

# UK-EU Series: Trade & Cooperation Agreement Human Rights

September 2022



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# **UK-EU Series: Trade & Cooperation Agreement** Human Rights

September 2022

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The Trade and Cooperation Agreement sets the terms for the UK-EU relationship following the UK's withdrawal from the EU. This series summarises key parts of the agreement and what they mean for Wales. This guide focuses on human rights.

The UK formally withdrew from the EU on 31 December 2019 and entered a transition period while the terms of its future relationship with the EU were negotiated.

On 24 December 2020, the UK and EU announced that they had reached agreement on the terms of their future relationship in the **Trade and Cooperation Agreement** (TCA) alongside a number of other agreements and joint statements.

The agreement applied provisionally from 1 January 2021, pending UK and EU ratification. It entered fully into force on 1 May 2021.

The TCA follows the **Withdrawal Agreement** which set the terms for the UK's withdrawal from the EU. Both agreements remain in force.

The UK and EU have agreed that the TCA will govern future agreements between:

- UK-EU;
- UK-EU plus EU 27 Member States; and
- UK-Euratom bilateral agreements.

unless otherwise provided for in the agreements themselves. These agreements are called 'supplementing agreements' in the TCA and form part of the overall framework as an integral part of UK-EU bilateral relations.

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## 1. Introduction

The UK and EU agreed the terms of their new relationship in the Trade and Cooperation Agreement (TCA). This guide explains how human rights commitments are embedded in the new UK-EU relationship.

The TCA makes UK-EU cooperation contingent on 'respect for human rights'. This applies to the TCA and to future UK-EU agreements.

Specific human rights commitments are also contained in Part 3 of the TCA, on law enforcement and judicial cooperation.

This guide explains:

- where UK-EU decisions on human rights are made post-Brexit;
- human rights in the TCA;
- law enforcement and judicial cooperation; and the
- the European Convention on Human Rights (ECHR).

## 2. UK-EU decision making

The TCA establishes a complex network of new UK-EU forums, set out in an infographic on the next page. Our guide to the [TCA's institutional framework](#) provides more detail on the powers and role of each forum.

The Welsh Government can attend some meetings as an observer. Senedd Research articles provide regular updates on [how Wales is represented](#) in UK-EU relations and [track meetings](#).

### Where are decisions made about human rights?

Discussions and decision-making on the TCA's human rights provisions are most likely to occur in two forums:

#### **Partnership Council**

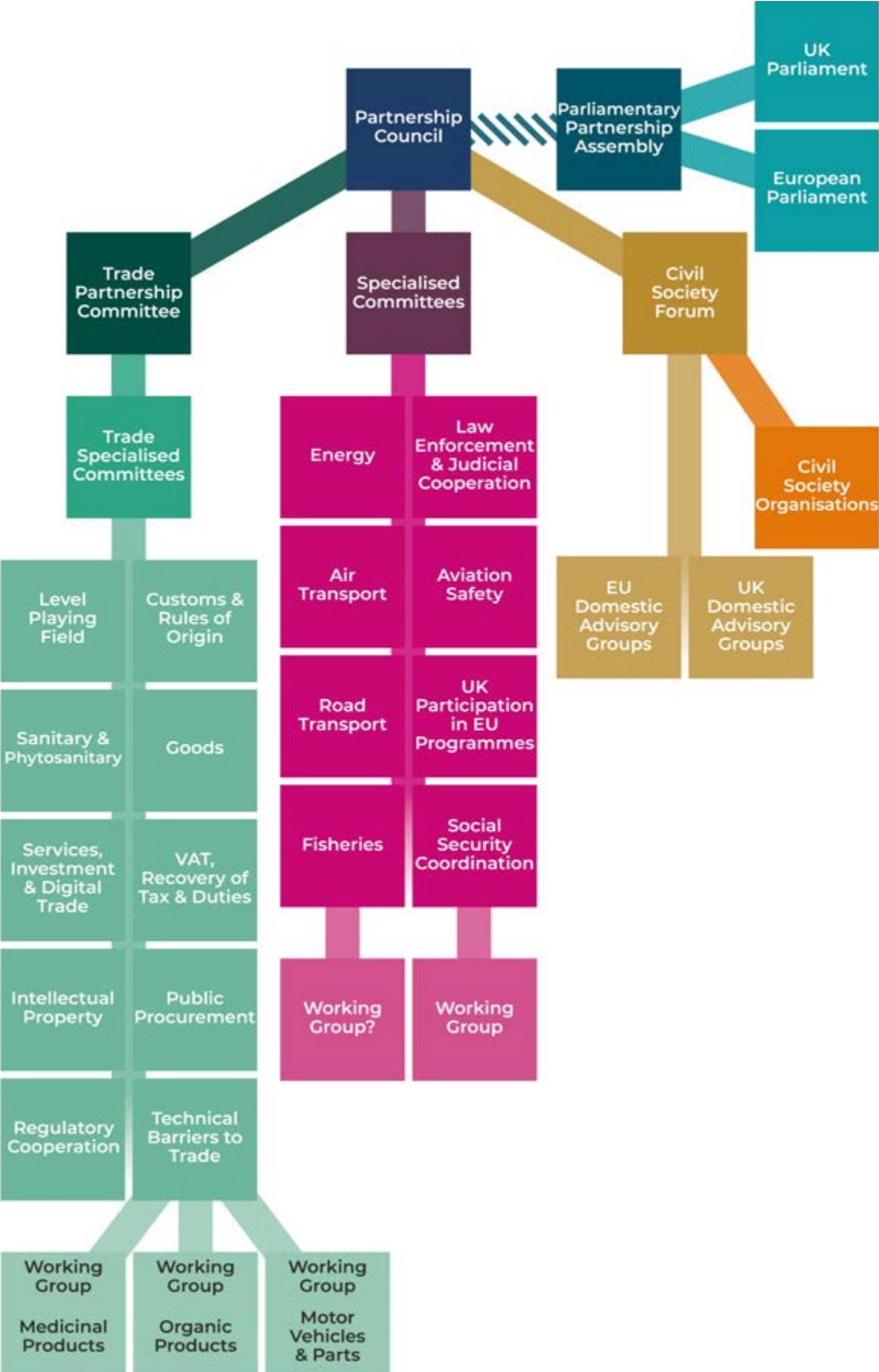
The Partnership Council is the main oversight body. Here, delegations from the UK and EU discuss the operation of the agreement, including its **basis for cooperation** and **essential elements** described in section 3 of this guide. The Welsh Government attends the Partnership Council as an observer.

## Specialised Committees

The Specialised Committee on Law Enforcement and Judicial Cooperation is the lead committee for human rights protections in Part 3 of the TCA, summarised in section 4 of this guide. A Welsh Government official attended the **first and only meeting** of this Committee to date, in October 2021.

The TCA's institutional framework is shown on the next page.

Trade and Cooperation Agreement: institutional framework



### 3. Human rights in the TCA

Human rights are embedded in the new UK-EU relationship so that their cooperation is contingent on 'respect for human rights'. This applies to the TCA and to future UK-EU agreements.

The TCA primarily references the **Universal Declaration of Human Rights**, the **European Convention on Human Rights (ECHR)** and, for EU Member States, the **EU's Charter of Fundamental Rights**. It also emphasises giving effect to ECHR rights and freedoms domestically. For the UK, this is a clear reference to the **Human Rights Act 1998 (HRA)**.

#### Good faith and compliance

In general, the TCA commits the UK and EU to work together in good faith and to refrain from taking measures which jeopardise their shared objectives found in the TCA or future UK-EU agreements (Article 3).

#### Essential elements

'Respect for human rights' constitutes one of five 'essential elements' of the TCA and subsequent UK-EU agreements (Article 771). Essential elements have an elevated status in the TCA because a breach can lead to termination of the agreement. This section describes how this works.

#### Breaches

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A breach of an essential element is the quickest way to terminate the TCA or future UK-EU agreements, in whole or in part, within 30 days (Article 772).

#### Safeguarding & rebalancing measures

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Article 773 allows for the UK or EU to unilaterally take safeguarding measures if they consider that there has been a serious and substantial failure by the other to fulfil their essential elements obligations.

Safeguarding measures are only permitted where such failure has caused:

serious economic, societal or environmental difficulties of a sectorial or regional nature, including in relation to fishing activities and their dependent communities.

The other party can respond with rebalancing measures to remedy an imbalance caused by safeguarding measures.

Furthermore, the TCA's provisions on essential elements safeguarding and rebalancing measures can automatically be applied to future UK-EU agreements, unless they specifically provide otherwise.

## Basis for cooperation

The TCA sets out eight basis for UK-EU cooperation in Articles 763-770, one of which is 'democracy, rule of law and human rights'.

Article 763(1) commits the UK and EU to:

continue to uphold the shared values and principles of democracy, the rule of law, and respect for human rights, which underpin their domestic and international policies.

The UK and EU reaffirm their respect for the Universal Declaration of Human Rights and the international human rights treaties to which they are parties.

Article 763(2) also commits the UK and EU to promoting these shared values and principles in international forums and to cooperate in doing so. This includes their contact with third countries.

Additionally, each of the other seven basis for cooperation touch on human rights issues:

- the fight against climate change (Article 764);
- countering proliferation of weapons of mass destruction (Article 765);
- small arms and light weapons and other conventional weapons (Article 766);
- the most serious crimes of concern to the international community (Article 767);
- counter-terrorism (Article 768);
- personal data protection (Article 769); and
- global cooperation on issues of shared economic, environmental and social interest (Article 770).

## Withdrawal Agreement as a basis for cooperation

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The **EU has made it clear** that the Withdrawal Agreement forms the "necessary foundation for the Trade and Cooperation Agreement". It has also said that **the UK-EU relationship** must:

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be based on the full respect of the legally binding commitments that we have made to one another.

This is reflected in Article 775 of the TCA, which states that it applies without prejudice to ‘earlier bilateral’ UK-EU agreements and that the parties reaffirm their obligations to implement any such agreement.

In reality, this is a reference to the Withdrawal Agreement, as there are no other earlier bilateral UK-EU/Euratom agreements.

## 4. Law enforcement and judicial cooperation

Specific human rights commitments are included in Part 3 of the TCA on law enforcement and judicial cooperation in criminal matters. Examples of cooperation include the exchange of DNA, fingerprint and vehicle registration data, and criminal record information.

The Universal Declaration of Human Rights and the ECHR are cited as the basis for cooperation in this area in Article 524, which also emphasises:

the importance of giving effect to the rights and freedoms in that Convention [the ECHR] domestically.

For the UK, this is a clear reference to the Human Rights Act 1998 (HRA).

### Termination

Article 692 allows the UK or EU to terminate Part 3 with nine months’ notice.

However, Part 3 can be terminated sooner if either one terminates Part 3 because the other has denounced the ECHR or its Protocols 1, 6 or 13. If this happens, Part 3 would be terminated either on the date the denunciation takes effect or within 15 days, depending on how the denunciation happens.

### Suspension

Article 693 allows the UK or EU to suspend all or parts of Part 3 in the event of:

serious and systemic deficiencies within one Party as regards the protection of fundamental rights or the principle of the rule of law.

Article 693 sets out detailed procedural requirements for suspension, including the role of the Partnership Council and Specialised Committee on Law Enforcement and Judicial Cooperation.

Under Article 693, the UK and the EU have flexible options to suspend all or parts of Part 3 with three months' notice (exceptions apply).

## 5. European Convention on Human Rights (ECHR)

### Historical context

The UK's withdrawal from the EU does not affect its status as a party to the European Convention on Human Rights (ECHR), which is a Council of Europe treaty.

#### Council of Europe

The Council of Europe is the European continent's leading human rights organisation, with 47 member states and six observer states. It is separate from, and pre-dates, the EU. All 27 EU Member States and the EU are members of the Council of Europe.

Its European Convention on Human Rights (ECHR) is incorporated into UK domestic law by the Human Rights Act 1998 (HRA). The ECHR has a court, the European Court of Human Rights (ECtHR) which is based in Strasbourg.

Both UK courts and the ECtHR can declare that laws are incompatible with ECHR rights.

During the TCA negotiations, **the EU made** future cooperation conditional on a written commitment from the UK Government that the ECHR and its implementing legislation would continue to be given effect in the UK "so that individuals can rely on it".

The then **EU Chief Negotiator, Michel Barnier, told reporters** at the time that the UK Government refused to include this commitment, which ran contrary to the UK's **negotiating position**. This stated that:

the [future UK-EU] agreement should not specify how the UK or the EU Member States should protect and enforce human rights and the rule of law within their own autonomous legal system.

The UK Government later changed its position and agreed to include a written commitment in the **Political Declaration**, which accompanied the Withdrawal Agreement, and similar commitments were later incorporated into the TCA.

## Changes to the Human Rights Act 1998

While parliamentarians, academics and experts disagree on the extent to which the TCA ties the UK to the ECHR and its implementing legislation in the UK, most agree that the UK Government has several options to limit ECHR rights while avoiding withdrawal from the ECHR, repeal of the HRA or a breach of UK-EU obligations.

For example, Frederik Cowell of the [London School of Economics](#) suggests that the UK Government could limit the way ECHR case law is applied in UK courts or limit the applicability of ECHR rights in certain situations, as it proposed in the [Overseas Operations Bill](#). The Bill originally contained a duty to consider derogating from the ECHR in respect of future overseas military operations.

## What this means for Wales

Future changes to the UK's approach to both the ECHR and HRA98 will likely be closely monitored by the EU, whose assessment and response will be critical to future UK-EU cooperation.

If the EU considers that the UK's actions constitute a breach of the TCA, it could lead to further UK-EU disputes, and termination of the TCA, in whole or in part, is possible.