



## DEBATE PACK

Number CDP 2020/0137, 13 November 2020

# Trade deals and the NHS

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## Summary

The House of Commons Petitions Committee has scheduled a debate in Westminster Hall on the motion “That this House has considered e-petition 307339 relating to trade deals and the NHS” on Monday 16 November.

Martyn Day MP will open the debate.

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The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

# 1. Background

## 1.1 NHS in UK trade deals

One of the Government's main Brexit objectives has been for the UK to pursue an independent trade policy. The Government is negotiating a free trade agreement with the US, Australia, New Zealand and considers joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

The effects of future trade agreements on the NHS, especially the consequences of agreeing a trade deal with the US, have been in focus of public debate. There are particular concerns that trading terms agreed with other countries would limit the ability of the government and devolved administrations to organise and publicly fund their health services or change the way the public access NHS services.

## 1.2 Government position

The Government has consistently said that it is committed to protecting public services and that there will be nothing in the UK's future agreements that will stop it from being able to regulate public services, including the NHS. [Ministers have said](#) that there would be no requirement to increase private provision, no allowing American companies to ramp up drug prices, and no undermining the safeguards on healthcare data.

## 1.3 Issues

However, several concerns continue to feature in the public debate. Increasing liberalisation of services in trade deals could affect NHS provision. Trade agreements could change medicine pricing in the NHS, as well as influence access to NHS data.

## 1.4 Increasing liberalisation of services trade

Trade agreements can "lock in" liberalisation of services preventing countries from introducing new restrictions and possibly limiting governments' freedom to regulate. While carve-outs for public services like the NHS are not unusual, liberalisation of tangent services such as data management could affect the provision of public health services.

Private companies can already bid for some contracts to provide NHS services in England. Some campaigners fear that future trade deals would allow foreign investors to claim compensation if they lost their NHS contracts. They say this would limit the government if in the future it wished to reverse the current level of private involvement in the NHS.

## 1.5 Drug Pricing

Drug pricing is another issue that could arise. The US has indicated that it would seek to negotiate better trading terms for its pharmaceutical companies. The US negotiating objectives for a future trade deal with the UK, published in February 2019, state that the US would try to ensure that Government regulatory reimbursement regimes are transparent, provide procedural fairness, are non-discriminatory and provide full market access for US products. Trade commentators have suggested that given the global significance and market power of the NHS, there are incentives for the US to attempt influencing the way drugs are currently priced in the NHS.

## 1.6 Digital services

The government sees digital trade as a key priority for trade negotiations. There is a concern that commitments on digital services could open access to valuable NHS data, including patient data. The risks would include moving sensitive NHS data outside the UK. The government could limit its own access and use of public health data if it gave full intellectual property protection to privately developed algorithms used on such data and lifted restrictions on data localisation through trade deals.

## 2. Additional sources

### 2.1 NHS expenditure allocated to private providers

Information on the proportion of NHS resource expenditure allocated to non-NHS providers is shown in the [DHSC Annual Report and Accounts](#). In particular, table 37 of the [DHSC Annual Report and Accounts for 2018/19](#) shows that in 2018/19 7.3% of overall NHS resource expenditure was spent on private sector providers (a total of £9,180 million). 11.0% of resource expenditure was spent on purchase of healthcare from all non-NHS providers (including voluntary sector providers and local authorities). It should be noted that this represents the proportion of expenditure allocated to non-NHS providers, not the proportion of contracts currently held by the private sector, or the number of contracts secured following a competitive tender (not all NHS services are put out to competitive tender and those that are will vary widely in size). Responses to Parliamentary Questions note that information on the proportion of NHS contracts secured by private sector providers is not collected centrally (see for example, [PQ 135922, 24 April 2018](#)).

Other, non-government, reports on the extent of private sector involvement in the provision of NHS funded health services in England can be found below, although please note this is not a comprehensive list:

- The Nuffield Trust [Privatisation in the English NHS: fact or fiction?](#) (November 2019)
- The King's Fund, [Is the NHS being privatised?](#) (dated October 2018 – although it appears have been first published in 2017).
- The British Medical Association, [Hidden figures: private care in the English NHS](#) (March 2017)
- The Health Foundation, [Evolution, revolution or confusion?: competition and privatisation in the NHS](#) (March 2015)

There is no official data on expenditure on NHS services provided by foreign owned healthcare companies nor a central register of foreign companies operating within the NHS in England.

### 2.2 Proposals for legislative reform of NHS competition and procurement rules

The [NHS Long Term Plan](#), published in January 2019, proposed changes to the 'system architecture' of the NHS, to increase the coordination of services. This has been seen as a move away from some of the market-based reforms of the Health and Social Care Act 2012, and also a shift from the commissioner/provider split introduced in the early 1990s.

Following a process of engagement and consultation, NHS England and NHS Improvement published recommendations for an NHS Bill in September 2019. Their proposals aim to remove barriers to joint working between NHS organisations and their partners. They proposed replacing the existing NHS competition and procurement framework to ensure that commissioners can exercise more discretion about when to carry out a formal procurement process. Specifically, NHS England and NHS Improvement have proposed the repeal of section 75 of the Health and Social Care Act 2012 and the removal of the NHS from the Public Contract Regulations 2015.

The Health and Social Care Committee's report [NHS Long-term Plan: legislative proposals](#) (HC2000, 24 June 2019) supported the intent behind NHS England and NHS Improvement's proposals to ensure that commissioners can exercise greater discretion over when to conduct a procurement process. However, the Committee also noted that the way the NHS in England operates may mean the proposals to change how procurement rules apply could face legal difficulties. The Committee's report also noted the varied views about the extent and impact of competitive tendering within the English NHS.

### 3. Press Articles

[Trump or Biden, trade deals still threaten Britain's NHS: Whether a UK deal with an 'America First' president, or Biden's more traditional global trade stance, battles ahead are likely if Britain is to protect its NHS and avoid higher drug prices](#)

Open Democracy, 2 November 2020

[NHS should be on the table in UK-US trade talks, says senior US Senator](#)

Stefan Boscia

City AM, Thursday 29 October 2020

[Will the UK's love for the NHS survive the pandemic? The service is enjoying a newly enhanced status, but its structural flaws have been brutally exposed by coronavirus](#)

Sarah Neville

Financial Times, 17 September 2020

[Trade deal: Was this week's vote bad news for the NHS?](#)

BBC, 24 July 2020

[The Tories' new trade bill means the NHS is now unquestionably up for sale](#)

Emily Thornberry

The Guardian, 22 July 2020

[Britain gets a glimpse of life after Brexit: The lesson from the pandemic is that national 'sovereignty' does not answer the challenges facing the UK](#)

Philip Stevens

Financial Times, 18 June 2020

[NHS 'off the table' in US trade talks, says Government](#)

Peter Foster, James Crisp, Rozina Sabur and Amy Jones

Daily Telegraph, 2 March 2020

[Trump will insist NHS pays more for drugs in trade deal, says ambassador](#)

Daniel Boffey

The Guardian, 31 January 2020

[Trade deal with US would put NHS at risk, say 90% of Britons](#)

Caroline Wheeler and Rosamund Urwin

Sunday Times, 26 January 2020

['Not for sale': Why the UK is so touchy about its health service being part of a US trade deal](#)

Holly Ellyatt

CNBC, 11 December 2019

[US tech firms want access to £10bn NHS health data](#)

Philip Aldrick

The Times, 2 December 2019

[General election 2019: Row over Labour's 'NHS for sale' claim](#)

BBC, 27 November 2019

[Will drug prices rise following a UK-US trade deal?](#)

Karl Claxton

The Conversation, 12 November 2019

[Could the NHS be part of a US-UK trade deal?](#)

Financial Times, 5 June 2019

## 4. Parliamentary material

### 4.1 Debates

[UK-US Trade Deal](#)

HC Deb 2 March 2020, c 644-57

[NHS and the Future Trade Deals](#)

HC Deb 22 July 2019, c 477WH – 498WH

[NHS: Future UK Trade Deals](#)

HL Deb 4 July 2019, c 1529-56

[Future Free Trade Agreements](#)

HC Deb 21 Feb 2019, c 1619-1690

[Leaving the EU: NHS](#)

HC Deb 22 March 2018, c 217WH – 252WH

### 4.2 Oral questions

[NHS](#)

HC Deb 9 Jan 2020, c 593-94

[EU Trade Agreements: Roll-over](#)

HC Deb 17 Oct 2019, c 432-33

[Free Trade Agreements: NHS/Public Services](#)

HC Deb 25 April 2019, c 855-56

[Future Trade Deals: NHS and Other Public Services](#)

HC Deb 14 March 2019, c 506-07

### 4.3 Written questions

[Health Services: Trade Agreements: Question for Department of Health and Social Care: UIN 107724](#)

**Asked by Alex Norris**

**Asked on 22 October 2020**

To ask the Secretary of State for Health and Social Care, what discussions he has had with the Secretary of State for International Trade on including UK health priorities in future trade negotiations.

**Answered by Edward Argar**

**Answered on 3 November 2020**

The Department of Health and Social Care and the Department for International Trade have worked together at all levels to ensure that United Kingdom health priorities are represented in the UK's trade policy.

The Government has been consistently clear that protecting the National Health Service is a fundamental principle of our trade policy. The NHS, the price it pays for drugs and its services are not for sale. Indeed, our published objectives for negotiations with the United States and other new trade partners make it clear that we will not agree measures which undermine the Government's ability to deliver on these commitments.

The Government has been clear that it will uphold the UK's high levels of public, animal, and plant health. As such, public health issues are being actively considered as part of the Government's trade policy development.

[Trade Agreements: NHS: Question for Department for International Trade: UIN 82517](#)

**Asked by Charlotte Nichols**

**Asked on 28 August 2020**

To ask the Secretary of State for International Trade, if she will make it her policy to exclude the NHS from potential future trade deals.

**Answered by Mr Ranil Jayawardena**

**Answered on 7 September 2020**

Trade is vital for the NHS, which relies heavily on crucial goods and services that come wholly, or in part, from suppliers based overseas. Trade enables the NHS to buy the best possible medicines and medical devices that industry – here and overseas – has to offer.

At the same time, Britain's international public procurement commitments do not apply to the procurement of British healthcare services.

In fact, Britain's public services are protected by specific exclusions, exceptions and reservations in the trade agreements to which we are party, and HM Government will continue to make sure that the same rigorous protections are included in future trade agreements.

[Trade Agreements: NHS: Question for Department for International Trade: UIN HL7180](#)

**Asked by Lord Roberts of Llandudno**

**Asked on 22 July 2020**

To ask Her Majesty's Government whether they have any plans for Parliament to ratify future trade deals involving the NHS; and if they have no such plans, why.

**Answered by Lord Grimstone of Boscobel**

**Answered on 30 July 2020**

Trade is vital for the NHS, which relies heavily on crucial goods and services that come wholly, or in part, from suppliers based overseas. Trade enables the NHS to buy the best possible medicines and medical devices that industry – here and overseas – has to offer.

At the same time, Britain's international public procurement commitments do not apply to the procurement of British healthcare services. In fact, Britain's public services are protected by specific exclusions, exceptions and reservations in the trade agreements to which we are party, and HM Government will continue to make sure that the same rigorous protections are included in future trade agreements.

[Trade Agreements: Health Services: Question for Department for International Trade: UIN 51518](#)

**Asked by Dr Julian Lewis**

**Asked on 1 June 2020**

To ask the Secretary of State for International Trade, with reference to her oral contribution of 20 May 2020, Official Report, col. 612, that (a) the Government Procurement Agreement to which the Trade Bill relates will not apply to the procurement of UK health services, and (b) the NHS is not on the table, what safeguards will exist to ensure that (i) the NHS cannot be exposed to action in international courts as a result of any new trade arrangements facilitated by the Bill for (A) pharmaceuticals and (B) medical services, and (ii) personal data of NHS clients cannot be transferred abroad as a result of any aspect of the provisions of that Bill once enacted.

**Answered by Mr Ranil Jayawardena**

**Answered on 4 June 2020**

When HM Government is negotiating trade agreements, we have been clear that the NHS will not be on the table. The price the NHS pays for drugs will not be on the table. The services the NHS provides will not be on the table.

The NHS is protected by specific carve outs, exceptions and reservations in the trade agreements to which the United Kingdom is party. HM

Government will continue to make sure these are included in future trade agreements.

The Government Procurement Agreement (GPA) provides British businesses with guaranteed access to overseas procurement opportunities, estimated to be worth £1.3 trillion per year. Health and social care services are not, and will not, be included in the United Kingdom's market access schedule to the GPA, meaning that they will not be opened to GPA competition.

Patient data will only ever be shared where used lawfully, treated with respect, held securely and where the right safeguards are in place.

[Trade Agreements: NHS: Question for Department for International Trade: UIN 49855](#)

**Asked by Bell Ribeiro-Addy**

**Asked on 20 May 2020**

To ask the Secretary of State for International Trade, what steps she is taking to ensure that the NHS remains in public ownership and free at the point of use in the event that new trade deals are agreed.

**Answered by Mr Ranil Jayawardena**

**Answered on 2 June 2020**

HM Government has been clear that the NHS will remain free at the point of need.

When HM Government is negotiating trade agreements, we have been clear that the NHS will not be on the table. The price the NHS pays for drugs will not be on the table. The services the NHS provides will not be on the table. The NHS is not, and never will be, for sale to the private sector, whether overseas or at home.

This position was reaffirmed in our negotiating objectives for a Free Trade Agreement with the United States of America, published on 2nd March 2020.

[Trade Agreements: USA: Question for Department for International Trade: UIN 33396](#)

**Asked by Gareth Thomas**

**Asked on 23 March 2020**

To ask the Secretary of State for International Trade, whether it is her Department's policy to exclude contracts for the delivery of (a) NHS and (b) other public services from future trade negotiations with the US; and if she will make it her policy to (a) commit to a positive list approach and (b) not commit to an investor-state dispute settlement in those negotiations.

**Answered by Greg Hands**

**Answered on 30 March 2020**

As outlined in the Government's approach to trade negotiations with the US published on 2 March 2020, 'The Government has been clear that when we are negotiating trade agreements, the NHS will not be on the table.'

The UK's public services, including the NHS, are protected by specific exclusions, exceptions and reservations in the trade agreements to which the UK is a party, which make use of both positive and negative listing approaches. The UK will continue to ensure that the same rigorous protections are included in future trade agreements.

The UK's international procurement obligations specifically exclude Health and Social care services. This will not change in any future trade deal.

Regarding listing and dispute resolution, these are for formal negotiations and we would not seek to pre-empt these discussions.

[Trade Agreements: USA: Question for Department for International Trade: UIN 25149](#)

**Asked by Patrick Grady**

**Asked on 4 March 2020**

To ask the Secretary of State for International Trade, what steps the Government is taking to protect the role of the National Institute for Health and Care Excellence in regulating drug prices in the event of a UK-US trade deal.

**Answered by Greg Hands**

**Answered on 9 March 2020**

The National Institute for Health and Care Excellence (NICE) is an executive non-departmental public body of the Department for Health and Social Care. Questions about NICE should be referred to my Rt Hon Friend the Secretary of State for Health & Social Care.

The Government has been clear that the price the NHS pays for drugs is not on the table in trade negotiations. This position was reaffirmed in our negotiating objectives for a UK-US Free Trade Agreement published on 2 March 2020.

## 5. Further reading

[Brexit: We must never trade what we value; our NHS and our health](#)

BMJ, 7 September 2020

[Assessing the potential impact on health of the UK's future relationship agreement with the EU: analysis of the negotiating positions](#)

Health Economics, Policy and Law, June 2020

[How a US-UK trade agreement could affect NHS drug prices](#)

BMJ, 20 June 2020

[The NHS Is Not for Sale – But a US–UK Trade Deal Could Still Have an Impact](#)

Chatham House, November 2019

[The NHS and future free trade agreements](#)

NHS Confederation, October 2019

[NHS and Future Trade Deals](#)

House of Lords Library, June 2019

[Brexit and the NHS](#)

UK in a Changing Europe, March 2018

[Beyond Brexit – International trade and health](#)

British Medical Association, 2018

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