/3826/documents/38307/default/>

321 Home Office, ‘Promotional material, An introduction for employers (accessible version)’ (4 January 2021): <https://www.gov.uk/government/publications/uk-points-based-immigration-system-employer-information/the-uks-points-based-immigration-system-an-introduction-for-employers> [accessed 12 February 2021]

281. Several of our witnesses raised concerns about this system in the context of social care. Kate Ling informed us:

“Nearly all professional healthcare workers will meet the points-based entry criteria for a visa ... It is a different story with social care. Front-line care workers do not qualify under the new points-based immigration system. They do not qualify for visas to enter the UK because they do not earn enough and they do not have high enough qualifications.”<sup>322</sup>

She added that the Cavendish Coalition had estimated a gap of about 112,000 care staff in the UK.<sup>323</sup>

282. NHS Providers argued that “it will take a number of years to grow the domestic workforce supply, and in the interim the NHS and social care will need to recruit additional staff internationally”.<sup>324</sup> They were also “concerned that the points-based system may exacerbate shortages across the social care workforce as many potential international staff are left without a valid migration route”.<sup>325</sup>

283. On 29 September 2020 the Migration Advisory Committee wrote to the Home Secretary, Rt Hon Priti Patel MP, stating that “we would expect the end of freedom of movement to increase the pressure on the social care sector, something that would be particularly difficult to understand at a time when so many care occupations are central to the COVID-19 pandemic frontline response”, and advising the Government to add senior care workers and several other health occupations to the shortage occupation list.<sup>326</sup> Such a step would reduce both the relevant salary threshold and the visa application fees.<sup>327</sup>

284. The Home Secretary said in response that the Government intended to “pause and assess how the UK labour market develops [following the end of free movement] and how quickly recovery is evidenced post-Covid 19”, before deciding whether to implement the Migration Advisory Committee’s recommendations,<sup>328</sup> although on 4 March “senior care workers” were added to the shortage occupation list.<sup>329</sup>

285. The Health Minister told us that the Government was focusing on developing a “homegrown” social care workforce.<sup>330</sup> He also acknowledged “the strain—I could probably use a tougher word than that—of dealing with COVID, and

322 [Q 24](#)

323 *Ibid.*

324 Written evidence from the NHS Confederation ([EEH0017](#))

325 Written evidence from NHS Providers ([EEH0010](#))

326 Migration Advisory Committee, ‘Corporate report, Review of the shortage occupation list: 2020 - letter to the Home Secretary’, (19 October 2020): <https://www.gov.uk/government/publications/review-of-the-shortage-occupation-list-2020/review-of-the-shortage-occupation-list-2020-letter-to-the-home-secretary> [accessed 12 February 2021]

327 Migration Advisory Committee, *Review of the Shortage Occupation List*, 2020, September 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/927352/SOL\\_2020\\_Report\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927352/SOL_2020_Report_Final.pdf) [accessed 12 February 2021]

328 Letter from the Secretary of State for the Home Office, Priti Patel to the Chair of the Migration Advisory Committee, Professor Brian Bell, dated 22 October 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/928905/2020-10-12\\_-\\_HS\\_Letter\\_to\\_MAC\\_re\\_SOL\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928905/2020-10-12_-_HS_Letter_to_MAC_re_SOL_report.pdf)

329 Home Office, ‘Rule changes to make it easier to recruit health and care staff’, (4 March 2021): <https://www.gov.uk/government/news/rule-changes-to-make-it-easier-to-recruit-health-and-care-staff> [accessed 9 March 2021]

330 [Q 33](#)

the emotional and physical drain that dealing with COVID will have had on our workforce in the social sector”.<sup>331</sup>

286. **The UK’s NHS and social care workforce has been subject to unprecedented and unforeseeable pressures over the last 12 months. The inevitable impact of the COVID-19 pandemic on recruitment and retention of staff will compound the existing and alarming shortages in the sector.**
287. **We see no evidence of a credible plan from the Government to address the shortage of social care staff in the UK. While we support its ambition to encourage more ‘homegrown’ care workers, such measures will take years to materialise, and the need is immediate.**

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331 *Ibid.*

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### Food and agricultural produce trade

1. Tariffs and quotas on food and agricultural produce trade would have threatened the viability of some producers and led to rises in consumer food prices. We share the relief of businesses that an agreement was reached that provides for tariff and quota-free trade. (Paragraph 25)
2. We are disappointed that the Government and the EU did not achieve more through the sanitary and phytosanitary measures Chapter of the TCA. This has resulted in substantial barriers to trade which risk reducing the profitability of parts of Great Britain's food and agricultural produce sectors. We recommend that the Government seeks supplementary agreements with the EU in these areas, along the lines of the EU-New Zealand agreement. We find it strange that the TCA accomplishes less on sanitary and phytosanitary measures in comparison. (Paragraph 26)
3. We regret the Government's decision to defer establishing the Partnership Council and other bodies and urge it to review this position. We are especially frustrated by the delay in setting up the Trade Specialised Committee on SPS Measures. We urge the Government to work with the European Commission to set up the Committee swiftly, and for it to operate inclusively and with transparency. (Paragraph 31)
4. Trade in food and agricultural produce between Great Britain and the EU will suffer if significant policy divergences on either side lead to tariffs and increased checks being introduced. Both sides should thoroughly assess potential trade barriers that may arise as they develop approaches to regulating and supporting food and agricultural production. (Paragraph 35)
5. Some of Great Britain's exports of food and agricultural products to the EU, such as seed potatoes, have come to a complete halt following the end of the transition period, with severe impacts on the affected sectors. (Paragraph 40)
6. We welcome the TCA's equivalence agreement on organics, but we are dismayed that the agrifood sector more widely is facing increased trade frictions because other equivalence agreements could not be reached. (Paragraph 41)
7. The increases in paperwork and preparation required for food and agricultural exports to the EU are presenting very difficult challenges for the sector, particularly small businesses. (Paragraph 49)
8. We deeply regret that certification processes are not yet fully electronic nor streamlined. The Government should move quickly on these fronts, updating and integrating systems as far as possible. We call on both Parties to the TCA each to urgently establish a single window where traders can submit documentation. (Paragraph 50)
9. It is unclear whether there will be sufficient veterinary capacity to meet the increases in demand for export health certification as the grace periods currently in place fall away. We welcome the Government's steps to increase veterinary capacity. It is essential that the Government continues to monitor this serious issue closely and takes steps to ensure sufficient capacity is in place. (Paragraph 58)

10. We welcome the Government's promotion of the use of Certification Support Officers. We believe apprenticeships should be developed to improve the professional development offer for veterinary paraprofessionals like these. (Paragraph 59)
11. Trade certification activities are important but often not the best use of a vet's time and expertise. The Government should explore with the EU and other trade partners whether the requirement for export health certificates to carry a vet's signature could be removed or adapted. This could take time to negotiate but ultimately would free up valuable veterinary capacity. (Paragraph 60)
12. Higher haulage rates and issues with groupage and parcel delivery services are putting further pressure on food and agricultural produce exporters, especially smaller businesses. (Paragraph 64)
13. The Government must resolve the issues with Great Britain to EU groupage transport. We urge the Government to also promote understanding within parcel delivery companies about trade in food and agricultural produce under the TCA. (Paragraph 65)
14. The perishability of food and agricultural produce means that delays at the border can be particularly costly. EU exporters to Great Britain will not encounter these barriers and costs until the Government introduces its border controls. This might make EU border control officials more amenable to a change in practices on Great Britain's exports. We urge the Government to continue monitoring the situation closely and act quickly to resolve issues that cause delays. (Paragraph 72)
15. We recommend the Government raise two issues in the Trade Specialised Committee on Sanitary and Phytosanitary Measures: the consistent application of rules at border control posts, and the designation of EU ports to receive live animals. (Paragraph 73)
16. The Government must ensure HMRC has sufficient resource to advise businesses on export issues, including for both back-office functions and customer-facing offices as close to traders as possible. (Paragraph 74)
17. If workable arrangements cannot be found soon for the movement of food and agricultural produce from Great Britain to Northern Ireland the potential impacts on Northern Ireland's consumers—as well as the political implications—will be acute. All parties should continue to focus on finding solutions so that goods can be moved as smoothly as possible. We trust that Lord Frost will recognise the urgency of the situation for Northern Ireland. (Paragraph 80)

### **Fishing**

18. The ability to export fish and seafood products to the EU tariff-free is vital to the prosperity of the UK's seafood sector, and we welcome the fact that the TCA achieves this. But this outcome is undermined by other serious shortcomings. (Paragraph 101)
19. The Government asserts that UK fishers will have access to 25 per cent more quota in five and a half years' time: independent analysis suggests that the UK's share of the quota in its own waters will in fact increase by 16.6 per cent. (Paragraph 102)

20. The species whose quota will increase are not necessarily those of value to the UK fishing industry, and will benefit some parts of the sector more than others. The industry will need to adapt as the quota adjustments take effect. (Paragraph 103)
21. When conducting future quota negotiations with the EU, the Government should consult with industry and devolved administrations to ensure that they are prioritising appropriate stocks. In the meantime, the quota gained through the TCA settlement should, as far as possible, be distributed to support those parts of the sector that would otherwise benefit less from the overall deal, such as inshore fishers. (Paragraph 104)
22. In light of ministerial statements during the future relationship negotiations, we were surprised that the TCA grants EU vessels fishing access to parts of the UK's 6–12 mile zone. We acknowledge this is a politically contentious subject, but urge the Government to explore ways to reduce EU fishers' access to the UK's coastal waters while ensuring they are still able to catch their full quota. (Paragraph 107)
23. The UK fishing fleet is heavily dependent on exporting to the EU market, and thus has to balance its need to export with its desire to acquire more fishing rights. (Paragraph 111)
24. While the Fisheries Minister highlighted the importance of tariff-free access for the fisheries sector, the Secretary of State prioritised control over the UK's fishing waters. Both are important considerations, but their juxtaposition contributes to mixed messages being received by the fishing industry over whether the Government will seek to further reduce the EU's ability to fish in UK waters after the adjustment period. (Paragraph 112)
25. There is no doubt that the safeguarding measures in the TCA will be a serious barrier to any unilateral reform of access to UK fishing waters. No reform should be considered without full consultation with the whole fishing supply chain, including fishers and those who process, market and export their produce, and with the devolved administrations. (Paragraph 113)
26. Quota swaps have, in recent years, been an essential and mutually beneficial management tool for supporting sustainable fishing in mixed fisheries, and are vital to the functioning of both UK and EU fisheries. We greatly regret that the TCA has not maintained arrangements for swaps between producer organisations. The Government should seek to agree a process for in-year quota exchanges with the EU as a matter of urgency, and should seek to make that process as responsive and flexible as possible. (Paragraph 117)
27. Some of the difficulties the fishing industry is experiencing with exporting products to the EU are probably 'teething problems' which can be solved with familiarity and guidance. We welcome the Minister's efforts across the sector, Government and with Member States to resolve these, and urge the Government to maintain financial support for the sector while these initial challenges remain. (Paragraph 124)
28. But other difficulties facing the fishing industry are the direct result of the UK's withdrawal from the EU and its new status as a third country, and thus represent unavoidable, long-term impacts on the sector. These new challenges disproportionately affect smaller fishing operators. (Paragraph 125)

29. Ensuring the long-term health and sustainability of fishing waters is necessarily a joint endeavour. We welcome the ongoing cooperation between UK and EU fishing regulators, and encourage all parties to maintain that cooperation to support sustainable and law-abiding fishing in both UK and EU waters. (Paragraph 128)
30. We urge both the Government and the European Commission to establish the Specialised Committee on Fisheries swiftly, and to ensure that its work is informed by scientific expertise, the fishing industry, and civil society. It is also important that the devolved administrations have direct influence on the Committee's work. (Paragraph 132)
31. We welcome the Minister's commitment to provide statements to the House both before and after the annual Total Allowable Catch (TAC) negotiations, but it is vital that such high-level statements are supplemented by expert parliamentary and select committee scrutiny. (Paragraph 133)

### **Environment and climate change**

32. We are glad that the Government and the EU were able to find compromises on the environment and climate change Chapter of the TCA, though we share the concerns voiced by witnesses about the enforceability of some provisions. (Paragraph 147)
33. The TCA negotiated by the Government will affect the policy choices available to devolved administrations and legislatures in areas of devolved competence including the environment. There are already diverging environment and climate change goals across the UK, which could indicate challenges ahead. We urge the Government to address any concerns raised by the devolved administrations regarding the TCA's environment and climate change provisions—via the Common Frameworks programme or other routes—as fully and promptly as possible. (Paragraph 148)
34. We welcome the inclusion of climate change as an essential element in the TCA, which reflects the fact that addressing climate change is the most serious challenge of our time. We urge the Government to seek similar commitments in the trade agreements it negotiates with other international partners. (Paragraph 152)
35. It is in the UK and EU's mutual interest that levels of environment and climate change protection are maintained. We are glad that there is provision for temporary remedies should there be breaches of the non-regression provisions. We urge the Government to dedicate appropriate resource to monitoring non-compliance with Article 7.2(2) in the EU and engage with the European Commission constructively on cases of suspected non-compliance. (Paragraph 159)
36. Although the TCA requires arrangements to be in place for the domestic enforcement of environmental law, UK and Welsh Governments have not yet established new domestic enforcement mechanisms. We are deeply disappointed that the statutory basis for the Office for Environmental Protection is still not in place, and call on the Government to progress this as a top priority. (Paragraph 163)
37. Environment law will be more effectively enforced if the UK's supervisory authorities cooperate closely with one another and with the European Commission. We urge them to enter into this cooperation openly and with

the goal of ensuring the maximum level of protection for the environment. (Paragraph 164)

38. We welcome the fact that the rebalancing measures help mitigate the threat of competitive disadvantage that could otherwise have limited the Parties' ambitions on environment and climate change protections. There are policies—especially in relation to climate change—where the UK's progress exceeds the EU's. (Paragraph 169)

### Energy and carbon pricing

39. For energy policy especially, success of the TCA depends critically on implementation and further negotiation. The UK and EU should, where possible, jointly set out their ambitions, processes and timetables for delivering the TCA's energy and carbon pricing commitments. We urge the Parties to proceed with the necessary resources and goodwill to ensure timely and positive outcomes. (Paragraph 188)
40. We welcome the Nuclear Cooperation Agreement agreed between the UK and Euratom, which provides an underpinning for civil nuclear cooperation in the future. (Paragraph 189)
41. We share the energy industry's concern that the termination clause could undermine investor confidence in large energy projects. It is in the interests of both the UK and EU to maintain close energy cooperation further into the future, and swiftly to implement the TCA's energy and carbon pricing provisions in the meantime. (Paragraph 194)
42. The Secretary of State's assertion that the EU was unlikely to link energy and fishing negotiations in the future was somewhat undercut by his acknowledgement that the EU introduced such a linkage into the TCA. (Paragraph 195)
43. We are concerned that consumer electricity prices could increase due to the inefficiency of the initial cross-border electricity trading arrangements between Great Britain and continental Europe and the island of Ireland, and the uncoupling of Great Britain's two power exchanges. The Government, Ofgem, and Northern Ireland's Utility Regulator should monitor closely for price rises, and consider taking mitigating actions if necessary. (Paragraph 199)
44. The Government should explore options for recoupling Great Britain's two power exchanges while the new day-ahead trading arrangements—which should resolve this issue—are being developed. (Paragraph 200)
45. We welcome the fact that the TCA envisages a return to more efficient day-ahead cross-border electricity trading arrangements. It is disappointing, though perhaps expected, that these will be less efficient than the EU Internal Energy Market's trading mechanisms and could affect consumer prices. We urge the Government and other involved parties to develop the new arrangements with urgency. (Paragraph 206)
46. We urge the Government and the EU to focus on improving cross-border electricity trading arrangements across the market timeframes, and to provide guidance through the Specialised Committee on Energy on the current position and future plans for cross-border balancing services. (Paragraph 209)

47. We share the view of industry and environmental groups that the UK and EU should prioritise linking emissions trading systems, and should jointly set out a timeline for the discussions. This is an opportunity—which the Government should take—to show global leadership on climate change ahead of COP26. We hope that the EU’s proposal for a binding ‘net zero’ objective will be passed, allowing any linkage of the two schemes to be aligned with that objective. (Paragraph 214)
48. We welcome the TCA’s provisions on cooperation on renewable energy in the North Sea, given the importance of this area to decarbonisation. We nonetheless regret that the TCA does not provide for UK participation in the existing North Seas Energy Cooperation initiative. We urge the Government to seek such participation, and hope the Parties will cooperate closely in the meantime. We also support close cooperation between the Parties on renewable, sustainable energy beyond the North Sea. (Paragraph 219)

### Chemical regulation

49. Tariffs and trade quotas would have been a substantial barrier for the UK chemicals sector given the amount of trade it does with the EU, so we welcome their absence from the TCA. (Paragraph 227)
50. The Secretary of State’s suggestion that chemical companies may be willing to share substance data without significant cost ignores the situation the industry has been describing throughout the Brexit process. The Government cannot act in the interests of the chemicals industry unless it acknowledges the challenges it faces. (Paragraph 232)
51. Divergence between the UK and EU REACH systems would increase compliance costs for the UK chemicals sector. In exercising its new sovereignty, we urge the Government to avoid divergence for divergence’s sake. (Paragraph 233)
52. The fact that institutional data sharing on chemical regulation was not agreed through the TCA is a necessary consequence of the UK’s withdrawal from the EU Single Market and the Government’s decision not to commit to aligning with EU REACH in the future. Although the chemicals industry is keen to find an alternative way towards a data sharing agreement, the positions taken by the UK and the EU suggest that such an outcome is unlikely. (Paragraph 238)
53. We call on the Government to monitor how many substances are registered with UK REACH over the coming months, to publicly report how these registrations compare to the number of substances already registered with EU REACH, and to set out what actions it will take if it appears that the new regime will result in fewer substances being available for use in the UK. (Paragraph 239)

### Healthcare

54. We welcome the replacement healthcare arrangements that the Government has established, and the reassurance this will provide for UK citizens when they travel, particularly those with long-term health conditions. We support the Government’s objective of extending those arrangements to EEA countries and Switzerland. (Paragraph 252)

55. It is beneficial for the UK's pharmaceutical and manufacturing industries that the TCA allows tariff-free export of medicines and medical devices to the EU. (Paragraph 259)
56. While mutual recognition of Good Manufacturing Practices is helpful for the medical industry, it is disappointing that such recognition has not been extended to other regulatory processes such as batch testing. We note that the EU has reached mutual recognition agreements with other third countries, and urge the Government to seek a similar agreement. (Paragraph 260)
57. We welcome the grace period that the Government has secured to allow businesses time to adjust their supply routes to accommodate the post-Brexit application of the Falsified Medicines Directive in Northern Ireland. We also welcome the Government's continuing engagement with the sector: if disruption once the grace period has elapsed is to be minimised, it will be essential to explore the alternative possibilities mentioned by the Minister, such as bonded warehouses and cabotage. (Paragraph 266)
58. We are encouraged that the Government was prompt to request access to the Early Warning and Response System in relation to the COVID-19 pandemic, and that the EU was equally swift to grant that access. This bodes well for future cooperation on monitoring cross-border health threats. To ensure transparency on the use of this measure, we urge the Government to make a statement to both Houses whenever such a request is made, and to confirm whether or not it has been granted. (Paragraph 269)
59. The UK's recognition of EU-based clinical trial sponsors is helpful, but the lack of mutual recognition risks both significantly harming the UK's ability to conduct clinical research and reducing UK patients' access to clinical trials on rare diseases and children's cancers. We recommend that the Government seek EU recognition of UK-based clinical trial sponsors, and in the meantime take steps to ensure UK-based researchers have the funds available to establish EU-based legal representatives. (Paragraph 273)
60. The flow of data between the UK and EU is important for enabling both patient treatment and clinical research. In the absence of a positive data adequacy decision from the EU, the Government will need to provide advice on data protection to the healthcare industry and researchers, and support them in forming alternative arrangements for data sharing. (Paragraph 279)
61. The UK's NHS and social care workforce has been subject to unprecedented and unforeseeable pressures over the last 12 months. The inevitable impact of the COVID-19 pandemic on recruitment and retention of staff will compound the existing and alarming shortages in the sector. (Paragraph 286)
62. We see no evidence of a credible plan from the Government to address the shortage of social care staff in the UK. While we support its ambition to encourage more 'homegrown' care workers, such measures will take years to materialise, and the need is immediate. (Paragraph 287)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Baroness Brown of Cambridge  
 Baroness Bryan of Partick  
 Lord Cameron of Dillington  
 Lord Carter of Coles  
 Lord Cormack  
 Lord Giddens  
 Baroness Jolly  
 Baroness McIntosh of Pickering  
 The Duke of Montrose  
 The Earl of Stair  
 Lord Teverson (Chair)  
 Lord Young of Norwood Green

### Declarations of interest

Baroness Brown of Cambridge  
*Vice Chair of the Climate Change Committee (ceased on 28 February)*  
*Chair of the Adaptation Committee on the Climate Change Committee*  
*Chair of the Carbon Trust*  
*Non-Executive Director of the Offshore Renewable Energy Catapult*  
*Sector Champion for the Offshore Wind Sector Deal*  
*Chair of the Cambridgeshire and Peterborough Independent Climate Commission*  
*Non-Executive Director of Ørsted*

Baroness Bryan of Partick  
*No relevant interests declared*

Lord Cameron of Dillington  
*Farming and landowning interests, involving agricultural production, stewardship contracts, commercial and domestic lettings and renewable energy projects*  
*Chair of the UK Centre for Ecology and Hydrology*  
*Chair of the Advisory panel for the UK's Global Food Security research programme*  
*Chair of Airports Direct Travel Ltd*

Lord Carter of Coles  
*Farming, rural property and tourism interests*  
*Operator of an RHI-backed biomass scheme*  
*Chair, Primary Group Limited, Bermuda (subsidiaries providing global healthcare insurance)*  
*Non-Executive Director, NHS Improvement*  
*Chair, The Glenholme Healthcare Group Ltd (care and rehabilitation centres)*  
*Chair, HSL Ltd (NHS and private pathology services)*

Lord Cormack  
*No relevant interests declared*

Lord Giddens  
*Council Member, European Council of Foreign Relations*

Baroness Jolly

*No relevant interests declared*

Baroness McIntosh of Pickering

*Director and sole owner, Anne McIntosh Consulting Limited (strategic advice on food, farming and the environment): clients include the Dispensing Doctors Association*

*Honorary Associate, the British Veterinary Association*

*Member, the Rural Affairs Group of the Church of England*

*President, National Energy Action: Action for Warmer Homes*

*Vice President, Association of Drainage Authorities*

*Patron, Institute of Agricultural Secretaries and Administrators*

*Patron, Sustainability First*

*Co-Chair, All-Party Parliamentary Group on Water*

The Duke of Montrose

*Family farm receiving agricultural and environmental subsidies historically from the EU and UK*

*Selling young stock to the rearing industry*

*Activities geared to emissions reduction*

*Run of the river hydroelectric scheme*

*Estate involvement in tourism, leisure and freshwater fishing*

*Member of NFU Scotland*

*Member of Scottish Land and Business Association*

*Member of National Sheep Association*

*Associate Member of British Veterinary Association*

The Earl of Stair

*Farmer and landowner in receipt of Single Farm Payment, managing let property for both commercial and domestic tenants*

*Managing forestry and heritage*

*Business receiving EU support*

*Member, NFU Scotland (non-financial)*

*Member, Scottish Land and Business Association (non-financial)*

*Management of several sites of scientific interest and nature reserve*

Lord Teverson

*President, Major Energy Users Council*

*Trustee, Regen South West*

*Trustee/director, Green Purposes Company*

*Chair, Cornwall and Isles of Scilly Local Nature Partnership*

*Director, Aldustria Ltd*

Lord Young of Norwood Green

*No relevant interests declared*

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

The Earl of Kinnoull (Chair)

Baroness Brown of Cambridge

Baroness Couttie

Baroness Donaghy

Lord Faulkner of Worcester

Lord Goldsmith

Baroness Hamwee

Lord Kerr of Kinlochard  
 Lord Lamont of Lerwick  
 Baroness Neville-Rolfe  
 Lord Oates  
 Lord Ricketts  
 Lord Sharkey  
 Lord Teverson  
 Lord Thomas of Cwmgiedd  
 Lord Wood of Anfield

During consideration of the report the following Members declared an interest:

The Earl of Kinnoull (Chair)

*Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy*  
*Chairman, Culture Perth and Kinross, in receipt of governmental subsidy*  
*Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies*  
*Shareholdings as set out in the register*

Baroness Couttie

*Non-Executive Director, Mitie*  
*Commissioner, Guernsey Financial Services Commission*  
*Special Advisor, Heyman AI Ltd*

Baroness Donaghy

*Former President of the Trades Union Congress*  
*Former member European Trades Union Congress*

Lord Faulkner of Worcester

*Chairman, Great Western Railway Advisory Board*  
*Chairman, Alderney Gambling Control Commission*  
*Her Majesty's Government's Trade Envoy to Taiwan*

Lord Goldsmith

*Partner of Debevoise & Plimpton LLP international law firm with offices in the UK and various EU cities amongst others*

Baroness Hamwee

*No relevant interests to declare*

Lord Kerr of Kinlochard

*Chairman, Centre for European Reform*  
*Deputy Chairman, Scottish Power PLC*  
*Member, Scottish Government's Advisory Standing Council on Europe*

Lord Lamont of Lerwick

*Director, Devon European Opportunities Trust*  
*Director, Compagnie Internationale de Participations Bancaires et Financières (CIPAF)*  
*Director, Chelverton UK Dividend Trust*  
*Adviser, Halkin Investments*  
*Adviser, Official Monetary and Financial Institutions Forum (OMFIF)*  
*Adviser, Meinhardt Engineering Group, Singapore*

Baroness Neville-Rolfe

*Former Commercial Secretary, HM Treasury*  
*Chair, Assured Food Standards Ltd*  
*Chair, UK ASEAN Business Council*

*Non-Executive Director, Capita Plc*  
*Non-Executive Director, Secure Trust Bank*  
*Shareholdings as set out in the register*  
*Trustee (Non-Executive Director), Thomson Reuters Founders Share Company*

**Lord Oates**

*Director, Centre for Countering Digital Hate*  
*Chairman, Advisory Board, Weber Shandwick UK*  
*Director, H&O Communications Ltd.*

**Lord Ricketts**

*Non-Executive Director, Group Engie, France*  
*Strategic Adviser, Lockheed Martin UK*  
*Charitable activities as set out in the Register of Interests*

**Lord Sharkey**

*Chair of the Association of Medical Research Charities*  
*Chair of the Specialised Healthcare Alliance*  
*Member of Council at University College London*

**Lord Thomas of Cwmgiedd**

*Chairman, London Financial Markets Law Committee*  
*First Vice-President, European Law Institute*  
*Member, First Minister of Wales' European Advisory Group*

**Lord Wood of Anfield**

*Chair of the United Nations Association (UNA-UK)*  
*Director, Good Law Project*  
*Director of Janus Henderson Diversified Income Trust*

A full list of Members' interests can be found in the Register of Lords' interests:  
<https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://committees.parliament.uk/work/944/future-ukeu-relations-energy-environment-and-health/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

|    |   |                          |
|----|---|--------------------------|
| *  | Dominic Goudie, Food and Drink Federation   | <a href="#">QQ 1-9</a>   |
| *  | Andrew Opie, British Retail Consortium  | <a href="#">QQ 1-9</a>   |
| *  | Nick von Westenholz, National Farmers' Union  | <a href="#">QQ 1-9</a>   |
| *  | Professor Susan Dawson, School of Veterinary Science                                  | <a href="#">QQ 10-16</a> |
| *  | Mandisa Greene, Royal College of Veterinary Surgeons                                  | <a href="#">QQ 10-16</a> |
| ** | James Russell, British Veterinary Association   | <a href="#">QQ 10-16</a> |
| ** | Kate Ling, NHS Confederation  | <a href="#">QQ 17-25</a> |
| *  | Fiona Loud, Kidney Care UK  | <a href="#">QQ 17-25</a> |
| ** | Emlyn Samuel, Cancer Research UK  | <a href="#">QQ 17-25</a> |
| *  | Richard Torbett, Association of the British Pharmaceutical Industry                   | <a href="#">QQ 17-25</a> |
| *  | Minister Edward Argar MP, Department for Health and Social Care                       | <a href="#">QQ 26-34</a> |
| *  | Matthew Harpur, Department for Health and Social Care                                 | <a href="#">QQ 26-34</a> |
| *  | Ed Moses, Department for Health and Social Care                                       | <a href="#">QQ 26-34</a> |
| *  | Josh Burke, Grantham Research Institute on Climate Change and the Environment         | <a href="#">QQ 35-46</a> |
| *  | Paul Dawson, European Federation of Energy Traders (EFET)                             | <a href="#">QQ 35-46</a> |
| *  | Matt Hinde, EU Affairs at National Grid   | <a href="#">QQ 35-46</a> |
| ** | Emma Pinchbeck, Energy UK   | <a href="#">QQ 35-46</a> |
| ** | Secretary of State George Eustice, Department for Environment, Food and Rural Affairs | <a href="#">QQ 47-57</a> |
| *  | Dr Sarah Swash, Department for Environment, Food and Rural Affairs                    | <a href="#">QQ 47-57</a> |
| *  | Mark Thompson, Department for Environment, Food and Rural Affairs                     | <a href="#">QQ 47-57</a> |

**Alphabetical list of all witnesses**

|    |  |                         |
|----|--|-------------------------|
|    | ABTA—The Travel Association  | <a href="#">EEH0043</a> |
|    | Agriculture and Horticulture Development Board (AHDB)  | <a href="#">EEH0006</a> |
|    | Agricultural Industries Confederation  | <a href="#">EEH0034</a> |
|    | Alvis Bros Ltd   | <a href="#">EEH0013</a> |
| *  | Richard Torbett, Association of the British Pharmaceutical Industry ( <a href="#">QQ 17-25</a> ) |                         |
|    | Professor Richard Barnes, The University of Lincoln  | <a href="#">EEH0033</a> |
|    | The BioIndustry Association  | <a href="#">EEH0020</a> |
|    | British Food Importers and Distributors Association  | <a href="#">EEH0037</a> |
|    | British Poultry Council  | <a href="#">EEH0040</a> |
| *  | Andrew Opie, British Retail Consortium ( <a href="#">QQ 1-9</a> )                                |                         |
| ** | British Veterinary Association ( <a href="#">QQ 10-16</a> )                                      | <a href="#">EEH0027</a> |
|    | Professor Charlotte Burns, University of Sheffield   | <a href="#">EEH0028</a> |
| ** | Cancer Research UK ( <a href="#">QQ 17-25</a> )  | <a href="#">EEH0014</a> |
|    | Griffin Carpenter, Independent Consultant  | <a href="#">EEH0033</a> |
|    | Chatham House  | <a href="#">EEH0011</a> |
|    | CHEM Trust   | <a href="#">EEH0008</a> |
|    | Chemical Business Association  | <a href="#">EEH0001</a> |
|    | Chemical Industries Association (CIA)  | <a href="#">EEH0012</a> |
|    | ClientEarth  | <a href="#">EEH0026</a> |
|    | Dairy UK   | <a href="#">EEH0025</a> |
|    | Mark Dayan, Nuffield Trust   | <a href="#">EEH0007</a> |
| *  | Department for Environment, Food and Rural Affairs ( <a href="#">QQ 47-57</a> )                  |                         |
| *  | Department for Health and Social Care ( <a href="#">QQ 26-34</a> )                               |                         |
|    | Department of Business, Energy and Industrial Strategy   | <a href="#">EEH0042</a> |
|    | Dr Mary Dobbs, Maynooth University   | <a href="#">EEH0038</a> |
| ** | Energy UK ( <a href="#">QQ 35-46</a> )   | <a href="#">EEH0009</a> |
|    | European Chemical Industry Council (Cefic)   | <a href="#">EEH0012</a> |
| *  | Paul Dawson, European Federation of Energy Traders (EFET) ( <a href="#">QQ 35-46</a> )           |                         |
|    | Dr Nicholas Fahy, University of Oxford   | <a href="#">EEH0007</a> |
|    | Andrew Glencross, Aston University   | <a href="#">EEH0002</a> |
|    | Silke Goldberg, Herbert Smith Freehills  | <a href="#">EEH0036</a> |

- \* Dominic Goudie, Food and Drink Federation  
([QQ 1-9](#))  
Dr Viviane Gravey, Queen's University Belfast [EEH0028](#)
- \* Josh Burke, Grantham Research Institute on Climate  
Change and the Environment ([QQ 35-46](#))  
Greener UK [EEH0030](#)  
Health and Care Professions Council [EEH0016](#)  
Professor Tamara Hervey, University of Sheffield [EEH0007](#)  
Professor Andrew Jordan, University of East Anglia [EEH0028](#)
- \* Fiona Loud, Kidney Care UK ([QQ 17-25](#))  
Law Society of Scotland [EEH0035](#)
- \* Nick von Westenholz, National Farmers' Union  
([QQ 1-9](#))  
National Federation of Fishermen's Organisations [EEH0031](#)
- \* Matt Hinde, National Grid ([QQ 35-46](#))  
National Sheep Association (NSA) [EEH0018](#)  
Chris Williams, New Economics Foundation [EEH0033](#)  
New Under Ten Fishermen's Association [EEH0041](#)
- \*\* NHS Confederation ([QQ 17-25](#)) [EEH0017](#)  
NHS Providers [EEH0010](#)  
Annaïg Nicol, Living Law [EEH0039](#)  
Martha McCarey, Nuffield Trust [EEH0007](#)  
Ofgem [EEH0022](#)  
Dr Ludivine Petetin, Cardiff University [EEH0038](#)  
Provision Trade Federation [EEH0023](#)  
Prof Colin Reid, University of Dundee [EEH0004](#)
- \* Mandisa Greene, Royal College of Veterinary Surgeons  
([QQ 10-16](#))  
Royal Society of Chemistry [EEH0003](#)
- \* Professor Susan Dawson, School of Veterinary Science  
([QQ 10-16](#))  
Scottish Fishermen's Federation [EEH0015](#)  
Susan Shaw, Living Law [EEH0039](#)  
United Kingdom Lubricants Association Limited [EEH0005](#)  
UK Fisheries Ltd [EEH0019](#)  
UK Seafood Industry Alliance [EEH0024](#)  
UKELA (UK Environmental Law Association) [EEH0029](#)  
UKERC [EEH0011](#)

Which?

[EEH0032](#)

Dr Matthew Wood, University of Sheffield

[EEH0007](#)

**APPENDIX 3: GLOSSARY**

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|         |  |
|---------|--|
| AHDB    | Agriculture and Horticulture Development Board   |
| BCPs    | Border Control Posts   |
| BVA     | British Veterinary Association   |
| CBA     | Chemical Business Association  |
| Cefic   | European Chemical Industry Council   |
| CFP     | Common Fisheries Policy  |
| CIA     | Chemical Industries Association  |
| COP26   | The 26th meeting of the Parties to the United Nations Framework Convention on Climate Change.  |
| Defra   | Department for Environment, Food & Rural Affairs   |
| EEA     | European Economic Area   |
| EFET    | European Federation of Energy Traders  |
| EHIC    | European Health Insurance Card   |
| EMA     | European Medicines Agency  |
| ePhyto  | The electronic equivalent of a phytosanitary certificate.                                      |
| ETS     | Emissions Trading System   |
| Euratom | European Atomic Energy Community   |
| EWRS    | Early Warning and Response System  |
| FMD     | Falsified Medicines Directive  |
| FTE     | Full-Time Equivalent   |
| GDPR    | General Data Protection Regulation   |
| GMP     | Good Manufacturing Practice  |
| HMRC    | Her Majesty's Revenue and Customs  |
| ICES    | International Council for the Exploration of the Sea   |
| IEM     | Internal Energy Market   |
| IEMA    | Institute of Environmental Management & Assessment   |
| MHRA    | Medicines and Healthcare products Regulatory Agency  |
| MSP     | Member of the Scottish Parliament  |
| NCA     | Nuclear Cooperation Agreement  |
| NFFO    | National Federation of Fishermen's Organisations   |
| NSA     | National Sheep Association   |
| NUTFA   | New Under Ten Fishermen's Association  |
| OEP     | Office for Environmental Protection  |
| REACH   | Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals |
| SEM     | Single Electricity Market  |

|        |   |
|--------|---|
| SFF    | Scottish Fishermen's Federation   |
| SPS    | Sanitary and Phytosanitary  |
| TAC    | Total Allowable Catch   |
| TCA    | EU-UK Trade and Cooperation Agreement   |
| TRACES | The European Commission's online platform for sanitary and phytosanitary certification. |
| TSO    | Transmission System Operator  |
| WTO    | World Trade Organization  |