CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

AGENDA

4th Meeting, 2021 (Session 5)

Thursday 4 February 2021

The Committee will meet at 9.30 am in a virtual meeting that will be broadcast on www.scottishparliament.tv.

1. **EU-UK trade and co-operation agreement**: The Committee will take evidence from—
   
   Charlie Adam, Vice President, NFU Scotland;
   
   James Withers, Chief Executive, Scotland Food and Drink.

2. **Consideration of evidence (in private)**: The Committee will consider the evidence heard earlier in the meeting.

3. **Correspondence (in private)**: The Committee will consider correspondence from the Standards, Procedures and Public Appointments Committee.

4. **Work programme (in private)**: The Committee will consider its work programme.

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Clerk to the Culture, Tourism, Europe and External Affairs Committee
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The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk
PRIVATE PAPER

**Agenda item 3**

PRIVATE PAPER

**Agenda item 4**

PRIVATE PAPER
Culture, Tourism, Europe and External Affairs Committee

4th Meeting, 2021 (Session 5), Thursday 4 February 2021

EU-UK Trade and Co-operation Agreement

Note by the Clerk

Background


2. The Committee considered and reported on the European Union (Future Relationship) Bill and an associated Scottish Government legislative consent memorandum on 30 December 2020. Full details of the Committee’s scrutiny of the future relationship negotiations process can be accessed at—
https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/114740.asp

3. However, given the extremely limited timescales for scrutiny of the TCA, the Committee agreed last month to take further evidence on the content of the TCA and, in particular, from a range of stakeholders representing sectors of the economy which will be impacted by the new EU-UK trading relationship established by the TCA on 1 January 2021.

Evidence session

4. The Committee will take evidence from—

- Charlie Adam, Vice-President, National Farmers Union (Scotland); and

- James Withers, Chief Executive, Scotland Food and Drink.

Supporting Information

5. The National Farmers Union Scotland have provided a written submission which is provided at Annexe A to this paper. A SPICe briefing paper considering the impact of the TCA, to date, on the agriculture and food and drink sectors is provided at Annexe B to this paper.

Stephen Herbert
Clerk
Culture, Tourism, Europe and External Affairs Committee
1 February 2021
Written Submission from NFU Scotland

- NFU Scotland (NFUS) welcomes the opportunity to submit supplementary evidence to the Committee further to the implementation of the Trade and Cooperation Agreement.
- As outlined in previous evidence to the Committee, a so-called ‘no deal’ outcome would, in NFUS’s view, have been disastrous for the Scottish agricultural industry. The Trade and Cooperation Agreement ensures that there are no tariffs or quotas on agri-food goods, which is vital. As such, NFUS welcomed the positive conclusion of the future relationship negotiations on 24 December 2020.
- However, what the Agreement does not satisfy is NFUS’s priority for trade in agri-food goods to be friction-free. Whilst the UK has secured ‘national listed status’ for the trade of live animals, products of animal origin and plants, extensive checks Sanitary and Phytosanitary Standards (SPS) are required. This involves substantial paperwork and physical inspections, which is causing friction, delay and extra costs for traders.
- With new systems being implemented in a live environment, the situation is fast-moving and NFUS is involved in close and regular dialogue with stakeholders and government(s) to address and seek resolution to issues and problems as they arise. Nonetheless, it is important to emphasise that the issues causing trade disruption should not be characterised as ‘teething issues’ – in the vast majority of examples, set out in this submission, there are clear evidence of structural challenges which are creating barriers to trade in practice.
- Unlike the well-documented issues in the fishing and seafood sector, trade disruption is yet to have a meaningful impact at the farm-gate however it is vital that resource and support is available from both the UK and Scottish governments to support the whole food and drink sector through the short, medium and long-term impacts of any trade disruption.
- This submission identifies the key issues for agri-food and primary agricultural producers at the time of writing.

Key Issues

Meat export impacts

1. NFUS understands that the meat industry is taking a cautious approach to exports, with export volumes currently at 25-30% of normal levels as it adjusts to the new rules and adapts to the system in a live environment.

2. The main challenge relating to meat exports is the new requirement for Export Health Certificates (EHCs), which require extra time and impose extra costs, with

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very little leeway on paperwork. Requirements around EHCs create a whole new set of rules for authorities to follow. NFUS is aware that challenges have been created by lack of detailed guidance from UK Government for certified officers which has created some inconsistency between certifying officers and processing plants on the application of the new rules before products are despatched to customers in the EU.

2.1. A practical example is as follows. A shipment of pork going to the EU now requires 27 different signatures and stamps from an official veterinarian on the Export Health Certificate. It is therefore clear that difficulties or inconsistencies can arise at multiple points. An error or inconsistency on paperwork will mean a shipment not getting to its destination, and NFUS is aware of delays of up to 48 hours occurring for products reaching end customers.

3. It should be noted that in recognition of the exponential increase in paperwork, Food Standards Scotland (FSS) has worked closely with industry to increase the number of certifying officers who are working at capacity to ensure throughput. NFUS believes that if there could be a tightening of guidance and training for certified officers then there would be better consistency, therefore reducing capacity for delay and additional cost. This must be a focus for the UK Government.

4. Similarly, NFUS believes the UK Government should seek to secure assurances from the EU that there will be a consistent approach for European EHCs, and a wider commitment to simplify SPS requirements going forward.

Seed potato sector impacts

5. A major failure of the trade deal from the perspective of Scottish agriculture is on seed potatoes. Despite negotiations taking place for over two years, it was not possible for the UK and the EU to agree equivalence on seed potatoes, resulting in significant prohibitions on seed exports to the EU and, by extension, Northern Ireland.

6. As an EU Member State, Britain exported around 30,000 tonnes of seed potatoes, worth £13.5 million, to mainland Europe each year and the majority of these were high-health stocks grown in Scotland. This is therefore an issue which is particularly damaging to the sector in Scotland due to loss of these lucrative markets.

7. NFUS has welcomed the rapid action of Defra in submitting an application for equivalence to the European Commission in the first week of January. NFUS recognises that Scottish Government has also prioritised this issue in dealings with UK counterparts. Any effort to expedite an outcome on this will be vital for the sector. Moreover, NFUS strongly believes that the UK Government must reverse its decision to allow EU seed potatoes into the UK without reciprocal trade being allowed.

Vegetable sector impacts

8. The vegetable sector has also encountered issues exporting to Northern Ireland and EIRE. Seven days’ notice of exports are required, making it impossible to meet short notice requests from buyers. Inspections and the requirements to complete
additional paperwork are also adding cost, and is exacerbated by a shortage of staff who can undertake inspections. NFUS understands that SASA are undertaking recruitment in order to ease this issue.

**Logistics**

9. There are emerging issues for firms who use groupage. Prior to 1 January, it was possible for firms to group various products into a consignment and back-fill loads, therefore keeping cost and logistics at a minimum. With the introduction of EHCs, groupage has now become a major difficulty as each product and each company will require separate EHCs, which vastly multiplies cost. As a result, exports are either not going at all, or companies or having to send their loads in smaller trucks or vehicles that are not filled. Where groupage is happening, this remains bureaucratically burdensome and costly for those exporters. This is hugely problematic for the Scottish food and drink sector in particular, where there are a large number of small producers and exporters to whom groupage is extremely important. It is therefore important that measures are put in place to assist with groupage and to enable consolidated loads to be exported – otherwise there could be significant implications for the medium to longer-term expansion of the Scottish food and drink sector.

10. As per the terms of the Agreement, varying rules of origin percentages apply for different products and some issues are beginning to emerge with composite food and drink products where the constituent parts come from several different sources and countries. This is causing major issues for the processing sector who use composite products and in some cases are unable to export. There is risk and opportunity in this issue:

10.1. The risk is that if processors and companies lose sales as a result of being unable to export composite food and drink products they may look to relocate, which could mean a lost market for Scottish primary producers. Scottish primary producers are extremely vulnerable to supply chain shocks and any loss in processing/manufacturing capacity could create major and immediate implications at the farm-gate.

10.2. Conversely, there is a potential opportunity for primary producers if composite products can be identified within the domestic market rather than being sourced from outside the UK. However, any opportunity to realign the domestic supply chain in order to find solutions to problems with Rules of Origin for composite goods may require investment and assistance from government.

11. NFUS understands that there are logistical problems in the supply chain for animal feed and fertiliser. The feed sector is still trying to establish whether EHCs are required for exports the EU (and by extension, NI) of feed containing certain processed animal proteins. This is particularly relevant for feeds containing materials such as milk and milk derived products, gelatine, hydrolysed proteins, eggs, dicalcium phosphate and collagen. Currently, there is no clear guidance on certification, and as a result livestock feed exporters are unable to export products to NI or the EU. NFUS understands that FSS are pursuing this issue.
12. NFUS had been made aware that in the initial days of implementation of the Trade and Cooperation Agreement there were logistical issues relating to export of GB grain to the EU. The issue related to confusion of customs staff in the EU who were not aware that grain shipments did not require a phytosanitary certificate, which led to consignments being held up on the border. This issue has now been resolved, however it is an important example of where early intelligence and intervention from customs officials and governments is vital in order to ensure everyone is operating from the same rules and that the matter is swiftly resolved.

13. Moreover, it is important to emphasise the obvious concern that if exports from the UK continually do not arrive on time then customers in the EU may look to source from other suppliers. Once the customer has found another supplier it will be difficult to win back the business. Due to the Border Operating Model, suppliers from the EU able to service UK customers with no friction or disruption, which creates an asymmetric situation between traders either side of the Channel. NFUS wishes to see more urgency from the UK Government to push EU counterparts for more flexibility for UK exporters who are at a disadvantage. NFUS continues to believe that had there been a grace period in place to allow the same system to apply on both sides of the Channel whilst businesses adapted to new rules then this situation may have been avoided.

**Workers**

14. The edible and ornamental horticulture and potatoes sectors must bring in seasonal workers from outside of the UK if the seasonal harvest is to be successfully completed. The UK Government has confirmed that it will expand the Seasonal Worker Pilot Scheme to allow an additional 30,000 workers to enter the UK to undertake essential seasonal work in 2021, in addition to returning workers from the EU who have Settled or Pre-Settled Status, and workers from the domestic population.

15. While NFUS has strongly welcomed the increase in Seasonal Worker Pilot Scheme permits there remain concerns on what the travel rules and quarantine restrictions will be for these workers in light of the prevailing Covid-19 situation. Throughout 2020, stringent protocols were in place to ensure that seasonal workers arriving in Scotland were exempt from travel restrictions in order to undertake work on-farm immediately and safely. These protocols, agreed between the industry and the Scottish Government, proved very effective. NFUS is seeking assurances from both governments that similar measures will be afforded to seasonal workers in 2021 should travel restrictions still be in place as the season moves towards its peak. Without non-UK seasonal workers it will not be possible for the seasonal harvest to be completed, with a risk of crop loss and disrupted supply to the domestic and export markets.

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Sheep scrapie monitoring

16. A further non-tariff barrier that has been introduced by the Protocol on Northern Ireland relates to the movement of sheep from Great Britain to Northern Ireland. New technical requirements now require live sheep being moved from GB to NI either be from a scrapie monitored flock, or to have passed a genotype test. Due to the substantial time and investment involved in fulfilling these two requirements, it essentially spells a prohibition for traders. NFUS has raised these concerns with both the Scottish and UK Governments to seek a resolution.
EU-UK TRADE AND COOPERATION AGREEMENT

Context

The new EU-UK Trade and Cooperation Agreement (TCA) took effect on 1 January 2021. The new TCA includes a free trade agreement which provides for zero tariffs and zero quotas on the trade in goods between the UK and the EU.

The deal does not however include any sort of agreement in terms of non-tariff barriers (NTBs). The EU’s Q&A on the agreement addresses the issue of NTBs stating:

“Trading under ‘FTA’ (free trade agreement) terms – even one as ambitious as this one, with zero tariffs or quotas – will inevitably be very different compared to the frictionless trade enabled by the EU’s Customs Union and Single Market. In particular:

rules of origin will apply to goods in order to qualify for preferential trade terms under the agreement;

all imports will be subject to customs formalities and will need to comply with the rules of the importing party;

and, all imports into the EU must meet all EU standards and will be subject to regulatory checks and controls for safety, health and other public policy purposes.”

Reaction to the EU-UK Agreement

The day the new EU-UK Agreement was announced, the Chief Executive of Scotland Food and Drink, James Withers welcomed news of the deal being reached and the avoidance of tariffs but expressed concerns about the new border procedures necessary for trading with the EU:

“The tariff threat is averted but we remain hugely concerned at the wave of new export checks about to be introduced. For months now we have been warning the UK Government of disruption and a lack of readiness. We have lost a transition period to a pandemic and it is only with a week to go that we now know what we are transitioning to.”
Scotland Food and Drink reiterated its call for a grace period to be negotiated.

The National Farmers Union Scotland (NFUS) published a similar message welcoming the avoidance of tariffs whilst highlighting the possible effects of new procedures for exporting goods:

“It does offer a platform for trade with the EU, but it is unlikely to be frictionless. Trade will inevitably involve significant levels of bureaucracy, additional cost and delays, particularly in early January whilst new systems at the borders bed in.”

The NFUS President Andrew McCormick added that:

“Whatever the details of the deal, wrapped up in more than 2000 pages, there will be friction. Our new trading arrangement with the EU will not be a continuation of what we have just now. New demands on paperwork and new rules around certification will bring a period of adjustment, the potential for delay and add additional costs.”

**Implications for Scotland’s food and drink exports**

When the new TCA came into effect, replacing UK participation in the Single Market and the Customs Union, barriers to seamless trade quickly emerged. This created obstacles for producers seeking to get food and drink to the EU market. The new requirements faced by UK exporters to the EU include:

- Sanitary and Phytosanitary checks
- Requirement for Export Health Certificates
- Customs checks

Exports of perishable goods in **mixed consignments has also led to delays with different procedures and forms needed for different goods.**

Complying with these new requirements has led to **significant problems for exporters.** These issues have been particularly problematic for exporters of perishable goods. For example, some sectors of Scotland’s seafood industry, particularly shellfish, seeks to get its produce to the EU market within 24 hours of landing catches. This has proved very challenging for the industry since the start of the new year. This particular issue has been **explored in a recent SPICe blog.**

**Disruption at the border**

A week into the new year, **Scotland Food and Drink once again highlighted** the new “bureaucratic steps to navigate in getting product from Scotland into France”. Chief Executive James Withers said:

“It has been a very challenging 72 hours with industry and the authorities adjusting new, complex trading rules without having had any time to properly test them. We have warned for months about the lack of preparation time for everyone involved and these problems sadly come as little surprise.
“There are now a lot of bureaucratic steps to navigate in getting product from Scotland into France and small delays at different points can quickly cause major problems for a set of products whose value relies on getting to European markets within 24 hours.”

On 18 January, Scotland Food and Drink issued a further statement calling for **urgent action to address the export crisis**. Chief Executive James Withers used the statement to highlight increasing concerns, particularly within the seafood sector, about the ongoing difficulties in exporting goods to the EU. He also cited growing anger in the industry due to “a number UK Ministers dismissing this crisis as ‘teething problems’ or, worse still, trying to make jokes about it”.

Scotland Food and Drink called for compensation for industry along with a halt to checks on goods going from the UK into the EU adding that immediate dialogue should take place with the EU. James Withers added:

“All our warnings that systems weren’t ready have sadly proven true and it is businesses now paying the heavy price for complacency and failure to act on our warnings. The Government’s own watchdog, the National Audit Office, gave the same warning that was not acted upon. Action now is critical to try and rescue a desperate situation for many.”

NFU Scotland observed in its written submission (p.1) to the Committee that—

“what the Agreement does not satisfy is NFUS’s priority for trade in agri-food goods to be friction-free. Whilst the UK has secured ‘national listed status’ for the trade of live animals, products of animal origin and plants, extensive checks Sanitary and Phytosanitary Standards (SPS) are required. This involves substantial paperwork and physical inspections, which is causing friction, delay and extra costs for traders”.

**The need for a cross-border taskforce**

On 26 January 2021, the Scottish Salmon Producers Organisation (SSPO) called for a **“joint UK-Scottish taskforce to solve post-Brexit export issues.”**. The SSPO suggested that whilst the situation has improved over the last week, “there are still serious issues which are causing problems, mostly linked to the huge amounts of new paperwork that is needed to export seafood to the EU”.

The SSPO Chief Executive, Tavish Scott, said that there was a clear need to get experts from Scotland and the UK together to work through the outstanding issues to deliver an efficient and speedy seafood export system to the EU. As a result, the SSPO proposed that along with Scottish and UK government ministers, senior officials, hauliers and agencies responsible for administering the new regulations, including Food Standards Scotland, should be involved in the taskforce.
This proposed approach was backed by Scotland Food and Drink. In a series of tweets, James Withers provided a summary of the challenge facing Scotland’s food producers who export to the EU:

“It’s become clear, as this new trading system is tested in real time, that the EU third country import process was never designed for:

1. a country so integrated into its supply chain
2. fast movement of large volumes of perishable goods
3. consolidated loads (groupage)"

On 28 January, the UK Government’s Chancellor of the Duchy of Lancaster Michael Gove MP, speaking on Good Morning Scotland on BBC Radio Scotland confirmed that a joint government led taskforce is to be set up to help support British seafood exporters. This announcement was welcomed by the Scottish Salmon Producers Association.

**UK Government support**

Following agreement of the new TCA on Christmas Eve, guidance in the form of the final version of the UK Government’s ‘Border Case Studies’ was not published until six hours before the end of transition on 31 December. Responding to the publication, James Withers tweeted:

“UKGov published the final version of the Border operating model last night. It’s very well-written. But it’s also 160 pages long & was published with six hours to go.

Includes the new 18-step process for moving fish to France.”

On 19 January 2021, the UK Government announced new financial support for the UK’s fishing businesses that export to the EU. The support, worth £23 million aims to “support businesses most adversely affected by the COVID pandemic and the challenges of adjusting to new export requirements”. According to the UK Government’s press release announcing the funding:

“This is in recognition of the unique circumstances of the fishing sector, which has had the most significant new requirements to adjust to, and for whom even a short delay can lead to goods perishing - at a time when the industry is facing lower market prices and demand due to the pandemic.

The fund will be targeted at fishing export businesses who can evidence a genuine loss in exporting fish and shellfish to the EU. Support will be available immediately and paid retrospectively to cover losses incurred since 1 January 2021. The scheme will be targeted at small and medium enterprises and the maximum claim available to individual operators will be £100,000.”

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3 https://twitter.com/scotfoodjames/status/1354057266589278210?s=20
4 https://twitter.com/scotfoodjames/status/1354063602173538305?s=20
5 https://twitter.com/scotfoodjames/status/1344960172289093632?s=20
Whilst this funding was welcomed by the industry, it does not address the ongoing challenges faced in getting goods to market. On that issue, the UK Government indicated it would also provide further support to businesses in adapting to new export processes. It provided examples such as Defra and HMRC offering targeted, proactive and hands on support to fisheries exporters to help them successfully meet the new requirements. The UK Government provided a list of the support it is providing to the seafood sector:

- Issuing clear guidance on the required IT forms to stakeholder representative groups, hauliers and businesses.
- Twice-weekly meetings with businesses to understand and address issues as they arise.
- Working closely with individual businesses to help them get used to the new procedures required to ensure that errors or problems are tackled early.
- UK Government is stepping up extra physical resources to support certification in Scottish Hubs
- The UK Government has provided two specialist certifiers to support Food Standards Scotland and DFDS over the last week
- An experienced certifying officer from Defra is also currently in Lanarkshire supporting Official Veterinarians with the issuing of health certificates
- APHA has additional Official Veterinarians on standby, available to Scottish Hubs, to support exporters if required.
- Working with French authorities to ensure that minor administrative issues associated with EHCs have not prevented goods from entering the market and with the EU Commission to help member states adopt consistent approaches.
- Providing extensive guidance as part of a range of measures to help the industry meet new export requirements, including training, regular engagement and weekly bulletins.

The Scottish Government response

The Scottish Government had no formal role in negotiating the terms of the UK-EU trading relationship, and consequently the new customs requirements. The UK border is a reserved matter, so responsibility for managing exports of seafood through key export ports such as the port of Dover is managed by the UK Government and its agencies. However, the Scottish Government does have responsibility for supporting the Scottish seafood industry to prepare for the impact of EU exit and new export processes.

The Scottish Government received about £200 million from the UK Government to prepare for Brexit. SPEce contacted the Scottish Government to clarify how this funding has been allocated. The Scottish Government’s response states the following points:

- A total of £194.8m in EU Exit preparation consequentials from the UK Government was allocated from 2017-2021. Brexit consequentials for 2020-21 have been absorbed into the Scottish Budget for 2020-21.
• These funds were allocated for Brexit preparedness across all policy areas and not limited to supporting the seafood industry. The funds have been used for dealing with e.g. legislative changes, logistics, compliance, enforcement, information and communications.

• Allocation of these funds from the Scottish Government has included £5.7 million to Food Standards Scotland which has enforcement functions for export health certificates. This allocation pre-dates the end of the transition period before seafood export issues were reported and the situation may have changed since.

Third country approval status

Ahead of the announcement of the terms of the TCA being agreed, it was announced that agreement had been reached to give the UK ‘national listed status’. This means UK producers can continue the export of live animals and products of animal origin such as meat, fish and dairy to the EU after the end of the transition period.

Third country listing is a technical requirement for imports of sanitary and phytosanitary (SPS) products into the EU. Exports will still require export health certificates and be subject to sanitary and phytosanitary and customs checks when they arrive in the EU. The UK Government said this agreement ensured continued exports to a market worth over £5 billion a year to the UK economy. The agreement was necessary, simply to allow the UK to continue such exports to the EU after the end of the transition period.

Seed potatoes

In announcing the UK had secured national listed status, the UK Government confirmed that it had been unable to reach agreement with the EU for a permanent change to the EU’s prohibition on seed potatoes. As a result, it is no longer possible to export seed potatoes to the EU or Northern Ireland following the end of the transition period.

Commenting on announcement of national listed status, the NFUS said:

“The decision by the EU to grant third country listing status to the UK yesterday (23 December) and approve exports of meat, dairy and other products of animal origin is seen as crucial. Scottish red meat exports to the EU alone are worth more than £80 million.

However, the trade deal has failed Scotland’s internationally recognised seed potato industry. From the 1 January it will not be possible for Scottish seed potatoes to be exported to the EU.

As an EU Member State, Britain exported around 30,000t of seed potatoes, worth £13.5 million, to mainland Europe each year and the majority of these were high-health stocks grown in Scotland. There is also significant trade with Northern Ireland that is now at risk although great efforts have been made by the seed potato trade to export earlier to beat the 31 December deadline.”
The NFUS President Andrew McCormick added that:

“On the deeply disappointing news about seed potatoes, NFUS has been highlighting this issue over the course of this year with both UK and Scottish Governments. It has been recognised by all as a problem that needs sorted. With a trade deal now announced between the UK and the EU, this must stimulate fresh negotiations to facilitate EU trade and to restore exports of our prized high health seed potatoes.”

In its written submission to the Committee, NFU Scotland commented on steps taken to address this issue as follows—

“NFUS has welcomed the rapid action of Defra in submitting an application for equivalence to the European Commission in the first week of January. NFUS recognises that Scottish Government has also prioritised this issue in dealings with UK counterparts. Any effort to expedite an outcome on this will be vital for the sector. Moreover, NFUS strongly believes that the UK Government must reverse its decision to allow EU seed potatoes into the UK without reciprocal trade being allowed” (p.3).

Geographical Indications

Geographical Indications (GIs) are a distinctive sign used to identify a product as originating in the territory of a particular country, region or locality where its quality, reputation or other characteristic is linked to its geographical origin.

The Agreement does not include any advance in terms of the protection of geographical indications beyond what is covered in the Withdrawal Agreement. According to the European Commission:

“All EU geographical indications already registered in the EU by end December 2020 (the “stock”) will be protected in the United Kingdom by virtue of the Withdrawal Agreement. No provisions pertaining to the protection of geographical indications that the EU could register in the future could be agreed with the UK.”

Iain McIver
SPICe Research
1 February 2021