



FACULTY OF
PUBLIC HEALTH

How to use the public health duty to 'Do No Harm'

Guidance for civil servants and public health campaigners

About this guidance

In May 2018, following a major campaign by the public health and wider health sector, the Government confirmed that the current EU public health duty to 'Do No Harm' will remain after the UK leaves the European Union (EU) – and guaranteed that there will be no rollback of our vital public health protections and standards now or in the future. This guidance sets out what the Government has agreed to and how to use the duty to hold it to account.

This guidance also addresses key questions civil servants and public health campaigners working on Brexit across Government might have, including: What is a public health standard? What questions should be considered when thinking about the impact of a policy proposal on the public's health? What can be done when a policy proposal may not be in line with the Government's commitments and may lead to the dilution of or rolling back from current protections or standards?

Who is this guidance for?

This guidance should be read and followed by:

- Civil servants, including the UK's Brexit and trade negotiators
- Ministers
- Public health and wider health sector campaigners
- Parliamentarians

Background to the 'Do No Harm' campaign

Our discussions with the public health community highlighted concerns that, without the safety-net of EU law and in the context of cuts to public health and wider health budgets, we may see a gradual erosion of our existing high level of vitally important public health legislation, policy and practice.

The 'Do No Harm' campaign was focused on acknowledging that we've made huge progress in public health during our time in the EU and guaranteeing that, as we leave, this and future governments would remain committed to ensuring we do not roll back from that progress. It was also an opportunity for the Government to offer clarity and reassurance on the tone and guiding principles for the UK's Brexit negotiations and future trade negotiations with the EU and beyond – placing a high level of public health as a benchmark moving forwards.

The 'Do No Harm' campaign also provided an opportunity for the Government to reassure the business community that the UK is committed to building a post-Brexit economy based on supporting high levels of health, wellbeing and productivity within our workforce. In turn, the campaign also provided a chance to reassure our EU partners that the UK is committed to working in an ongoing and close partnership on public health after Brexit. Threats to the public's health do not respect borders and European countries therefore need to continue to work to similar standards, priorities and expectations.

A sector united in coalition

A coalition, led by the Faculty of Public Health, of 64 medical Royal Colleges, Faculties and health organisations, including the Academy of Medical Royal Colleges, Royal College of Physicians, Brexit Health Alliance and major charities such as Cancer Research UK, Macmillan, Diabetes UK and Mind united in their support for the campaign – one of the largest health coalitions ever assembled in the UK.

Together, the coalition called on the Government to make clear that the current duty on the EU to ‘Do No Harm’ to public health (found in Article 168 of the Treaty of Lisbon) will continue to influence policy making and be legally enforceable in the UK after Brexit. The duty says that “a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities”.¹

What are public health standards and protections?

Public health standards are regulations and laws setting the minimum standards required to promote and protect the health and wellbeing of people at a population level. They also offer tools to help countries cooperate, pool knowledge and identify best practice. As we leave the EU, the Government has guaranteed that the high level of standards of health security, health improvement, food safety and environmental protection developed in partnership with the EU won’t be compromised – and that we can go further in future.

Public health standards are regulations and laws setting the minimum standards required to promote and protect the health and wellbeing of people at a population level.

Public health standards prevent, control and provide a response to existing and emerging threats such as antimicrobial resistance, microbiological and chemical threats and emergencies (e.g. pandemics) which know no borders and require a shared response. They also address non-communicable diseases such as cardiovascular disease, cancers and diabetes, and their associated risk factors (e.g. tobacco use, harmful alcohol use and unhealthy diet). They also address environmental risks such as air quality. And, they provide standards for health products and services (e.g. medicines) and patients (e.g. safety and health services).

A high level of public health is essential to maintaining as healthy and productive a workforce as possible and, in turn, to securing our economic prosperity as we leave the EU. Three examples of public health standards appear to the right:

Air quality

Despite considerable improvements in past decades, air pollution is responsible for more than 400,000 premature deaths in Europe each year.

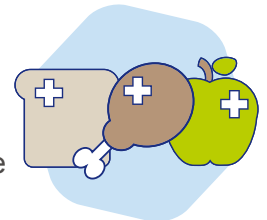
Poor air quality adversely affects human health, the environment and the climate. The EU has developed an important, extensive body of legislation that establishes high standards to protect the UK’s public from a number of air pollutants.



Food safety

The EU has developed vital regulations to ensure a high level of food hygiene and safety. These address food-borne diseases (e.g. Salmonella), rules and policy on monitoring, control of infections in animals and rules on contaminated food.

They also address preventative action on antimicrobial resistance which carries a heavy economic burden due to higher costs of treatments and reduced productivity caused by sickness. And, they regulate food and feed containing genetically modified organisms and pesticide use.



Medicinal products

The EU’s legal framework for human medicines sets standards to ensure a high level of public health protection and the quality, safety and efficacy of authorised medicines. It also includes harmonised provisions for the manufacture, wholesale or advertising of medicinal products for human use and provides common rules for the conduct of clinical trials (to test the safety and efficacy of medicines under controlled conditions) in the EU.

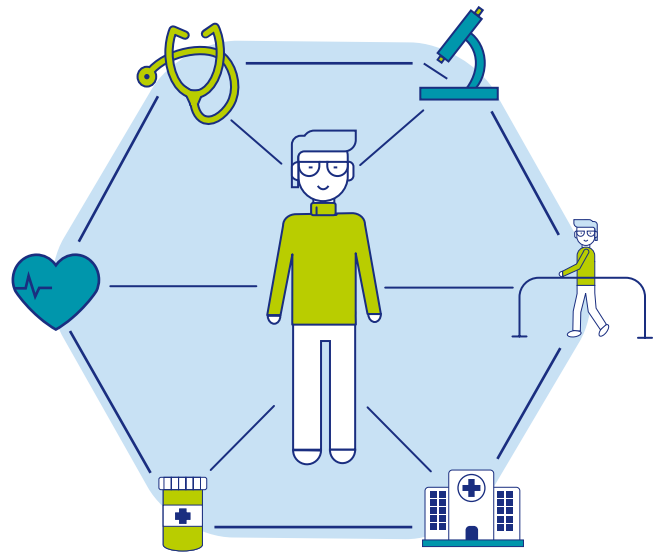


Five commitments from the Government

The Government has guaranteed that “our high standards of health improvement, health security, food safety and environmental protection [will not] be compromised in any way [as we leave the EU]”.² The Government has further assured the public that anyone attempting to dilute our public health protections during the Brexit negotiations, or after Brexit, may be subject to legal challenge.

The Government has reaffirmed its commitment to protecting and improving the public’s health as a vital “part of our national DNA”. Our current and future trading partners will, it clarified, “expect us to continue to prioritise health”³, and the Government has given a clear commitment that, as the UK negotiates our future trade agreements, there “will be no rollback of [public health] standards because they are at the heart of what we believe to be right and proper”.⁴

Formally recognising the ‘Do No Harm’ coalition in Parliament, the Government has made clear that “there is now genuine recognition on all sides of the Brexit argument that public health must be at the epicentre of our engagement”.⁵ Despite the divisive nature of the EU (Withdrawal) Act discussions, all sides are now united around a commonly-held commitment to protecting the public’s health after Brexit – a shift in focus in the UK’s Brexit negotiations.

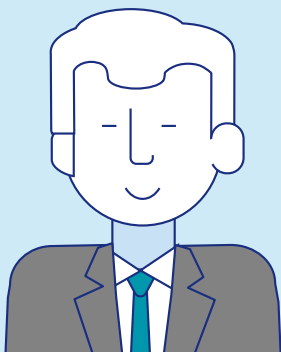


The Government has made five commitments to protecting the public’s health as we leave the EU:

1. An unequivocal guarantee that our public health protections and standards will be the same or higher when we’ve left the EU.⁶
2. Public health protections and standards – and our National Health Service – will not be ‘traded away’ with the US or any other trade partner.⁷
3. The Government – or others – can be challenged and held to account in our domestic courts after Brexit should it fail to meet these commitments.⁸
4. Our health partnerships with the EU will remain just as strong in the future.⁹
5. The public’s health will be at the ‘epicentre’ of the UK’s Brexit negotiations and future policy making.¹⁰

“ Our guarantee of equivalent or higher standards of health protection and health improvement when we have left the EU is unequivocal ”

Rt Hon Jeremy Hunt MP, Secretary of State for Health and Social Care during passage of EU (Withdrawal) Act, 18 April 2016 ⁶



What is the legal status of the duty to ‘Do No Harm’?

The EU (Withdrawal) Act preserves and converts EU law into UK law (called retained EU law) and creates powers for the Government to amend laws in areas where the EU has legislated.¹¹

The Government has stated that these powers will only be used to make limited “technical changes” as it prepares our statute book for March 2019.¹² The EU’s duty to ‘Do No Harm’ (Article 168 of the Lisbon Treaty) will continue to be enforceable in two key ways. The duty will be:

1. Preserved as part of retained EU law
2. Used to interpret and apply retained EU law and all other UK domestic law¹³

In this way, the duty to ‘Do No Harm’ establishes an important test for the UK’s Brexit negotiators and Ministers when they are:

1. Using their powers to amend retained EU law
2. Interpreting existing legislation and introducing future legislation on any policy matter
3. Negotiating the terms of a withdrawal agreement with the EU

4. Negotiating future free trade and investment agreements, for example with the US
5. Putting the terms of those agreements, when agreed, into UK law

In all five situations, the Government has promised to pay active regard to “a high level of human health protection” when it makes and implements policy.¹⁴ As we leave the EU, the UK’s Courts will interpret retained EU and UK domestic law (e.g. the NHS Act 2006) consistently with the duty to ‘Do No Harm’ – and the UK’s Brexit and trade negotiators will need to place a high level of human health protection at the heart of their negotiations, whatever issue or sector is being addressed.

“The effect of Article 168 in the domestic law of this country before exit will continue after exit...we are now in a good position to offer certainty”. Lord Duncan of Springbank, Lead Minister in the Lords during passage of EU (Withdrawal) Act¹⁵

What should you consider if you’re a civil servant working on Brexit policy?

1. Actively consider whether or not policy proposals will meet the test of ensuring a ‘high level of human health protection’ by being aware of relevant public health standards and checking policy proposals against the minimum standards set out. If you’re unsure whether a standard exists, please contact the Faculty of Public Health, at policy@fph.org.uk.
2. Carefully consider the health impacts of proposals – will they increase health harms or involve a rolling back of agreed public health standards. Invite public health and other independent experts to offer professional advice at an early stage.
3. Formally consult on policy proposals in as transparent a way as possible, ensuring a reasonable time frame for stakeholders to respond to the consultation. Actively consider how to involve the health community in your consultation.
4. A cross-government approach will support you in upholding the Government’s commitment

to prioritise health as you develop policy. For example, seek out advice from colleagues in the Department of Health and Social Care.

5. The High Court refers to the ‘Precautionary Principle’ in its judgment in support of standardised tobacco packaging.¹⁶ It is also a key element of the EU (Withdrawal) Act 2018.¹⁷ Where there is scientific uncertainty about whether and how harmful a policy proposal might be to human health, animal health, plant health or to the environment, using the Precautionary Principle will help you to manage any risks involved and to prioritise health. The European Commission has published a helpful guidance document, ‘The Precautionary Principle: decision-making under uncertainty’, which we would recommend you consult when developing your policy proposals.¹⁸
6. Actively view policy development as an opportunity to champion the health and wellbeing of the UK’s population – and to build a healthier workforce and economy.

What should you do if you're a health campaigner working on Brexit policy?

1. Scrutinise policy proposals and legislation against existing public health standards and protections to ensure proposals uphold or improve what is already in place.
2. Form or strengthen collaborative and consultative relationships with civil servants and officials. Ask to meet them to offer your professional advice and to understand how you can be of most help within the policy context in which they are operating and the challenges they face.
3. Encourage those civil servants working in the less obviously 'health-related' government departments to also recognise their responsibility to work within the letter and spirit of the Government's 'Do No Harm' commitments. Ask them to seek out the views of the health community when developing new policy that may impact on the public's health and wellbeing.
4. Respond to relevant government and select committee consultations, where possible working collaboratively with partners to demonstrate health sector support. Highlight the public health commitments the Government has made in your consultation responses and the health community's expectation that these will be delivered.
5. If you are concerned that a policy proposal might lead to the rolling back of a public health protection or standard, share your thinking with colleagues and other experts to sense check your concerns and to explore potential solutions. Write to the relevant civil servants and officials – with as much sector support as possible – and ask to meet them to discuss.
6. Raise awareness of any concerns in thought pieces and on social media using #DoNoHarm to keep the public health duty front of mind and to remind ministers and the health community of the commitments the Government has made.
7. Share with the Faculty of Public Health any arguments ministers or government departments use to explain why they are not going to meet one or more of the public health commitments, so that we can monitor and seek a legal opinion where necessary.
8. Write to your local MP, interested peers and relevant select committees and ask them to ask relevant ministers how they are delivering against the 'Do No Harm' commitments the Government made during the EU (Withdrawal) Act's passage through Parliament.
9. Share new ideas and thinking about how the Government could improve public health protections and standards once the UK leaves the EU by using #DoNoHarm.
10. Importantly, where the Government is keen to develop higher public health standards and protections, highlight and celebrate this progress through your networks and with the media using #DoNoHarm. And let the Faculty of Public Health know as well.



Endnotes

1. Treaty of the Functioning of the European Union, Article 168, Public Health, <https://bit.ly/1q3mD7t>
2. Rt Hon Jeremy Hunt MP, <https://bit.ly/2HaMvfz>
3. Rt Hon Jeremy Hunt MP, <https://bit.ly/2HaMvfz>
4. Hansard, EU (Withdrawal) Bill, Lord Duncan of Springbank, 19 March 2018, <https://goo.gl/sYBZZm>
5. Hansard, EU (Withdrawal) Bill, Lord Duncan of Springbank, 16 May 2018, <https://goo.gl/zLK4TP>
6. Rt Hon Jeremy Hunt MP, <https://bit.ly/2HaMvfz>
7. Hansard, EU (Withdrawal) Bill, Lord Duncan of Springbank, 19 March 2018, <https://goo.gl/sYBZZm>
8. Hansard, EU (Withdrawal) Bill, Lord Duncan of Springbank, 16 May 2018, <https://goo.gl/zLK4TP>
9. HM Government, The future relationship between the United Kingdom and the EU, July 2018, <https://bit.ly/2uuREWp>
10. Hansard, EU (Withdrawal) Bill, Lord Duncan of Springbank, 16 May 2018, <https://goo.gl/zLK4TP>
11. Department for Exiting the EU, The EU (Withdrawal) Bill receives Royal Assent, 26 June 2018, <https://bit.ly/2KchlWb>
12. Hansard, The Rt Hon David Davis MP, Legislating for UK Withdrawal from the EU, 30 March 2017, <https://goo.gl/KGdCBk>
13. Hansard, EU (Withdrawal) Bill, Lord Duncan of Springbank, 16 May 2018, <https://goo.gl/zLK4TP>
14. Treaty of the Functioning of the European Union, Article 168, Public Health, <https://bit.ly/1q3mD7t>
15. Hansard, EU (Withdrawal) Bill, Lord Duncan of Springbank, 23 April 2018, <https://bit.ly/2C4LgMC>
16. Courts and Tribunals Judiciary, BAT v Department of Health Judgment, 19 May 2016, <https://bit.ly/2KtL09u>
17. National Archives, EU (Withdrawal) Act 2018, S.16, Maintenance of environmental principles etc, <https://bit.ly/2K5i835>
18. European Commission, 'The precautionary principle: decision-making under uncertainty', http://ec.europa.eu/environment/integration/research/newsalert/pdf/precautionary_principle_decision_making_under_uncertainty_FB18_en.pdf, September 2017



**FACULTY OF
PUBLIC HEALTH**

September 2018

For further information contact:

Mark Weiss | Senior Policy Officer | markweiss@fph.org.uk | 0203 696 1479

About UK Faculty of Public Health

The UK Faculty of Public Health (FPH) is a membership organisation for approximately 4,000 public health professionals across the UK and around the world. We are also a registered charity. Our role is to improve the health and wellbeing of local communities and national populations. We do this by supporting the training and development of the public health workforce and improving public health policy and practice in partnership with local and national governments in the UK and globally.