



The NHS and future free trade agreements: Implications for health and social care in devolved nations

THE WELSH NHS CONFEDERATION
CONFFEDERASIWN GIG CYMRU



Introduction

In September 2019 the NHS Confederation published a [briefing](#) which highlighted how future free trade agreements post Brexit could impact the NHS at a UK level.ⁱ

Future trade agreements (FTAs) have an important role to play in the health and care system across the UK. They offer opportunities to capitalise on the UK's reputation as a world leader in clinical care and governance, healthcare education, medical and scientific research and the development of innovative treatments, products and services. However, these opportunities should not come at the cost of decreased protection for patients and the public from provisions that could increase healthcare costs, lower standards or place additional burdens on already challenged services and budgets.

Within their briefing the NHS Confederation stated that *'future trade deals should aim to create an economic climate that will support population health by improving the wider determinants of mental and physical health such as employment, good housing, education and nutrition'*. This remains true within a Welsh context, and there is also the possibility for FTAs to reiterate the core policy drivers within the Welsh NHS. These include promoting the wellbeing of future generations and the focus on early interventions and preventative measures to support people to stay happy, healthy and independent as set out within the Welsh Government's long-term plan for health and social care, A Healthier Wales. Historically Wales has implemented EU Directives and Regulations earlier than other UK nations, such as food hygiene labelling and maintaining robust co-ordination mechanisms on public health and wellbeing standards will be essential in future trade negotiation process.

While FTAs will be negotiated by the UK Government, health policy and the delivery of services is a devolved responsibility to the Welsh Government. This briefing starts to examine how FTAs negotiated at a UK level could impact the NHS in Wales and how the key asks may differ between national and devolved administrations.

Key Points:

- Health issues are often not high on the agenda (or on the agenda at all) in trade negotiations. **However, FTAs should not result in lowering standards or increasing costs for patients and the health and social care system. This is also an opportunity to promote the core principles of the Welsh NHS, including equality, prevention and the wellbeing of future generations.**
- The impact of FTAs should be assessed to ensure that commercial advantage is not prioritised at the expense of human and economic health. In order to guarantee equal or higher public safety, **impact assessments should ensure robust co-ordination mechanisms on public health and wellbeing standards.**
- There should be **public and political scrutiny of trade negotiations.** Health is a devolved responsibility and Wales should be meaningfully included in future negotiations..
- FTAs will not themselves change the fundamental principles of the NHS - **free care provided to all based on need at the point of use and funded through general taxation** – and FTAs should not weaken or undermine this principle.
- While some competition is expected to continue when commissioning service provision in England, the **Welsh NHS governance system emphasises integrated care, enabling Local Health Boards in Wales to commission their own services for their local population, including for public health.**
- Operating on World Trade Organisation terms will not force the NHS to open services to foreign providers: it will be for the **UK Government to decide what services to offer, or not, in any future deal.**
- An early priority should be for the UK Government to **negotiate a trade agreement with the EU.** This will promote continuity, minimise potential disruption and costs, ensure shared access to data and preserve reciprocal healthcare arrangements.
- While protecting the NHS across the UK when negotiating FTA, Wales should emphasise the need for the **long-term impact on public health and population wellbeing to be considered, maintaining high regulatory standards, having shared access to data, protecting food quality, reducing health inequalities and providing the best possible quality of healthcare services for patients whilst ensuring value for money.**

How will post-Brexit trade policies impact health and care services?

Individual Member States of the EU are responsible for their own organisation and delivery of health services and medical care.ⁱⁱ However, within the UK's health and social care policy the EU has significant influence on areas such as public health, quality and safety of human bloods and tissue products, medicines and medical devices, and co-ordinating social security systems or cross-border healthcare arrangementsⁱⁱⁱ. EU laws, directives, regulations and trading relationships between the EU and other countries greatly impact the UK's access to and cost of medicines, public health protection and standards, data access and reciprocal healthcare arrangements.

The ability to make trade policy remains an exclusive power of the EU while the UK is a Member State. Once the UK leaves the EU, developing international trade policy will be a central matter for the UK Government. Future trade talks with the EU presents an opportunity for [health to be made one of the top priorities](#) in the UK's negotiating mandate and for the health and care community to have a 'seat at the table' in the development of trade policy and negotiations. Research conducted by the [Faculty of Public Health](#), [PETRA](#) (an interdisciplinary expert community, exploring how international trade can improve human health and prevent non-communicable diseases) and the [World Trade Organisation \(WTO\)](#) explain in more detail the relationship between health and trade.

All key points and asks within the NHS Confederation's [briefing](#) apply to the NHS across the UK, including the Welsh NHS, including the implications of World Trade Organisation standards and protections that are currently in place. Since health is devolved to the Welsh Government, there are some areas which would impact Wales differently from the rest of the UK. For example, while the UK is a net importer of goods, Wales is a net exporter and the Welsh Government has the devolved responsibility to promote Wales's economic development abroad. Welsh Government has also recently published a new [International Strategy](#), which highlights the desire to maintain a close relationship with the EU as the UK's largest trading partner. Below are some points which are specific to the Welsh context.

How can devolved administrations be involved with trade negotiations when they impact devolved competencies?

After exiting the EU, a main priority for the UK should be to negotiate trading arrangements with the EU to maintain continuity and regulatory alignment, mutually recognised professional qualifications and access to goods and services with the UK's largest trading partner.

Without a trade deal at the end of the transition period, in December 2020, the UK would lose access to those FTAs negotiated by the EU and only those trade deals which the UK holds as a WTO member would remain. After exiting the EU and acting as a member of the WTO, the UK will be free to make its own trade agreements in a way that it is not able to under its EU membership. However, this would not oblige the UK to open health care services to international providers. It will be up to the Government of the day to decide which services should fall within the scope of the agreement, and any exceptions or reservations.

The UK Government has confirmed the commitment to involve devolved administrations in trade negotiations by stating in the [Preparing for our future UK trade policy](#) White Paper that they will “*continue to ensure that decisions about public services are made by the UK Government, including the devolved administrations, not our trade partners*”. The exact nature of any engagement with devolved nations has yet to be defined. Since health is a devolved responsibility, Wales should be meaningfully included in future negotiations and ensure the protection of the policy direction in Wales and how we deliver our healthcare services, as it currently does.

The Trade Bill, which ceased when the UK Parliament was prorogued in the lead up to the General Election in December 2019, would have given MPs parliamentary scrutiny and a guaranteed vote on future trade deals. After Brexit and without a new Trade Bill being put forward and passed by the UK Parliament, the UK would revert to the ‘Ponsonby rule’, a convention established in World War I which limits MPs powers to scrutinise secret defence deals and would apply to future trade deals negotiated by the UK Government. Determining the most appropriate way Wales, and other devolved nations, should be involved in negotiating FTAs should be agreed with the UK Government as a matter of urgency given the time remaining in the current implementation period.

How can the core principles of the Welsh NHS be considered when negotiating future trade arrangements?

Protecting Post-Brexit trade deals have significant implications for a range of wider determinants of health for Wales such as environmental protection, food standards, alcohol and tobacco regulations and working conditions. Topics related to health are typically not high, or even on the agenda at all, in trade negotiations – but there is an opportunity to change this. Trade agreements provide a unique opportunity to protect health standards and costs, and promote the core principles of the Welsh NHS such as prevention, wellbeing of future generations and prudent healthcare and should be subject to public and parliamentary scrutiny of trade negotiations.

Governance

Commissioning arrangements for the NHS services are different in Wales and England. The Health and Social Care Act 2012, which applies to NHS England, established 211 local Clinical Commissioning Groups in a clinically-led commissioning structure, held to account by the independent NHS Commissioning Board. Most public health functions have transferred to Local Authorities and decisions on local planning and priorities are informed by Health and Wellbeing Boards.

NHS England patients have the right to choose which hospital they are referred to by their GP. NHS commissioners in England may already choose to invite competitive bids for local services, based on frameworks and regulations. Future trade deals will not force the NHS to provide preferential services to foreign companies.

In Wales health is devolved to the Welsh Government and market driven levers were removed when Health Boards in Wales were established in 2009. There are seven Local Health Boards (LHBs), each aiming to integrate specialist, secondary, community and primary care and health improvements. Each Health Board holds the full budget allocation and the national direction is towards collaborative planning. The seven LHBs collaborate for specialist commissioning through a joint committee – the Welsh Health Specialised Services Committee (WHSSC) – and public health is integral to each LHBs work.

LHBs both provide and commission services within their own area to enable services and care closer to home in for their population. While some NHS England services are already run by independent providers, Health Boards in Wales have a different governance structure and act as both commissioners and providers. In addition to the seven LHBs, there are three national Trusts in Wales, including Public Health Wales NHS Trust. Public Health Wales is the national public health agency who works to protect and improve health and wellbeing and reduce health inequalities for the people of Wales.

Policy and legislative frameworks

In addition to a different governance structure, Wales has several pieces of legislation and strategies which change how the NHS in Wales plan and provide services. These should be considered when Wales is consulted on when FTAs are being negotiated.

The [Well-being of Future Generations \(Wales\) Act 2015](#) requires public bodies to think about the long-term impact of their actions to improve social, cultural, environmental and economic wellbeing such as poverty, health inequalities and climate change. It is focused on long-term planning, integration, involvement, collaboration and prevention.

As public health is integral to each Health Board, the [Public Health \(Wales\) Act 2017](#) sets out provisions in a number of priority areas of public health policy, including obesity, smoking, 'special procedures' (such as body piercing, tattooing) and pharmaceutical services. This emphasis on public health and prevention has led to the [Public Health \(Minimum Price for Alcohol\) \(Wales\) Act 2018](#) which enables the Welsh Government to set a minimum unit price of alcohol, which has been set at 50p and will be introduced on 2 March 2020.

Wales also has the [Active Travel \(Wales\) Act 2013](#) which enables Wales to build physical activity into everyday lives, reducing motorised traffic and environmental problems, connecting people and communities and offering low cost mobility, enabling access to education, jobs and services.

[A Healthier Wales](#) is the Welsh Government's long-term plan for health and social care. The Plan sets out the vision of a whole system approach focusing on health and wellbeing and preventing physical and mental illness. The Plan establishes new ways of working across health and social care, shifting services from hospitals to communities.

There is a strong emphasis on prudent and value-based healthcare across the NHS in Wales. Prudent healthcare shapes the Welsh NHS to ensure it is always adding value, contributes to improved outcomes and is sustainable by using the principles of coproduction, caring for those with the greatest need first, do only what is needed, and reducing inappropriate variation; and working toward. Value based healthcare is a measurable way to delivering the best outcomes for people by providing the right care for them as individuals.

What are the main priorities for the Welsh NHS when negotiating FTAs?

The NHS, and services themselves across the UK, will not be impacted by FTAs because free care will continue to be provided to all based on need at the point of use and funded through general taxation will continue.

Maintaining continuity and compatibility

Leaving the single market and the customs union with the EU could risk the UK falling out of regulatory alignment with the rest of the EU27, to which there is already full continuity for tariff and non-tariff barriers. This might impact the physical logistics of medicines which the Welsh NHS is reliant on which could lead to delays or increased costs if alignment is not agreed. This continuity is not only important for goods but would also impact the [mutually recognised professional qualifications](#) of EU staff that provide essential services to the Welsh NHS and [cross boarder healthcare arrangements](#).

Shared access to data

Current mutual recognition arrangements include access to a shared EU-wide database whereby regulators can exchange warnings about healthcare professionals who have been struck off or sanctioned in one or more Member State and may be seeking to practise elsewhere, which potentially impacts on patient safety.

Shared access to EU-wide data bases is essential to maintain knowledge of struck off or sanctioned medical professionals, clinical trial confidential information, membership of European Reference Networks for rare diseases, access to surveillance and early warning systems etc.

Food quality and implications for public health and health inequalities

Currently Wales has some of the highest quality regulations on food and it is important that these remain in place for regulation and oversight as opposed to self-monitoring at a business level. Consumers in Wales were the first to benefit from the mandatory display of the food hygiene rating sticker from the Food Standards Agency, which gives people a quick and easy way to know about hygiene standards at food businesses.

Maintaining Wales's high food production standards by explicitly limiting entry of food and products that have been grown or manufactured under lower animal welfare and environmental standards may present real risks to public health and clearly contradict the goals of sustainable development set out within the Wellbeing and Future Generations (Wales) Act 2015. Wales needs to maintain this high quality and standards of imports within current EU legislation as it could impact on future public and population health.

Pharmaceutical pricing

Another area of concern could be any potential rise in pharmaceutical pricing or drug protection, specifically in any FTA with the USA. Current EU regulations on drug and pharmaceutical pricing mean that prices for medicines and medical devices are kept low for patients. Opening new trade deals has the potential to increase drug prices for commercial advantage.

Conclusion

Any future trade deals should aim to create an economic climate that will support population health, by improving the wider determinants of mental and physical health such as employment, good housing, education and nutrition. This virtuous circle is not only desirable in itself but will also reduce costs in the longer term.

The NHS Confederation argues strongly that trade agreements between the UK and third countries should protect patients and the public from provisions that could increase healthcare costs, lower standards, or place additional burdens on services and budgets in health and social care. Nor should such provisions inhibit the ability of future UK Governments to promote population health and wellbeing, for example through regulation. The interests of patients should not be compromised in exchange for short-term commercial advantages and the long-term impact on public health and population wellbeing should always be considered during future trade negotiations.

How can the Welsh NHS Confederation help you?

Please get in touch if you want further details on anything highlighted in this briefing. Please contact **Victoria Hage, Brexit Programme Support Officer**, on Victoria.hage@welshconfed.org.

The Welsh NHS Confederation is the only national membership body which represents all the organisations that make up the NHS in Wales: the seven Local Health Boards, the three NHS Trusts and Health Education and Improvement Wales (HEIW).

You can visit our website at www.welshconfed.org or follow us on Twitter  [@WelshConfed](https://twitter.com/WelshConfed)

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ⁱ According to Article 168.7 the Treaty of the Functioning of the European Union (TFEU)

ⁱⁱ NHS Confederation: The NHS and future free trade agreements. September 2019.

ⁱⁱⁱ National Assembly of Wales Research Briefing Wales and the EU: What does the vote to leave the EU mean for Wales?