

# This week in Brexitland, February 25, 2022



Nick Tyrone

Feb 25



1. What my own work on the subject tells me about Brexit deregulation and what to make of possible “Brexit upsides” to come

Okay, confession time. Some of you may know this already, and the information I’m about to divulge is available to anyone who might wish to perform even the most cursory of internet checks on me, but for two years, between 2017 and 2019, I was the Director General of something called the Red Tape Initiative. If you think it sounds pretty Brexity, that was intentional - I was starting the thing from scratch with Oliver Letwin as chair. Given both he and I were Remainers, I worried that the whole thing would be taken as a Remainer attempt to prove that Brexit was a bad idea and that would affect the work the organisation was going to attempt to do. I wanted to play the whole thing with as straight a bat as possible, for reasons I will now explain.

As a hardcore Remainer, someone who had spent years and years doing things like organising panels at Labour and Tory conferences to discuss the European question, I was completely gutted by the result in June 2016. I went through several phases of grief very quickly and arrived at this place: Brexit is going to happen. I don’t see how it will be stopped. I have always considered the idea of the UK leaving the EU to be a bad one. However, perhaps throwing myself full tilt into one area where Brexiters had for years said the EU was holding us back, namely EU derived regulation, I could try and come to terms with Brexit.

I never believed for a second in the whole Five Eyes as a trade bloc thing, or even that we would get a trade deal with the US of any significance. I never believed that we would get access to the single market on par with membership without being part of the institutions and paying in. However, I was open-minded to the idea that there may indeed be some EU Directives that when applied to the UK, were at least relatively bad news and that if we had to leave, at least we could make the most of the new regulatory environment, freed from any European Union considerations.

The Red Tape Initiative looked at nine sectors of the economy - housing, infrastructure, training & apprenticeships, retail, tech, health, energy, tourism, media and culture - ones that should have been the most in line for a Brexit upside given they are the least traded. What that means is they don't export very much or at all, and so if there was a lot of troublesome EU red tape about that then got eliminated, they should stand to get the most benefit as they wouldn't even face the downside of losing access to the single market given they didn't use that freedom in the first place.

We contracted Oliver Lewis, Research Director of Vote Leave who went on to work as a SpAd for Boris Johnson, to be our research director; we did this through Hanbury Strategy, itself a public affairs company started by a couple of ex-Tory SpAds. In a weird way, I was extra determined to find stuff to deregulate given I emotionally felt like it was my one way of coping with Brexit. This was my route to trying to accept that perhaps there was something good about it, as all I could see were the negatives at the time.

I remain shocked at how little we managed to find in those two years in the way of bad regulation, or even regulation you could alter in some meaningful way to produce real economic change. In fact, I can summarise all of the most important points I learned about EU regulation as it pertains to a post-Brexit Britain right here and now. This is a little long, but stay with me here - I think I've covered all of the relevant points on post-Brexit regulatory changes that would be genuinely material in the following mini-section with one caveat, that being we didn't cover financial services which I'll talk about briefly at the end of this section. In other words, Jacob Rees-Mogg look no further than this for your Brexit opportunities:

1. We did more work in the retail sector than any other and yet we found no EU Directives that could be changed to Britain's benefit. Large retail companies were dead set against any changes to existing regulation. We tried to help out small retail companies by giving them the details of EU Directives that they might find difficult or annoying to deal with - and still came up with nothing they wanted to change. The small companies were worried that the UK government, left to its own devices, would put in place something worse. Given "bendy bananas" were one of enduring symbols of why we had to

leave the EU, the fact that we found nothing EU-related in this sector still surprises me - but that's what happened.

2. The Mortgage Credit Directive, EU Directive 2014/17/EU, is genuinely a bad fit for the UK. It was intended to create a single market for mortgages throughout Europe, but the UK mortgage market is complex and instead of helping to simplify it, the addition of the MCD has just made things worse. So, yes getting rid of the MCD is a genuine Brexit upside as its elimination would help people get on the housing ladder, amongst other things. Watch though - this is one change they probably won't bother to make, looking for their pot of gold at the end of the rainbow instead.
3. The Habitats Directive is a good example of regulation that you would need to replace like for like and even then, it is difficult to see any real economic upside in bothering to do so. The crux of the issue is the friction between large scale building projects and the need to protect wildlife habitats, particularly for bats and some bird species. In 2011 and 2012, Defra conducted "The England Review of Nature Directives Implementation" to see how much the EU Directives were causing a problem and concluded that, and I quote, "the Directives generally work without creating an unnecessary burden". That's what we found too.
4. Being inside the single market severely limits what a government can do on "state aid", which is when governments prop up failing businesses with free cash to keep them going. The Tories used to hate any whiff of relaxing state aid rules given it's basically communism, but it now appears they love the idea more than one could have ever previously imagined. All it took was Brexit to turn some ardent free marketeers into Chavez style socialists it seems, at least in this one important area. Anyhow, relaxing state aid rules is a bad idea for lots of reasons I won't go into here, but yeah, you could do a lot more of it outside the SM if that's the way you really wanted to go, but I'm not keen on turning Britain into Venezuela myself.
5. Procurement regulations could be improved upon, but not to the degree that it would save either private or public enterprises any serious money.
6. In the tech sector, there are things you could theoretically do to make life easier for tech companies in the UK - however, and this is a big however, if they come at the loss of easy access to data from within EU countries, then any possible gains would very likely be wiped out. So, something like GDPR -

you can argue it's overkill and the UK should get rid of it, but if that means that trading data between the EU27 and the UK becomes way more difficult as a result, keeping the relatively minor irritations involved in GDPR would definitely be worth it.

7. Health was a much more interesting sector than I had anticipated. You wouldn't know it from some of the rhetoric that flies around, but the NHS has historically had some battles with the EU Commission. You see, the single market doesn't like monopolies and the NHS is, of course, a monopoly. The NHS has constantly looked for an exemption from EU regs designed to break up monopolies to no avail. There are also specific EU Directives that the NHS doesn't really like all that much: The recognition of Professional Qualifications Directive (2005/36/EC) makes it so that the NHS has to over-recognise qualifications from EU applicants, while making it very difficult to hire doctors or nurses from the US or India; the Falsified Medicines Directive (2011/62/EU, came into full effect in 2019) is overburdensome to the NHS, making it have to do things that are expensive to solve a problem it does not have in the first place. However - and this is key - even if you solved all of these problems by repealing the relevant Directives, it would not come remotely close to making up for what losing freedom of movement has done to NHS staffing. Just saying, "Well, now the UK can do what it likes on health workers coming from abroad to fill the gaps" isn't enough. While in the EU, the free market sort of took care of this for us - workers came and went to and from the continent as we needed them. And it turned out, we really needed them most of the time. Now the NHS has to try and lure people in off its own back. And that costs money. Your money. Like all things Brexit, health comes down to this: Yes, there are ways being outside of the orbit of EU institutions can be used to the UK's advantage, but they never make up for what being inside of the single market offers any country in terms of advantages. It's like we've paid £30 in order to have the opportunity to make £20.
8. There is a lot of "gold plating" around. What this means is that EU Directives tend to come with a lot of appendices that allow you to bend things to your own country's needs. This mostly got ignored during our time as EU members, as the UK simply transcribed the EU Directives into British law in the harshest way possible. So, if a Directive came with a range of options,

we'd almost always pick the worst end of it from a British perspective. Why we did this was complicated and would require a whole other article to begin to try and explain - sufficed to say, so much of what was "stifling" about EU regulation was our own fault in terms of application of the Directives. Like many things related to the UK's EU membership, we constantly made things harder for ourselves than they actually needed to be.

9. In addition to the "gold plating", I even found what I came to call "platinum plating" - this is where the UK government clearly decided to use the EU Directive as an excuse to put in place even harsher regulation than the Directive itself called for. Take the European Energy Taxation Directive (2003/96/EC). For years this was used as an excuse for why the UK government couldn't allow petroleum companies a tax break on synthetic fuels that would have a much lower carbon emission. Except, the EU Directive clearly and explicitly allows countries to apply tax incentives for exceptionally low-carbon or exceptionally non-polluting synthetic road fuels. When the UK government transcribed it into British law, it removed this exemption, I'm guessing because it simply didn't want to allow the tax break for Treasury reasons and used the EU as a convenient excuse to do this.
10. We could get rid of the need to have all of that fast talking tagged onto the end of radio adverts. That would be something, I guess.

There is a lot more detail I could give you guys - I did work on it for two years, so I've got a lot of stuff to talk about on EU regulation - but these are the major findings. Yet even if I wrote a whole book on this subject, it all amounts to the same thing. Yes, there are some small things we could improve via being outside the single market. But none of them come close to making up for having erected trade barriers with every neighbouring country. Not even remotely close. They can search all they like for a deregulatory nirvana, but it does not exist.

The one thing I can't talk about with any authority is financial services. We didn't touch this sector because it's too big and too technical for our small team to do it justice. Could we deregulate the City to post-Brexit Britain's advantage? Possibly, but I get a distinctly uneasy feeling about this. "City chiefs to unleash £80bn Brexit 'Big Bang' as ministers scrap EU red tape" reads a Telegraph headline this week, which refers to a plan to deregulate the insurance sector. Again, I will try and keep an open mind here, but my first reaction to these proposals is: Yikes. Anyone remember 2007/2008?

## 2. Is Jacob Rees-Mogg deeply confused about Brexit?

On Valentine's Day, Rees-Mogg, who let us remind ourselves here is the actual, current minister for Brexit Opportunities, lavished praise on an IEA report that talked about product standards post-Brexit. The report said that it would be a waste of time and money to create and maintain new, UK only product standards and certificates, such as the UKCA, and instead should just accept standards from abroad in order to make trade easy. So, basically the UK just accepts EU standards for EU goods, US standards for US goods, and for export, creates things to those standards.

Rees-Mogg even expanded on this idea in a Times interview in which the minister said:

"In my view, there's no point in repeating things that other organisations and countries do to a perfectly competent standard. If a widget is a good and effective widget, why do we need to put the cost on companies of testing it twice?"

While I don't agree with Rees-Mogg all that often, I agree with him here - setting up UK certifications will just increase red tape for British businesses across the board. The problem with Rees-Mogg declaring this a good idea, however, is that it flies in the face of what the Tories have not only been talking about for years in regard to Brexit, but planning to do as well, namely setting up all new certifications and standards that are British in origin and rejecting EU versions of the same things. This is being done all in the name of "sovereignty".

Embarrassingly, Number 10 were questioned by the FT about this and were forced to say that no, things hadn't changed, certificates like UKCA are still going ahead. Now, my question here is: does Jacob Rees-Mogg really know so little about what his own government is planning in terms of "Brexit opportunities" that he wasn't aware of plans in motion to create UK-derived certifications? And further, what does this say about the whole Brexit project at this stage that someone as close to the heart of it as Jacob Rees-Mogg could be this confused about what it is attempting to achieve?

Thanks for reading. Please subscribe if you haven't already and here's the site if you want to leave a comment or like:

[nicktyrone.substack.com](http://nicktyrone.substack.com)