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Issue 11: EU-UK Future Relationship Negotiations

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Following the UK's departure from the EU, the negotiations to determine the future relationship began on 2 March 2020. Over the course of the negotiations, SPICe will publish briefings outlining the key events, speeches and documents published. This briefing tracks the negotiation's progress during July 2020 and the UK's preparations for leaving the single market and customs union.



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Executive Summary

This is the eleventh in a series of SPICe briefings covering the negotiations on the future relationship between the EU and the UK.

This briefing:

- Reviews the state of the negotiations at a symbolic 'halfway point'.
- Summarises appearances by UK and Scottish ministers at the Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee.
- Reports on progress of the negotiations during July.
- Describes UK government plans for border arrangements and trade tariffs after the transition period.
- Discusses the role of food and agricultural standards in current trade negotiations.
- Reports on UK government proposals for the UK internal market.
- Provides an update on Brexit-related legislation, including the introduction of the *UK Withdrawal from the European Union (Continuity) (Scotland) Bill* in the Scottish Parliament.

Negotiations at the 'halfway point'

On 15 June, the EU-UK negotiation's planned 'high-level conference' between Prime Minister Boris Johnson and Presidents of the relevant EU institutions took place - [see Issue 10 for further detail](#). This conference marked a symbolic 'halfway point' where political leaders met and a [new schedule of talks was agreed](#) in the knowledge that no extension to the transition period was to be sought. The negotiation's state-of-play at this point was [summarised in a SPICe blogpost](#) as showing few signs of progress:

“ After four rounds of the EU-UK future relationship negotiations there have been few signs of progress. Key sticking points revolve around level playing field provisions, fisheries, and governance of the future relationship. In addition, an exchange of letters between the chief negotiators ahead of round four suggested that the negotiations were going nowhere fast. With the transition period set to end in just over six months’ time, the race is on for the UK and the EU to reach an agreement on the future relationship.”

Scottish Government reaction

Three days after the high level conference, the Culture, Tourism, Europe and External Affairs Committee took [evidence from Michael Russell, Cabinet Secretary for the Constitution, Europe and External Affairs](#).

Commenting on the negotiations and the type and likelihood of a deal being reached, the Cabinet Secretary said:

“ The UK is asking for a low deal, which is far away from anything that we envisaged that it would settle for a year ago. In essence, it is looking for the most rudimentary and basic free trade agreement, with the UK being able to do anything that it likes with no restrictions. It is unrealistic to think that the EU will sign up to that.”

“ However, if there were changes on both sides, there could be a really unsatisfactory low deal, which would be almost as damaging as no deal. Even if we could get that, it would still need to be implemented.”

Alongside emphasising the challenges of implementing a deal on a short timescale, the Cabinet Secretary commented on the opportunities for scrutinising any deal:

“ Let us now consider scrutiny... What scrutiny opportunities would there be if a deal was reached at the end of August or at the beginning of September? It would take a long time—certainly a couple of months—to ratify. How could that deal be properly investigated and scrutinised, particularly given the pressure on Parliaments as a result of the circumstances that we are in?”

On Scotland's influence over the UK's negotiating position, the Cabinet Secretary said:

“ it is very difficult—indeed, it is next to impossible—to ensure that Scotland’s voice is heard in what are the most important constitutional negotiations for decades.”

The Cabinet Secretary emphasised his desire for a "resetting of the discussions" between the UK and devolved administrations. Referring to the remit of the Joint Ministerial Committee (Europe Negotiations) (JMC(EN)), he said:

“ The JMC(EN) is meant to”

“ “discuss each government’s requirements of the future relationship with the EU; seek to agree a UK approach to, and objectives for, Article 50 negotiations”—”

“ that did not happen—”

“ “provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations; and, discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive.””

“ That is clear. However, that is not happening and has not happened for some considerable time. That point has been raised at almost every meeting. It has to be recognised that that is what we are there for.”

“ The JMC(EN) must be given precedence again and must meet regularly—we have said weekly—while the negotiations are going on. The meetings should be slotted in in a way that ensures that we can talk about, and have oversight of, the negotiations. There should be a meaningful way in which task force Europe, which is headed by David Frost, comes and discusses things. It should not be done in a pro forma way or by telling us things that we have already read in the newspapers, which is what happens. Yesterday, we had a ministerial briefing from the Paymaster General and the report from task force Europe had nothing in it that we had not already read in the newspapers. What I have asked for has to happen.”

“ We have to ensure that the agendas for the meetings give real information and involve us in the discussions, and there has to be an intention to try to do some of the things that need to happen. For example, the Scottish, Welsh and Northern Ireland Governments have all said that, if the UK Government does not wish to participate in the horizon Europe programme and the Erasmus+ scheme, it must bring to the table the arrangements for, and requests from, the devolved Administrations to take part in those schemes, if we so wish. That issue has been evaded meeting after meeting. That is not happening. Task force Europe knows that that is what it would have to do in order to find a way in which the devolved Administrations could continue to take part in those schemes. It is not doing that, and I do not think that it has any intention of doing that. It certainly will not answer questions on that issue.”

“ We need to get back to a situation in which there is actual discussion, actual oversight and actual action.”

And specifically on the Scottish Government's role in influencing the UK's legal texts, the Cabinet Secretary said:

“ On 19 May, the UK Government published its draft legal texts for the negotiations, which were shared with the Scottish Government less than 24 hours before publication, with no opportunity to amend.”

But later he added that:

“ The one text on which there was any discussion was the one on justice and security. It was necessary to involve the Lord Advocate, because he has an independent position as a prosecutor. He was able to point out that Scots law says certain things. He said that, in his independent role, he is responsible for a great deal of the law and, for example, the administration of extradition. [...] We have experts in each area who could have influenced the texts, but that has not happened. That is the issue. We have put forward ideas in each area and have tried to discuss them, but we do not get anywhere. ”

The Cabinet Secretary also extended his criticisms of over the lack of devolved influence to the implementation of the Ireland/Northern Ireland protocol:

“ Despite the importance of the joint committee’s decisions for implementation in Scotland, including in devolved areas, the Scottish Government is not sighted on those discussions. Neither the Scottish Government nor the other devolved Governments have been provided with anything like a meaningful opportunity to influence discussions on the protocol or any other matter.”

Further issues covered in the evidence session included extending the transition period, fisheries negotiations, impacts on business' preparation during the Covid-19 pandemic, trade deals with other countries, cooperation on criminal matters, participation in EU programmes such as Horizon 2020, and preparations for a no-deal scenario.

Michael Gove's evidence to CEETA committee

In the week after the high level conference, the Culture, Tourism, Europe and External Affairs Committee [took evidence on 25 June from Michael Gove, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office](#).

Michael Gove addressed questions on the extent to which the devolved nations' interests are represented in the negotiations. When asked for examples of devolved influence, he said:

“ We should take everything into account: the fact that, in agriculture, as I mentioned earlier, Scotland, Wales and Northern Ireland rely to a greater extent than England does on livestock production; the fact that there are specific equities for Scottish producers in the agri-food sector because of the prominence of geographical indications; the fact that the Scottish Government has said that it is strongly attached to access to the Erasmus+ programme; the fact that the Northern Ireland protocol and its implementation have to take account of the legacy of the Belfast agreement; the fact that, as we look again at Wales’s economic future, we need to be certain that particular sectors—not only agri-food but manufacturing—have the right deal.”

“ In all those areas, our negotiating stance has been shaped and framed by determination to do the best for the United Kingdom. In doing that, we are listening to the Scottish and Welsh Governments and the Northern Ireland Executive. However, from time to time, of course our judgment about what might be in the interests of the whole UK differs from that of, for example, the Scottish or Welsh Governments, because party traditions and the political philosophies of politicians, although it is always good if they overlap, will inevitably diverge in some circumstances.”

On the negotiations themselves, Michael Gove was asked what status the political declaration has for the UK government:

“ It very much is the basis for the negotiations—it provides a framework for [the negotiations] and allows us to reach what I hope will be a mutually beneficial free trade agreement.”

Michael Gove also addressed questions on specific topics under negotiation. On fisheries, he stated:

“ We want to make sure that we are an independent coastal state... so that, just like Norway, Iceland and the Faroe Islands, we can allow others in, but on our terms. As we touched on earlier, that means that, as the Scottish Government’s research has shown, there will be more jobs and more money for Scotland’s coastal communities, in particular—but not exclusively—those in the north-east of Scotland. It also means that we will be able to manage stocks in a more environmentally sensitive way, so it is a win-win both economically and environmentally.”

“ You are right that the logic of the Scottish Government’s position of wanting us to remain in the European Union would mean that we would be in the common fisheries policy. If, at some future date—I hope that it does not happen—there were an independent Scotland and it wanted to accede to EU membership, it would have to accept the common fisheries policy and it would lose a lot of its territorial waters.”

On participation in EU programmes, he stated:

“ On Horizon 2020 and Erasmus+, for the UK’s involvement in any EU programme, the important thing is that we need to make sure that it is value for money. We know that Scottish universities, because of their excellent research base, benefit particularly from involvement in the UK-wide allocation of research funding. As in so many ways, Scotland benefits financially from being in the United Kingdom because of the strength of the UK Treasury and its institutions.”

“ We will look at future participation in Erasmus+ and in science programmes. We hope that we will be able to participate in such programmes, but they need to be value for money. One thing that is unambiguously value for money is Scots universities having access to UK research.”

On animal and environmental standards in trade deals more generally, he said:

“ When we consider trade agreements we take very seriously the importance of protecting our high animal welfare and environmental standards, and your question gives me the opportunity to state that those protections already exist in law and that we are not going to dilute them.”

Michael Gove also answered questions on implementation of the Withdrawal Agreement. On extending the UK government's settlement scheme deadline to take account of the impact of Covid-19, he said:

“ I do not see any reason to extend that deadline, which is halfway through next year. Some 3.2 million EU citizens in the UK have applied for settled status, which is more than the number of EU citizens that we imagined were in the UK—that figure was widely believed to be around 3 million rather than 3.2 million. You are right that the presence and participation of EU citizens in the life of the UK is a good thing.”

On border arrangements for intra-UK trade in goods across the Northern Ireland border, he repeated the UK's position that:

“ There will be no need for any infrastructure in Scotland, because Northern Ireland businesses will have unfettered access to the UK internal market. There will be some additional requirements in checks on products of animal origin, because we respect the island of Ireland's status not just as a single epidemiological zone, but as a single sanitary and phytosanitary zone. However, it is already the case that there are checks at Larne and Belfast for live animals. We will build on the existing systems in order to ensure that the checks are appropriate. It is, of the course, the case that physical checks on products of animal origin apply to only a small proportion of those goods.”

On goods bound for the Republic of Ireland from Scotland, he said:

“ If [goods] are bound for the Republic of Ireland, customs procedures will be conducted, and we believe that they can be conducted electronically as the goods make their way there. However, the overwhelming majority of trade between the UK and Northern Ireland is intra UK. That reinforces the importance of the United Kingdom's internal market and the fact that we all benefit from those economic, social and cultural ties.”

Negotiations during July

At the high-level conference a [new schedule of negotiating rounds was agreed](#). This included formal rounds and four more restricted rounds or specialised meetings to focus on issues of particular difficulty. These meetings were to take place in-person where possible:

- Restricted round & specialised sessions: week of 29 June to 3 July (Brussels)
- Specialised sessions: week of 6 July (London)
- Specialised sessions: week of 13 July (Brussels)
- Round 5: week of 20 July to 24 July (London)
- Specialised sessions: week of 27 July (London)
- Round 6: week of 17 August to 21 August (Brussels)

Following the high-level conference, Michael Gove indicated that [the UK Government saw July as a important time to make progress](#).

Progress during July's restricted & specialised sessions

The first restricted round started on 29 June. The [agenda](#) indicates that a wide range of policy areas were still tabled for discussion. These were:

- LEVEL PLAYING FIELD for OPEN & FAIR COMPETITION
- HORIZONTAL ARRANGEMENTS AND GOVERNANCE
- FISHERIES
- TRADE in GOODS
- TRADE in SERVICES and INVESTMENT and OTHER ISSUES
- CRIMINAL LAW AND JUDICIAL COOPERATION
- NETWORKS: ENERGY AND TRANSPORT S
- PARTICIPATION IN UNION PROGRAMMES
- MOBILITY, SOCIAL SECURITY, AND THEMATIC COOPERATION

In the event, talks ended a day early on Thursday. Both sides reported that significant differences remained.

The UK's chief negotiator David Frost [said](#):

“ We have completed our discussion of the full range of issues in the negotiation in just over three days. Our talks were face to face for the first time since March and this has given extra depth and flexibility to our discussions. The negotiations have been comprehensive and useful. But they have also underlined the significant differences that still remain between us on a number of important issues. We remain committed to working hard to find an early understanding on the principles underlying an agreement out of the intensified talks process during July, as agreed at the HLM on 15 June.”

The EU's chief negotiator, Michel Barnier [said](#):

“ Our goal was to get negotiations successfully and quickly on a trajectory to reach an agreement. However, after four days of discussions, serious divergences remain.”

There has been no agendas published in relation to the two specialised sessions during the weeks of 6 July and 13 July, and few public statements were made. Following the first specialised session in London during the week of 6 July, Michel Barnier [continued to indicate](#) that little progress had been made.

What happened during Round 5?

The fifth round of formal negotiations began on 20 July with the [agenda published in advance](#).

Again, these negotiations appear to be characterised by a lack of progress in reconciling the positions of the UK and the EU, with the level playing field and fisheries once again proving stumbling blocks. Signs of progress were noted by the negotiators on governance issues and the role of the Court of Justice of the European Union.

On 23 July, the UK's Chief Negotiator David Frost [statement following the Round's conclusion](#) said:

“ It is unfortunately clear that we will not reach in July the “early understanding on the principles underlying any agreement” that was set as an aim at the High Level Meeting on 15 June. At that meeting, the Prime Minister set out once again the fundamental principles which we have repeatedly made clear would need to underpin any future agreement and which are intrinsic to the UK's future as an economically and politically independent country. Any agreement needs to honour these principles in full. The EU's proposals so far, while a welcome response to the Prime Minister's statement, do not do so, and therefore substantial areas of disagreement remain.”

“ Specifically, the EU has listened to the UK on some of the issues most important to us, notably on the role of the Court of Justice, and we welcome this more pragmatic approach. Similarly, we have heard the EU's concerns about a complex Switzerland-style set of agreements and we are ready to consider simpler structures, provided satisfactory terms can be found for dispute settlement and governance.”

“ We have also had constructive discussions on trade in goods and services, and in some of the sectoral agreements, notably on transport, social security cooperation, and participation in EU programmes. We have also continued to deepen our understanding of each other's constraints on law enforcement.”

“ But considerable gaps remain in the most difficult areas, that is, the so-called level playing field and on fisheries. We have always been clear that our principles in these areas are not simple negotiating positions but expressions of the reality that we will be a fully independent country at the end of the transition period.”

“ That is why we continue to look for a deal with, at its core, a free trade agreement similar to the one the EU already has with Canada – that is, an agreement based on existing precedents. We remain unclear why this is so difficult for the EU, but we will continue to negotiate with this in mind.”

“ Looking forward, there are large areas of convergence in many of the areas on which we are negotiating and ample precedents and texts on which we can base our work. We will keep working hard to bridge the gaps and find a way through.”

“ When the next round of negotiations begins there will be not much more than four months left until the end of the transition period. Although we will continue energetically to seek an agreement with the EU, we must face the possibility that one will not be reached, and we must therefore continue preparing for all possible scenarios for the end of the transition period at the end of this year.”

“ Despite all the difficulties, on the basis of the work we have done in July, my assessment is that agreement can still be reached in September, and that we should continue to negotiate with this aim in mind. Accordingly we look forward to welcoming the EU team back to London next week as planned for informal discussions and to the next negotiating Round beginning on 17 August.”

On the EU side, the EU's chief negotiator Michel Barnier [stated](#):

“ This week, we have had useful discussions on some issues in goods and services.”

“ But these negotiations are complex and require us to make progress across all areas. And we are still far away.”

“ This week, discussions took place in a positive atmosphere, and I want to thank David Frost and his team, as well as the EU team, for their professional approach.”

“ It has allowed us to make some progress:”

- We had useful discussions to narrow our divergences in the areas of social security coordination and Union programmes.”
- We made progress towards the objective of a comprehensive and single institutional framework, which must include robust enforcement mechanisms.”
- And we had good discussions on police and judicial cooperation, even if divergences remain.”

“ On two important subjects, transport and energy, we had intense and useful discussions. However, the UK continued to request single market-like benefits.”

“ In addition, there is still no progress on two essential topics of our economic partnership.”

- First, there must be robust guarantees for a level playing field – including on State aid and standards – to ensure open and fair competition among our businesses, also over time. This is a core interest for all 27 Member States – and in my view also for the UK.”
- Second, we have to agree on a balanced, sustainable and long-term solution for fisheries, with the interests of all Member States concerned in mind, and not least the many men and women whose livelihoods depend on it on both sides.”

In his statement, Michel Barnier went on to provide [more detail on the EU's view of the level playing field and fisheries issues causing difficulty](#).

Preparations for leaving the single market and customs union

Border arrangements

On 13 July 2020, the UK government presented the [Border Operating Model](#) to clarify the functioning of border controls after the transition period. The long document (206 pages) confirms the staggered approach announced in June (see [Issue 10](#)). From July 2021, EU goods crossing the UK borders will be cleared through customs only upon payment of any relevant tariffs. The Model also explains the kind of checks applicable to special goods (like food or controlled products like tobacco).

The document notes that, while border management is a reserved competence, Scotland retains the competence on food safety, health and environmental protection. As a result, the applicable procedure and the competent institutions might vary across the UK countries.

Ultimately, the document sets out the need for importers and exporters to complete UK and EU **customs declarations**; pay **custom duties** (i.e. any tariffs applicable); pay **VAT**; complete default **safety and security declarations** and undergo the applicable checks.

Special goods will undergo additional checks. They include prohibited goods (like endangered species), goods subject to sanitary and phytosanitary controls (like animal products and plants), other controlled goods (like controlled drugs and firearms).

Clearly the UK borders will see more checks on goods traffic than they do currently. The UK government accordingly [announced an investment of £705 million](#) to finance the personnel upgrade that is necessary to perform all the activities described and many more (besides trade in goods, people will want to cross the UK border, and the customs authorities will need to apply the new immigration regime).

This commitment came in the wake of the concern about the **readiness of the UK's border**, which transpired from a [leaked internal communication](#) between government members. The main areas of concern were the readiness of the customs facilities in Northern Ireland and the compliance of the Model with the law of the WTO. On the latter point, the concern was that non-EU countries might complain about the temporary advantages granted to EU goods in the period between January and July 2021 (for instance, the possibility to pay custom duties within six months from importation).

The situation in Northern Ireland is constantly evolving. The Protocol to the Withdrawal Agreement provides for a system of **dual tariffs in Northern Ireland**. Northern Ireland will stay in the customs territory of the UK, while remaining in the EU single market for goods, and applying EU customs. In practice, this arrangement requires the identification of goods travelling from Great Britain into Northern Ireland which are at risk of further movement into the Republic of Ireland or the rest of the EU. The EU external tariff will apply to these "at risk" goods when they arrive in Northern Ireland, with a process that led some commentators to speak of a so-called "[border in the Irish Sea](#)". No checks, conversely, will be necessary between the Republic of Ireland and Northern Ireland.

On the **readiness of the border operations in Northern Ireland**, the European Commission made [a statement on 16 July 2020](#), stressing that it is:

“ of paramount importance for the United Kingdom to further intensify the technical engagement to resolve all outstanding questions.”

The UK Global Tariff scheme

On 19 May 2020 the UK government published the [UK Global Tariff](#) . This document specifies which tariff rate will apply to imported goods, when the UK is no longer part of the EU customs union and applying the EU external tariff.

The Global Tariff is a MFN tariff (Most-Favoured-Nation). This means that it will apply to all foreign goods, irrespective of their provenance. The only goods that are spared the Global Tariff will be those circulating within a Free Trade Area and goods from poorer countries enjoying special treatment for development reasons. Therefore, EU goods will be subject to this tariff scheme unless a free trade agreement is achieved by the end of the transition period.

To avoid opening delicate negotiations with all the other WTO members, the new tariff rates cannot exceed those applied by the EU. Under WTO rules, third countries cannot be disadvantaged by the consequences of Brexit. The UK, however, is free to apply lower tariffs, and the new scheme uses that option to create a new simplified scheme.

The scheme, prepared after consultation with the industry, is the [third one that the UK has published in the last two years](#). After proposing a drastic cut of tariffs across the board in March 2019 and a more moderate scheme in October 2019, the UK government opted for a scheme that seeks to achieve several goals, which might be seen to be contradictory.

“

1. **Liberalisation:** tariffs on consumer goods and intermediate components used in UK industries are cut or removed, if there is no significant UK production. This measure will alleviate the impact that tariffs on EU goods will have on UK citizens and manufacturers. The overall cut is not massive but is significant ([down one point to an average 6% duty on imports](#), judging by tariff lines).”
2. **Protection:** refrain from lowering tariffs on foreign goods that compete with domestic ones on the UK market. Essentially, all agricultural food will [continue to incur the same pre-Brexit tariffs](#) (extended of course also to EU goods);”
3. **Simplification:** nuisance tariffs (below 2%) are removed; and higher tariffs are staggered along regular intervals (i.e. multiples of 2.5%);”
4. **Currency conversion:** when tariffs are expressed in monetary values rather than percentage, the scheme uses British Pounds rather than Euros, even when the rate is not modified;”
5. **Negotiation:** some tariffs are kept high for reasons other than protection, for instance on [fruits that do not grow in the UK](#). Instead of simply cutting these tariffs, the scheme maintains the high EU rates, which are originally designed to protect the EU production but, in this scenario, would be applied against it. These tariffs seem to be there as negotiating chips for the negotiation of a free trade agreement. If the lobby of Spanish cherry producers is worried about the overnight raising of a tariff that could undermine their export of cherries and oranges to the UK, they might insist to Brussels that the EU-UK deal is important.”

Overall, the weighed reduction of tariffs (not measured on product categories but trade flows) will be [from 2.1% to 1.5%](#). The simplification is welcome, but the divergence from the EU tariff rates create new complications, for instance with respect to the Northern Ireland situation, where products “at risk” of further importation into the Republic of Ireland would include all products from third countries. For instance, US or Chinese exporters will have an incentive to use the Northern Ireland access into the EU market, to [circumvent the higher MFN rates](#). The simple fact of diverging from the EU rate creates additional pressure on the so-called “border in the Irish Sea” and on the [customs operations that should occur there](#).

Food and agricultural standards

As reported in [Issue 9](#) of this series of negotiation updates, at mid-June 2020 talks were stalling on the so-called [Level-Playing Field \(LPF\) clauses](#) of the trade agreement.

LPF provisions seek to ensure that, once tariffs and other trade obstacles are removed, the members of a free trade agreement retain comparable regulations on certain matters. This approach ensures that manufacturers across the free trade area comply with comparable rules and sustain comparable compliance costs. Without LPF rules, regulatory differences between the EU and the UK could result in different production costs in the two markets, and entail an unfair advantage for the producers that can save on production costs and then undermine the competition in the other market.

The EU is insisting on strong LPF guarantees because the UK will no longer be bound by EU rules. Without LPF commitments, the UK could in theory be free to create regulatory gaps: looser UK rules boosting UK manufacturers' competitiveness abroad for reasons unrelated to the quality of their products.

LPF clauses are negotiated on a range of matters, from state aids to workers rights. Among them is the field of food and agricultural standards.

The UK is currently engaging in parallel negotiations with the EU and the United States on distinct trade agreements. Food and agricultural standards (which include measures on animal welfare) are relevant to both. In talks with the EU, agricultural standards form part of the LPF negotiation: the EU has demanded assurances that the standards will not be loosened. In talks with the US, the converse is true: the US has signalled its intention to seek a loosening of agricultural standards in the framework of the trade deal, to sell its product to the UK. It appears, even at first sight, that the UK is at a cross-roads, as it will be difficult to please both partners.

One of the most prominent trade interests of the US is the possibility to export to the UK food and agricultural products that have so far been shut out of the EU market due to regulatory barriers. [Several examples can be made](#), including the well-known trans-Atlantic difference on chlorine-washed poultry, hormone-fed beef and GMO-containing food.

The chief US trade negotiator [has made that demand very clear](#), hinting at the possibility that the UK use its new regulatory independence to leave behind some restrictive EU rules:

“ Alluding to the dispute over agricultural exports, Mr Lighthizer said that food safety standards in some cases were "nothing more than thinly veiled protectionism". ”

“ Fears over chlorine-washed chicken and other US farming practices have been described by Woody Johnson, the US ambassador to the UK, as "inflammatory and misleading". ”

“ Earlier this year, Mr Johnson said it was important that US beef and poultry should be allowed into the UK. ”

“ He said the process was used by EU farmers to treat vegetables, and that it was the best way to deal with salmonella and other bacteria. ”

This prospect raises two issues with respect to the EU-UK negotiations, and a problem with the devolved administrations:

1. First, a change of UK law in this direction might cause **precisely the kind of distortions that LPF provisions try to prevent**. The EU could still ban UK products on grounds of safety (e.g., GMO foodstuff, hormone-fed beef), but could not restrict the access to its markets of UK goods that were cheaper to produce in the UK because of looser production standards that do not affect the final products (e.g., animal welfare restrictions). On the latter issue, the UK has essentially to choose whether to trade away its high standards to secure a deal with the US, or retain them to secure a deal with the EU.
2. Second, the prospect of US goods entering the UK that are prohibited in the EU increases the stakes for the border operations between the UK and EU, and

complicates further the situation in Northern Ireland. In essence, the EU would have to redouble the scrutiny to make sure that non-compliant products do not cross into its territory originating not only from the UK but also from the US. Maintaining satisfactory production standards in the UK would not be reassuring for the EU if sub-standard products were allowed into the UK from the US. **The risk of re-importation of US goods would need regulation and policing.**

3. Finally, looser UK-wide standards on agricultural foods, or lower trade barriers to substandard foods from the US, might cause a disagreement between the UK government and the Devolved Administrations. In a move to defuse internal conflict and coordinate scrutiny over these matters, the UK government appointed on 10 July 2020 a [Trade and Agriculture Commission advising on trade policies](#), which includes representatives from the agricultural industry in the four nations.

However, the UK government has stated food standard will not be compromised by trade negotiations, including when it announced the Trade and Agriculture Commission. The Secretary of State for Environment, Food and Rural Affairs [stated](#):

“ We have been consistently clear that we will not compromise on our high environmental protection, animal welfare and food standards in all of our trade negotiations.”

UK internal market

On 16 July 2020, the UK government published its [white paper setting out its thinking on the nature of the UK internal market](#) once the UK leaves the Brexit transition period at the end of this year.

The aim of the white paper is to “seek the views of businesses, academics, consumer groups and trade unions” on the UK government’s proposals to enshrine in law two principles to protect the flow of goods and services in the UK’s Internal Market: the principle of mutual recognition, and the principle of non-discrimination.

As this is a white paper rather than legislative proposals, it is not clear exactly how the UK government plans to approach enshrining the Internal Market in legislation. Instead the white paper gives an indication of the UK government’s thinking in this area.

As a starting point the white paper seeks to define the UK’s Internal Market stating it was established after the 1707 Act of Union. Whilst the Internal Market may date back over 300 years, the impact of EU membership effectively meant a definition for it wasn’t necessary even when devolution for Scotland, Wales and Northern Ireland was delivered in 1999. EU membership means membership of the EU’s Internal Market established under Article 18 of the Treaty on the Functioning of the European Union.

The introduction of devolution across the UK nations in 1999 did not lead to significant divergences in rules and standards within the UK largely as a result of EU rules providing a framework for the UK within which the UK government along with the governments in Scotland, Wales and Northern Ireland worked.

On the mutual recognition principle, the UK government's approach appears to suggest that any good which meets the rules and standards required in one of the UK's nations should as a result be able to be sold in any of the four nations. The White Paper states:

“ The fundamental aim of all mutual recognition systems is to ensure that compliance with regulation in one territory is recognised as compliance in another. This is useful to prevent discrimination against businesses from other parts of the UK, and to ease the burdens associated with complying with two sets of requirements.”

The White Paper also suggests that legislation should include a non-discrimination principle in the operation of the Internal Market. According to the White Paper:

“ The non-discrimination principle will be a requirement not to discriminate between individuals or businesses based on residence or origin within the UK. Direct discrimination is where an individual or business is treated differently and unfavourably by another administration, in an explicit manner, compared with local operators when operating in another part of the UK, expressly on the grounds of residence or geographical origin. The non-discrimination principle will allow scope for such differential treatment where this is necessary, for example, to address a public, plant or animal health emergency.”

In the White Paper, the UK government recognises that an independent non-political body is required to oversee the operation of the Internal Market. It is proposed that an independent body should carry out two functions in relation to the Internal Market:

- Monitoring and advising on the health and evolution of the Internal Market
- Capturing business and consumer insight into the development of the Internal Market

It is not clear from the White Paper, how the role of an independent body would be developed but the UK Government has indicated its role may include providing expert advice to administrations and legislatures across the UK.

SPICe will publish further analysis of the Internal Market White Paper and subsequent legislative proposals in the coming weeks.

European Commission 'readiness' guidance

On 9 July, the European Commission published [guidance for national authorities, businesses and citizens](#). The guidance explicitly does not address the possible implications of there being no-deal agreed in the current negotiations. Rather it focuses on the:

“ Changes [that] will occur to cross-border exchanges between the EU and the UK as of 1 January 2021– irrespective of whether an agreement on a future partnership has been concluded or not.”

The sectors covered are:

- trade in goods,
- trade in services,

- energy,
- travelling and tourism
- mobility and social security coordination
- company law and civil law
- data digital and intellectual property rights
- international agreements of the EU

The European Commission is also updating notices previously published at the time of the withdrawal negotiations. These are available from the [Commission's website](#).

UK guidance and advertising campaign

On 13 July, the UK government announced an public information campaign setting out the "actions businesses and individuals need to take to prepare for the end of the transition period on 31 December 2020".

Guidance and a "checker tool" is published at <https://www.gov.uk/transition>

The UK Government states:

“ The UK is leaving the single market and customs union at the end of the year, and so most of the actions businesses and citizens are being asked to take will need to be completed regardless of the outcome of negotiations.”

Brexit legislation

Continuity Bill at the Scottish Parliament

On 18 June 2020, the Scottish Government introduced the *UK Withdrawal from the European Union (Continuity) (Scotland) Bill* to the Scottish Parliament.

The Bill provides:

- for the introduction of a power to enable Scottish Ministers to continue to keep devolved law aligned with EU law so far as appropriate following the end of the implementation period (31 December 2020)
- that Ministers and public bodies pay attention to environmental principles (currently in EU law) when making policy, and
- creates a new body to oversee environmental law in Scotland, replacing the role of the European Commission in environmental governance.

The Scottish Government introduced the first [UK Withdrawal from the European Union \(Legal Continuity\) \(Scotland\) Bill](#) on 27 February 2018. This first Bill sought to provide Scottish Ministers with powers to make regulations to ensure that where appropriate Scots law in devolved areas could continue to comply with EU law after the UK left the European Union (i.e. a similar power to that sought in the new Bill). Following Stage 3 amendments, the first Bill also saved the EU's environmental principles into Scots law. However the first Continuity Bill did not progress to Royal Assent after the Supreme Court ruled that some provisions of the Bill were outside the legislative competence of the Scottish Parliament. This ruling did not cover the provisions mentioned.

The Finance and Constitution Committee will be the lead committee scrutinising the new Bill, with the Environment, Climate Change and Land Reform Committee designated as a secondary committee focusing on the environmental policy aspects.

There are two open calls for evidence:

- [Finance and Constitution Committee - deadline 7 August 2020](#)
- [Environment, Climate Change and Land Reform Committee - deadline 31 July 2020](#)

A full SPICe briefing on the new Bill will be published in August.

ECCLR committee report on legislative consent for the UK Environment Bill

On 19 June, the Environment, Climate Change and Land Reform (ECCLR) Committee published its [report on the devolved aspects of the Environment Bill under consideration by the UK Parliament](#).

Under the Sewel Convention, legislative consent is being sought from the Scottish Parliament on a number of clauses in the UK Bill which relate to devolved matters. The Scottish Government's view, as stated in its Legislative Consent Memorandum (LCM) of 27 May 2020, is to recommend consent:

“ The Scottish Government supports the approach set out in the Bill to those matters requiring consent... while the Scottish Government regrets that EU exit is now taking place, it recognises that replacement legislation is required for those frameworks previously provided by EU law.”

However, the ECCLR Committee concluded that it:

“ is unable to make a recommendation in relation to the LCM for the Environment Bill.”

The report expresses concerns over the Scottish Parliament's ability under the Bill to influence decisions on devolved policy:

“ The Committee is concerned that, if legislative consent is given and the Bill is passed, there would be a very limited role for the Scottish Parliament in relation to how the legislative powers in the Bill are exercised. The Scottish Parliament, as the Bill is currently drafted and if enacted, would have limited scope to influence decisions on devolved policy, scrutinise relevant legislation and its implementation and, therefore, effectively hold Scottish Ministers to account.”

The reports states:

“ There is no equivalent of the LCM process/Sewel Convention for subordinate legislation. Thus, the Committee is of the view that this Bill, along with other EU exit bills which introduce shared powers and a significant number of the SIs the Committee has previously considered, change the nature and operation of the devolution settlement in relation to the environment in Scotland and devolved environmental policy.”

“ Measures need to be put in place – as a matter of priority – to ensure the devolution settlement keeps pace with the constitutional reality of a post-EU UK. The Committee believes that, where significant legislative powers in devolved competence are delegated to the UK Government, the Scottish Government should explore whether a joint process for approval of SIs needs to be included on the face of the Bill. The Committee believes the joint process should be included on the face of all bills which provide that significant legislative powers in devolved competence are delegated to the UK Government.”

The full ECCLR report includes further details and recommendations.

Court interpretation of retained EU case law

On 2 July, the UK government published a consultation paper on the circumstances in which UK courts and tribunals (including Scottish courts) might depart from retained EU case law after the transition period ends.

The potential for UK courts below the Supreme Court to depart from retained EU case law represents a change in policy compared to the previous UK government. The consultation proposes two options:

1. provide this flexibility to additional appellate courts (i.e. the Inner House of the Court of Session and High Court of Justiciary in all its appeal court capacities in Scotland)
2. extend this flexibility "one further rung down the judicial ladder" to the Outer House of the Court of Session, the High Court of Justiciary as a first instance court in Scotland, and the Sheriff Appeal Court in Scotland.

See [House of Commons Library: Retained EU law and lower courts – A Government consultation](#) for further information.

Progress of the Trade Bill

The [Trade Bill 2019-21](#) gives the UK government powers to [implement “rolled-over” trade agreements](#) - these are trade agreements which the UK already had as an EU Member State and which the UK has successfully negotiated the continuation of - though not always in identical form. The Bill is not intended by the UK government to deal with future “new” trade agreements. On the 20 July, the Trade Bill completed its Report Stage and 3rd Reading in the House of Commons and passed to the House of Lords.

The current Trade Bill follows a very similar bill introduced in the previous session of the UK Parliament. Legislative consent from the Scottish Parliament was sought for the previous bill. The Scottish Government [did not recommend consent to the Bill as drafted at publication and following scrutiny the Finance and Constitution Committee concluded](#) that:

“ While the Trade Bill is relatively narrow it nonetheless raises significant questions about the future role of the devolved institutions in trade negotiations.”

Questions about the role of devolved institutions in trade negotiations have stayed live during the passage of the current Trade Bill. The Commons Library summarised discussion on devolution in its Committee Stage Report:

“ The SNP proposed an amendment requiring Ministers to gain the consent of the devolved administrations before making changes to regulations that directly affected them. Mr Hosie referred to commitments given to a Scottish Minister by the former Minister for Trade Policy. These included a commitment that UK Government Ministers would not normally use the Bill’s powers in devolved policy areas without consent and never without consultation. The UK Government also committed to consulting the devolved nations before extending the sunset power in clause 2. The Minister restated these commitments. However, the Government rejected a statutory consent provision for the devolved administrations as this would give them a veto over a reserved matter. The Minister said this would be constitutionally inappropriate.”

“ A further amendment would require the approval of the devolved parliaments before implementing any trade deal agreed after the passage of the Bill. It was argued that modern trade agreements could cut across devolved policy areas. It was, therefore, important to give a statutory voice to the devolved nations. The Minister said that it was a principle of the UK constitution that negotiation of international agreements was a prerogative power of the UK government. It would therefore be inappropriate to give the devolved nations a veto.”

At Report Stage on 20 July, amendments to:

- require consultation with Scottish Ministers on the content of the draft negotiating objectives and the text of any proposed agreement before it is signed.
- require consent from Scottish Ministers for regulations which implement any trade agreement in devolved areas.
- require imported agricultural goods to meet animal health and welfare, environmental and other standards at least as high as those which apply to UK produced agricultural goods
- prevent international agreements being implemented which constrain domestic policy in certain areas of health and care.

were debated and not agreed.

No legislative consent memorandum has yet been lodged with the Scottish Parliament in respect of the current Trade Bill. However the Bill's [explanatory notes](#) state:

“ The Government will... seek legislative consent for the provisions in the Trade Bill relating to the power to implement the GPA (Clause 1) and the power to implement qualifying international trade agreements (Clause 2).”

In evidence to the Culture, Tourism, Europe and External Affairs Committee on 18 June, Michael Russell, Cabinet Secretary for the Constitution, Europe and External Affairs [said](#):

“ We cannot accept a trade bill, which will be underpinning legislation, that does not recognise the legitimate rights of the Scottish Parliament and the Welsh Assembly in relation to how such matters are dealt with. We also need a modern approach to trade negotiations. At the moment, there is a race to the bottom, but what we need is a recognition that trade negotiations are about raising standards, not lowering them. That is what is happening globally, with responsible nations saying that they need to recognise the issues around the environment, climate change and non-discrimination and that those issues need to be put into the system. That is not what is happening here.”

“ I am very sceptical about whether we can support in any way what is happening with the Trade Bill. That will be a matter to discuss with the trade minister; I am sure that the committee will want to do that.”

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