



Llywodraeth Cymru
Welsh Government

The **New** Relationship with the EU

What it means for businesses in **Wales**

Contents

Introduction

Trade in goods

Trade in services and investment

Procurement

Introduction

On 12 February, the Welsh Government published *The New Relationship with the EU – what it means for Wales*¹. The document set out in an objective way what has changed for citizens, businesses and our communities in Wales since we left the transition period at the end of December 2020.

As part of the Single Market and Customs Union, our businesses have benefited from the free movement of goods, services, people and capital within the EU. The end of transition brought about the greatest change in our trading relationships in decades and the Internal Market rules which ensured barriers to trade were eliminated and the harmonisation of standards between nations are no longer applicable.

The Trade and Cooperation Agreement (TCA) now provides the framework for our trading relationship with the EU, and as a result there are a number of new rules which our businesses need to understand and barriers which they need to navigate around.

We recognise that businesses in Wales will require a greater level of detail on the new relationship and the practical changes that they will need to be aware of. We are therefore publishing this technical document, aimed at businesses which builds on the information in *The New Relationship with the EU – what it means for Wales* and signposts further information that will be needed as business in Wales adjust to the new trading relationship.

The changes are complex and the implications for businesses in Wales will depend on which sector the business is in and the nature of the business processes it uses.

Further advice and support is available at the Welsh Government EU Transition Portal: <https://businesswales.gov.wales/eu-transition-portal/>

¹ <https://gov.wales/the-new-relationship-with-the-eu-what-it-means-for-wales>

Trade in Goods

The Trade and Cooperation Agreement (TCA) covers trade in goods in Part 2, Title 1 of the agreement. There are five chapters with two supporting Protocols and one supporting Annex:

- Chapter 1: National Treatment and market access for goods (including trade remedies)
- Chapter 2: Rules of Origin (RoO)
- Chapter 3: Technical Barriers to Trade (TBT)
- Chapter 4: Sanitary and Phytosanitary measures (SPS)
- Chapter 5: Customs and Trade Facilitation.

Below we consider what the deal says and the key changes and implications for businesses and employers. We consider chapters one and two together given they are inextricably linked when considering whether tariffs now need to be paid to send goods to the EU.

Chapters 1 and 2: Market Access and Rules of Origin

The rules

The UK and the EU have agreed there will not be any tariffs or quotas on any goods, but only if the goods produced qualify as ‘originating’ (see below for exemptions).

Non-originating goods from within the UK or EU will be subjected to the tariff rates imposed respectively by the EU (Common External Tariff² and UK Global Tariff³). These tariffs vary between products and can be quite high, especially for agri-food products.

The Rules of Origin (RoO) chapter specifies that to qualify as originating a product must be either:

- a. ‘wholly obtained’ in the UK or EU. This most often refers to goods that occur naturally in a single country/region, such as plants, minerals, or born and bred animals; or
- b. produced/manufactured in the UK or EU exclusively from originating materials (e.g. ingredients or component parts) which come from within the UK and EU. This refers to the complete production, from raw materials to end product, coming from a single country/region; or
- c. produced/manufactured in the UK or EU from a mixture of originating and non-originating materials that meets specific rules for that product. By non-originating we mean materials in the supply chain that come from outside of the EU or UK (third countries). If non-originating materials are used then certain rules must be met – known as product-specific rules of origin (PSR).

These rules mean that to export to the EU tariff free:

- **Bilateral cumulation is allowed.** Businesses will be able to source and EU originating materials as if they had come from the UK, for the purposes of meeting rules of origin requirements and qualifying for zero tariffs on exports to the EU. The same will apply for EU exporters to the UK – they will be able to use UK materials and components.

² https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/taric_en

³ <https://www.gov.uk/trade-tariff>

In order to use bilateral cumulation, the materials from the other party must be further processed. The full list of processes which do not confer origin can be found in Article ORIG.7 Insufficient Production, in the TCA.

- **Diagonal cumulation is not allowed.** Businesses are not able to cumulate and count materials from other third countries (outside of the EU and UK) as ‘originating’ – even if both the UK and EU have a trade agreement with that same (third) country e.g. Japan.
- Businesses can use third country non-originating materials in a product as long as the product meets the product-specific rules that apply to it, and as long as the production carried out on the product is sufficient⁴.

Particular product-specific rules that may be of note for Welsh businesses are:

- a) **Pharmaceutical products** will need to have a MaxNOM⁴ 50% (EXW), or conform to a specific production process, or result in an end product which is in a different tariff heading than the non-originating materials used.
- b) **Most fertiliser products** will need to have a MaxNOM 40% (EXW), or result in an end product which is in a different tariff heading than the non-originating materials used (provided the non-originating materials do not exceed 20% of the ex-works price of the end product).
- c) **Most essential oils and resinoids; perfumery, cosmetic or toilet preparations** products will need to have a MaxNOM 50% (EXW), or conform to a specific production process, or result in an end product which is in a different tariff heading than the non-originating materials used.
- d) **Most plastics products** will need to have a MaxNOM 50% (EXW), or result in an end product which is in a different tariff heading than the non-originating materials used.
- e) **Most rubber products** will need to have a MaxNOM 50% (EXW), or result in an end product which is in a different tariff heading than the non-originating materials used (although retread tyres can be regarded as originating if they are retreaded within the UK or EU).
- f) **For textiles and textiles products** the most important criterion is that the production conforms to a specific production process, such as weaving or making up of fabric.
- g) **For iron and steel products** the most important criterion is that the end product is in a different tariff heading than the non-originating materials used (although there are some exceptions to this).
- h) **Most machinery and electrical products** will need to have a MaxNOM 50% (EXW) or result in an end product which is in a different tariff heading than the non-originating materials used.
- i) **Automotive vehicles** will be need to have a MaxNOM 45% (EXW).

⁴ Further guidance on PSRs can be found at:
<https://www.gov.uk/government/publications/rules-of-origin-for-goods-moving-between-the-uk-and-eu>

Tolerance arrangements and exemptions

Tolerance

The agreement has put in place some flexibility by setting out some tolerance arrangements that businesses can use if they cannot meet the appropriate rules of origin, or product-specific rules of origin, requirements. However once again, these rules do not apply across the board and they are product specific. Tolerance allows for a small amount of materials, which the Product Specific Rule restricts, to nonetheless be used. This allowance is either expressed by weight or value of the final good. Examples of the tolerances allowed include:

- For agricultural goods (excluding fisheries products), businesses can still claim originating status and qualify for zero tariffs if the total weight of non-originating materials used in the production of the product does not exceed 15% of the weight of the product.
- For all other goods, Businesses can still claim originating status and qualify for zero tariffs if the total value of all non-originating materials used in the manufacture of the product does not exceed 10% of the ex-works price of the product (paid or payable to the producer where the last working or processing is carried out).
- A product set (i.e. something that is sold as a set, like cutlery or tools) can still be determined as originating, provided the value of the non-originating components does not exceed 15% of the ex-works price of the product (paid or payable to the producer where the last working or processing is carried out).

Staging/phasing

Some staging/phasing origin rules will allow for an initial higher proportion of non-originating materials to be applied in the manufacturing and trading of electric accumulators and electric batteries, as well as for electrified vehicles:

- Electric accumulators and electric batteries will be tariff free if they contain at least 30% originating content until the end of 2023, after which they need to contain at least 60% and 50% originating content respectively until the end of 2026.
- Electric vehicles will need to have at least 40% originating content until the end of 2023, and then at least 45% originating content until the end of 2026.

Following 2026, these staging/phasing origin rules will cease and the standard PSRs will apply for these products.

Exemptions

The agreement also contains special origin rules that apply for canned tuna and aluminium products. If businesses export either of these products the special origin rule allows for a defined volume of trade to be conducted without tariffs. Once the special origin quota has been met, then the standard rules of origin will apply:

- Up to 3,000 tonnes or 4,000 tonnes (depending on its precise species of fish) of canned tuna can be traded annually without tariffs via the alternative origin rules.
- Up to 95,000 tonnes of certain aluminium products can be traded annually without tariffs, between the period 1 January 2021 to 31 December 2023, by meeting the alternative special origin rules. After 2023, the special origin rules quota will reduce for aluminium products to 72,000 tonnes annually between 1 January 2024 and 31 December 2026, before another further reduction down to 57,500 tonnes annually from 1 January 2027 onwards. There are provisions for review every five years.

The quota will be conducted on a first come, first served basis, and it will be up to the UK Government to administer.

For further information businesses should refer to:

www.gov.uk/transition

www.gov.uk/export-goods

www.gov.uk/government/publications/rules-of-origin-for-goods-moving-between-the-uk-and-eu

What does this all mean for businesses?

General

Purchase and sales of good from/to the European Union are now considered as imports and exports rather than arrivals and dispatches. This means that businesses are subject to the same overall controls and processes as purchases and sales from/to other overseas markets.

Businesses that trade with the EU will need to have a GB Economic Operator Registration and Identification (EORI) number in order to be able to make customs declarations. In some circumstances, they will also require an EU EORI number.

The provisions of the TCA will not apply to trade in goods between the EU and Northern Ireland, where instead the provisions of the Protocol on Ireland and Northern Ireland included in the Withdrawal Agreement will apply.

Businesses moving goods between GB and Northern Ireland need an XI EORI. The customs process for moving goods is different and the Trader Support Service⁵ has been put in place to make declarations on behalf of businesses and their hauliers.

In respect of trade between GB and NI, temporary measures have been agreed between the EU and the UK to allow for adaption to the new rules.

Contract Terms and Conditions

Businesses must agree which party is responsible for each step in the chain of supply including customs clearance. These are called Incoterms®.

Incoterms rules are created and published by the International Chamber of Commerce (ICC) and are revised from time to time. The most recent revision is Incoterms 2020 which came into force on 1 January 2020.

If businesses are selling goods to the EU on a Delivered Duty Paid (DDP) basis they will also need to have an EU EORI in order to make import declarations in the EU and will also be responsible for payment of any duties and taxes.

5 <https://www.tradersupportservice.co.uk/tss>

Conversely, EU businesses that are selling goods to the UK on a DDP basis will also need a GB EORI number.

Businesses selling goods to the EU on an ex-works (EXW) basis will need to retain records to demonstrate that the goods have left the UK or risk having to account for sales VAT.

If businesses are importing from the EU on an EXW basis then they will be an EU exporter and have to complete all of the EU export procedures including customs declarations for which they will need an EU EORI as well as a GB one.

Commodity Codes

Correct classification of goods is important as this determines the duties that may be payable and the controls that might apply to the import or export of goods.

Export and Import Licenses/Authorisations

These are important new considerations for businesses as the controls now apply to trade with the EU. Businesses need to be aware of these.

There are UK controls on a wide range of items including:

- animals and animal products
- plants and plant products
- drugs and medicines
- medical devices
- chemicals
- ozone-depleting substances and F-gases
- radioactive substances
- diamonds
- art works, antiques and culturally significant goods
- waste
- goods that could be used for torture or capital punishment
- firearms, ammunition and related equipment
- military goods, services and technology
- dual use items (those that can be used for both civil and military applications).

Importers and exporters will also need to consider EU controls, including whether their suppliers/customers will need a license to export/import the goods.

Customs Declarations

These are made (electronically) for both imports and exports – either by the trader or via an intermediary such as a freight forwarder, Chamber of Commerce or other approved intermediaries. Customs Declarations include relevant safety and security declarations.

This process is complex and requires specialist software and trained personnel. Businesses are being encouraged to use an appropriate intermediary.

There will be a staged introduction of declarations for imports to the UK, full declarations are needed for exports from day one.

VAT

Rules here for exports changed significantly on 1 January 2021 as the UK will be a third country for VAT purposes (with the exception of goods supplied to and from Northern Ireland).

The key change is that sales of goods to the EU will be treated as “exports” from the UK and invoices will be “zero-rated” for VAT purposes. However, special rules will apply for goods moved between Northern Ireland and Great Britain, and Northern Ireland and the EU.

Customers in the EU are responsible for accounting for import VAT in their country (unless the goods are sold on a Delivered Duty Paid (DDP) basis, where the exporter would be responsible for VAT in the EU).

For business to consumer (B2C) exports to the EU, many EU Member States require non-EU suppliers to be the importer of record when goods arrive. This obligation results in the need to register for VAT in an EU country and account for any VAT due, in order to recover import VAT and account for local VAT on supply to the customer. The import VAT should be recoverable by most businesses, however it might pose a cashflow issue. UK companies should consider whether they need to be VAT registered in the EU countries with which they trade.

As a consequence of the mutual assistance provisions in the VAT and Debt Recovery Protocol to the TCA, EU Member States should not require UK businesses to appoint a Fiscal Representative based in that Member State in order to make supplies there. However, there may be Member States that have not yet implemented this provision in full so you should check whether a fiscal representative may be required in the short term.

It is important to remember that although all EU countries have VAT, the requirements and obligations differ between each. UK companies should avoid the assumption that what applies in one EU country applies to them all.

Inward Processing Relief

Inward Processing Relief allows for the delay or reduction in import duties or VAT on goods that are only entering a region (say the UK) for processing or repair purposes only, before being exported back to their place of origin (say the EU).

Additionally the absence of a no-drawback clause in the TCA means that there is now the opportunity for UK businesses who sell goods outside of GB to use customs processes to defer/claim back the costs of Duty and VAT on imported materials.

Rules of Origin

As a result of the rules described above businesses will now need to prove that they are adhering to these rules. Businesses operating in the agri-food sector or those that deal with the export of live animals or products of animal origin may face additional Sanitary and Phytosanitary (SPS) measures. These are detailed in the SPS section.

Proof now means the following:

It is the responsibility of businesses to ensure that they are correctly providing proof of origin declarations (otherwise known as statements of origin⁶) to claim the preferential zero tariffs for goods. These are needed to prove that goods are originating and hence determine whether supply and processing chains used in the production of goods will fulfil the relevant rules of origin arrangements for specific products. Exporters can self-certify the origin of goods through their statement of origin. There is no need for businesses as the exporter to have “approved exporter” status.

An importing business must keep for at least three years the statement of origin, or the records used to make an importer’s knowledge claim. The exporter must keep a copy of his statement of origin, and supporting documents demonstrating compliance with the origin rules, for at least 4 years.

Alternatively, ‘importer’s knowledge’ can be used to show that a product satisfies the relevant rules of origin. Importer’s knowledge is when an importer uses their own knowledge about the originating status of imported products in order to claim preferential tariff rates. To qualify under the TCA as ‘importer’s knowledge’ the assertion by the importer must be based on information demonstrating that the product is originating – generally be in the form of supporting documents or records provided by the exporter or manufacturer of the product, which are in the importer’s possession. As an importer is making a claim using own knowledge, no statement of origin from the exporter is used.

As is set out above, product-specific rules of origin can differ greatly depending on the product concerned. Manufacturers of a product using a mixture of originating and non-originating products are likely to have to prove one or a combination of the following:

- that the non-originating materials have been through a specific production or manufacturing process;
- that the non-originating materials do not collectively amount to more than a given percentage of the value or weight of the final product; and
- that the end product belongs under a different tariff heading (code) than the non-originating products.

Help and guidance on this is available on the Gov.UK website and through HMRC:

<https://www.gov.uk/government/publications/rules-of-origin-for-goods-moving-between-the-uk-and-eu>

⁶ As part of the Single Market, Statements of origin were previously not needed in moving goods from the UK to the EU.

Chapter 3: Technical Barriers to Trade (Regulations, Standards and Conformity Assessments)

The Rules

Under the TCA both the UK and EU have committed to using good regulatory practices when developing regulations relating to goods, such as carrying out impact assessments of any planned regulations, and using international standards (such as those produced by ISO, IEC, ITU and CODEX) as the basis for those regulations.

However this does not prevent a divergence in regulations between the EU and UK going forward. Therefore, the risk is real that businesses might be faced with needing to meet two different sets of regulatory requirements where goods are traded between the two in the future.

Conformity assessments

Conformity assessment procedures are used to provide assurances that the product produced and supplied meets the relevant expectations specified and (legally) required of it. Conformity assessment procedures includes activities such as testing, inspection and certification.

Some products (such as electronic devices, toys, machinery, construction products, medical devices, and personal protection equipment) can be self-certified through this process, but others must undergo one of a number of specific conformity assessment procedures involving third parties. This involves Conformity Assessment Bodies (CABs), known also as Notified or Approved Bodies in the EU and UK, or approval by relevant authorities such as the MHRA (Medicines & Healthcare products Regulatory Agency) or VCA (Vehicle Certification Agency), before the manufacturer can declare conformity.

The agreement puts in place commitments that the UK and EU will both uphold when it comes to the requirements and application of conformity assessment procedures, such as that conformity assessment procedures will be applied proportionately based on the risks involved. However, it puts in place only one specific case of mutual recognition related to Good Manufacturing Practice (GMP) certificates for medicinal products (this means that sites making such human and veterinary medicines in the UK will not need to be inspected by EU inspectors and vice versa).

Apart from this one example, the TCA does not provide for the mutual recognition of conformity assessment. This means that when conformity assessment procedures are required, UK CABs cannot certify that UK products meets EU standards, and EU CABs cannot certify that EU products meets UK standards.

Where conformity assessment procedures require approval from a third party conformity assessment body, a business will need to obtain certification in both the UK and the EU if their products are to be sold in both. The UK Conformity Assessment (UKCA) mark will be used to demonstrate compliance of products in the UK, whilst the CE mark⁷ will continued to be used to demonstrate compliance of products in the EU.

The UKCA (UK Conformity Assessment) mark is the new UK product marking that will be required for certain products being placed on the market in Great Britain (England, Wales and Scotland). It covers most products that previously required the CE mark. To support business in adjusting to this change, the UK is allowing most CE marked goods to continue to be placed on the GB market until 1 January 2022. This includes goods that have been assessed by an EU CAB.

⁷ The CE Mark is stamped on or affixed to relevant products to show that they have been assessed as meeting EU regulatory standards.

UKCA will not be recognised in the EU market. Products that require CE marking will still need a CE marking to be sold in the EU.

Marking and labelling

The agreement does provide businesses with some reassurances to do with marking and labelling requirements, most notably in allowing the use of additional labels and marks, and allowing rectification of any errors in the country of import:

- **Marking:** businesses will be allowed to use both the UKCA and CE markings together on the same product (potentially removing the need for separate production lines)
- **Labelling:** businesses will be able to correct labelling errors at customs warehouses rather than requiring products to be returned for rectification at the country of import.

Sectoral Annexes/Regulatory burden

The agreement contains specific annexes on certain sectors/products which provide additional commitments with a view to reducing regulatory burden.

Motor Vehicles

For motor vehicles and parts, aside from the commitment by both parties to use the same international standards, there is mutual recognition of UN type approval. This means that systems, components and parts manufactured in accordance with certain UN regulations will be accepted in both markets.

The UK and EU will continue to accept UN type approvals issued by authorities in either Party in accordance with standards developed in the World Forum for Harmonisation of Vehicle Regulations within the framework of the UN Economic Commission for Europe (UNECE). This removes the need for these goods to have two sets of approval/conformity assessments.

However, type approvals not covered by UN regulations – such as whole vehicle type approval – will not be accepted for registering vehicles in either the EU or UK, unless the relevant type approval has been obtained. For vehicles looking to register in Great Britain, a GB provisional type approval will be needed. For vehicles looking to register in the EU, the European Community Whole Vehicle Type Approval (ECWVTA) will be required.

Furthermore, the potential introduction of UK type approvals which are not covered by UN regulations will not be accepted automatically for registering vehicles in the EU.

Businesses should refer to:

<https://www.gov.uk/transition>

<https://www.gov.uk/export-goods>

<https://www.vehicle-certification-agency.gov.uk/>

Medicinal Products

For medicinal products, there is the commitment to use international standards in the relevant medical regulations introduced by both parties.

Of particular note is the mutual recognition of Good Manufacturing Practices (GMP) inspections by the UK and EU, which means that both parties have agreed to recognise each other's GMP inspection certificates. This will remove the need for two separate GMP inspections – one by UK authorities and one by EU authorities – on sites that are manufacturing medicinal products (although in specific circumstances a Party can opt not to recognise a GMP inspection).

However, the agreement does not allow for mutual recognition in terms of batch testing and QP (qualified person) release. This means that businesses will need to ensure they are able to meet the UK and EU's separate batch testing and QP procedure, in order to export goods that require such procedures, to the respective markets.

Businesses should refer to:

<https://www.gov.uk/transition>

<https://www.gov.uk/export-goods>

<https://www.gov.uk/government/collections/new-guidance-and-information-for-industry-from-the-mhra>

Chemicals

For chemicals, both Parties' right to regulate on the assessment of hazards and risks of chemicals has been preserved. There is a commitment by both parties to the implementation of the UN Globally Harmonised System, which should help to minimise the need to meet different classification and labelling requirements of chemicals by businesses.

However, as there is no agreement on data access/sharing, other than to facilitate the exchange of non-confidential information. GB regulators will not have access to all ECHA held EU REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) data. This means that businesses (whether based in the UK or the EU) which wish to sell products in both the GB and EU markets will need to register and comply with the separate UK and EU REACH regulations UK REACH registration data requirements are being phased in over time.

Businesses based in Northern Ireland will not need to register with UK REACH unless they wish to sell products into the GB market.

Businesses should refer to:

<https://www.gov.uk/guidance/how-to-comply-with-reach-chemical-regulations>

<https://www.hse.gov.uk/reach/index.htm>

Organics

On organic products, the UK and EU have agreed equivalence arrangements for these goods. This means that each party will accept that the other's regulations for particular organic products as being equivalent, even though there may be different requirements and regulations put in place by either party. Therefore products certified as organic in one market will be recognised as organic in the other. This arrangement will ensure those trading organic products will not have to demonstrate compliance with two sets of regulations.

However, this arrangement will be reassessed in response to an assessment of the new EU regulation on organics that will be introduced by 31 December 2023.

Businesses should refer to:

<https://www.gov.uk/guidance/importing-and-exporting-organic-food>

Wine

The agreement provides for simplified import certification arrangements to help reduce the additional cost and burden in trading these goods to the minimum necessary.

Businesses exporting wine to the EU will need to have EU V1-1 documentation in place. Details on how to apply for an EU V1-1 are available here: <https://www.gov.uk/guidance/importing-and-exporting-wine>.

What does this mean for businesses?

Conformity assessments

Where conformity assessment procedures require approval from a third party conformity assessment body, a business will need to obtain certification in both the UK and the EU. Examples of specific sectoral requirements are highlighted above.

The UK Conformity Assessed (UKCA) mark will be used to demonstrate compliance of products in the UK, whilst the CE mark will continue to be used to demonstrate compliance of products in the EU (although – as noted above – UK Government has put in place standstill arrangements to continue to allow the CE mark to be used as demonstrating compliance of products in the UK until 31 December 2021).

However, the agreement does allow for businesses to use supplier's declarations of conformity (SDOC) as a way to self-certify that their goods meet the relevant UK or EU standards. This practice is reserved for low-risk products and in areas where this practice is already allowed i.e. where manufacturers were previously able to self-declare for the CE marking, then they will be able to continue to self-declare for the CE marking (in order to access the EU and NI market) and UKCA marking (in order to access the GB market)⁸.

⁸ A list of these products can be found at <https://www.gov.uk/guidance/using-the-ukca-marking#self-declaration>

Chapter 4: Sanitary and Phytosanitary (SPS) measures

The Rules

SPS measures are measures that are made to protect humans, animals, and plants from diseases, pests, or contaminants. The key considerations for businesses are laid out below:

Equivalence

As the UK is no longer in the EU Single Market, plants and Products of Animal Origin (POAO) will be subject to new import checks when exporting to the EU.

Antimicrobial Resistance (AMR) and Animal Welfare

The agreement contains strong commitments to both AMR and animal welfare. AMR refers to when microorganisms develop resistance to antimicrobial substances (e.g. antibiotics) after being in an environment where these substances are present. The pace of AMR development is increasing, in part due to inappropriate and excessive use of antimicrobials, and this presents risks to both human and animal health. Combatting AMR is one of the Welsh Government's key SPS priorities.

Plant protection products (Pesticides etc.)

Applications for new active substance approvals, Plant Protection Products (PPP) authorisations and Maximum Residue Levels (MRL) in GB should continue to be submitted applications to the Health and Safety Executive in the same format. A new active substance must be approved in GB before it can be included in any PPP authorised for use in GB⁹.

The TCA does include measures for customs and trade facilitation, which aim to reduce complexity and streamline the customs process, allowing goods to cross borders more easily. These measures should allow Authorised Economic Operators recognised by either the UK or the EU to face fewer checks when moving goods between the parties.

What does this all mean for businesses?

Live Animal Imports and Exports

- Businesses that export live animals will now require the relevant Export Health Certificate (EHC) and should seek to ensure that they are registered as an 'Approved Establishment'. There are 1,900 model EHCs for various products and destinations and these can be found on the Gov.UK website¹⁰.
- A breed society wishing to trade purebred breeding animals or germinal products with organisations in the EU on the same terms they previously had, will need to be listed as a 'third country breeding body' by the EU. The European Commission has already granted the majority of Welsh studbooks Third Country Listing, however not all of those wishing to trade with the EU currently meet the requirements for Third Country Listing¹¹.
- Aside from Third Country Listing, businesses that move horses across borders will require additional paperwork and veterinary checks. In addition to this, they must ensure that all equines are microchipped.

⁹ <https://www.hse.gov.uk/pesticides/pesticides-registration/general/introduction.htm>

¹⁰ <https://www.gov.uk/export-health-certificates>

¹¹ If businesses need help with listing: <https://www.gov.uk/guidance/export-horses-and-ponies-special-rules>

Food imports and exports

- All businesses should seek to ensure that they are registered as ‘Approved Establishments’ where exporting food goods containing ‘Products of Animal Origin’ (POAO)¹².
- Businesses importing POAO, will also find that such goods will be subject to checks in the UK, although checks at the UK Border will be phased in according to risk, with a lower frequency of checks for lower-risk goods. For a more detailed explanation of the phasing of UK border controls see the UK Border Operating Model publication¹³.
- Businesses exporting POAO will be subject to checks by the EU and this will add time at the border.
- If businesses import SPS goods, these will also now be subject to checks in the UK and there will be a phased implementation of checks at the UK border according to risk, with a lower frequency of checks for lower-risk goods.
- All POAO for import or export will now require the relevant EHC, which must be signed off by an Official Veterinarian or Inspector¹⁴.
- As the UK is now treated as a ‘third country’ by the EU, a number of UK exports are subject to prohibitions and restrictions. This means that some products, such as chilled, processed raw meats will no longer be eligible for export to the EU. UK businesses must assess whether their products will be subject to prohibitions and restrictions and plan accordingly.

Further guidance is available from the UK Government website:

<https://www.gov.uk/government/collections/guidance-on-importing-and-exporting-live-animals-or-animal-products>

Plant trade and plant health

Applications for new active substance approvals, Plant Protection Products (PPP) authorisations and Maximum Residue Levels (MRL) in GB should continue to be submitted applications to the Health and Safety Executive in the same format. A new active substance must be approved in GB before it can be included in any PPP authorised for use in GB¹⁵.

Trade with Northern Ireland

Supermarkets and trusted suppliers, who have been identified and the list agreed with the EU, will benefit from a ‘grace period’ until 1 April 2021 where they will not have to provide SPS paperwork (e.g. EHCs) when moving agri-food goods between GB and NI. This is subject to certain requirements on these traders. During this period, the UK will not change its relevant SPS rules following the end of the Transition Period. This will mean that goods prohibited under the prohibitions and restrictions section of the TCA could still move between GB and NI for three months.

There are separate arrangements for meat products which are subject to a grace period of six months until 1 July 2021. Again, these arrangements only apply to supermarkets.

¹² <https://www.gov.uk/food-premises-approval-wales>

¹³ <https://www.gov.uk/government/publications/the-border-operating-model>

¹⁴ Details can be found on the Gov.UK website: <https://www.gov.uk/export-health-certificates>

¹⁵ <https://www.hse.gov.uk/pesticides/pesticides-registration/general/introduction.htm>

Following the end of the grace period on certification, agri-food goods in particular will need official certification (e.g. EHCs). Work is underway with supermarkets, retailers and their suppliers to move to new, end-to-end digital systems that enable goods to be moved in accordance with the Protocol in the most streamlined way possible.

Following the end of the grace period on meat products, some forms of chilled processed raw meats (e.g. sausages) will not be permitted move to Northern Ireland as well as the EU, although the UK Government has been clear that it intends to pursue a permanent solution here, recognising that the UK-EU Trade and Cooperation Agreement allows the UK and the EU to cooperate on avoiding unnecessary SPS barriers to trade in agri-food goods.

The grace periods in relation to prohibited or restricted products and EHCs **do not apply** for goods travelling to Northern Ireland via Holyhead and the Republic of Ireland.

Further information on the temporary arrangements for agri-food goods moving between GB and Northern Ireland can be found on the UK Government Website:

<https://www.gov.uk/government/publications/the-northern-ireland-protocol>

Trade in Services and Investment

The UK is no longer part of the EU Single Market and this means that UK service suppliers will lose their automatic right to offer services across the EU. Access is still allowed, but the suppliers will have fewer rights than an EU Member State competitor. Businesses exporting services to the EU have to satisfy rules for third countries made by each Member State – meaning up to 27 different sets of regulations to navigate.

In addition there are a number of separate agreements between the UK and the European Economic Area (EEA)/European Free Trade Agreement (EFTA) states (Iceland, Liechtenstein and Norway) and between the UK and Switzerland relating to trade in goods, Citizens' Rights and Fisheries and for people crossing borders for short term business reasons, known as mobility.

The TCA covers trade in Services in Part 2, Titles II, III and V and in Part 4, Title II. These include:

Part 2 (Trade, Transport, Fisheries and other arrangements)

Title II – Services and Investment

- Chapter 1: General Provisions
- Chapter 2: Investment Liberalisation
- Chapter 3: Cross-border Trade in Services
- Chapter 4: Temporary Entry and Stay of Natural Persons for Business Purposes
- Chapter 5: Regulatory framework
 - Section 1: Domestic Regulation
 - Section 2: Provisions of General Application (including professional qualifications)
 - Section 3: Delivery Services
 - Section 4: Telecommunications Services
 - Section 5: Financial Services
 - Section 6: International Maritime Transport Services
 - Section 7: Legal Services

Title III – Digital Trade

Title V – Intellectual Property

Part 4 (Thematic Cooperation)

Title II – Cyber Security

What is not included in the Agreement?

It is important to begin with what isn't in the agreement compared to how arrangements worked as part of the EU Single Market. This can have important implications for certain sectors in Wales as set out below.

Even where positive provisions are included in the TCA, these provisions are subject to significant exceptions outlined both in the articles of the TCA and in the Annexes.

Audio-visual

This sector is excluded from the TCA. This means trade in audio-visual services is regulated by individual Member States, subject to the (very limited) provisions of the World Trade Organisation (WTO).

Data adequacy

Ensuring the free exchange of data between the EU and UK is not a part of the TCA. Rather it will be dependent on an unilateral assessment by the EU of the adequacy of the UK's data protection regime under the General Data Protection Regulation (GDPR) and the Law Enforcement Directive, and UK legislation deeming the EEA to be adequate for UK purposes on a transitional basis. This assessment has now concluded with data adequacy granted by the EU for a period of four years at which stage the EU will review the decision. This means that data can continue to flow freely immediately from 1 January 2021 and that businesses and public bodies across all sectors will be able to continue to freely receive data from the EU (and EEA), including law enforcement agencies.

For the latest information and how companies can put in place alternative transfer mechanisms, please see the Information Commissioner's Office (ICO)¹⁶ website.

Financial equivalence

The Agreement does not include "passporting" for financial services which was previously available under the terms of the EU Single Market. Passporting allows firms authorised in an EEA state to conduct business within other European Economic Area (EEA) states based on their 'home' Member State authorisation: in other words, a business licensed to carry on the relevant financial service within one Member State is automatically entitled to carry on that service across the whole EEA. Passporting is no longer possible between the UK and EEA.

Instead, decisions on access to each other's markets in financial services will be based on each side declaring unilaterally that the other side's regulatory systems are equivalent (an 'equivalence decision').

Financial equivalence is part of different UK/EU discussions which are still taking place. The declaration on financial services annexed to the TCA does not commit either side to make future equivalence decisions.

This means that the financial sector does not have certainty on long term arrangements for UK-EU trade.

¹⁶ <https://ico.org.uk/>

This is especially important for financial services companies based in the UK that do not already have a presence in the EU. In this case the uncertainty of financial equivalence decisions, which can change at short notice will have an impact on UK-EU financial services trade.

So far the EU has granted the UK time-limited equivalence on two of the roughly 40 different financial areas where London is seeking market access. These relate to recognising UK clearing houses as being equivalent so EEA firms can use them for derivatives transactions (until 30 June 2022) and recognising central securities depositories for settling Irish securities transactions (until June 2021). The EU has given no further indication on when it will take more equivalence decisions.

Even in the event of financial equivalence in respect of other financial services being awarded to the UK by the EU, this would still exclude many core banking and financial activities e.g. accepting deposits, providing investment services to retail (non-professional) investors of payment services because these can only be supplied within the EU by providers based in and regulated by EEA Member States.

There are fewer restrictions on EU-based financial services businesses trading in the UK. The UK has granted as many equivalence decisions as it could, in areas where it makes sense for the UK to do so but without reciprocity from the EU. These equivalence decisions provide a range of benefits, including supporting well-regulated open markets, facilitating effective pooling and management of risk, and supporting UK and EEA clients' access to financial services and market liquidity.

Ahead of the Transition Period, the UK authorities also took extensive action to mitigate risks of disruption to cross-border financial services. This included confirming that a Temporary Permissions Regime would apply from the end of the Transition Period which allows EEA firms that had been providing services in the UK via a financial services 'passport' to continue operating following the Transition Period while they apply for full UK authorisation.

Investment protection

Title II of the TCA includes standards protecting UK investments and investors in the EU based on the right to access a market, the right to receive the same treatment as investments and investors of that Member State and agreements to improve provisions in line with future UK trade deals.

The TCA does not contain any form of investor-state dispute settlement meaning that UK investors cannot use the terms of the TCA to bring claims against the EU for perceived losses due to changes in EU law not considered 'fair and equitable treatment' or expropriation whether direct or indirect.

Chapter 2: Investment liberalisation

The Rules

This chapter contains rules in respect of EU and UK businesses or individuals wishing to establish businesses in the other territory and the way investors can operate those businesses.

The Agreement states that neither the UK nor the EU will adopt or maintain measures that impose limitations in terms of investment from the other on the number of enterprises allowed, the value of transactions, the number or quantity of output, the participation of foreign capital either by percentage or total value or the number of people employed.

It also states that the UK and the EU must treat one another's investors no less favourably than investors based within their own territory when they are in like situations in regard to the establishment and operation of enterprises.

There is also a provision (Article SERVIN.2.4 Most favoured nation treatment) that ensures, if a free trade agreement is negotiated in the future by the UK or the EU with more favourable terms for investors than this TCA, that those more favourable terms will be awarded to UK and EU investors going forward. This commitment is also subject to reservations.

The agreement also states that there will be no restrictions on appointing individuals as executives, managers or members of boards of directors in terms of their nationality (if they are UK or EU nationals).

The agreement also prohibits discrimination between EU and UK owned businesses in terms of the use of suppliers and the award and operation of licenses and contracts.

There are, however, a large number of exceptions to these provisions in respect of EU and EEA Member States which are contained in the Annexes of the TCA and which should also be considered by potential investors¹⁷.

What does this all mean for businesses?

In principle, UK investors in to the EU should be able to establish and invest in an enterprise, and to serve as a senior executive/manager or sit on the board of directors in the same way as an EU investor in their own country would be able to. This also applies vice versa.

However, UK business investing in the EU, Iceland, Liechtenstein, Norway, or Switzerland, need to check the national regulations of the country they are doing business in to understand how best to operate.

Businesses should be prepared for:

- additional requirements on the nationality or residency of senior managers or directors; and
- limits on the amount of equity that can be held by non-nationals.

UK companies and limited liability partnerships that have their central administration or principal place of business in certain EU Member States may no longer have their limited liability recognised.

¹⁷ For more information see the link here:

<https://www.gov.uk/government/collections/providing-services-to-eea-and-efta-countries-after-eu-exit>

Chapter 3: Cross Border Trade in Services

The Rules

Like most Free Trade Agreements that include services, the TCA uses the WTO General Agreement on Trade in Services (GATS) as the baseline. Against this baseline it has further reduced barriers to trade in sectors such as professional and business services, financial services, legal services and transport services. This includes commitments which ensure service suppliers and investors do not face limitations such as economic needs tests, restrictions on corporate form and foreign equity caps.

The TCA prohibits any requirements for the establishment of an enterprise or to be resident as a condition for the cross-border supply of a service. This means that a UK services supplier is able to trade with the EU Member States without establishing a subsidiary or local presence.

The TCA includes commitments on non-discriminatory treatment between UK and EU services suppliers and investors (as noted in the previous section). This means that a UK services supplier working in an EU Member State should be treated in the same way as a services supplier from that Member State. It also applies vice versa to EU services suppliers delivering services in the UK.

The TCA ensures that if either the UK or the EU gives more favourable terms to another country in future, those terms will automatically extend to the UK/EU.

What does this all mean for businesses?

It is important to note that the TCA also contains schedules of reservations which provide for exceptions to the terms outlined above in The Rules section. This means that Member State regulations also apply so there could be other restrictions relating to the specific Member State. Hence businesses will need to investigate these to ensure they are trading compliantly.

For more information please visit the UK Government website:

<https://www.gov.uk/guidance/providing-services-to-any-country-in-the-eu-iceland-liechtenstein-norway-or-switzerland-after-eu-exit>

Chapter 4: Entry and Temporary Stay of Natural Persons for Business Purposes

Chapter 4 of the TCA provides for the entry and temporary stay of individuals who are carrying out business-related activities between the UK and the EU. Each category of business visitor is subject to its own set of provisions in the TCA.

Individuals who meet the definition of a short-term business visitor are potentially eligible to travel between the UK and the EU without a work permit of up to 90 days in any six-month period. As there is some variation in the rules which apply in individual Member States, the exact conditions of entry will need to be checked before making any travel arrangements.

The Rules

To travel to a Member State for business purposes on a temporary basis, the individual (or if applicable employee(s)) will need to fall within one of the following categories:

- undertaking a business visit to the EU for establishment of an enterprise
- contractual service supplier
- independent professional
- intra-corporate transferee
- short-term business visitor.

What does this all mean for businesses?

Business visits for establishment purposes allows individuals working in a senior position within a business entity located in the UK to travel to a Member State as long as they are responsible for setting up an enterprise in that territory, do not offer or provide services or engage in any economic activity other than that required for the purposes of establishment of that enterprise and do not receive remuneration from a source located within that territory. The permitted length of stay is up to 90 days within any six-month period, subject to Member State reservations. Some Member States (Austria, Czech Republic, Slovak Republic and Cyprus) have more restrictive entry requirements¹⁸.

Intra-corporate transferees cover temporary transfers of employees or partners in a business entity located in the UK to another branch in a Member State. In order to qualify individuals must be either a manager, specialist or a trainee employee. Managers and specialists must have either been an employee of, or a partner in a business entity within the UK for a period of 12 months before the date of transfer. For trainee employees, the respective period is six-months. The maximum length of the transfer is three years for managers and specialists and up to one year for trainee employees.

Contractual service suppliers covers employees of a business entity in the UK that has signed a contract to supply services to a consumer in a Member State. The service contract entered into by the employer must be for a maximum period of 12 months and require individuals (if they are an employee) to work in the territory of a Member State on a temporary basis. They must not receive remuneration from a source located within that territory. There are other minimum eligibility conditions that they need to satisfy. For example, at least three years professional experience and a relevant degree level qualification (or a qualification of an equivalent level).

¹⁸ Outlined in Annex SERVIN 3 to the TCA

Independent professionals covers self-employed professionals who are established within the UK (or EU). In order to qualify, individuals must have concluded a contract to provide services to a consumer in a Member State for a maximum period of 12 months which requires their presence in that territory on a temporary basis. Individuals must not already be established in that Member State and there are other minimum eligibility conditions that need to be satisfied. For example, six years professional experience and a relevant degree level qualification (or a qualification of an equivalent level).

Short term business visits under the TCA are limited to specified activities which may be undertaken up to 90 days in any six-month period without a work permit (subject to reservations). The exact entry requirements will need to be checked for the particular country to be visited. For example, in some Member States certain activities may require a permit and/or an economic needs test.

In order to benefit from visa free travel for short-term business visits, businesses and individuals will need to:

- Track who is going where.
- Check the conditions of entry that apply to the Member States it is proposed to visit.
- Track how long they are staying for (while noting that tourism will count in the 90 day allowance even if subsequent trips are for business purposes).
- Check that all activities it is proposed to undertake are consistent with the permitted activities that apply to short term business visitors in that Member State.
- Record what activities are being undertaken while there.
- Dedicate time and money to secure the relevant visa applications in situations where the nature and/or length of the proposed business visit does not meet the requirements of a short term business visit.

Potential penalties for falling foul of the rules include fines, refused entry or denied future visa applications.

It is important to note that a number of Member States have placed additional restrictions on the conditions of entry that apply to business visitors¹⁹. It will be important for businesses and individuals to check the exact rules that apply to the relevant Member State before making any arrangements. Individuals and businesses should consult the UK Government website and any relevant trade or professional organisation. Restrictions and different entry requirements within the 27 Member States can change at short notice, although there is a commitment for at least three months' notice for visa changes.

The travelling for business link²⁰ on the UK Government website contains further information about the actions that should be taken when planning to travel to an EU Member State for business purposes.

¹⁹ Outlined in Annex SERVIN 3 to the TCA

²⁰ <https://www.gov.uk/visit-europe-1-january-2021/business-travel-extra-requirements>

Chapter 5: Regulatory Framework – Section 2 – Professional qualifications

The Rules

The UK and EU did not reach agreement either on the automatic mutual recognition of professional qualifications or on a defined route to such recognition, as existed formally under the Mutual Recognition of Professional Qualifications (MRPQ) EU Directive.

However, the TCA does contain a framework process for the future recognition of professional qualifications – as outlined below.

Whilst a member of the EU, UK nationals and EU citizens holding a qualification, such as doctors, nurses, dental practitioners, pharmacists, veterinary surgeons, lawyers, architects or engineers from the UK benefitted from a streamlined recognition regime in other EU countries, including automatic recognition for some professions. This regime provided a route for the recognition of professional qualifications which supported the ability of professionals to supply services across the EU.

With the TCA, UK nationals are still able to supply services across the EU. However, they will be subject to individual Member State domestic regulations which could make it more difficult to gain recognition for UK obtained qualifications or in some cases could prevent them practising their profession in some EU Member States.

The TCA has established a framework for mutual recognition of professional qualifications through the Partnership Council²¹, similar to the EU – Canada Comprehensive Economic and Trade Agreement (CETA). This agreement allows (but does not require) the UK and EU Member State regulators in the future to submit joint recommendations to the UK-EU Partnership Council for profession-specific arrangements. These arrangements can provide routes for UK professionals to have their qualifications recognised in the jurisdiction of an EU Member State, and vice versa.

In the specific case of legal services, the TCA does allow lawyers from each party to provide legal services relating specifically to the practice of public international law and the law of the country where they are authorised under their “home” title. This relates both to the recognition of qualifications for lawyers and to the cross border supply of services.

The changes to mutual recognition of professional qualifications do not apply to those professional within scope of the Withdrawal Agreement. The Withdrawal Agreement protects positive recognition decisions made on the individual professional qualifications for UK citizens (and their families) living in the EU, or EU citizens (and their families) living in the UK, as well as established frontier workers before the end of the transition period (subject to restrictions). These arrangements do not apply to UK citizens applying for the recognition of their qualifications in the EU after 1 January 2021.

The Withdrawal Agreement and Common Travel Area also protect the rights of UK citizens to travel and work in Ireland (the Republic and Northern Ireland) and vice versa.

²¹ A Joint EU- UK body created by the TCA

What does this all mean for businesses?

UK professionals wanting to work in the EU will need to have their qualification recognised by the appropriate regulator for their profession in each country where they intend to work. This could also involve having to pass additional professional examinations and/or a need to demonstrate work experience.

The UK Government provide further guidance here:

<https://www.gov.uk/guidance/providing-services-to-any-country-in-the-eu-iceland-liechtenstein-norway-or-switzerland-after-eu-exit#recognition-of-professional-qualifications>

Chapter 5: Regulatory Framework – Section 4: Telecommunications Services

Telecommunications, mobile data roaming and net neutrality

The TCA provisions lock in existing levels of liberalisation in the UK and EU markets. There are standard provisions on authorisations, access to and use of telecoms networks, interconnection, fair and transparent regulation and the allocation of scarce resources. The Agreement ensures businesses from either party will not have to wait for prior authorisation before they begin to deliver services, giving UK operators access to EU telecoms markets.

The TCA includes measures to encourage cooperation on the promotion of fair and transparent rates for international mobile roaming, but it does not guarantee surcharge free mobile data roaming. Rates for mobile data roaming are a matter for mobile operators and could change in the future.

The TCA also covers obligations on ‘net neutrality’, fulfilling the UK’s aims of securing commitments towards an open internet and protecting the safety of users online.

Chapter 5: Regulatory Framework – Section 5: Financial Services

The Rules

Financial services market access is subject to a complete carve-out for prudential measures²² ensuring UK and EU regulatory and supervisory authorities will be able to act where necessary to ensure financial stability, market integrity and protect investors and consumers.

²² The prudential carve out reflects the position under the WTO General Agreement on Trade in Services (GATS) Annex on Financial Services. Given the crucial role of the financial sector for overall economic stability, governments throughout the world closely regulate banks, insurance companies and other financial service providers. The Annex on Financial Services is intended mainly to clarify some core GATS provisions as they apply to financial services. One of the central elements is the so-called “prudential carve-out”. In essence, it confirms “notwithstanding any other provisions of the Agreement” that WTO Members are free to take prudential measures to protect investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.

This chapter contains a provision facilitating the protection of the confidentiality of the affairs and accounts of individual consumers and any confidential or proprietary information in the possession of public entities is included in the Agreement.

The Agreement also contains a commitment for the UK and the EU to use best endeavours to ensure that they implement and apply internationally agreed standards in the financial services sector for regulation and supervision, anti-money laundering and counter terrorist financing and for combating tax evasion and avoidance.

There is a requirement for each Party (the UK and the relevant EU Member State) to ensure that, where the Party requires membership of, participation in or access to a self-regulatory organisation to supply financial services in its territory, that organisation complies with requirements regarding national treatment and most-favoured nation treatment. This means that UK companies in the EU (and vice versa) cannot be discriminated against because of nationality (known as national treatment) and can take advantage of any future more favourable terms negotiated by either the UK or the EU in trade deals (known as 'most favoured nation').

Where UK/EU financial service suppliers are established in the territory of the other Party, that Party must act in accordance with national treatment principles. So they must permit such suppliers to supply any new financial service that it would permit its own financial service suppliers to supply in accordance with its law, provided that the introduction of the new financial service does not require the adoption of a new law or the amendment of an existing law. They must also grant such suppliers access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the ordinary course of business.

The UK and the EU agree in a non-binding declaration to establish by March 2021 a framework for regulatory cooperation via information sharing and bilateral dialogue. The declaration reaffirms the integrity of the UK and EU autonomous equivalence frameworks.

What does this all mean for businesses?

The detail of this depends on which financial service is offered, but overall for businesses to continue to access the EU single market, they will either have to comply with the different requirements of the 27 Member States including the requirement to establish a subsidiary in order to undertake services trade or rely on EU equivalence decisions (which are far from certain and can be revoked). As noted above, up to January 2021 the EU has taken two time limited equivalence decisions but UK/EU discussions on financial equivalence are still taking place and further equivalence decisions may be taken in future.

For further guidance from UK Government please see their financial services section of their website.

<https://www.gov.uk/government/collections/financial-services-sector-end-of-transition-period-guidance>

Chapter 5: Regulatory Framework – Section 7: Legal Services

The Rules

The UK-EU FTA goes further than any EU agreements in its coverage of legal services but it is important to note that EU Member States can still impose total bans on UK lawyers advising on EU and their own national laws.

The Agreement will give UK solicitors, barristers and advocates the right to advise their clients across the EU on UK and public international law using their home professional titles, except where EU Member States have placed specific limits on this activity by taking a reservation in the TCA.

What does this all mean for businesses?

Where EU Member States require UK lawyers to register in order to provide advice on UK and public international law, the Agreement makes clear this is not a requirement for requalification or admission to the local legal profession except where EU Member States have taken reservations against the commitments.

However, even a UK lawyer advising on UK law, may be subject to particular rules. For example in the Czech Republic, UK lawyers will have to be resident to provide legal advice, while in Austria lawyers are specifically prohibited from being resident and must provide legal advice on a cross-border basis. In some Member States, UK lawyers will be able to fly in, provide legal advice, and fly out again without work permits. In others this will be subject to an economic needs test.

For further information please see the UK Government guidance for:

- lawyers
- auditors
- services country by country guides.

Part 2, Title III – Digital Trade

The Rules

This part of the TCA sets the terms under which businesses can provide products and services to each other via digital channels e.g. over the internet.

Data flows

The agreement indicates that both the UK and EU are committed to facilitating cross-border data flows. It includes a ban on data localisation, meaning that UK and EU based companies (unless in specific circumstances) cannot be required to store or process data within a specific country in order to undertake trade.

The Agreement includes provisions protecting companies' Intellectual Property with a guarantee against the forced transfer of source code.

There is also a novel provision on open government data. This encourages governments to make data easily accessible and to provide information in machine readable formats. This could be useful for businesses undertaking research that requires government data.

Consumer protection, data protection and online harms

The TCA specifies that there should be high standards of protection for personal data and privacy. The TCA contains sections on online consumer protection and anti-spam provisions that provide customers with strong protections when buying from businesses in the UK and EU.

Other parts of the deal (including on security cooperation, customs cooperation and fishing) also include provisions on data sharing.

Electronic contracts, signatures and providing services digitally

There is a guarantee that neither the UK nor the EU will discriminate against electronic signatures or electronic documents as opposed to paper based documents and an assurance that contracts can be completed digitally, with some exceptions e.g. for legal, gambling and broadcasting services²³.

There is an obligation for the UK and EU to cooperate on the development of emerging technologies and supporting corresponding dialogue between public and private bodies and regulators to develop new technologies. This common understanding and cooperation should support research and product development as well as agreeing compatible market rules.

What does this all mean for businesses?

The digital trade sections aim to protect and encourage digital trade, as well as allowing future space for emerging technologies. This means that businesses trading electronically between the EU and UK should not encounter any additional substantial barriers to the flow of the information and the security of it.

Part 2, Title V – Intellectual Property

The Rules

The Agreement covers a broad range of intellectual property rights, including patents, trademarks, designs, unregistered rights such as copyright, trade secrets and unregistered designs.

The UK and EU have agreed to protect the intellectual property of each other's nationals no less favourably than their own. The Agreement also contains mechanisms for co-operation and exchange of information on intellectual property issues of mutual interest.

²³ For the full list of exceptions see the digital trade chapter: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

What does this all mean for businesses?

Copyright and database rights

Most of the UK's copyright law derives from international treaties and is not dependent on membership of the EU. However, one exception is sui generis database rights. UK citizens, residents and businesses will not be eligible to receive or hold database rights in the EEA for databases created on or after 1 January 2021. Owners of databases created on or after 1 January should consider whether they can rely on alternative means of protection in the EEA e.g. licensing agreements or copyright where applicable.

UK legislation will be amended so that only UK citizens, residents and businesses are eligible for database rights in the UK for databases created on or after 1 January 2021.

However, under the terms of the Withdrawal Agreement, database rights that existed in the UK or EEA before 1 January 2021 will continue to exist in the UK and EEA for the rest of their duration. Anyone in the UK who wishes to use databases protected by these rights will continue to need the permission of the right holder(s) as before.

Copyright in databases

Copyright protection for databases in the UK and EEA is unchanged as it continues to be governed by international treaties and protection and rights do not depend on the UK's membership of the EU or EEA²⁴.

Part 4 Thematic Cooperation

Title II Cyber security

The TCA creates a framework for UK-EU cyber security cooperation as well as facilitating the UK's voluntary participation in the activities of expert bodies e.g. the EU Agency for Cybersecurity (ENISA) and the Network and Information Systems (NIS) Cooperation Group as well as voluntary cooperation with the EU's Computer Emergency Response Team (CERT-EU).

24 For further information see the Intellectual Property Office website, Brexit section here: <https://www.gov.uk/transition>

Procurement

The procurement rules in the TCA are based on the WTO Agreement on Government Procurement (GPA), with some additional rules for covered procurement. However, these procurement rules in the TCA are largely consistent with our domestic procurement regulations and will not inhibit the Welsh Government's ability to undertake procurement reform. Financial thresholds are the same as the thresholds in the UK's domestic procurement regulations.

The TCA requires contracting authorities in the UK to treat EU-owned suppliers based in the UK no less favourably than UK-owned suppliers based in the UK for any procurement (subject to some exceptions set out in the GPA, and the additional exceptions in Annex PPROC-1 to the TCA).

This obligation is already a requirement in our domestic procurement regulations, however, it does not currently apply to non-covered procurement (e.g. those which fall below the financial thresholds) so it is an additional requirement.

This is reciprocal which also means that UK-owned suppliers which have a base in the EU must be treated no less favourably than EU-owned suppliers by contracting authorities in the EU.

There are some changes to covered procurement including Healthcare services (specified in the TCA as human health services, administrative healthcare services and supply services of nursing personnel and supply services of medical personnel) which are expressly excluded.

Businesses should consider and check the market access coverage before bidding for any public sector contract opportunities in the EU.

