USING BREXIT TO TACKLE
NON-COMMUNICABLE DISEASES AND
IMPROVE THE HEALTH OF THE PUBLIC

May 2017
Using Brexit to tackle non-communicable diseases and improve the health of the public

Prepared by UK Health Forum

Published May 2017

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UK Health Forum
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

www.ukhealthforum.org.uk

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Introduction

In June 2016, the UK voted to leave the European Union (EU). Following the ruling by the Supreme Court in January 2017, Parliament voted to invoke Article 50 of the Lisbon Treaty and the Government began the process of leaving the EU on 29 March 2017. The public health community in the UK must understand and prepare for the challenges and potential opportunities to the population’s health in a post-EU United Kingdom. Currently, the UK’s membership in the EU affects the major determinants of health, both directly and indirectly. European legislation, regulation and policy on the environment, consumer safety, food quality, human rights and wider social policy, to name a few, have contributed to better health and wellbeing across the UK.\(^1\)

Non-communicable diseases (NCDs) account for the greatest burden of death and ill health both globally and in the UK. NCDs include cardiovascular disease, stroke, type 2 diabetes, cancer, respiratory disease, chronic kidney disease, liver disease and dementia. The shared, modifiable risk factors of NCDs are poor nutrition, physical inactivity, obesity, tobacco use and alcohol misuse. The *UK Health Forum* (UKHF) recognises that tackling the risk factors for NCDs demands action to address the wider economic, social and environmental determinants of disease, and that doing so will have potential co-benefits for health inequalities, sustainable development, climate change and social justice.

This briefing provides an overview of current EU laws, regulations and policies for their potential impact on the wider determinants of health. The briefing covers the following themes: environmental and consumer protections; food, including fisheries and agriculture; alcohol; tobacco; and trade movements and deals. This briefing is not exhaustive but provides examples across the themes and where possible, specific potential risks have been highlighted. The scope of this briefing does not consider health protection issues, the economic impact of Brexit on health or the implications of Brexit on the NHS and social care.

Legal challenges and fierce debate by both ‘leave’ and ‘remain’ camps in the ten months since the referendum indicate that the process of leaving the EU will be neither clear nor quick. The uncertainties are currently compounded by the snap general election called for 8 June 2017 with the potential for altering the course of Brexit. Regulatory threats and challenges to the public health policy space will therefore require ongoing appraisal.

Background

The benefits of regulations, legislation and policies at the EU level can be seen in human rights, freedom of movement, employment rights, and the safety and regulation of goods and services. However, the impact of new trade and investment agreements and the loss of subsidies may have a greater impact on health. For example, all UK jurisdictions have benefited from significant EU Regional Development Funds – particularly in economically deprived areas where the funds have addressed social determinants of health such as job creation. It is unclear at present if the Westminster Government will provide some form of compensatory funding for this loss. Furthermore, public health research and action is inherently global. Cross-country collaborations, both globally and regionally within the EU, will be affected by the UK’s exit from the EU, the effect of which is already being felt by academic and civil society organisations across the country.\(^2\)
The current Government’s Brexit plan was set out in a white paper in February 2017. This identified twelve principles that will underpin the UK’s talks with the EU. It also included a proposal for a “Great Repeal Bill” (Repeal Bill). This would be an Act of Parliament to repeal the European Communities Act (1972), which translates into domestic law the rights and responsibilities derived from the United Kingdom’s membership of the EU (see box below for further details). This presents a potential risk to public health. Specific legislation may be subject to possible deregulatory drives and undermined by affected vested commercial interests and under-the-radar secondary legislation modifications, which avoid necessary scrutiny, after transposition. Where there are powerful vested interests at stake, often by multi-national corporations, public health could stand to lose. For example, EU health claims regulations are opposed by the food industry because they have restricted the number of permissible claims on products. Industry groups claim that this prohibits them from developing innovative products and promoting the health benefits of their food products.

Since the Repeal Bill does not appear to have been introduced to Parliament before it was dissolved, its continuation will depend on the nature of the new Government elected in June 2017. Also of some concern is the tight legislative timetable that Brexit creates. With the majority of new legislation needing to focus on managing the UK’s exit, there will be little space for introducing non-Brexit-related legislation. The potential lack of Parliamentary time may lead to primary legislation being amended without sufficient scrutiny.

Following the triggering of Article 50, the UK has two years to negotiate a deal to determine the country’s future relationship with the EU. Assuming the Government elected in June 2017 does not revoke Article 50 but continues with the intention to leave the EU, it will be negotiating on “hard” vs “soft” exit criteria with regards to the single market, freedom of movement, trade and other areas of policy, such as the Common Agricultural Policy (CAP), which are currently practical elements of the UK’s membership in the European Union.

Ultimately, the priorities for public health in the Brexit process will be:

- maintaining existing health protection through transposing EU regulations into UK law and strengthening these where possible;
- ensuring that the public’s health is fully and transparently protected in the provisions of new trade and investment agreements;
- mitigating the losses of financial subsidies to economically disadvantaged regions of the UK; and
- enabling the UK to maintain research and practical collaborations.

“UK politicians will be faced with some important decisions over the coming weeks, months and years in the light of the outcome of the EU referendum. The Association of Directors of Public Health asks for the health of the public to be front and centre of those judgements.”

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**Headline points**

- European legislation on issues such as the environment, consumer safety, food quality, human rights and wider social policy has contributed to better health and wellbeing across the UK.
- The Government should ensure that important regulations and mechanisms including protections on the environment, food, alcohol and tobacco are maintained or strengthened.
- Brexit can serve as an opportunity to strengthen public health measures, particularly on areas of food labelling, alcohol taxation and trade.
- The Government should ensure the UK remains eligible for involvement in EU-wide public health research and development collaborations, which have technical and financial benefits to the UK.
- Human and planetary health will need to be protected and promoted in new regulations and trade and investment agreements.
- The EU currently provides financial subsidies to the UK including for example those found in the Common Agricultural Policy and the EU Regional Development Funds. The Government has yet to confirm if these funds will be compensated once the UK is outside the EU.
- Scotland, Northern Ireland and Wales have very different views on Brexit from the Westminster Government and the impact will vary across the UK.

**Overview of EU authority and structures**

*European law is jointly and democratically made by the European Commission, elected national governments, in the Council of Ministers, and the directly elected Members of the European Parliament.*

1. **European Communities Act (1972):** The overarching UK legislation which gives legal effect to EU treaties and acts made under them.

2. **Directives:** EU directives are generally binding and become EU law through secondary legislation. All current directives will have to be clearly re-defined in corresponding legislation by Westminster. This could be done through blanket reciprocal legislation. *Example – The Tobacco Products Directive.*

3. **Regulations:** EU regulations are generally binding and directly applicable to member states without the need for domestic legislation. New UK laws will have to be put in place to replace these. *Example – European Medicines Agency and regulation for medicines.*

4. **Obligations:** EU obligations have become UK law under an Act of Parliament and are usually contained in directives. *Example – Obligation of the UK Government to undertake environmental risk assessments.*

5. **Soft measures:** Outside the formal, legal EU authority there are important soft measures including the open method of communication and expert working groups.

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**Environmental and consumer protections**

*It should be noted that most EU public health law is already transposed into UK legislation. More in-depth assessments are being undertaken by Government, and the Faculty of Public Health is developing a risk register to pull together the wider public health communities’ concerns.*
Membership of the EU currently provides the UK population with many environmental and consumer protections. These include measures on climate, air, and water as well as broader consumer protections on chemicals, medicines, food, alcohol and tobacco and employment. Both short and long-term potential health threats could arise if these environmental and consumer safeguards were lost as a result of exiting the EU.

The majority of UK climate change regulations and environmental protections come from the EU and at present the UK’s commitment to the Paris COP21 Climate Agreement is tied to the EU. Air quality regulations from the EU include those overseeing ‘hot zones’ and the EU Emissions Trading System Directives, which regulate high pollution areas and vehicle emissions respectively. The EU structure has a significant impact on the UK’s water and water management, including the Water Framework Directive and associated Drinking Water Directive regulating the quality and supply of UK water.

To maintain current levels of regulation in the UK, all of these EU directives will need to be directly transposed into UK legislation — through the Repeal Bill — and not weakened including for example: the EU 2030 Climate and Energy Framework and the Renewable Energy Directive. Brexit also presents an opportunity for climate change mitigation and air quality regulations to be strengthened in the UK to include measures for reducing traffic-related road pollution levels and supporting opportunities for cities and devolved powers to implement their own – tougher – measures.

There is the risk that the Government will choose not to maintain or strengthen regulations such as national emissions standards, despite obligations to the Paris agreement and the Sustainable Development Goals. This is of particular concern because the UK Government has lobbied to weaken EU level emissions standards and national emissions ceilings.

Further consumer protection measures covering areas such as chemicals, medicines and medical devices, food, alcohol and tobacco also exist within the EU regulatory structure. For example, the Registration, Evaluation, Authorisation & restriction of Chemicals (REACH) regulation which protects the public from everyday exposure to health harming chemicals. The latter three are discussed in greater detail in the section below.

Food, alcohol and tobacco

Regulations pertaining to food, alcohol and tobacco are particularly important to the health of the UK population because of their role as primary contributing risk factors to the UK’s high burden of non-communicable disease (NCD). The quality, availability, price and promotion of these commodities directly impacts on rates of consumption. Some of the regulations pertaining to these commodities fall under consumer protections while others relate to fiscal, agricultural and global policy mechanisms, all impacted by the EU.

\[\text{b} \quad \text{‘Hot zones’ are relatively small geographic areas with particularly high amounts of pollutants – particularly NO}_2 \text{ from diesel exhaust. London alone has at least 11 regular ‘hot zones’.} \quad \text{http://bit.ly/28KX2Li}\]

\[\text{\textit{It is essential that health gains are not rolled back and a legislative environment that encourages progressive public health measures is maintained.}} \quad \text{(Shirley Cramer, Royal Society for Public Health)}\]
Food

The quality, safety and labelling of food products are an EU competency. Although regulations have supported some important consumer protections, they have also constrained the UK. For example, the EU Nutrition and Health Claims Regulation protects consumers against misleading nutrient and health claims, the Food Information Regulation (FIR) dictates what information can and cannot appear on food packaging, and the Common Agricultural Policy (CAP) regulates agricultural subsidies.

The UK’s agriculture and fisheries sectors are currently regulated under both the CAP and Common Fisheries Policy (CFP). The CAP accounts for around 40% of the total EU budget but these funds are not currently aligned with health objectives. The majority of CAP subsidies support meat and dairy production. Very little support is provided for the production of fruits, vegetables and pulses, with over 50% of crop-based land in the UK dedicated to growing animal feed, compared to just 3.5% for horticulture. This policy has contributed to the widespread availability and population’s excess consumption of meat, dairy and saturated fat and insufficient consumption of vegetables, fruit and fibre.

Brexit presents the risk that the status quo on food production will be maintained or indeed made worse if economic interests are prioritised over health and sustainability concerns. Animal-based agriculture is more profitable than horticulture and is supported by powerful, dominant lobby groups within the UK. Horticulture also faces the added risk of being heavily reliant on seasonal immigrant workers and could collapse if these workers are prevented from working in the UK post-Brexit.

The fisheries policy needs to ensure a sustainable and affordable fish supply. This could support the availability of a healthy source of dietary protein and omega-3 oils, and help overcome the population’s current dietary deficiencies in this area. Recent reforms to EU fisheries policies have been positive for sustainability. Measures have included setting quotas to prevent overfishing and limiting certain fertilizers to reduce water pollution which is harmful to both fish and the environment. If these reforms are weakened as a result of short-term pressure to boost production and the economy, the long-term supply of healthy fish for future generations will be put at risk.

Brexit presents both challenges and opportunities to the UK regarding food. Any new, post-Brexit arrangements will need to:

- be fairer to consumers, agricultural and rural workforces, and farmers;
- reduce the health and environmental burden of the food system; and
- aim for a higher degree of sustainable UK food production, land use and food security.

Outside agriculture, the EU Nutrition and Health Claims Regulation requires the food industry to submit evidence in support of proposed nutrient and health claims for assessment by the European Food Safety Authority (EFSA) before these claims can be used legally. 4,400 claims were initially put forward for evaluation by EFSA between 2006 and 2012, and of these only 200 (or around 5%) were deemed permissible under the regulation. This outcome was interpreted by the public health community as evidence that the regulation was working to protect consumers. However, food industry actors have expressed frustration at being unable to promote purported health benefits of their products and claim that the regulation stifles innovation. Both the Confederation of British

“It is not simply a choice about farming – the decision will affect the entire UK food system and all of our daily lives... food is perhaps the most immediate link between the EU and ordinary British people”

(Tim Lang, Food Research Collaboration)
Industry and the British Chambers of Commerce put forward requests in their 2017 election manifesto briefings for the burden of regulation to be reduced.

The FIR has provided several benefits for UK consumers, but it constrained the UK government in areas such as its ability to mandate the national front-of-pack traffic light nutrition labelling scheme. As a result, a significant number of foods which are high in fat, salt and/or sugar fail to display this information using the government’s accessible scheme. Brexit provides the UK Government with the opportunity to strengthen such measures outside the EU by mandating the use of traffic light labels within the UK. However, the government’s traffic light nutrition labelling scheme has been threatened with a legal challenge from the EU. In 2014, the Commission’s trade department (DG Trade) issued a letter of notification to the UK government in the first step towards infringement proceedings against the UK scheme. DG Trade raised a number of concerns which were focused on whether the scheme presents a barrier to trade by negatively discriminating against products with red traffic lights. With trade being a post-Brexit priority, the traffic light nutrition labelling scheme could be at risk.

Brexit may create opportunities to introduce positive changes and join up domestic food, farming, agriculture and fisheries policies which all impact on health. At present, value is inequitably distributed across the food system. Manufacturers are rewarded for producing unhealthy, processed products which are high in salt, sugar and/or fat while farmers receive very little for producing minimally processed whole foods whose increased consumption would be beneficial for health. Brexit has already resulted in a delay to DEFRA’s long awaited 25 year food and farming and environment plans and the plans may be further delayed if there is a change in Government following the 2017 snap election. In the short term, this presents an opportunity for health and sustainability concerns to be fully integrated within these policies. In the longer-term, the post-Brexit reforms to the wider food system should ensure that:

- the food system is geared towards directly supporting the Eatwell Guide’s public health and nutrition goals; and
- value is spread more equitably across the different food system actors.

Finally, a significant potential risk from Brexit is the UK’s heavy reliance on food imports, with domestic food production below 60% of consumption. As discussed above, reliance on fruit and vegetable imports is particularly acute owing to the low levels of horticulture in the UK. Horticulture’s dependence on cheap foreign labour is a further weakness in the sector. Fruits and vegetables are already the most expensive item in household food baskets and consumption levels are lowest in the poorest households. Post-referendum volatility, disruption and uncertainty have begun to manifest in the food and agriculture sector; import costs are rising as a result of the fall in sterling and food prices seem set to rise. This presents particular challenges both for those on low incomes and public health efforts to tackle health inequalities.

**Alcohol**

Aspects of alcohol labelling, marketing, taxes and pricing are maintained at EU level. For example, EU directives dictate that stronger ciders and wines be taxed based on volume and not alcohol content (Directives 92/83/EEC and 92/84/EEC). Alcohol is also exempt from the FIR, meaning alcohol manufacturers are not required to place ingredient, calorie and nutrition information on the labels of alcoholic beverages over 1.2% ABV.

The UK Government will have the opportunity to raise taxes on products like high strength ciders and wine, often the drink of choice for heavy drinkers, based on alcohol content. There is also the potential that alcohol availability, marketing and labelling would be considered in any new trade and investment agreements negotiated by the UK. For example, a health impact assessment of the
proposed Trans-Pacific Partnership identified a risk of increased alcohol consumption in Australia because of the potential limits on the restriction of marketing and warning labels.\textsuperscript{27}

A potential risk following Brexit is that the Government will not commit to acting on its ability to tax wine and cider proportionate to strength outside the EU or move to require nutrition labelling.\textsuperscript{28}

**Tobacco**

The UK is a party to the WHO Framework Convention on Tobacco Control (FCTC), the global treaty which sets out measures that Parties to the Treaty should implement to reduce the harm caused by tobacco. The UK has also committed to ratifying the Illicit Trade Protocol to the WHO FCTC, which will require parties to implement supply chain controls, and tracking and tracing of tobacco products. EU tobacco legislation has been included in directives which have been transposed into domestic legislation to help EU member states meet their obligations as parties to the FCTC. Tobacco-specific EU directives, which set standards for the UK, include the Tobacco Advertising Directive and the Tobacco Products Directive (TPD) which regulates safety warnings and e-cigarettes.

Although there is strong cross-party support for tobacco control measures in all UK jurisdictions, new trade and investment agreements may weaken current safeguards. Such agreements tend to provide industry with strong intellectual property protections. The tobacco industry has a track record of defending these rights very vigorously, having both the legal expertise and financial resources to invest in lengthy claims. Such challenges currently cover standardised packaging, limits on use of descriptive terminology (eg “light”, “mild” etc) and disclosure of ingredients on the grounds that this violates trade secrets. The latter would be of particular concern to e-cigarettes.

Trade and investment agreements are designed to remove both tariff and non-tariff barriers to commerce. As this could be considered inappropriate for any tobacco product, the UK government has the option of specifically excluding them from any new trade and investment agreements—as is the case for military products for example. See more on trade in the following section.\textsuperscript{29}

In many cases the UK Parliament and its devolved counterparts have, with strong cross-party support, passed legislation which goes further than the requirements set out in the EU Directives,\textsuperscript{30} for example, the Tobacco Tax Directive, where the UK has instituted excise duties which are significantly higher than the minimum limits.\textsuperscript{31} There is still a risk that some of these measures could be lost or weakened following Brexit if vested interests are involved. For example, if the UK no longer has influence on EU tobacco policy other member states might continue to maintain significantly lower excise duties, which could indirectly fuel illegal trade back to the UK.\textsuperscript{32} Or a risk could also include the “vaping” community who may push for the deregulation of e-cigarettes under the TPD already transposed into UK law.

“It is crucial that the UK maintains its involvement in frameworks that underpin the protection of public health or that they are replaced by equivalent or even stronger safeguards.”

*(Royal College of Physicians, London)*

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Trade

As the Government considers its trade relationship with the EU and beyond, promotion of economic productivity and growth can best be delivered through building upon and enhancing the strong cross-border standards of health and safety; consumer safety; workers’ rights; environmental standards; actions to address global climate change and carbon emissions; and the wider air pollution and public protections evolved at EU level. The UK currently trades as a member of the EU; this includes access to the single market, freedom of movement of people and workers, the protection of workers’ rights, and a variety of manufacturing arrangements.

The UK’s ability to regulate to maintain or improve these standards must not be eroded, particularly in tobacco control; reducing harmful alcohol use; air pollution and measures to tackle poor diets and obesity. This includes avoiding regulatory “chill” that can occur as a result of lengthy, expensive claims brought by industry (e.g. Scottish Whiskey Association’s claim against minimum unit pricing of alcohol). Improving the public’s health is an economic necessity; it is in the UK’s long term economic interests to invest in a health creating economy.

Although there has been much government rhetoric on the UK’s future relationship with the EU, there are still a number of potential trade scenarios for the UK to consider (Table 1).

<table>
<thead>
<tr>
<th>Options</th>
<th>What would it mean?</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
<td>Maintain the same or almost identical trade, freedom of movement, workers’ rights and manufacturing arrangements within the single market as the UK currently has.</td>
</tr>
<tr>
<td>EEA – “Norwegian option”</td>
<td>Maintain access to the single market; freedom of movement; the UK can not support manufacturing industries or manufacturing through procurement.</td>
</tr>
<tr>
<td>EFTA – “Swiss option”</td>
<td>Partial access to the single market; freedom of movement; no protection for workers’ rights; the UK can not support manufacturing industries or manufacturing through procurement.</td>
</tr>
<tr>
<td>Free Trade Deals – “Canadian or US option”</td>
<td>Select access to the single market; no freedom of movement; no protection for workers’ rights; the UK can not support manufacturing industries or manufacturing through procurement.</td>
</tr>
<tr>
<td>WTO Rules – “Hard Brexit”</td>
<td>No access to the single market; no freedom of movement; no protection for workers’ rights; the UK can support manufacturing industries and support manufacturing through procurement.</td>
</tr>
</tbody>
</table>

Brexit will result in the development of new international trade and investment agreements. The UK will need to protect its public policy space and public health regulations from the potential risk of becoming the subject of violations and disputes over perceived discrimination of trade and investment rules. Disputes over World Trade Organisation violations, for example, that relate to public health include: tobacco control (standardised packaging, flavoured cigarettes, etc.).
pharmaceuticals, insurance services, and environmental risks. Furthermore, health, equity and environmental impact assessments must be undertaken on all new trade policies. Any new trade arrangements for the UK must include mechanisms for transparency and public accountability.

Collaborations and co-operation

The current funding from, and collaborative working allowed by, the UK’s membership in the EU has had a tremendous impact on the quality of public health research in the UK as well as the ability of civil society to effect policy change in the UK, Europe and globally. As a global centre of research excellence, the UK has been the largest EU Member State beneficiary of EU funding for health research. The UK risks losing global influence when it is outside the EU’s arrangements.

Will the UK Government continue to support collaborations and cooperation that supports public health research, development and advocacy? For example:

- Public health research (i.e. Horizon 2020 and funding consortia).
- The EU public health programmes and involvement in joint actions between member and neighbouring states and expert groups.
- Broader global health collaborations (e.g. WHO, UN, WTO, multi-national NGOs).

How does Brexit affect Scotland, Wales and Northern Ireland?

Since 1999, Scotland, Wales and Northern Ireland (NI) have had the right to determine their own form of government. The central issue with regards to the devolved nations is the future of the various devolution Acts that set out the scope and competences of the devolved jurisdictions. Although Westminster would want to remove the requirement to comply with EU law, the Sewel Convention promises that devolved legislatures will be asked for their consent to any changes on devolved matters.

An initial direct effect of Brexit, is that all UK jurisdictions have benefited from significant EU Regional Development Funds – particularly economically deprived areas where the funds have addressed social determinants of health such as job creation. The “Pillar 2” strand of CAP provides a similar function through its support of wider social and environmental objectives. The UK received 5.2 billion Euros from this fund over a seven year period. There is now uncertainty over whether Westminster will provide compensation for the loss of this funding. Estimates suggest that the Welsh Assembly, for example, could lose about 6% of its current budget.

There are potential long-term political and economic consequences for the devolved nations. For example, at the end of March 2017 the Scottish Parliament voted for a second independence referendum in response to the EU referendum result, indicating its wish to retain closer allegiance to the EU. In Northern Ireland, the Good Friday Agreement, setting out the system of government for NI within the UK and the relationship between NI and the Republic of Ireland, is predicated on membership of the EU. It is now the subject of a legal challenge and could create particular policy issues.

Conclusion

“Almost all policy questions depend on the outcome of the exit negotiations and the kind of agreement(s) reached. Most Brexit ‘unknowns’ are therefore predicated on this main ‘unknown’.”

There are many unknowns over the coming months and years as the UK negotiates its departure from the EU. The public health community will need to assess these developments constantly. This rapid appraisal is an initial strategic overview to identify the priorities for protecting and improving the health and wellbeing of the public. As illustrated, there are a wide variety of challenges and potential opportunities for public health.
Priorities for public health in the Brexit process include:
- maintaining existing health protections through transposing EU regulations into UK law and strengthening these where possible;
- ensuring that the health and wellbeing of the public is fully and transparently protected in the provisions of new trade and investment agreements and any dispute procedures;
- planning for the removal of CAP subsidies and CAP obligations and the central inclusion of human and planetary health in future arrangements;
- mitigating the losses of financial subsidies to economically disadvantaged regions in the UK; and
- enabling the UK to maintain public health research and practical collaborations.

Additional resources
- Reuters: Brexit Weekly Round-up (on-going) [http://tmsnrt.rs/2gaR1vY](http://tmsnrt.rs/2gaR1vY)

Glossary
CAP – Common Agricultural Policy
CFP – Common Fisheries Policy
ECDC – European Centre for Disease Prevention and Control
EFSA – European Food Safety Authority
ERCC – Emergency Response Coordination Centre
EU – European Union
FCTC – WHO Framework Convention on Tobacco Control
FIR – Food Information Regulations
GATT – General Agreement on Tariffs and Trade
NCDs – Non-communicable disease(s) are conditions considered to be non-infectious or non-transmissible. NCDs include cardiovascular disease, respiratory diseases, stroke, chronic kidney disease, dementia, diabetes and many cancers. The four main modifiable risk factors for NCDs are diet, physical activity, tobacco use and alcohol misuse.
NI – Northern Ireland
SDGs – UN Sustainable Development Goals
TPD – Tobacco Products Directive
TTIP – Transatlantic Trade and Investment Partnership
UN – United Nations
WHO – World Health Organization
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Acknowledgements

This briefing was produced with the support of The Health Foundation as part of its strategy to improve the health of the people in the UK. The Health Foundation is an independent charity committed to bringing about better health and healthcare for people in the UK.

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