

# 39 from 39, Series 3 Episode 4: The UK / EU Trade and Cooperation Agreement – Aviation, Chemicals and Waste

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# Aviation

- Air Traffic Rights
- Code Sharing / Blocked Space Agreements
- Leasing
- Ownership and Control
- Recognition of Existing Authorisations
- Aviation Safety
- Non-Discrimination

# Introduction

- On 24/12/20 the EC and UK agreed a comprehensive Trade and Cooperation Agreement (TCA) which sets out the basis for the future EU and UK trade relationship.
- TCA approved by all 27 EU countries & UK Parliament
- Compared to the contingency measures (the Contingency Regulations) published by the EC on 10 December 2020 to ensure basic air connectivity in the event no free trade agreement was reached, the Agreement provides several important operational flexibilities and further rights which will benefit UK and EU passenger, cargo, and charter operators.
- Relevant provisions are contained within Heading 2 (Aviation), Titles 1 and 2 (Air Transport and Aviation Safety) pp237-257/1276

# Air Traffic Rights

- 1-4 (ICAO) Freedoms of the Air provide EU/UK unlimited rights to fly between the two
- Open to parties to negotiate 5<sup>th</sup> Freedom Rights (i.e. cargo only and to/from EU location and then on to/from 3<sup>rd</sup> countries)
- But no scheduled intra EU/UK flights for UK/EU

# Code Sharing / Blocked Space Agreements

- The TCA permits code sharing arrangements between UK, EU and 3rd country carriers if the relevant operating carrier has the necessary rights to perform the relevant service.
- A UK marketing carrier can enter into a code sharing arrangement to offer a service from the UK to an EU destination and then onwards to a final destination in the EU or a 3rd country.
- But customers must be informed which carrier operates which sector of the relevant service.
- Any code sharing arrangement may be subject to the approval of the relevant aviation authorities of the carriers involved who will ensure that safety, security and competition requirements are met.

# Leasing of Aircraft

- The TCA permits dry leasing (aircraft only) and also allows UK air carriers to wet lease (aircraft plus crew) from EU carriers.
- However EU carriers can only wet lease from UK carriers if the leasing can be justified on the basis of exceptional need, seasonal capacity or operational difficulties of the lessee and is for a duration strictly necessary to fulfil that need or overcome the relevant difficulty. In other words the EU will apply 3<sup>rd</sup> country restrictions to wet leasing by EU carriers from UK carriers but the UK will not introduce equivalent restrictions for UK air carriers wishing to wet lease from EU carriers.
- The TCA acknowledges that leasing may also be subject to requirements imposed by the UK and EU member states providing for leasing arrangements to be approved by their relevant aviation authorities to verify compliance with the conditions of the TCA and safety and security requirements. The EU and the UK agree that where this is the case they will endeavour to expedite the approval process and reduce the administrative burden on air carriers.

# Ownership and Control

- Ownership and control restrictions are maintained.
- To be an “air carrier of the UK” it must be majority owned & controlled by UK nationals, headquartered, licensed and CAA certified in the UK.
- To be an “air carrier of the EU” it must be both majority owned and controlled by EU and/or EEA and/or Swiss nationals, headquartered, licensed and EASA certified in the EU.
- Grandfathering provision for UK carriers with a valid EU license by 31 12 20 which are owned and controlled by EU nationals (whether alone or in combination with UK nationals).
- But no equivalent grandfathering provision for EU air carriers controlled by UK nationals (whether alone or in combination with EU nationals).
- Commitment to discuss the liberalisation of future ownership and control restrictions as part of the Specialised Committee on Air Transport (a committee formed to monitor the application of the TCA) initially within 12 months of the TCA coming into force.

# Recognition of Existing Authorisations

- Certificates of airworthiness, licences and certificates of competency issued by the EU or UK which are valid and still in force will continue to be recognised by the other party for the purposes of conducting air services if also Chicago Convention compliant.
- Additional procedures for consultation on safety issues and for ramp inspections.



# Aviation Safety

- TCA provides for cooperation on aviation safety e.g. airworthiness, operation, air traffic management and personnel training and licensing.
- Annexes to be developed by the Specialised Committee on Air Transport to outline the scope of the cooperation in each relevant area.
- These will also set out the terms of UK – EU mutual recognition of future findings of compliance and certification.
- Current relevant TCA Annex deals with Airworthiness and Environmental Certification.
- Provisions also made for future info exchange re safety and proposals to revise laws in this area. But UK is no longer a member of the European Aviation Safety Agency (EASA).

# Non-Discrimination

- Air transport services are subject to the general “level playing field” provisions regarding social and environmental issues but also to some specific provisions re non-discrimination in the provision of ground handling services, allocation of slots and aircraft fuel tax.
- The TCA provides for both parties to ensure effective and non-discriminatory measures for consumer protection including compensation for denied boarding, cancellation and delays and to consult with each other as to their proposed measures for this.
- EU carriers are subject to EU Regulation 261/2004 in this regard.
- There are plans for the UK to transpose the regulation into UK law by the European Union (Withdrawal) Act 2018 and The Air Passenger Rights and Air Travel Organiser’s Licensing (Amendment) (EU Exit) Regulations 2019 and to amend the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 to bring these into line with the EU legislation.

# Summary and Conclusions

- The TCA brought an undoubted aviation industry sigh of relief that a *relatively* comprehensive UK-EU aviation agreement was reached.
- The TCA offers the aviation sector significantly more than the Contingency Regulations of December 2020.
- It preserves basic connectivity for UK – EU air transport services and shows pragmatism in many areas such as the recognition of existing certification and grandfathering for UK air carriers with substantial EU shareholdings.
- However the TCA is not the last word in EU – UK aviation matters.
- It establishes a framework for future dialogue in key areas such as aviation safety and the liberalisation of ownership and control restrictions.
- COVID and the decline in commercial aviation has slowed the hammering out the remains of these agreements and it remains to be seen whether both sides pursue the opportunities to establish closer partnership for the benefit of an industry hit hard by the cross winds of a pandemic, the urgent need to reduce carbon emissions, and the relatively restrictive terms of the TCA itself.

# Chemicals



**Gethin Thomas**

# EU REACH

- EU REACH – the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (No 1907/2006)
- Obligation to register with the ECHA: 'no data, no market'.
- More than 22,000 substances are registered under REACH.
- Following the UK's withdrawal from the EU on 31 January 2020, REACH continued to have effect in the UK until the end of the transition period in accordance with the Withdrawal Agreement.
- Ceased to have effect in GB on 1 January 2021.



# What does the TCA provide?

## *ANNEX TBT-3: CHEMICALS*

### Article 1: Definitions

For the purposes of this Annex:

- (a) “responsible authorities” means
  - (i) For the Union: the European Commission;
  - (ii) For the United Kingdom: the government of the United Kingdom.
- (b) “UN GHS” means the United Nations Globally Harmonized System of Classification and Labelling of Chemicals.

### Article 2: Scope

This Annex applies to the trade, regulation, import and export of chemicals between the Union and the United Kingdom in respect of their registration, evaluation, authorisation, restriction, approval, classification, labelling and packaging.

### Article 3: Objectives

1. The objectives of this Annex are to:
  - (a) facilitate the trade of chemicals and related products between the Parties;
  - (b) ensure high levels of protection for the environment, and human and animal health; and
  - (c) provide for cooperation between Union and United Kingdom responsible authorities.
2. The Parties acknowledge that the commitments made under this Annex do not prevent either Party from setting its own priorities on chemicals regulation, including establishing its own levels of protection in respect of the environment, and human and animal health.



# What does the TCA provide?

## Article 7: Cooperation

1. The Parties recognise that voluntary cooperation on chemicals regulation can facilitate trade in ways that benefit consumers, businesses and the environment and that contribute to enhancing the protection of human and animal health.
2. The Parties commit to facilitating the exchange of non-confidential information between their responsible authorities, including through cooperation on electronic formats and tools used to store data.
3. The Parties shall cooperate where appropriate with a view to strengthening, developing and promoting the adoption and implementation of internationally agreed scientific or technical guidelines, including, where feasible, through the presentation of joint initiatives, proposals and approaches in the relevant international organisations and bodies, in particular those referred to in Article 4.
4. The Parties shall cooperate, if considered beneficial by both Parties, with regard to the dissemination of data related to chemicals safety, and shall make such information available to the public with the objective of ensuring easy access to and the comprehensibility of that information by different target groups. Upon request of either Party, the other Party shall provide available non-confidential information on chemicals safety to the requesting Party.
5. If a Party so requests and the other Party agrees to do so, the Parties shall enter into consultations on scientific information and data in the context of new and emerging issues related to the hazards or risks posed by chemicals to human health or the environment, with a view to creating a common pool of knowledge and, if feasible, and to the extent possible, promoting a common understanding of the science related to such issues.

# What does the TCA provide?

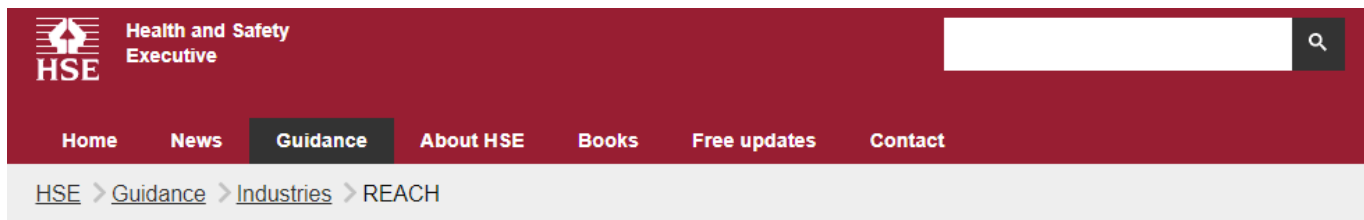
**Globally Harmonized System of Classification and Labelling of Chemicals**





# Introduction of UK REACH

- The Health and Safety Executive (HSE) is now the UK REACH Competent Agency, taking over the functions of the ECHA.



**BETA** This is a new way of showing guidance - [your feedback](#) will help us improve it.

## UK Registration, Evaluation, Authorisation & restriction of Chemicals (REACH)

### Registration and authorisation

#### New registration

Register a substance under UK REACH

#### Apply for an authorisation

Start an application to apply for the use of a substance on Annex XIV (Authorisation list)

#### Grandfathering a registration

Recognising EU REACH registrations held by GB-based entities under UK REACH

#### Downstream User Import Notification (DUIN)

Transitional provision for GB-based existing downstream users and distributors

#### Research and development exemption (PPORD)

Apply for an exemption from registration for the purposes of product and process orientated research and development

#### Northern Ireland Notifications

Enable GB market access for qualifying Northern Ireland goods

# Introduction of UK REACH

- Secondary legislation was passed in March 2019 that would amend the retained EU REACH Regulation in the UK to make it work in a UK-only context: The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 (as amended).
- The Government has since laid two amending instruments to amend the REACH EU Exit SI to correct technical gaps raised by industry:
  - The REACH etc. (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (SI 858/2019, made on 11 April 2019) – this fixes a gap that left some firms not covered by the transitional provisions.
  - REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019 (SI 1144/2019, made on 2 July 2019) – this instrument concerned a gap regarding authorisation applications that are pending a decision by the European Commission.
- In early December 2020, the Government also laid REACH etc. (Amendment etc.) (EU Exit) Regulations 2020, which was made under section 8 of the EU (Withdrawal) Act 2018.

# UK REACH

- Scientific advice and input: The UK REACH regime places a duty on the HSE to commission external scientific advice when developing its opinions on regulatory measures, except in circumstances where there are “justifiable reasons” not to.
- Appeals against HSE decisions: The UK REACH regime has a different mechanism for appeals against HSE regulatory decisions compared to the EU regime. Appeals against HSE decisions would be heard by the First-Tier Tribunal (which already hears appeals against government regulatory bodies on environment enforcement matters, such as appeals against Environment Agency fines).



# Future Changes: The Draft Environment Bill

## SCHEDULE 20

Section 131

### AMENDMENT OF REACH LEGISLATION

#### *Amendment of the REACH Regulation*

- 1 (1) The Secretary of State may by regulations amend the REACH Regulation.
- (2) The Secretary of State may make regulations under this paragraph only if the Secretary of State considers that the provision made by the regulations is consistent with Article 1 of the REACH Regulation (aim and scope of the REACH Regulation).
- (3) The Secretary of State may not make regulations under this paragraph which amend any protected provision of the REACH Regulation.
- (4) But sub-paragraph (3) does not prevent any protected provision of the REACH Regulation from being amended by provision made under this paragraph by virtue of section 133(1)(a).
- (5) Before making regulations under this paragraph, the Secretary of State must publish an explanation of why the Secretary of State considers that the provision to be made by the regulations is consistent with Article 1 of the REACH Regulation.
- (6) The explanation relating to regulations under this paragraph is to be published—
  - (a) no later than the time when the Secretary of State begins the consultation on that exercise of the power that is required by paragraph 5, and
  - (b) in the manner which the Secretary of State considers appropriate.
- (7) Regulations under this paragraph are subject to the affirmative procedure.

#### *Fundamental principles*

Article 1 (aim and scope of the REACH Regulation)

Article 5 (the principle of “no data, no market”)

Article 25(1) (animal testing as a last resort)

Article 35 (access to information for workers)

Article 45 (evaluation of substances on the rolling action plan)

Article 48 (follow-up to substance evaluation)

Article 55 (the aim of Title VII, which is about authorisation of substances)

Article 67(1) (effect of restrictions contained in Annex XVII)

Article 92 or 93 (appeals)

Article 111, first subparagraph (formats and software for submission of information to the Agency)

Article 123 (communication to the public of information on risks of substances)

#### *Role of the devolved administrations*

Article 4A (the consent requirement)

Article 129(1) (the safeguard clause: basic principles)

#### *Transparency*

Article 54 (publication of information on evaluation)

Article 64(6) (publication of Agency authorisation opinions)

Article 72(2) (publication of Agency restriction opinions)



# Waste



**Ruth Keating**

# Chapter 1 – general provisions

## *“Article 1.1: Principles and objectives*

...

*2. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing, and affirm their commitment to promote the development of international trade and investment in a way that contributes to the objective of sustainable development.*

*3. Each Party reaffirms its ambition of achieving economy-wide climate neutrality by 2050.*

*4. The Parties affirm their common understanding that their economic relationship can only deliver benefits in a mutually satisfactory way if the commitments relating to a level playing field for open and fair competition stand the test of time, by preventing distortions of trade or investment, and by contributing to sustainable development. However the Parties recognise that the purpose of this Title is not to harmonise the standards of the Parties. The Parties are determined to maintain and improve their respective high standards in the areas covered by this Title.” (Emphasis added.)*

# Article 7.1

## Article 7.1.1

“Environmental levels of protection” is defined to mean the levels of protection provided overall in a party’s law which have the purpose of protecting the environment, including the prevention of a danger to human life or health from environmental impacts, including in each of the following areas:

- Industrial emissions.
- Air emissions and air quality.
- Nature and biodiversity conservation.
- Waste management.
- The protection and preservation of the aquatic environment.
- The protection and preservation of the marine environment.
- The prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release or disposal of chemical substances.
- The management of impacts on the environment from agricultural or food production, notably through the use of antibiotics and decontaminants.

## Article 7.1.2

For the EU, only environmental levels of protection that are common to all member states are in scope.

# Article 7.2

## Article 7.2: Non-regression from levels of protection

*“1. The Parties affirm the right of each Party to set its policies and priorities in the areas covered by this Chapter, to determine the environmental levels of protection and climate level of protection it deems appropriate and to adopt or modify its law and policies in a manner consistent with each Party's international commitments, including those under this Chapter.*

*2. A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period, including by failing to effectively enforce its environmental law or climate level of protection.*

*3. The Parties recognise that each Party retains the right to exercise reasonable discretion and to make bona fide decisions regarding the allocation of environmental enforcement resources with respect to other environmental law and climate policies determined to have higher priorities...” (Emphasis added.)*



# Waste: import and export

- In relation to imports and exports of waste, the UK will be treated by the EU in the same way as any other member of the Organisation for Economic Co-operation and Development (OECD) or any country party to the Basel convention
- OECD or Basel waste description codes. There are generally three predominant categories of waste recognised by the EU:
  - “Green list” waste (to which Article 18 controls apply);
  - “Amber list” waste (to which prior notification and consent is required); and
  - Prohibited waste, including hazardous and household waste (this waste is generally banned from export, but is sometimes permitted pursuant to special consideration).

# Waste: import and export

- “Green list” waste can be imported from and exported to the EU without permission from the countries involved in the shipment.
- “Amber list” waste can be exported and imported to and from the EU. Operators must notify the relevant authority of the country from which waste will be exported and obtain consent from the competent authorities of the relevant importing and exporting countries.
- Waste plastics – notification control or special consideration. The Basel code B43011 and Article 18 controls.

# Waste-to-energy



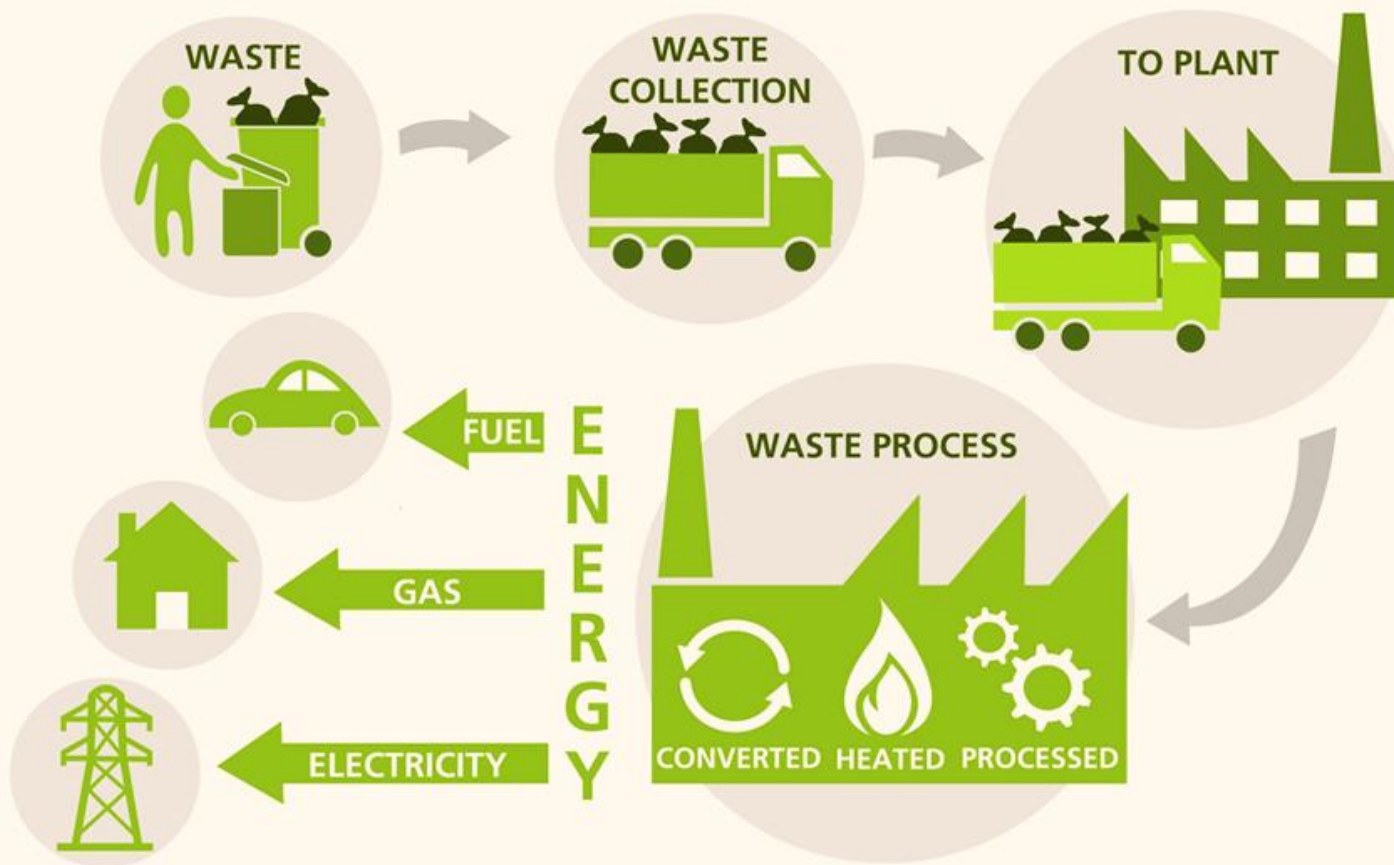
**Tom van der Klugt**

# What is waste-to-energy / energy from waste?

“Energy from waste (EfW) – is the process of creating energy - usually in the form of electricity or heat but also potentially biofuels - from the thermal treatment of a waste source via technologies such as incineration, Anaerobic Digestion, Gasification or Pyrolysis...

...The terms ‘energy recovery (from waste)’, or ‘energy from waste’ (commonly abbreviated to EfW) can be used interchangeably and cover a range of different processes and technologies... we shall use the term ‘energy from waste’ to describe a number of treatment processes and technologies used to generate a usable form of energy and which also reduce the solid volume of residual waste. This energy can be in the form of electricity, heating and/or cooling, or conversion of the waste into a fuel for future use e.g. transport fuels, or a combination of these forms.”

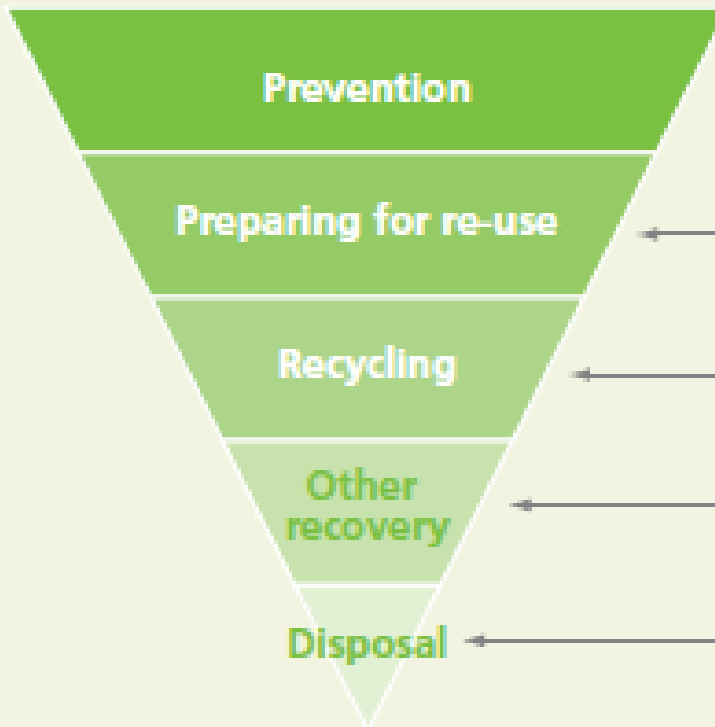
**DEFRA, Energy from waste: a guide to the debate (February 2014)**



## The Waste Hierarchy

### Stages

### Includes



Using less material in design and manufacture.  
Keeping products for longer; re-use.  
Using less hazardous material.

Checking, cleaning, repairing, refurbishing, repair, whole items or spare parts.

Turning waste into a new substance or product.  
Includes composting if it meets quality protocols.

Including anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling operations.

Landfill and incineration without energy recovery.

## EU Waste Framework Directive

# Waste-to-energy: context & debate

“In a perfect world all waste would be prevented and the hierarchy would be unnecessary. However, in reality a range of social, economic, practical and technological reasons mean that different waste streams are currently best dealt with at different levels of the hierarchy – including through energy recovery...

...many waste materials that could theoretically be recycled are not currently, and go to energy recovery or landfill. It is important that the presence of energy recovery as an option does not diminish efforts to overcome the range of barriers to capturing and recycling these. However, it is equally important that while those barriers do exist, energy from waste is used effectively to ensure those materials do not go to a worse environmental fate in landfill...”

**DEFRA, Energy from waste: a guide to the debate (February 2014)**

# The Trade & Cooperation Agreement

## PART TWO | HEADING ONE

### Title VIII: Energy | Chapter 3: Safe and sustainable energy

#### Article ENER.22: Support for renewable energy

*2. Biofuels, bioliquids and biomass shall only be supported as renewable energy if they meet robust criteria for sustainability and greenhouse gas emissions saving, which are subject to verification.*

#### Article ENER.25: Cooperation on standards

*...the Parties shall promote cooperation between the regulators and standardisation bodies located within their respective territories to facilitate the development of international standards with respect to energy efficiency and renewable energy, with a view to contributing to sustainable energy and climate policy.*



# The Trade & Cooperation Agreement

## PART TWO | HEADING ONE

### Title XI: Level playing field for open and fair competition and sustainable development | Chapter seven: Environment and climate

#### Article 7.2: Non-regression from levels of protection

- 1. The Parties affirm **the right of each Party to set its policies and priorities** in the areas covered by this Chapter, to determine the environmental levels of protection and climate level of protection it deems appropriate and to adopt or modify its law and policies in a manner consistent with each Party's international commitments...*
- 2. A Party shall not weaken or reduce, **in a manner affecting trade or investment** between the Parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period, including by failing to **effectively enforce...***

# UK policy trajectory

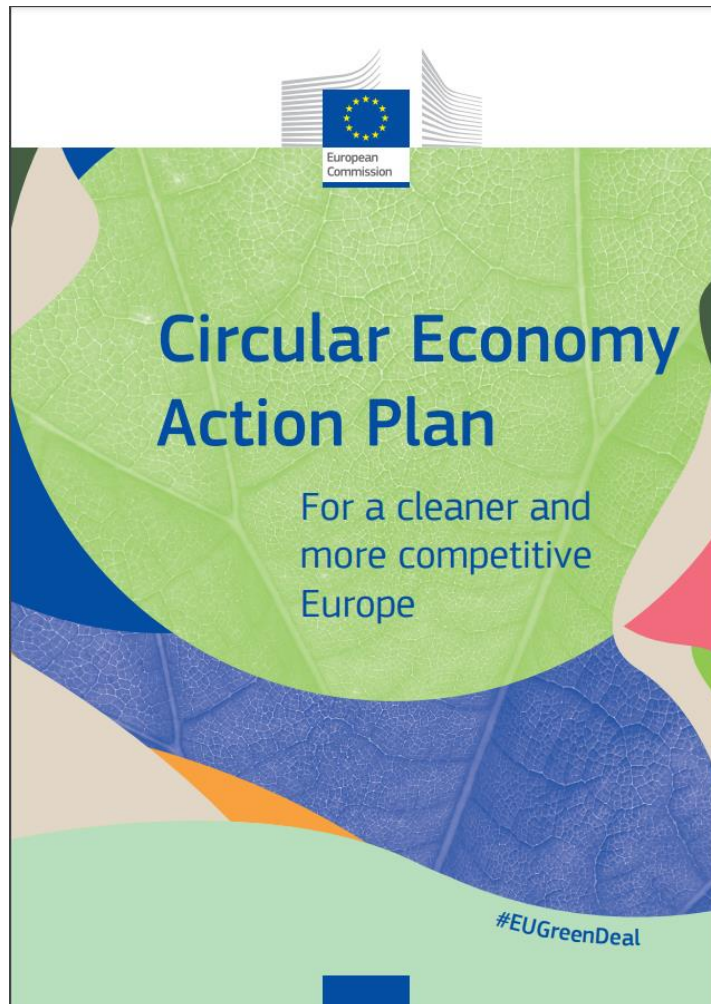
## Waste policy is devolved

“England has around 40 EfW plants. Eight operate in **Combined Heat and Power (CHP)** mode, delivering greater efficiency than solely generating electricity. We want to help the companies that run EfW plants to use the heat produced to **improve their efficiency**, and to help industry make the right decisions over infrastructure investment.”

## Our Waste, Our Resources (2018)



# EU policy trajectory



“While up to 80% of products’ environmental impacts are determined at the **design phase**, the linear pattern of “take-make-use-dispose” does not provide producers with sufficient incentives to make their products more circular...” (p6)

“...all this shall serve the objective to significantly reduce total waste generation and halve the amount of **residual (non-recycled) municipal waste by 2030.**” (p16)

## Circular Economy Action Plan (2020)

# Thank you for attending

Slide pack will be available on 39 Essex website shortly

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# Thank you for listening!

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