

# **International Agreements:**

## Report on the agreement on trade in goods between Iceland, Norway and the UK

May 2019

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### **Introduction**

The External Affairs and Additional Legislation Committee considered the agreement on trade in goods between Iceland, Norway and the UK at its meetings on 29 April 2019 and 20 May 2019.

We agreed to report on the agreement due to significant omissions in its scope when compared to the existing EU relationship with Iceland and Norway under the European Economic Area agreement.



## Background

1. The agreement on trade in goods between Iceland, Norway and the UK is a **trade continuity agreement**.
2. The text of the agreement and associated explanatory materials published by the UK Government are [available online](#).
3. The agreement was laid before the UK Parliament on 12 April and the Constitutional and Regulatory Reform Act 21-day period ends on 3 June 2019.

## Legal assessment

Does the agreement engage the Assembly's competence?
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Yes, the agreement engages the Assembly's competence.
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## Policy assessment

Are there policy implications for Wales?
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Yes, as detailed under this section.
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4. Norway and Iceland are members of the European Economic Area (EEA). The EEA Agreement effectively extends the EU's Single Market to its EEA EFTA signatories: Iceland, Norway and Liechtenstein. Hence, the European Economic Area ("EEA") covers 31 countries - the 28 EU member states, plus Iceland, Liechtenstein, and Norway. Currently, as a member of the European Union, the UK is a party to the EEA Agreement. **This agreement is between the UK, Iceland and Norway. The UK has come to an agreement with Liechtenstein to extend certain provisions of the agreement between the UK and Switzerland to Liechtenstein. This is possible as Liechtenstein and Switzerland are in a customs union.**
5. The closely intertwined relationship between Iceland, Norway and the EU limits what trading arrangements can be continued bilaterally between the UK, Iceland and Norway. **Until the UK and EU agree a future relationship, the UK Government states that the UK, Iceland and Norway can only continue current trading arrangements where Iceland and Norway are not bound by their EEA Agreement obligations, and where the UK would not be required to align itself to**

**EU legislation. The only area where this is currently fully possible is tariff elements of trade in goods.**

**6.** This UK-Iceland-Norway Trade Agreement incorporates the relevant provisions of the EEA Agreement and the bilateral agreements in order to achieve continuity of trade in goods as far as possible, alongside additional provisions which will ensure the trade agreement is operational, namely institutional provisions, trade remedies, settlement of disputes, customs cooperation and rules of origin.

### Trade between the UK and Iceland/Norway

**7.** Total trade in goods and services between the UK and Iceland/Norway was £29.5 billion in 2017. Norway is the UK's 12<sup>th</sup> largest trading partner, with trade between the UK and Norway comprising 2.2% of UK total trade. Iceland is the UK's 63<sup>rd</sup> largest trading partner, accounting for 0.1% of the UK's total trade. £23.6 billion of trade between the UK and Iceland/Norway in 2017 was in goods, with trade of £5.9 billion in services.

**8.** The UK exported £6.5 billion of goods and services to Norway in 2017, making it the UK's 24<sup>th</sup> largest export market. In 2017, the UK imported goods and services worth £21.1 billion from Norway, making it the UK's 10<sup>th</sup> largest import market.

**9.** The UK exported £0.7 billion of goods and services to Iceland in 2017, making it the UK's 70<sup>th</sup> largest export market. In 2017, the UK imported goods and services worth £1.2 billion from Iceland, making it the UK's 55<sup>th</sup> largest import market.

**10.** The main exports of goods and services from the UK to Iceland/Norway in 2017 were:

- Other business services (legal, accounting, management consulting) - £904 million;
- Travel services - £716 million;
- Machinery and mechanical appliances - £648 million;
- Financial services - £522 million; and
- Aircraft, spacecraft and parts thereof - £448 million

**11.** The main imports of goods and services by the UK from Iceland/Norway in 2017 were:

- Mineral fuels or oils, products of their distillation - £16.2 billion;
- Aircraft, spacecraft and parts thereof - £724 million;
- Other business services (legal, accounting, management consulting) - £620 million;
- Travel services - £552 million; and
- Transportation services - £456 million

**12.** In 2017 trade in goods between Wales and Iceland/Norway was £1.019 billion, 3.0% of total Welsh trade in goods. The vast majority of this trade was with Norway. Wales exported £87.3 million worth of goods to Iceland/Norway in 2017. Wales imported £931.7 million worth of goods from Iceland/Norway. Of these, £765.5 million were imports of petroleum, petroleum products & related materials imported from Norway.

**13.** The latest data available on Welsh service exports to Norway is from 2015 - with data on imports of services not being available. In 2015 Wales exported £17 million worth of services to Norway, 1% of total Welsh services exports. Figures are not available for Iceland, which is included in the 'rest of Europe' category in this dataset.

## How the UK-Iceland-Norway agreement compares to the EEA agreement

**14.** As stated above, until the UK and EU agree a future relationship, the UK Government states that the UK, Iceland and Norway can only continue current trading arrangements where Iceland and Norway are not bound by their EEA Agreement obligations, and where the UK would not be required to align itself to EU legislation. The only area where this is currently fully possible is tariff elements of trade in goods. **There are a number of areas from the EEA agreement that have not been included in the UK-Iceland-Norway agreement – these are trade in services; regulatory alignment; procurement; and competition and state aid.**

**15.** Dr Jappe Eckhardt's analysis states that:

Overall the UK Government has done what it can to prevent disruption in trade in goods with these two countries. Yet, this is not the whole story. The most obvious omission is the exclusion of trade in services. In addition, there are other issues that may have implications for trade between Wales and Norway/Iceland, most of which have to do with the

fact that the agreement only “covers areas where Norway and Iceland are not constrained by their EEA obligations and where UK’s continued alignment with EU/EEA rules is not required.

### **This agreement will enter into force only in two circumstances:**

- a) Where the United Kingdom withdraws from the European Union without any agreement between the United Kingdom and the European Union on the terms of the United Kingdom’s withdrawal; or
- b) If any agreement between the UK and the EU on the terms of the UK’s withdrawal does not provide for the continued application to the United Kingdom of the Trade-Related Agreements between the European Union and one or both of Iceland and Norway in respect of trade in goods.

**16.** A new **Joint Committee** will be established under Article 10 of the main text of the UK-Iceland-Norway agreement, to ensure that it operates properly.

#### Tariffs on industrial goods

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**17.** Tariff commitments have been transferred between the UK, Iceland and Norway with the exception of tariff-rate quotas (TRQs), which have been resized to reflect the UK will no longer be a member of the EU. Tariffs on industrial goods are included in the EEA agreement, and these have been carried over to the UK-Iceland-Norway agreement.

#### Tariffs on agriculture and fisheries products

**18.** The EEA Agreement tariffs and TRQs on agriculture and fisheries products have been incorporated into the UK-Iceland-Norway agreement to provide for continuity.

**19.** Where possible, TRQs have been re-sized in line with three years of historical customs usage data, which detail actual usage of the TRQs by importers. It includes information on the quantity and date of individual shipments of goods. This is relevant customs data which records the volume and date of entry of shipments that come into the UK, Norway or Iceland claiming TRQ preferences. Where there is not three years’ worth of usage customs data, trade flow data has been used as a proxy instead. Where TRQ volumes in the EU agreement have increased since the historical reference period, a proportional uplift has been applied to historic data to account for this.

**20.** Department for International Trade officials told the House of Lords European Union Committee that it was deemed appropriate to not replicate TRQs where usage has been zero. This is different to the approach taken with other continuity trade agreements, and so the Committee has asked the department for clarification of this.

**21.** Protocol 3 to the EEA Agreement establishes tariff preferences for processed agricultural goods and a price compensation mechanism for these goods whereby reference prices are established and updated between Norway and the EU on an annual basis. Iceland does not actively make use of the mechanism. The reference prices equalize the differences between the Norwegian domestic and world market/EU prices for the agricultural raw materials used in the production of these products in order to create a level playing field for trade. Usually the Norwegian domestic prices exceed those in the EU and the rest of the world owing to the environmental conditions present in the country.

**22.** The UK-Iceland-Norway Agreement on Trade in Goods ensures that the tariff preferences currently in place for processed agricultural goods are retained for the UK, Norway and Iceland in the event of a 'no deal' exit. This will provide continuity of trading conditions for consumers and businesses, to the extent possible. **Protocol 3 to the UK-Iceland-Norway Agreement on Trade in Goods retains, with modifications, the price compensation mechanism.** A new Article 2 of Protocol 3 to the UK-Iceland-Norway Agreement on Trade in Goods provides that the customs duties applied between Norway and the UK and Iceland and the UK under the UK-Iceland-Norway Agreement on Trade in Goods shall not exceed the customs duties applied between Norway and the EU and Iceland and the EU under the EEA Agreement. The UK Government states that this approach has three benefits: firstly, it achieves continuity of current trading conditions; secondly, the UK will not need to continuously amend this Agreement to show changes in customs duties; and thirdly, the UK will not need to initiate a separate, resource intensive annual negotiation on duties applicable to processed agricultural goods as currently happens in the EEA Agreement.

**23.** Protocol 9 to the EEA Agreement establishes tariff preferences applicable to fisheries goods. The UK-Iceland-Norway Agreement on Trade in Goods retains these tariff preferences through the incorporation and, where necessary, modification of the provisions of Protocol 9. To the extent possible, this provides continuity for consumers and businesses in terms of the availability and price of fish, in particular white fish, for the UK fish processing industry. There are some

amendments to this protocol in the UK-Iceland-Norway agreement – state aid and competition provisions are removed, and other technical amendments.

## Bilateral arrangements on agricultural and fishery products

**24.** Annexes II and III of the UK-Iceland-Norway agreement incorporate and modify, as required, the relevant bilateral agreements and protocols in place between the EU, Norway and Iceland. These changes set out which rules of origin will apply, and also a number of technical changes.

### Bilateral arrangement between Iceland and the UK on the protection of Geographical Indications

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**25.** The Agreement between the EU and Iceland on the protection of geographical indications (GIs) for agricultural products and foodstuffs is incorporated into the UK-Iceland-Norway Agreement on Trade in Goods. The transitioned GI arrangements provide for continuity of protection for UK agri-food GIs in Iceland, and vice-versa. There is no equivalent agreement on agri-food GIs between the EU and Norway.

**26.** The arrangements for protection of wine and spirits GIs with Norway and Iceland have not been incorporated into this Agreement as they depend on alignment with EU rules, and the UK will look to establish the appropriate protections in the course of future trade.

### Rules of origin

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**27.** Annex IV of the UK-Iceland-Norway Agreement **addresses rules of origin**. It has been agreed in the UK-Iceland-Norway Agreement on Trade in Goods that EU materials and processing can be recognised (i.e. cumulated) in the UK's exports to Iceland and the UK's exports to Norway (and vice versa for Iceland's exports to the UK, and Norway's exports to the UK).

**28.** The UK, Iceland and Norway are currently Contracting Parties to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (PEM Convention). This is a multilateral agreement that harmonises preferential rules of origin across the Euro-Med area and provides for cumulation between Contracting Parties to that Convention.

**29.** The UK's future relationship with the PEM Convention has not yet been determined, so the UK-Iceland-Norway Agreement reflects the provisions of the PEM Convention and Protocol 4 to the EEA Agreement. This includes cumulation arrangements with modifications between the UK, Iceland and Norway.



**30.** Dr Jappe Eckhardt's analysis raises a potential issue around re-exports of UK goods from Norway or Iceland to the EU. He states that:

Problems could arise, however, if the good is subsequently exported from Norway/Iceland to an EU member state, because if the EU does not recognise UK materials and/or processing as originating in Norway/Iceland, the good might be considered 'not originating' and thus subject to EU tariffs. So far, the EU has not indicated that it will make such a commitment.

#### Trade remedies

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**31.** Articles 9 and 10 have been included in the UK-Iceland-Norway Agreement on Trade in Goods in order to enable Parties to apply anti-dumping and countervailing measures if required. This is required in addition to the safeguard provisions incorporated from the EEA Agreement in Article 8 in the UK-Iceland-Norway Agreement on Trade in Goods to account for the Agreement being between the UK, Iceland and Norway, rather than an agreement to create a homogenous and dynamic EEA-wide Single Market, as the EEA Agreement aims to achieve. Modifications in Annex I to Article 4 of Protocol 9 ensure that trade remedies can be applied to fish products too.

#### Dispute settlement

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**32.** The UK-Iceland-Norway Agreement on Trade in Goods replicates the effects of the dispute settlement provisions in the EEA Agreement, except where modifications have been deemed necessary.

**33.** The dispute settlement chapter of the EEA Agreement provides for the Parties to request the European Court of Justice to give a ruling on the interpretation of relevant EU Treaties. This only applies when a dispute concerns the interpretation of provisions of the EEA Agreement that are identical in substance to EU Treaties. This provision has been removed as it is not relevant to the UK in the context of this Agreement.

**34.** One of the impacts of transitioning the dispute settlement chapters in the existing EU trade agreements is that, in the event that a dispute arises, the UK will be directly responsible for any relevant costs associated with the dispute settlement process.

### Parts of the EEA agreement that have not been transferred to the UK-Iceland-Norway agreement

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## Procurement

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**35.** The UK's current government procurement obligations with Iceland and Norway are governed by the Government Procurement Act (GPA) and the EEA Agreement. **The EEA Agreement requires Norway and Iceland to implement the EU's rules for public procurement and guarantees reciprocal procurement market access at levels equivalent to those in the EU internal market. This goes significantly beyond the obligations within the GPA in terms of both market access and procedural requirements.**

**36.** On 27 February 2019 GPA Parties confirmed that the UK can join the GPA as an independent member when it leaves the EU, and it is the UK government's policy to do so. Those international procurement obligations between the UK, Norway and Iceland that derive from the GPA will therefore continue once the UK accedes to the GPA.

**37.** **The public procurement obligations found in the EEA Agreement have not been transitioned as part of the UK-Iceland-Norway Agreement on Trade in Goods.** This is because the EEA Agreement requires the parties to implement the EU Single Market rules for public procurement. In a no deal scenario, the UK will leave the EU's Single Market, and therefore it would not be possible for the UK to technically replicate the EEA Agreement's provisions on procurement with Norway and Iceland.

**38.** For UK businesses, this means the loss (from exit day onwards) of guaranteed access to bid for Norwegian and Icelandic procurement contracts that are covered under the EEA Agreement and are above and beyond procurement obligations found within the GPA. UK businesses win approximately £14 million worth of these contracts a year. However, additional access to the UK market derived from the EEA Agreement will be maintained for Norway and Iceland for 18 months. Norwegian and Icelandic businesses win approximately £16 million worth of covered contracts a year. These arrangements will protect access to these contracts over the next 18 months. Continued access would depend on arrangements put in place after that date.

**39.** The UK Government has said that it does not expect there to be any implications for existing contracts held by UK firms in Norway or Iceland.

## Technical barriers to trade

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**40.** Due to the high degree of regulatory alignment and interdependencies between Iceland, Norway and the EU, in the absence of a partnership agreement

between the UK and the EU **it is not possible to replicate the technical barriers to trade (TBT) provisions of the EEA Agreement without making legal commitments to EU law.** In the immediate short term, after departing the EU the UK will have near-complete alignment with Iceland and Norway on **technical regulations, standards and conformity assessment.** The EEA Agreement nevertheless restricts Iceland and Norway's ability to reach a mutual recognition agreement on conformity assessment test results and certification with the UK independently of the EU.

**41.** Dr Jappe Eckhardt's analysis notes that this is a similar situation to the UK-Switzerland agreement, where both countries sought solutions for mutual recognition but were unable to reach a conclusion on this in many areas.

**42.** In a 'no deal' scenario, UK Notified Bodies will no longer be recognised by Iceland and Norway, and therefore UK Notified Bodies currently certifying goods marketed in Iceland or Norway are likely to face additional costs and lose business. To mitigate against this, the UK, Iceland and Norway have agreed an exchange of non-legally binding 'side letters' on TBT (separate to the Agreement) which confirm that UK policy regarding EU goods placed on the UK market will also apply to Iceland and Norway, and that Iceland and Norway will apply the same approach to UK goods as the EU does.

#### Sanitary/phytosanitary measures

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**43.** The EEA Agreement sanitary/phytosanitary measures have not been transferred over to the UK-Norway-Iceland agreement. Due to the high degree of regulatory alignment and interdependencies between Iceland, Norway and the EU, in the absence of a deal between the UK and the EU it is not possible to replicate the Sanitary and Phytosanitary (SPS) provisions of the EEA Agreement without committing to EU law. In a no deal scenario there will not be any change in food safety and veterinary import requirements, and goods that do not currently have import checks will not be subjected to these when the UK leaves the EU on exit day.

**44.** In non-binding side letters, Iceland and Norway have agreed to treat UK imports in the same way as the EU does in the event of 'no deal'.

**45.** The House of Lords European Union Committee notes that Department for International Trade officials explained that, UK exporters of live animals and animal products will become subject to third country requirements, such as producing additional documentation or transiting goods through a border inspection post.

**46.** Additionally, the European Union Committee stated that Norway and Iceland will only be able to accept imports of live animals and animal products from the UK once the UK is 'listed' by the European Commission as a third country for animal health purposes.

**47.** Dr Jappe Eckhardt's analysis highlights that the uncertainty around UK exports of live animals and animal products is similar to that in the UK-Switzerland trade agreement, as Switzerland adopts the EU's list of third countries.

## Trade in Services

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**48.** The preferential access achieved through access to the EU single market will not be transitioned to the UK-Iceland-Norway Agreement. This is due to the requirement for EEA members to closely align with EU law and is therefore dependent on a future UK deal with the EU. However, it does not follow that there would be no measures in place to support trade in services with Norway and Iceland following the UK's exit from the European Union because of the existence of continuity arrangements in some sectors.

## Expert input

**49.** Dr Jappe Eckhardt from the University of York has provided expert input to our consideration of this agreement and his advice has contributed to the analysis in this report.

## House of Lords European Union Committee report

**50.** The House of Lords European Union Committee reported on the agreement on 15 May. It drew special attention to the agreement on two grounds. Firstly, that it is a politically important agreement that gives rise to issues of public policy that the House of Lords may wish to debate, and secondly that there are significant differences in the arrangements contained in the agreement compared to the current position.

**51.** The Committee concluded that:

While preserving tariff preferences, the Trade Agreement will significantly change the nature of the UK's trade relationship with Iceland and Norway. It will not address non-tariff barriers to trade in goods, and trade in services is excluded entirely. Moreover, institutional arrangements and the enforcement mechanisms involved differ substantially. We recognise that the specific features of the EEA

Agreement, designed to achieve economic integration through regulatory alignment, have severely limited the Government's ability to transition existing arrangements with Norway and Iceland in the event of a 'no deal' Brexit. We therefore welcome the Parties' intention to re-open negotiations on their trade relationship as soon as possible, should the Trade Agreement take effect, with a view to replacing it.

## Conclusions and a recommendation

**Conclusion 1.** This agreement is not a simple rollover agreement. As it currently stands, there are significant gaps in the continuity it would offer in the event of the UK leaving the EU without a deal, including in areas of policy devolved to Wales.

**Conclusion 2.** We hope that the UK Government engages fully with the Welsh Government as this agreement is developed in the future and ask that the Welsh Government keeps us informed of progress.

**Recommendation 1.** We recommend that the Welsh Government undertakes further analysis of the gaps in the continuity under this agreement, with a view to ensuring that the UK Government is fully informed of the implications for Wales in the gap areas as steps are taken to close them.