UK IN A CHANGING EUROPE

REGULATING AFTER BREXIT

FOREWORD

Regulation, and the supposed over-regulation practiced by the European Union, were central to the Eurosceptic arguments put forward by Conservatives during the almost two and a half decades between the signing of the Maastricht Treaty and the UK's EU referendum in 2016. However, as this report makes clear, seizing any regulatory opportunities offered by the decision to leave the EU is proving more difficult than criticising the regulatory tendencies of Brussels.

In what follows, Joël Reland examines what has happened to regulation since the UK left the European Union and the challenges that remain. I am grateful to him for all his hard work on this project, and to Jill Rutter, Sarah Hall and Catherine Barnard for their reviews of the text. As ever, the UKICE team played a part in proofing, editing, and designing the final product and my thanks to them for their hard work.

I hope you find what follows useful and informative, should you have any comments or questions, please do not hesitate to get in touch. If you are interested in sponsoring UKICE or any of our activities and publications, please do contact me.

12 May 2025

Professor Anand Menon
Director, UK in a Changing Europe
Anand.menon@kcl.ac.uk

CONTENTS

EXECUTIVE SUMMARY

- Deregulation was at the heart of the Conservative vision of Brexit. Conservative Eurosceptics had long argued that overzealous EU regulation held back British business.
- Boris Johson thus negotiated a Brexit deal which gave Great Britain significant freedom to diverge from EU rules and regulations. For this he was willing to accept significant regulatory barriers to trade with the EU and between Great Britain and Northern Ireland.
- Yet the UK has done very little to diverge from EU regulations since Brexit. Though Conservative governments identified hundreds of EU-inherited rules they wanted to reform, replace or repeal, they only delivered a handful of substantive changes - for example banning live animal exports, establishing new freeports and repealing the bankers' bonus cap.
- The main reasons for the lack of divergence are that it makes it harder to trade with the EU (still by far the UK's largest trading partner); a lack of clear strategy for where and how to diverge; and a lack of capacity in a state overburdened by other post-Brexit responsibilities.
- The government also failed to anticipate 'passive divergence', where EU regulatory changes create divergence by default, and to develop a strategy for responding. Passive divergence continues to create new barriers to trade between Great Britain and the EU and Northern Ireland (which remains aligned to EU goods regulations).
- Brexit also increased the likelihood of policy divergence between the Scottish and Welsh governments and Westminster. Concerned about consequent trade effects, Westminster responded with an 'Internal Market Act' that significantly constrains the devolved governments' regulatory freedom and has become a source of major political tension.
- Unlike its predecessors, the Labour government has indicated a willingness to align with EU regulations to avoid future passive divergence.
- The key tool for this is the Product Regulation and Metrology Bill, which allows the government to replicate EU product regulations. However, the government has been unclear about when and where it intends to align, and there are concerns around a lack of parliamentary oversight of decisions to align.

- There are also signs that the new government is accelerating a trend begun under Rishi Sunak of being more receptive to the concerns of the devolved governments. It is reviewing the Internal Market Act and showing an openness to alignment with EU rules where the Northern Ireland Assembly expresses concern about divergence.
- The implementation of the UK's post-Brexit regulatory regimes is still not complete. Failure to complete these could hinder the progress of the UK-EU reset as well as the government's wider ambitions for regulatory reform – as overstretched departments lack bandwidth to focus on new tasks.
- The government has shown an interest in deregulation as a means to boost economic growth, especially in services sectors and on planning. But there is a lack of evidence to support its claims that deregulation will drive significant growth.
- Another way the government could seek to increase economic growth is through reforming the UK's regulatory relationship with the EU. The report identifies two ways it can do so while adhering to its red lines.
- 'Replication' involves voluntarily aligning with EU regulatory changes to avoid divergence. 'Integration' implies the negotiation of new binding agreements where the UK formally aligns with EU regulations in specific areas – e.g. veterinary standards or emissions trading – in exchange for 'frictionless' access to parts of the EU market.
- Integration brings greater economic benefits than replication, but the price is the UK losing its ability to set its own rules in those areas. It also requires the EU to be willing to offer the UK selective access to its internal market.
- The UK needs to ensure its multiple regulatory objectives do not undermine one another. It may see divergence from the EU on services as a way to boost growth and build ties with the Trump White House, but it could, in turn, reduce the EU's appetite for a 'reset' of economic relations. Conversely, regulatory alignment with EU agrifood or carbon pricing rules could lead to backlash from the United States.

INTRODUCTION

Regulation is something of a hot topic in British politics. The Prime Minister Keir Starmer has diagnosed an "overcautious" and "flabby" state as an impediment to effective government. His Chancellor Rachel Reeves sees an overabundance of regulators and red tape as a barrier to economic growth. And Ambassador to the United States, Peter Mandelson, says the UK needs to embrace "opportunities opening up as a result of Brexit", by aligning more closely with some US regulations in order to extract trade concessions.

The last point is especially salient, as any discussion of the UK's approach to regulation must take stock of the significant changes caused by Brexit. For many Conservatives, Brexit was a fundamentally deregulatory project, rooted in the idea that overzealous EU regulation was holding back British businesses. It was for this reason that Boris Johnson negotiated a 'hard' Brexit deal, placing the UK outside the EU single market and customs union and giving it the freedom to unpick EU regulation. In so doing, he promised to make the UK 'the best regulated economy in the world'.

Yet, for all the grand rhetoric, the UK has done very little to diverge from EU regulations. This report audits the (limited) extent of post-Brexit divergence, asks why regulatory reform has been so difficult, and highlights the key outstanding issues.

Four challenges to regulatory reform stand out. First, the Johnson government underestimated the costs of divergence from the EU, which accounts for over half of the UK's trade. For firms serving both the UK and EU markets, divergence makes life more complicated as they must comply with two rulebooks instead of one, adding administrative time and cost. This complicates life for British exporters while making the UK a less attractive destination for investment, and was the reason why many plans for radical divergence – for instance on data protection, conformity assessments and medical devices – were reined in.

Second is the state of the UK's 'internal market'. EU membership created a common rulebook for the four UK nations to follow, which has now been dismantled. Northern Ireland remains aligned to EU goods regulations, meaning that divergence from the EU often also means divergence between Great Britain and Northern Ireland, which is both an economic and political problem. Brexit also gave the Scottish and Welsh governments greater freedom to diverge from the rules of Westminster but – concerned about potential trade barriers

within the UK – the government responded with an 'Internal Market Act' that significantly constrains the devolved governments' regulatory freedom and has become a point of major political tension.

A third issue is regulatory strategy. No clear direction was ever set for the UK's approach to regulation post-Brexit, with ideas for reform often developed on the whim of individual ministers. Many were consequently poorly thought-through or succumbed to ministerial churn, while the few which were implemented lacked a coherent purpose. Thus, the UK banned the export of live animals on animal welfare grounds, while striking a trade deal with Australia allowing the import of more meat reared to lower welfare standards. The UK has also never developed a strategy for responding to 'passive' divergence – changes to EU rules – which, over time, create an accretion of regulatory differences and, therefore, further trade frictions.

A final challenge is state capacity. Brexit meant the UK had to take responsibility for a wide range of regulatory functions – such as subsidy control, competition and mergers, and environmental protection – which used to sit with the EU. It also made London responsible for implementing a range of new regimes, like a reformed immigration system and border checks on goods. This contributed to the near-doubling of the size of the civil service. Yet, even so, the new responsibilities placed on them left officials with little room to consider more strategic ideas for regulatory reform.

The Labour government has thus inherited a regulatory state suffering from both structural and strategic challenges: being asked to do far more than it has capacity for, and without a clear set of objectives. Addressing these challenges entails difficult trade-offs.

Structurally, Labour's regulatory ambitions will demand more, not less, of the state. It wants to merge regulators, streamline regulation, and promote new frameworks in emerging sectors; all while seeking to align with EU product regulations, via the Product Regulation and Metrology Bill, and undertaking a review of the Internal Market Act. These are major objectives requiring significant administrative resource to plan and deliver. Alongside all the existing post-Brexit responsibilities the UK has absorbed, not to mention planned cuts in civil service budgets and headcount, government will have to think hard about what it is willing to let the state do less of, if it is to deliver on all its regulatory ambitions.

Which brings us to the strategic challenge. This government appears willing to grapple with the economic costs of Brexit through a different regulatory approach to EU relations. Given its red lines of no single market or customs union, there are two broad options at its disposal. One is 'replication', which means the UK

unilaterally copying EU rules without being formally subject to them – which is the implicit strategy of the Product Regulation and Metrology Bill. This maintains UK autonomy over its lawmaking, reduces the amount of regulatory work the UK has to do itself, and can help avoid new trade frictions from further passive divergence with the EU. However, it does not remove any of the existing barriers to trade with the EU, so the overall economic gains are likely to be limited.

The second option is 'integration', which could bring greater economic gains. This involves the negotiation of new binding agreements where – like Switzerland – the UK formally aligns with EU regulations in specific areas in exchange for much smoother access to the EU market. This actively removes existing trade barriers and brings greater economic benefits, but the price is the UK losing its ability to set its own rules. It also requires the EU to be willing to offer the UK selective access to its internal market – hardly a given.

The government must soon decide where it wants a closer regulatory relationship and where it prefers to maintain autonomy from the EU. The return of Donald Trump to the White House complicates this picture, as UK attempts to avoid tariffs by aligning with the US on tech and AI regulation could see Brussels lose interest in a reset of economic relations. The UK's various regulatory objectives, in other words, do not necessarily sit well together.

SECTION 1: POST-BREXIT REGULATION: THE CONSERVATIVE ERA

THE BREXIT REFERENDUM AND NEGOTIATIONS: THE ROLE OF REGULATION

Freeing the UK from EU red tape was a foundational idea of British Euroscepticism, with Margaret Thatcher's 1988 Bruges speech serving as a rallying cry: "we have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at a European level". By the early 1990s, colourful dispatches from the Telegraph's Brussels correspondent (a certain Boris Johnson) about the latest interventions of 'Brussels bureaucrats' – on everything from condom dimensions to banana bendiness – were held up as evidence of the overzealous nature of EU regulation. For Conservative Eurosceptics like John Redwood, this created a heavy burden on small businesses, which lacked the resources to navigate a complex maze of bureaucratic requirements which were of little relevance to them. Certain measures – like the Working Time Directive – became totemic symbols of the overreach of the Brussels legislative machine.

While the impact of EU regulation was not central to the referendum debate, the Leave campaign did talk up the benefits of sovereignty with its promise to 'take back control of our laws'. Michael Gove said that the UK 'should be outside the single market' because 'we should not be governed by the rules that the European Court of Justice imposes on us, which cost business and restrict freedom' – a position with which Boris Johnson concurred. Others more explicitly linked the idea of sovereignty to a deregulatory agenda. The Leave campaign published a briefing arguing that EU regulatory harmonisation served the interests of 'a small number of large multinationals that lobby Brussels to use regulations to crush entrepreneurial competition'. It promised that, post-Brexit, the UK would cast off 'damaging Single Market rules' and embrace 'regulatory diversity', citing this as 'one of the great advantages of post-Renaissance Europe over China'. There was, however, almost no detail on which EU regulations should be got rid of (bar the Clinical Trials Directive) nor what 'regulatory diversity' meant in practice.

Post-referendum, aware that it mattered greatly to many of her MPs, Theresa May quickly made it clear that legal sovereignty would be a key pillar of her approach to Brexit. In her Conservative Party Conference speech in October 2016, May set red lines which in effect ruled out staying in the EU single market, while she also promised a "Great Repeal Bill" hinting that she would be removing EU laws from the UK statute book. Her January 2017 Lancaster House speech made these implications more explicit, as she echoed Michael Gove in arguing

that single market membership "would mean complying with the EU's rules and regulations… without having a vote on what those rules and regulations are… It would to all intents and purposes mean not leaving the EU at all."

What May intended to do with that regulatory freedom was much less clear. She was able in her Lancaster House speech to pinpoint the parts of the single market to which she would like to retain special access (vehicle exports, financial services) and even to espouse the benefits of "the greatest possible access" to the EU market in a future trade deal: "it makes no sense to start again from scratch when Britain and the remaining Member States have adhered to the same rules for so many years". But there was no such clarity about where, or why, it would make sense for the UK to diverge from the EU rulebook.

Over time, concerns from business combined with an increasing realisation of the implications for Northern Ireland led May to rethink the desirability of regulatory distance from the EU. In her September 2017 Florence speech, she argued that a "Canadian style free trade agreement" (removing tariffs and quotas with minimal regulatory alignment) would "represent such a restriction on our mutual market access", in terms of new trade bureaucracy, "that it would benefit neither of our economies". Instead, May highlighted that the UK and EU were starting from the "unprecedented" position of having "the same rules and regulations" and argued that the two sides should seek to preserve much of this, via a "creative" agreement on "a set of rules" to "avoid friction at the border". May supplemented the economic case for common rules with a social one: "people in Britain do not want shoddy goods, shoddy services, a poor environment or exploitative working practices".

May's creative solution ultimately took the form of her Chequers plan. This proposed a common UK-EU rulebook for goods with the UK making an 'upfront' commitment to ongoing alignment with the EU rules in the areas necessary to maintain frictionless trade in goods. The proposal would also have fulfilled the government's commitment to Northern Ireland, by maintaining an open Irish border while avoiding new regulatory barriers between Northern Ireland and the rest of the UK. The problem, however, was that some cabinet members deemed the common rulebook to sacrifice too large a degree of UK sovereignty. Brexit Secretary David Davis resigned stating that the deal was 'certainly not returning control of our laws in any real sense', with Foreign Secretary Boris Johnson following suit the next day, deriding May's deal as 'a semi-Brexit' which 'locked in the EU system, but with no UK control over that system'.

The Chequers proposition eventually secured Cabinet approval, but despite her team thinking it might prove acceptable to some European partners, the EU rejected it as 'cherry picking' on the basis that the UK would get many of the

rights of EU membership (in terms of unfettered access to the single market) without the countervailing obligations (budget payments, full alignment with EU rules). May's failure to find a Withdrawal Agreement that Parliament would pass meant she never got the opportunity to see how far she could realise her objectives in negotiations over the UK's long-term trading relationship with the EU.

It was left to her successor, Boris Johnson, to make a much more emphatic choice about the trade-off between regulatory autonomy and frictionless EU trade. Johnson decided that his primary imperative was to 'take back control of our laws' and 'use our post-Brexit freedoms to transform the UK for the better'. For this he was willing to sacrifice frictionless EU trade and a 'whole UK' exit. The Trade and Cooperation Agreement (TCA) which he negotiated was a Canadian-style deal (of the sort once derided by May), removing tariffs and quotas but creating significant new 'non-tariff barriers' in terms of paperwork and checks. It also created a regulatory border in the Irish Sea between Great Britain and Northern Ireland, which remained aligned to EU single market regulations for goods under the Protocol on Ireland/Northern Ireland.

The one major remaining constraint on UK sovereignty was the TCA's 'level playing field' commitments (designed to ensure fair competition through commitments not to regress from existing labour, social, environmental and climate standards; and to follow the same broad principles on subsidies). These were considered at the time to be the most extensive found in any trade agreement, and reflected EU concerns about how UK divergence could allow British firms to undercut EU competitors.

REGULATING AFTER BREXIT: AIMS, RESULTS, CHALLENGES

At the point the TCA took effect, the UK's baseline regulatory position was equivalent to the EU's. The European Union (Withdrawal) Act 2018 had copied the body of EU law which the UK followed as a member state onto the domestic statute book as 'retained EU law' (REUL). With its newfound 'Brexit freedoms', the UK now had the ability to reform or repeal any of that REUL as it saw fit, (notwithstanding the TCA's 'level playing field' commitments and other international obligations like non-discrimination requirements at the World Trade Organisation). This left the government with a number of important decisions to make about its future regulatory strategy.

- Which EU-inherited laws might it like to reform or repeal?
- What principles should underpin the development of future regulation? Including in areas where the UK took back regulatory responsibility from EU bodies.
- How should the UK monitor and respond to EU regulatory changes, including those which apply to Northern Ireland?
- How to deal with the increased potential for the devolved governments to implement policy which diverges from Westminster's?

The following section audits the government's approach; outlining the regulatory objectives it set itself; assessing the extent to which it achieved its aims; and explaining why, in many cases, delivery fell well short of ambition.

AIMS

Finding opportunities to regulate more nimbly than the EU was a primary preoccupation of Boris Johnson's government. On 24 December 2020, the day the TCA was agreed, Johnson delivered a speech promising to "originate new frameworks for the sectors in which this country leads the world, from biosciences to financial services, artificial intelligence and beyond." In February 2021, the government commissioned a Taskforce on Innovation, Growth and Regulatory Reform (TIGRR) – led by three Conservative MPs – to look into options for regulatory reform. In May 2021, the TIGRR delivered a report arguing that UK regulation 'should put innovation at its heart', through regulation more 'proportionate' to the size of business and level of risk being regulated. This, it

argued, 'should only be the start' as government 'should undertake a complete audit of EU derived law and look for further opportunities to deregulate and lower burdens on business'. This appeared to set the backdrop for a 'Singapore-on-Thames' approach to regulation which (ignoring the interventionist nature of the Singaporean state) came to signify a focus on deregulation to boost innovation and international competitiveness, sacrificing integration with the EU market as a result.

In embarking on this approach, the Johnson government quickly came to focus on the quantity, rather than quality, of reform. This approach is encapsulated in the *Benefits of Brexit* policy paper, published in January 2022, just after the resignation from government of Johnson's Brexit negotiator Lord Frost, who had been put in charge of identifying new regulatory opportunities. The paper paid homage to the TIGGR report and promised to turn the UK into the 'best regulated economy in the world', by making use of its new 'freedom to regulate in a more proportionate and agile way'. Yet it was hard to identify any proportionality or agility in a bloated 105-page document which outlined the regulatory possibilities open to the UK in almost every policy area imaginable – many of which had nothing to do with leaving the EU (like reforming HGV driver training), or were symbolic gestures (like reintroducing blue passports) or vaguely worded ambitions (like 'defending UK economic interests'). There was no sense of which issues would be prioritised nor how they would be delivered, and the primary aim of the document appeared to be to give the impression of large-scale, rapid change – performing divergence rather than developing a plan to deliver it.

Some form of a plan emerged the following month, when prominent Brexiter Jacob Rees-Mogg was appointed Minister of State for Brexit Opportunities and Government Efficiency and made a cabinet minister. He immediately published an op-ed in the *The Sun*, imploring readers 'to write to me with the regulations you want abolished... Through thousands of small changes, we can enact real economic change', and then announced a target to cut "at least £1bn of EU red tape". The theory of change was that, by scraping as many EU 'regulatory barnacles' off the British 'ship of state' as possible, it would become leaner and more dynamic. To deliver his vision, Rees-Mogg announced plans for a 'Brexit Freedoms Bill' – finally introduced under Liz Truss's brief premiership in September 2022 as the Retained EU Law Bill and made law as an Act in June 2023 – including a 'sunset clause' which would see all retained EU law expire by default on 31 December 2023. This was supplemented by a 'Retained EU Law Dashboard', published on the government website in June 2022, to provide public with live data on the amount of REUL which had been reformed, revoked or retained.

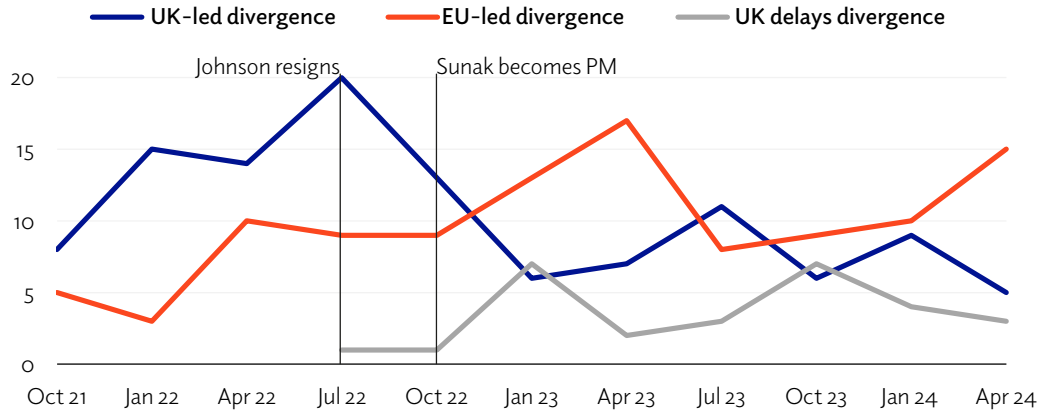
By the time Boris Johnson left office in September 2022, his government had laid down a strategy prioritising the removal of as much REUL as quickly possible, with little focus on the finer details. Both candidates in the run-off to replace him, Liz Truss and Rishi Sunak, committed firmly to maintaining the REUL sunset clause, with Sunak – in his desperation to gather momentum – releasing a campaign video involving a shredder and stacks of A4 paper, promising to fast-track the deadline and 'review or repeal' all REUL within his first 100 days. Yet, once in office, Truss allowed departments to delay the sunset deadline until 2026 where necessary, and, after being installed as leader following the ill-fated Truss interregnum, Sunak too adopted a more measured approach.

It soon became clear that Sunak's government would put the concerns of business before Brexit ideological purity. UK in a Changing Europe research found a marked decrease in the amount of plans for 'active' divergence (where the UK seeks to deviate from EU legislation) in the first few months of the Sunak regime. In addition, his government opted to delay a number of significant ongoing pieces of active divergence which were creating problems for business, including the mandatory use of the new 'UKCA' product mark, new veterinary certification requirements for meat exporters and registration deadlines under the UK's 'REACH' regime for chemicals. In announcing the UKCA delay, then-Business Secretary Grant Shapps argued it would 'remove barriers to businesses so they can get on with their top priorities'.

The pace of UK plans for divergence from EU law slowed significantly after Boris Johnson's resignation

New cases of planned regulatory divergence identified by UK in a Changing Europe's 'Divergence Tracker', by quarter, Ocotber 2021 to April 2024.

UK IN A CHANGING EUROPE



Source: UK in a Changing Europe, UK-EU Regulatory Divergence Tracker: first eleven editions (October 2021–April 2024).

Businesses had also expressed grave concerns about the REUL Act's sunset clause creating an uncertain regulatory horizon that prevented them from planning ahead – due to the prospect of thousands of laws disappearing with no idea about what, if anything, they would be replaced with. Sunak's government

eventually opted to abandon the sunset clause, with Shapps's successor as Business (and Trade) Secretary Kemi Badenoch defending herself in front of the European Scrutiny Committee by saying: "We are not arsonists. I am certainly not an arsonist; I am a Conservative. I do not think a bonfire of regulations is what we wanted."

Boris Johnson had repeatedly ignored concerns raised by business about the economic costs of regulatory divergence, arguing that short-term pain was in some cases necessary to obtain longer-term gain. For example, when the UK suffered a critical shortage of HGV drivers and abattoir workers in the autumn of 2021, Johnson argued that this was a necessary 'period of adjustment' as the UK reduced its reliance on EU migrant labour and instead began creating more 'high skill, high wage' jobs for UK nationals. Questionable economic logic aside, this underlined the extent to which the pursuit of 'Brexit benefits' justified other costs. By the time Sunak took office, the picture had changed markedly, as the Conservatives lost fiscal credibility following Liz Truss's mini-budget and consumers faced rocketing inflation, fuelled by a global spike in energy prices. Embarking upon further divergence risked worsening an already very difficult economic picture, and decisions to delay further divergence were in some cases explicitly linked to controlling inflation.

Sunak also showed greater sensitivity to the effects of divergence when it came to Northern Ireland, which remains aligned to EU goods regulations. The conclusion of the Windsor Framework reflected an awareness of – and willingness to grapple with – the trade problems created by the trade border in the Irish Sea. Then, in January 2024 his government published a command paper entitled *Safeguarding the Union*, intended to convince the Democratic Unionist Party to restore the Executive in Northern Ireland. That saw ministers impose new commitments on themselves to consider whether new legislation risks creating greater divergence between Great Britain (GB) and Northern Ireland (NI). The strength of the rhetorical commitment in the paper to avoiding future GB-NI trade disruption created an additional constraint on active UK divergence from EU goods regulations.

RESULTS

Conservative governments ultimately delivered very little significant divergence from the EU. The 'sunset' approach proved deeply counterproductive: the REUL dashboard initially catalogued 2,417 individual pieces of REUL on the UK statute book, but this continued to grow (it now stands at 6,901) – sending an alarming signal that the government did not know exactly how much REUL was within the scope of the bill. The implication was that the bill could lead to the deletion of vital pieces of law (for instance underpinning standards on food, gas or airline

safety) due to a lack of prior awareness of their status as REUL. This led to civil servants taking a crisis management approach – focused on identifying the key laws in need of retention – meaning departments had no time to take a more holistic look at their regulatory landscape and decide, strategically, where it made most sense to pursue divergence.

The result was that the review of REUL become a glorified spring-cleaning exercise. In May 2023, the government published a 'schedule' of 587 pieces of REUL to be revoked by the end of the year, yet almost every piece of legislation in the schedule had either expired (e.g. temporary regulations related to the 2001 foot-and-mouth crisis) or was redundant post-Brexit (e.g. regulations concerning the EU's fisheries partnership agreement with the Solomon Islands). Meanwhile, the UK in a Changing Europe's *UK Regulatory Divergence Tracker* (by no means an exhaustive database) identified 94 cases of the UK initiating plans for divergence from EU law under Johnson – but almost none of these came to fruition.

Ultimately, Conservative governments can claim to have delivered only a handful of substantive reforms – on the export of live animals, freeports and the repeal of the bankers' bonus cap – though the economic merits of the latter two are highly contested. They also initiated reviews to streamline financial services and gene editing regulations to encourage greater innovation – but these are yet to deliver much material policy change. Meanwhile various other plans for more radical reform, for instance to AI regulation, medical devices, data protection and procurement were abandoned or significantly reined in (the reasons for which are discussed in the following section). Beyond that, most of the divergence delivered put style before substance. The government passed some symbolic measures, like permitting the sale of goods in imperial weights and measures, and the sale of champagne in pint-sized bottles (Winston Churchill's preferred measure, apparently). It also initiated largely cosmetic edits to 'working time' and GDPR data protection rules (the latter was never completed) – allowing it to claim to have acted upon two *bêtes noires* of Conservative Eurosceptics, even if the effects were negligible.

In other cases, the decision to diverge for divergence's sake had much more significant consequences. The planned requirement for goods circulating on the GB market to obtain a 'UKCA' mark (denoting conformity with UK product standards) rather than allowing them to continue circulating with a CE mark (denoting conformity with the EU's almost identical standards) created an extra hoop for businesses serving both the GB and EU markets to jump through, as they needed to obtain two sets of regulatory approvals for the same product – adding time, paperwork and cost. For that reason, many EU suppliers may not have bothered (or, for regulatory capacity reasons, have been unable) to obtain a

UKCA mark, which risked an acute shortage of essential goods on the GB market. The obligatory use of UKCA marks was eventually abandoned in August 2023, but that still meant businesses suffered two and a half years of uncertainty and had incurred many of the costs of trying to adapt to the requirements. Similarly, requirements for businesses to re-register chemicals safety data under a new UK system (known as UK REACH), even though this largely replicates data already on an EU database, has an estimated administrative cost to businesses of £2bn – and registration deadlines have been repeatedly delayed for this reason.

The one area where more radical change was delivered related to what we might call 'regulatory gaps'. Leaving the EU meant the UK (and the devolved governments) had to take over certain regulatory functions previously carried out by the EU. And so, unlike divergence from EU rules, this was something that had to be done rather being than a matter of choice for the government.

Three areas stand out. First, at Defra, Michael Gove saw the UK's exit from the EU's Common Agricultural Policy, widely criticised from both sides of the political spectrum, as a 'once-in-a-generation' opportunity to reshape agricultural policy via a new farm payment scheme which rewarded farmers for 'public goods' (i.e. environmentally friendly and sustainable practices). Second, following the end of EU freedom of movement, the Home Office introduced a new 'points-based immigration system' setting out new terms on which both EU and non-EU nationals could get a work visa. Third, the government promised to design a new subsidy control policy which, while respecting the core principles of EU state aid law, would be quicker than its predecessor, based on the principle that subsidies are valid unless proven otherwise (meaning each case would not require formal approval).

The implementation of the farm payments scheme has been beset by problems, stemming in particular from frequent changes in policy design. While Defra deliberately sought to test and update the system in collaboration with farmers, this iterative strategy has left many struggling with uncertainty about the policy horizon. In a 2023 survey by *Farmers Weekly*, 70% of farmers said that Brexit had had a 'fairly' or 'very negative' effect on their business, citing cuts in farming support and increased red tape among the main reasons. The effects of the new immigration regime have been dramatic, as the relatively relaxed salary and skills thresholds for obtaining a visa led – quite foreseeably – to non-EU migration hitting record levels. There has been far less discussion about the impact of the new subsidy regime. However, some groups have raised concerns about the barriers to querying decisions and a lack of transparency about subsidy awards.

There were other areas where the UK now had to develop its own policy approaches – whether on fishing (though quotas were set until mid-2026 in the

TCA) or trade policy where the UK could now strike its own trade agreements (for instance with Australia and New Zealand). The UK could also tweak tax policy in areas which had previously been constrained by EU rules – for example Rishi Sunak's government reformed the regime to relate alcohol duties to alcohol strength and introduced a low rate of duty on beer sold in pubs which they claimed as a Brexit benefit.

Yet, overall, the fact that most divergence has taken place in areas where the UK had no choice but to make its own policy after Brexit, alongside the paucity of significant reform to retained EU law, are testament to the difficulty of delivering divergence in practice.

CHALLENGES

Why did Johnson's government deliver so little regulatory change, when it was so central to his agenda? There are four key reasons: trade frictions, political complexities, limited state capacity and a lack of strategy.

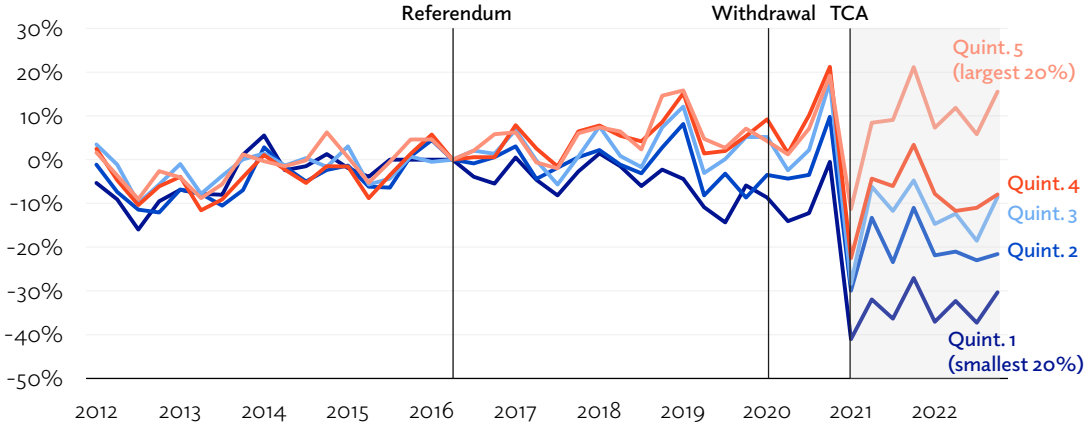
Perhaps most fundamentally, Johnson's government underestimated the economic costs of diverging from the rules and regulations of the UK's largest and closest trading partner. The EU accounts for over half of the UK's trade, with this proportion having increased slightly since Brexit. Any UK firms which want to sell into the EU market must comply with its rules and regulations, and divergence tends to make this more complicated, as they have to conform with both UK and EU rules simultaneously, rather than working to one harmonised standard. This reality served to dampen many of the more radical plans for UK divergence, such as those for a 'bespoke' medical devices regulatory regime which departed significantly from the EU's principles. While the UK might in principle have been able to design a simpler system than the EU's, in practice most firms selling into GB also sell into the EU, and it is more administratively complex for them to have to navigate two distinct rulebooks rather than one – posing a risk that some companies might simply stop getting their goods approved for the GB market (which is much smaller than the EU). The UKCA and REACH regimes are other examples of divergence being delayed because of the major administrative cost of having to get new approvals specifically for the GB market.

Divergence thus risks exacerbating the already difficult trading conditions created by the TCA. Goods in particular now face widespread new paperwork and checks, which have led to an estimated 13% fall in exports to the EU (though some put the drop much higher). Smaller firms have, unsurprisingly, struggled most to absorb the costs – with EU exports having declined for all but the largest fifth of firms, with the smallest fifth seeing a 30% drop. The greater the regulatory divergence, the greater these trade costs will become.

The TCA led to a sharp and sustained fall in relative UK exports to the EU, especially for smaller companies

UK IN A CHANGING EUROPE

Estimated changes in firm exports to EU versus RoW by firm size quintile.



Notes: Firm size measured using average employment between 2013q1 and 2015q4. Quintile 1 denotes the smallest firms and quintile 5 the largest firms.
Source: Freeman R., M. Garofalo, E. Longoni, K. Manova, R. Mari, T. Prayer, and T. Sampson (2024). "Deep Integration and Trade: UK Firms in the Wake of Brexit."

In other cases, UK divergence may lead to regulatory retaliation from the EU. A case in point was the plan to diverge on GDPR – feted as an opportunity to get rid of annoying cookies pop-ups on web browsers – which was ultimately abandoned as it became apparent it might provoke the cancellation of the EU's 'adequacy' decision for the UK, which simplifies personal data exchanges between UK and EU businesses, and was worth an estimated £1.4bn to UK firms over five years in reduced administrative costs. Elsewhere, UK divergence risked coming into conflict with international rulings to which it was subject, a reminder that EU membership was not the sole constraint on UK sovereignty. For instance, the UK abandoned plans for a 'buy British' procurement regime favouring UK-based bidders over foreign ones, through concerns it might fall foul of World Trade Organisation non-discrimination rules.

Divergence also poses specific problems when it comes to Northern Ireland, which remains aligned to EU goods regulations. In signing the Protocol on Ireland/Northern Ireland, Boris Johson – falsely – denied he was creating a regulatory border in the Irish Sea, whereas, in reality, the further the UK moved away from the EU's regulatory orbit, the more visible and divisive the Irish Sea border had the potential to become, in terms of disrupted supply chains and new regulatory checks. If the UK for instance adopted more relaxed standards on food safety or chemicals restrictions, goods made to those new, lower standards would not be exportable to Northern Ireland. The Windsor Framework eventually allowed for some exemptions to this, such as the application of new UK duties on alcohol and VAT on solar panels in solar panels, which avoided the need for new checks and levies on said goods crossing the Irish Sea to ensure they met EU requirements.

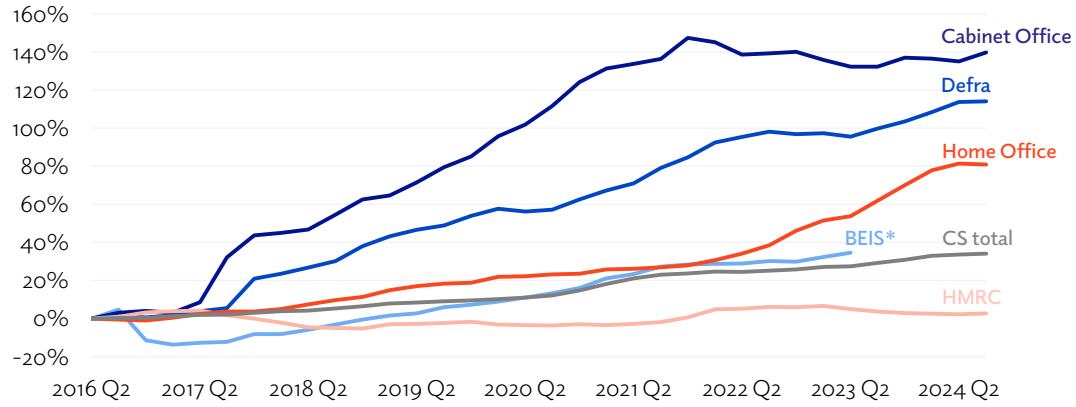
It was not merely the practicality of divergence that proved problematic, but also the politics. Boris Johnson's Brexit deal was delivered via an electoral coalition of traditional Conservatives and historically Labour-supporting 'red wall' voters. While many of the former were attached to the idea of Brexit as a deregulatory project, the latter were far less so. Take the Working Time Directive. This EU legislation, establishing legal limits on working hours, represented all that was wrong about European integration for Conservative Eurosceptics – unnecessary regulation undermining the competitiveness of the UK economy. The problem was that Red Wall voters did not favour the erosion of their workplace rights. Indeed, polling shows that the British public generally favours stronger regulation – on social rights, food standards or the environment – and this acted as a further constraint on post-Brexit drives for divergence. It is telling that two of the rare cases of substantive divergence which have been delivered relate to animal rights (bans on live animal exports and cosmetic testing on animals) – one of the most universally popular causes in Britain – and involve a more interventionist state rather than a deregulatory one.

A final challenge was state capacity. Cutting red tape, ironically, requires a lot of bureaucracy. As the failed experiment with the Retained EU Law Bill's sunset clause made clear, you cannot simply sweep legislation aside. Decisions need to be taken about how best to replace it, which takes time, human resource and effort. Given that government departments and regulators had to get to grips with lots of other new responsibilities post-Brexit (and staff numbers soared accordingly) it is little surprise they made little progress on regulatory reform. Defra, for instance, had responsibility for developing a new farm payment scheme and implementing checks on EU agrifood imports – leaving little bandwidth to focus on new regulatory challenges like novel foods and gene editing.

The Cabinet Office and Defra saw major increases in staff numbers following Brexit

% change in civil service staff numbers (FTE), selected departments, June 2016 to September 2024.

UK IN A CHANGING EUROPE



*Source: Institute for Government analysis of ONS, Public sector employment data, Q1 2009 to Q3 2024. *BEIS dissolved in February 2023.*

These were significant barriers which would be hard for any government to overcome. The Johnson government made things worse because of its lack of strategy for delivering divergence. Not only was the sunset clause a huge distraction from more targeted regulatory reform, but the government never set out clear regulatory principles for departments to focus on when developing ideas. This led to lots of half-baked plans which withered on the vine, while even those that were completed were sometimes contradictory. The UK raised animal welfare standards by banning live exports – something it had not been able to do while in the EU – but exposed farmers to more competition from places with lower animal protection standards by signing trade deals with Australia and New Zealand. Johnson's government promised to diverge from EU rules in order to streamline the British ship of state. Instead, his approach left it bloated and directionless.

OTHER REGULATORY TASKS

Passive divergence

The Johnson government never established a clear plan for divergence, and the same can be said for the other regulatory challenges that it faced post-Brexit. One especially stark question was how to respond to 'passive' divergence: i.e. EU regulatory changes which, because they no longer apply in most of the UK, create divergence by default. This is a significant challenge to get to grips with: the first von der Leyen Commission (2019-2024) developed 431 new legislative proposals, at an average of 8,582 words per proposal, with major new regulatory agendas around the green transition, industrial competitiveness and the digital economy.

Passive divergence creates two sets of problems. First, it creates new regulatory barriers to trade between Great Britain and the EU. For example, new EU regulations on packaging waste mean that a business may have to develop two different production lines for its packaging, depending on whether goods are destined for the GB or EU market – a cost which many smaller businesses cannot afford to bear. Second, in many cases it creates those same barriers between Great Britain and Northern Ireland, because the latter must align with EU goods regulations under the Windsor Framework. That makes it more technically complex and costly for businesses based in Great Britain to trade with Northern Ireland. And whereas many GB-based firms are willing to absorb those administrative costs to continue trading with the EU, they may not be so willing to do so in the case of Northern Ireland, as it is a much smaller and less lucrative market. Over time, passive divergence risks diminishing the supply of goods from GB to NI as the regulatory border grows thicker.

Yet the Johnson government never established a system for dealing with passive divergence. There was no central point in Whitehall to systematically track,

analyse and respond to EU regulatory changes, and no thinking about where and how the government might need to respond to them. Nor was the UK Mission to the EU tasked with seeking intelligence on EU plans for regulatory reform or trying to influence these. While the UK had a clear conception of itself as a sovereign entity outside of the EU, it more or less ignored the regulatory behemoth next door, which continued to have powerful shaping effects on economic life within the UK.

It was largely left to businesses to fill the gap - in many cases via voluntary alignment with new EU regulations. Many UK businesses have opted to comply with EU rule changes - for instance on vehicle safety and emissions, chemicals and food standards - to ensure they can continue to sell into the EU and/or NI market. But this approach is not cost-free: for a start, UK businesses have had to invest significant time and effort in tracking and responding to EU regulatory developments to which they would have previously been subject by default. Meanwhile, ongoing uncertainty about the potential for divergence limits their ability to plan ahead. Moreover, voluntary alignment cannot plug all the gaps: in some cases, such as the packaging directive, there is no way to avoid the need to develop separate packaging for the UK and EU markets - and the additional costs that come with that.

In other cases, there is an automatic cost to not being subject to a new EU regime, which cannot be solved through voluntary business alignment with EU rules. Take the EU Carbon Border Adjustment Mechanism (CBAM), designed to ensure that imports of certain industrial goods pay the same levy on their carbon emissions as if they had been produced in the EU. This means UK exporters face new administrative costs in terms of having to declare the level of emissions embedded in their goods and - from 2026 - tariffs to make up the difference in carbon price (if the UK's remains lower than the EU's). Or the new General Product Safety Regulation, which requires all companies selling into the EU (and Northern Ireland) to have an EU-based 'point of contact' at a cost of €150 per year per product. The only way for UK firms to avoid such costs is if the government formally (not voluntarily) aligns itself to the EU rulebook - e.g. by linking its emissions trading scheme to the EU's or binding itself to EU product regulations as part of a negotiated agreement. The price of this is the UK losing its ability to set its own rules in these areas.

The UK Internal Market

The UK's devolution settlement, agreed in the 1990s, was premised on membership of the EU single market and customs union. This guaranteed the free movement of goods between all parts of the United Kingdon, and limited wider differences in regulatory approach, as in many areas of devolved competence

(like environment and agriculture) the bulk of policy was set at EU level, with the main job for devolved governments being to oversee the implementation of EU directives. Brexit suddenly meant it was possible for the governments of Scotland and Wales to pull in very different directions to Westminster, something made more likely by their professed desire to maintain alignment with EU regulatory standards. The Scottish government passed a 2021 'Continuity Act' granting it powers to enact laws to maintain alignment with the EU.

The May government aimed to manage this potential divergence through a series of 'Common Frameworks', agreed with the devolved governments, with only a select few backed up by legislation. This approach was deemed inadequate by the Johnson government, with its more 'muscular' approach to the Union. To ensure that regulatory divergence did not create barriers to trade within the UK internal market, it developed the UK Internal Market Act (UKIMA) 2020, which established two 'market access principles'. 'Mutual recognition' guarantees that goods and services originating from any part of the UK can be freely traded to any other part of it, even if they do not comply with the regulations in that part of the UK. 'Non-discrimination' forbids the enforcement of regulatory requirements which would prevent the import of goods from any other part of the UK. The only exception to this is if an 'exclusion' can be agreed between Westminster and the devolved governments: as was done regarding a Welsh government ban on single-use plastics.

The UKIMA was condemned by the Scottish and Welsh governments for its 'chilling effect' on their regulatory freedom and authority. For example, plans for a new bottle recycling scheme in Scotland were neutered by the fact that the Scottish government had no way of obliging imports from the rest of the UK to carry the necessary labelling, due to the UKIMA's market access principles – leading to public recriminations between Holyrood and Westminster. Although Common Frameworks remained in place, they were rarely used as the UKIMA became a magnet for conflict.

The Welsh government launched an early judicial review of the Act (which the Court of Appeal dismissed as premature at the time) and the constraint on policymaking remains a significant concern for the Scottish and Welsh governments, which have passed very little legislation to maintain alignment with EU law, despite their stated ambition to do so. The fact that there has not been significant divergence between Scotland and Wales and the EU is largely down to the fact that the Westminster has made little use of its powers to reform or repeal retained EU law. Should the UK Government decide to pursue a more aggressive policy of divergence, however, this might well change.

SECTION 2: LABOUR'S REGULATORY INHERITANCE

Much like the Sunak government, Labour appears to see divergence from the EU as more of a cost than an opportunity. This is evidenced both by pronouncements which Keir Starmer made in opposition – "we don't want to diverge" – and the actions his government has taken in office. The pursuit of 'active divergence' all but dried up in Labour's few months in office (though there now appears to be some interest in deregulating certain service sectors).

Yet perhaps the key lesson of the previous four years is that, outside the EU, regulatory policy requires much more continuous attention than before. No longer is the bulk of UK law adopted from directives set at EU level – instead the UK has to actively devise its own rules and regimes, while also responding to developments from the continental-sized economy on its doorstep and thinking about the implications for Northern Ireland. The growing conflict in economic and regulatory approach between the EU, US and China only muddies the waters the UK has to navigate.

This section outlines the key regulatory challenges the Labour government has inherited, and analyses how its approach differs from its predecessors.

- Responding to passive divergence from the EU remains a key challenge and, unlike its predecessors, the new government appears willing to voluntarily align with EU regulations to reduce the effects in some goods sectors.
- The new government still has to continually monitor and manage divergence within the UK Internal Market, and there are signs that Labour is accelerating a trend begun under Rishi Sunak of being more receptive to the concerns of the devolved governments in its policymaking processes.
- The new government is, like its predecessors, still grappling with the practical challenges of implementing a range of new post-Brexit regulatory regimes, and this is hamstringing the wider regulatory capacity of the state.
- The new government has to think about developing its own regulatory philosophy, and has started talking up the benefits of deregulation – especially in services sectors – both as a means of boosting economic growth and enhancing trade with the Trump White House.

PASSIVE DIVERGENCE

Although the UK has largely stopped seeking to diverge significantly from the EU, the EU has not been standing still. One of the defining characteristics of the first von der Leyen Commission (2019-2024) was its legislative hyperactivity, as it introduced major new regulatory agendas such as the European Green Deal, designed to accelerate the EU's net zero transition. It is early days for the new Commission, but recent decisions to strip back significant parts of its green

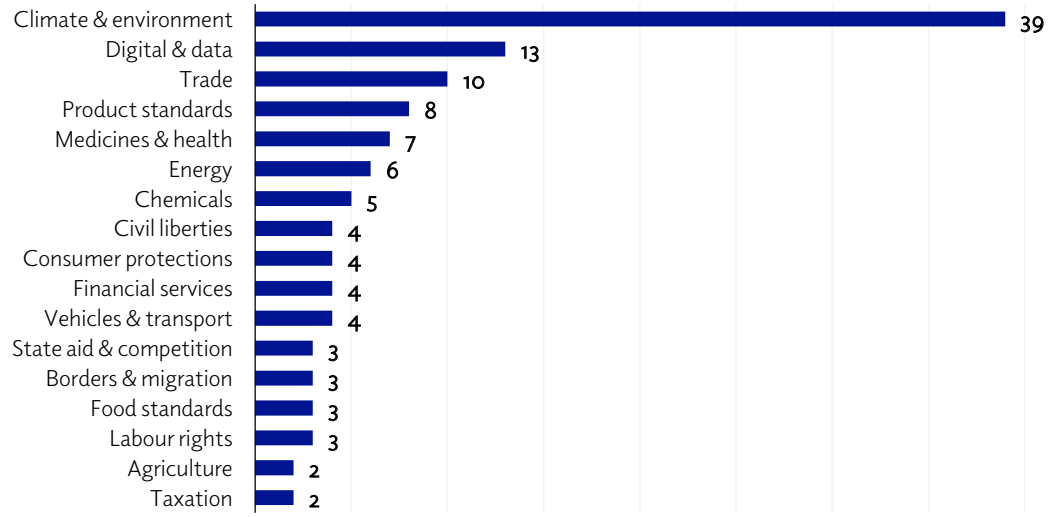
legislation could mean the costs of passive divergence to the UK will be less than previously anticipated.

Nevertheless, such regulation has a major bearing on countries outside the EU because adherence to those new rules is a pre-condition for exporting into its single market. As was outlined earlier, while businesses will often voluntarily align with EU rule changes to maintain market access, there are often unavoidable administrative costs which stem from having to produce to differing regulatory requirements in GB/UK and the EU. The weight of passive divergence has been greatest in relation to climate and environmental rules - especially as they affect manufactured goods.

The greatest amount of EU-led divergence has been in climate and environmental regulation

UK IN A CHANGING EUROPE

Cases of EU regulatory changes leading to divergence with the UK, as identified by UK in a Changing Europe's 'Divergence Tracker', Ocotber 2021 to April 2024.



Source: UK in a Changing Europe, UK-EU Regulatory Divergence Tracker: first eleven editions (October 2021-April 2024).

Note: The Divergence Trackers seek to identify the most consequential cases of divergence. They do not provide a comprehensive account of all divergence. In some instances, a single case of divergence may refer to a number of packaged decisions (such as multiplle new EU restrictions on harmful subtances).

This poses major challenges for UK businesses. It increases the cost of trade with the EU/NI and exposes the UK to risks of 'dumping'. There is a danger that goods which can no longer be exported to the EU because they are considered too dangerous, polluting or carbon-intensive are diverted to the UK. Government is therefore left with a choice as to whether to let those regulatory gaps grow and hope for the best, or to take a more proactive approach to tracking divergence and responding to the risks it creates. Conservative administrations largely took the former approach. There are signs that Labour is more minded towards the latter.

In September 2024, the government introduced the Product Regulation and Metrology Bill, which gives it powers to replicate EU regulations related to the environmental impacts of products through secondary legislation, avoiding

the need for more time-consuming (and potentially politically sensitive) acts of Parliament. The government lays out several reasons for introducing these powers, including:

- Avoiding 'business costs, complexity, uncertainty and confusion' which come from divergent regulatory requirements between the UK and EU.
- Avoiding 'consumer safety risks' if the UK does not 'keep pace' with EU regulatory advances, for instance around the safety of toys and e-bikes.
- Avoiding the risk that 'businesses may choose not to supply the GB market' if it operates to different rules than the EU.
- Avoiding 'UK internal market divergence' where regulations differ between Great Britain and Northern Ireland.

Replicating EU law via the bill would not remove any of the barriers to trade created by the TCA. Just because the UK mirrors new EU product safety legislation does not mean British goods will enjoy unencumbered access to the EU market – they will still be subject to the paperwork and checks created by Brexit. What the bill can do, however, is prevent the regulatory gap growing over time through new passive divergence which adds yet more complexity to trade for businesses forced to adhere to different standards for the GB and EU markets. That said, the extent of the bill's effect will depend on how it is interpreted and implemented by government. At the moment, there are far more questions than answers.

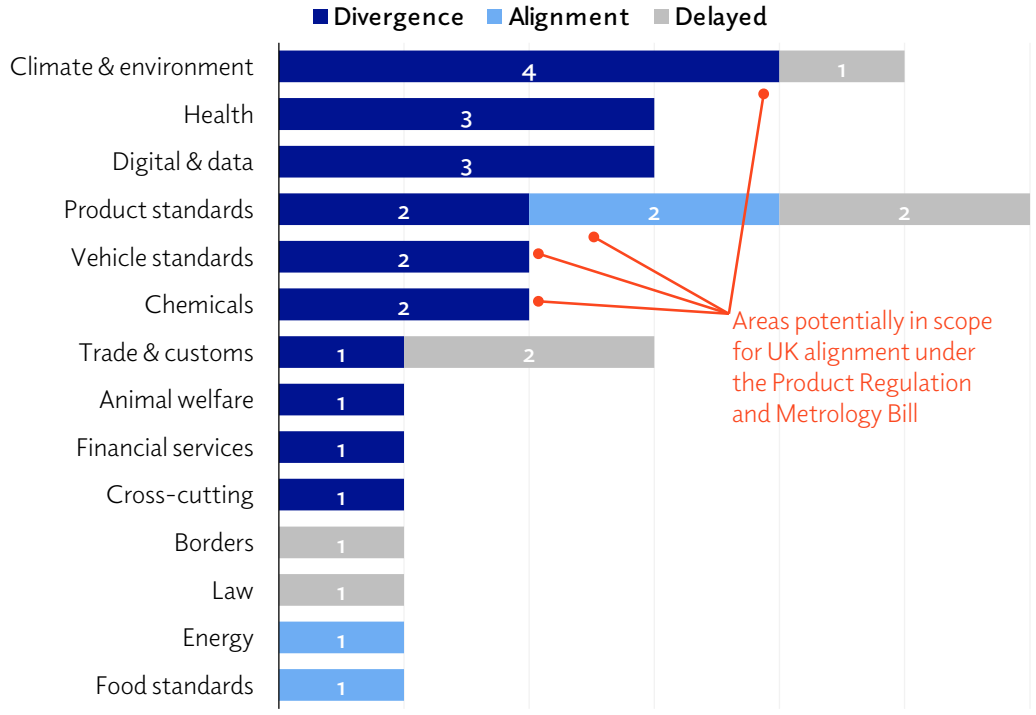
The first question is which EU laws will be in scope? The Secretary of State has powers to replicate EU rules related to the 'environmental impact of products', but what that means is ambiguous. Some aspects are clear enough. A product is defined to cover most things you can't ingest or start a war with: agrifoods, aircraft, military equipment, medicines and medical devices are all excluded. And the EU legislation must also relate to the 'marketing or use' of products, which includes their manufacturing, composition, certification, storage, transportation, packaging, labelling, disposal and online marketing.

Much vaguer is the specification that the EU legislation being replicated must serve the purpose of 'reducing or mitigating environmental impacts'. This might sound like it narrows the scope of the bill to strictly environmental legislation, but it is notable that some of the examples provided by the government of EU law which might be replicated – including rules on product safety and design – stray well beyond a narrow definition of environmental impacts. So, too, does a new UK proposal to mirror EU rules on common chargers, which could well be delivered via the powers in the PRMB. Under a liberal reading of the bill, a very

wide range of EU regulations could be fall under its scope. New EU legislation on supply chain due diligence, deforestation-free products, vehicle emissions, product packaging and AI are all rooted at least partly in environmental considerations, and relate to the marketing or use of goods.

The majority of UK-EU divergence is occuring around the safety and environmental effects of goods

Cases of regulatory divergence/alignment in the period April-October 2024, as covered by UK in a Changing Europe's Divergence Tracker, by policy area.



Source: UK in a Changing Europe, UK-EU Regulatory Divergence Tracker Q2-Q3 2024.

The next question is how does the government intend to use the bill in practice? If the aim is to systematically avoid as much passive divergence as possible, it could establish a requirement to align by default with all EU legislation that falls within the bill's scope. But this would be out of step with the government's cautious and piecemeal approach to improving EU trade. It seems more likely that the powers will be used selectively, to align with a limited set of EU laws, and it is not out of the question that it becomes a mechanism for delivering divergence too. The bill grants the government powers to make a regulation 'which corresponds, or is similar, to a provision of relevant EU law' - which in theory allows the UK to follow the gist of EU legislation while introducing deviations as and when it desires. This might be seen as an efficient means of delivering regulatory reform - using statutory instruments to piggyback off EU rule changes (rather than having to develop primary legislation from scratch) and then adjusting it to UK interests.

Assuming alignment is the core aim, however, there are a number of outstanding questions about how it will be delivered. Much like the Johnson government's lack of plan for divergence, this government has not outlined a vision for where it will seek alignment with EU rules. It would be well advised to set some criteria for deciding when to align and to designate a central unit to oversee that strategy. Given the cross-departmental (and -UK) nature of divergence, the new European and Global Issues Secretariat in the Cabinet Office seems an obvious location, though a unit could also potentially sit in the Department for Business and Trade (the bill's sponsor department). Another question is whether Whitehall will have the resources to systematically monitor divergence and promptly enact alignment where desired, given the wide range of competing policy priorities at a time when departments are also being asked to deliver budgetary and staffing cuts.

Finally, there is the issue of the democratic oversight of these powers. The bill allows the government to mirror EU rules via statutory instrument (SI). Consequently, MPs will have little ability to scrutinise rule changes and will be unable to amend them. MPs can vote down SIs but this seems unlikely given the size of the government's majority. The last time it happened was 1979. While SIs may be appropriate for mirroring technical regulatory changes, the design of the bill raises the prospect of the government being able to replicate significant pieces of EU legislation that would typically require an Act of Parliament – and which were subject to years of vexed contestation within the EU institutions – with almost no scrutiny. It does not help that the European Scrutiny Committee – the longstanding Commons select committee devoted to the scrutiny of EU legislation – was disbanded by the new government.

THE UK INTERNAL MARKET

NORTHERN IRELAND

The potential for passive divergence to create a thicker regulatory border between Great Britain and Northern Ireland is another significant and ongoing challenge for the UK. The Product Regulation and Metrology Bill is one tool for dealing with this, but it is unlikely to be applicable to all policy areas where GB-NI divergence can occur. That means a strategy is needed for monitoring and responding to potential divergence more widely.

The Northern Ireland Assembly's Democratic Scrutiny Committee has started to monitor a chunk of this passive divergence - providing crucial oversight though inquiries, evidence sessions and reports - but it does not have the resources to do this work systematically. Another means through which Westminster can be alerted to potentially disruptive divergence is via two democratic consent mechanisms built into the Windsor Framework: applicability motions and the Stormont Brake. These provide Members of the Legislative Assembly in Northern Ireland (MLAs) with powers to request the veto of the application of, respectively, new or updated EU legislation in Northern Ireland.

The Stormont Brake allows MLAs to ask the UK government to block the application of updates to EU law in Northern Ireland, if 30+ MLAs from 2+ parties register their objection to a rule change which has a significant impact that is liable to persist.

An applicability motion can be moved by MLAs on whether to approve the application of a new (rather than updated) EU law in Northern Ireland (which otherwise applies by default). Approval requires a 'cross-community' majority: either a majority of all MLAs including a majority of both self-designated 'nationalists' and 'unionists'; or 60% of MLAs including at least 40% of both 'nationalists' and 'unionists'.

The UK government can override these in exceptional circumstances, or if it deems that the law would not create a regulatory border between GB and NI.

There is a risk, however, that these tools are not used in good faith - and simply become ways to air political grievances about Northern Ireland's post-Brexit position. For instance, an applicability motion was triggered almost as soon as possible by unionist MLAs, over the application of a new EU regulation on geographical indications on craft products, even though a UK government impact

assessment reported that any effects on GB-NI trade from the new rules were likely to be 'limited'. The EU regulation was voted down, despite a majority of MLAs voting in favour, because all unionist MLAs voted against – meaning the motion did not gain cross-community support. Similarly, in December 2024 all Unionist MLAs voted to trigger the Stormont Brake in response to the application of changes to EU rules on chemicals labelling, even though officials deemed the changes 'unlikely' to meet the threshold for triggering the Brake.

The apparent politicisation of the democratic consent tools creates a potentially significant headache for the UK government, as it has to either push back against the objections of those using the mechanisms – risking political instability in Northern Ireland – or take complaints of potentially dubious merit forwards for mediation with the EU – which risks upsetting relations as the two sides attempt to embark upon a 'reset'. The Labour government seems intent on finding a middle way. In January 2025, it rejected MLAs' request to pull the Stormont Brake over the issue of chemicals labelling, with Secretary of State Hilary Benn stating that the "specific test wasn't met for doing so". While this might be seen as a rebuke to unionist MLAs, Benn also recognised 'the sincere and genuine concerns raised by Members' and promised a consultation on developing a 'consistent regime across the United Kingdom' – which would in effect mean alignment with the EU rule changes. Benn also noted that the EU rule change 'has some merits' and 'will be accounted for in the UK's considerations of its domestic regime'.

This suggests the democratic consent tools may, instead of being the mechanism unionists might have envisaged for reinforcing UK regulatory autonomy after Brexit, become a motor for greater alignment between the UK and the EU.

THE UK INTERNAL MARKET ACT

The potential for divergence within the rest of the UK Internal Market continues. Can Westminster find ways of appeasing devolved government concerns about the centralising force of the UK Internal Market Act (UKIMA), while maintaining frictionless trade within the UK?

There had been some speculation before the election that a Labour government would repeal the UKIMA in its entirety, but it has instead launched a consultation, asking 'how to provide the right balance between devolved decision-making on regulation and protecting the integrity of the internal market'. The devolved governments were unhappy not to be consulted in advance by Westminster on the design of the consultation – meaning the review has not set off on the best footing.

Nevertheless, a recent report from the Office for the Internal Market points out the potential for a more collaborative approach to managing internal divergence.

It looked into one of the most contentious policy areas – regulation of single-use plastics – and found that the UK governments have adopted 'broadly similar' approaches. This suggests the regulatory instincts of the four nations may be closer than sometimes assumed and, given businesses 'strongly prefer alignment' to aid intra-UK trade, this might provide grounds for reforming the UKIMA to promote greater collaboration between them. For example, it could give greater scope for devolved governments to develop their own independent regulations, while using Common Frameworks to guard against intra-UK trade frictions arising from technical differences in policy. That contrasts with the current system, where market access principles override much of ability of devolved governments to develop their own rules in the first place as, for example, new Scottish rules on the recycling of drinks containers cannot be applied to imported containers from other parts of the UK – neutering much of the effect of a Scottish-specific scheme.

There were signs of a more collaborative approach over the Tobacco and Vapes Bill, initially brought forward by Rishi Sunak's government and then reanimated by Keir Starmer's. This provided a rare example of the four governments reaching agreement on harmonised legislation – in this case to restrict the sale of tobacco products. While this could simply reflect an isolated point of policy agreement, Dr Thomas Horsley argues that it 'may evidence a deeper change in the regulation of the UK internal market' and 'indicate a new openness on the part of the devolved governments to shaping policy through multilateral coordination'.

In contrast, Labour's Product Regulation and Metrology Bill includes no obligation on Westminster to consult with the devolved governments on legislation developed via its powers, even in areas of devolved competence like environmental policy. This potentially amounts to a significant centralisation of policymaking, though the devolved governments have been much quieter about the implications of this bill than they were about the UK Internal Market Act. Scottish and Welsh governments may be willing to turn a blind eye if they deem the outcome (greater EU alignment) to trump the process (greater devolved power to deliver that alignment). This could change if the bill is barely used or, rather, deployed as a means of delivering greater divergence from the EU.

ONGOING IMPLEMENTATION

Four years after the TCA took effect, implementation of the UK's post-Brexit regulatory regimes is still not complete. Failure to complete it could hinder the progress of the UK-EU reset, as well as the government's wider ambitions for regulatory reform. Most pressingly, the EU has made clear that the negotiation of future agreements is contingent on the full implementation of the systems underpinning Windsor Framework. Progress has broadly been good up to now,

but, by July this year, the UK will need to ensure all retail goods are individually labelled and have established all SPS inspection facilities in Northern Ireland. A grace period on the movement of veterinary medicines expires at the end of 2025 which could be very damaging for the Northern Irish veterinary sector if it is not satisfactorily resolved.

The other major EU-related task is the implementation of the Border Target Operating Model (BTOM). This is the new set of border controls which the UK has to impose on EU goods imports, now that it is no longer part of the single market. Its implementation has been delayed five times, due largely to a lack of preparedness and state capacity, but also due to concerns about adverse economic effects - as the new controls increase costs for exporters, which are likely to be passed on to consumers in terms of higher prices. While the three phases of the BTOM have nominally been implemented, many imports are in practice still not subject to checks, with the level of inspections set to be 'scaled up' over time. Unless the government fully implements its regime, it may struggle to negotiate an 'SPS' agreement with the EU, to reduce the paperwork and checks related to plant and animal goods trade. There is less incentive for the EU to negotiate such an agreement if it is not subject to the full GB border bureaucracy in the first place.

Other regimes are also posing problems for business and government. The UK REACH regime for chemicals continues to be a major headache for industry, due to the significant administrative cost of registering data on over 22,000 substances which are already on an EU database. The Sunak government undertook a consultation on reforming the regime to make it easier for business to navigate, though this led to concerns about comparatively lower safety standards in the UK. The Chancellor has said the UK would like a 'bespoke' agreement with the EU on chemicals to reduce that £2bn cost, but has not provided any detail on how this would work in practice.

Other new regimes which are still finding their feet include the farm payment systems and environmental watchdogs in each of the four nations. Meanwhile regulators - including the Competition and Markets Authority, Food Standards Agency, Health and Safety Executive and the Medicines and Healthcare products Regulatory Agency - continue to find themselves overstretched by their post-Brexit responsibilities, which hampers their ability to deliver their core regulatory functions.

REGULATORY OPPORTUNITIES

Although the current UK government has shown itself inclined towards regulatory alignment with the EU, that does not mean it has entirely abandoned the pursuit of opportunities to diverge. It has directed regulators to 'strip back' red tape in order to 'boost growth' and ordered a full audit of the estimated 130 UK regulators with

a view to axing some. Labour's fiscal rules and tax promises have left it with limited means to stimulate economic growth – and the government seems to have alighted upon the idea of regulatory reform as a key tool.

Many of its substantive proposals bear striking similarity to those developed by Conservative governments. The Chancellor has promised a review of financial regulation to 'make our economy more dynamic and more competitive' and has instructed regulators to take more risks. This is similar to the 'Edinburgh reforms' set out by the previous Chancellor Jeremy Hunt. The government has also forced the chair of the Competition and Markets Authority (CMA) to step down and published a 'strategic steer' directing the CMA to seek to enhance 'the attractiveness of the UK as a destination for international investment' – echoing the last government's attempt to 'prioritise outcomes that promote competition, investment, innovation and boost economic growth'. The new government has also established a Regulatory Innovation Office (RIO) charged with speeding up approvals in four 'fast-growing' areas (biotechnology, space, AI and digital healthcare, and drone technology) similarly to how the Sunak government identified 'five growth industries' in science and technology to prioritise for regulatory reform.

The previous government failed to achieve its regulatory aims partly because of its focus on the quantity, rather than quality, of reform. It sought to remove as much regulation as quickly as possible, which incentivised officials to deliver quick wins (i.e. scrapping redundant regulations), leaving them little time for thinking about more consequential reforms. There is a danger that the new government will fall into the same trap. Its 'radical action plan to cut red tape and kickstart growth' boasts of '60 growth-boosting measures'. Yet many of these seem trivial, such as the review launched by the Financial Conduct Authority into lifting the £100 limit on contactless payments ('speeding up queues at checkout' will hardly be a game changer in macroeconomic terms). Similarly, the Regulator for Community Interest Companies and Payment Systems Regulator are to be consolidated into bigger organisations, but is the avoidance of some 'duplicative requirements' really going to be worth the inevitable administrative costs – and potential confusion for the businesses they regulate – of such organisational restructuring?

Government would be better served prioritising a few marquee reforms (for instance the speeding up of approvals for new medicines and technologies and changes to planning regulations), which, if done well, would have the greatest benefits for its wider governing missions. Asking regulators to find as many 'growth-boosting measures' as possible is likely to distract from the delivery of these. Another priority should be to thinking about how to create capacity

for regulators to focus on those reforms which matter most. This could, for instance, involve thinking about where the UK can be more flexible in accepting authorisations from other countries – for instance medicines already approved by the EU or Japan – to reduce the amount of time spent on run-of-the-mill approvals.

Even if effectively delivered, it is far from guaranteed that regulatory reform will lead to better outcomes, including on economic growth. Some regulators are concerned that structural reorganisations and the pursuit of ideas for reform will detract from their core mandate – which they see as delivering regulatory stability and predictability. The (Labour) chair of the Treasury Committee, Meg Hillier, has questioned the degree to which recent deregulation in financial services (for instance an abandonment of plans to 'name and shame' companies under investigation and stricter rules on diversity and inclusion) helps the wider economy – rather than companies' shareholders – while also raising concerns that it could leave consumers with fewer protections. And, on competition regulation, the Financial Times' Alan Beattie writes that it is 'worrying that the government seems to identify the interests of large companies as identical with promoting growth'.

The approach taken to the CMA is illustrative of this. A key reason why successive governments have placed the organisation in their crosshairs is its decision in 2023 to block Microsoft's acquisition of the gaming company Activision Blizzard. Microsoft declared that the decision 'had shaken confidence' in the UK as a destination for investment (it has also recently attacked the CMA for its probe into its domination of the cloud services market). Yet, the CMA's decision was hailed by some experts as a benefit of Brexit, with the UK getting ahead of the EU (which approved the merger) by blocking the acquisition on the grounds that it would dampen competition and innovation in an emerging market – and thus hamper the sector's long-term growth prospects. Government, on the other hand, appears to believe that growth is better served by allowing major companies to concentrate their power over markets rather than by encouraging greater competition.

The government must also be mindful of how plans for deregulation impinge on its wider ambitions for the EU reset. In principle, there is no reason why the UK cannot diverge from the EU on financial services or AI regulation while seeking closer alignment on veterinary standards or emissions trading. However, the politics of the former risks polluting the latter. The EU may react negatively to the UK 'seeking the best of both worlds' – improved access to the EU market while reaping the benefits of divergence elsewhere.

This risk is exacerbated by conflict between the EU and the Trump White House. The latter has attacked the EU's 'overly precautionary' regulatory approach while US tech companies accuse the EU of 'going after American businesses'. The UK has shown signs of trying to move closer to the US camp, by following the US in refusing to sign a global agreement on AI safety, with an official arguing that 'the character of the way we're dealing with AI is quite different' to the EU, and delaying the publication of an AI bill following Trump's return to power. The UK has also not followed the EU in threatening reprisals against US tariffs, with the new UK Ambassador to the US Lord Mandelson stating that the UK has to earn a living as 'not Europe'. Yet the risk of being 'not Europe' is that Europe views this as an act of hostility (or ambivalence) and loses interest in deepening UK relations. The UK will have to strike a careful balance between any deregulatory objectives, borne of a desire to cleave closely to the US, and its EU reset.

SECTION 3: REGULATORY RELATIONS WITH THE EU

The Labour government's clear priority is increasing economic growth and, with the macroeconomic benefits of its deregulatory agenda looking limited, another option at its disposal is changing the trading relationship with the EU. Indeed, Prime Minister Starmer has promised to improve what it calls the 'botched' trade deal Boris Johnson negotiated with the European Union. Yet Labour's red lines – no single market, customs union or return to free movement – severely limit its room for manoeuvre. Even within these constraints, the government's proposals for improving the trading relationship are meagre, and likely to result in little-to-no tangible increase in economic output.

The government may therefore come to look again at whether there are other ways to improve the trading relationship with the EU, while still respecting its red lines. One obvious way to do this is to think more deeply and creatively about the UK's regulatory relationship with the EU. The TCA has created a significant new trade friction because the EU and UK no longer have harmonised regulatory rulebooks. Over time, this friction could get worse by default, as the EU introduces new legislation which the UK does not automatically absorb. A different regulatory relationship could reduce some of those costs, but comes with a loss of UK regulatory autonomy and, in some cases, having to accept EU laws over which it has no control. This report does not advocate any particular approach, but rather seeks to lay out the regulatory options available to the government, and their inherent trade-offs. There are two broad models to choose from.

- **Replication** involves the UK unilaterally **recognising and/or aligning with** EU rules and regulatory decisions. This is easier to do (relatively speaking), as it does not require EU agreement and can be done on a case-by-case basis. Equally, however, it does not remove any barriers to the EU market created by Brexit, meaning the economic gains on offer are limited. The main benefit is greater certainty and the avoidance of additional complexity – due to new divergence – for businesses operating between Great Britain and the EU and/or Northern Ireland.
- **Integration** involves **legally-binding decisions or agreements** with the EU to remove existing technical barriers to trade, and can take different forms.
    - **Equivalence** involves the UK recognising the EU's regulatory standards in a certain sector as akin to its own, and thus removing administrative barriers for EU firms selling into the UK market. Such decisions are, however, unilateral – meaning the EU is not obliged to grant equivalence in the other direction.

- **Enhanced agreements** involve *both* the UK and EU mutually recognising each other's standards, and thus agreeing provisions to simplify technical barriers to trade. 'Simple' mutual recognition does not require UK alignment with EU rules but removes only limited barriers to trade. 'Advanced' mutual recognition entails UK 'dynamic alignment' (i.e. formal adoption of EU rules, including as they are updated over time) but removes most or all barriers to the EU single market in that area.

The key point is that there is an unavoidable trade-off between ease of access to the EU market and regulatory autonomy. If the UK wants what we might call 'deep' access to the EU single market (on the same terms as an EU member state) in a specific sector, the price is formal alignment with the EU rulebook. Some have suggested that the UK might be able to have its cake and eat it, by developing 'deep regulatory alignment' through simple 'mutual recognition' – where the EU grants the UK preferential access to its market on the basis that UK rules are similar enough the EU's, without the UK being formally subject to the EU rulebook. This is a political non-starter. The EU does not allow the privilege of market access on single market terms without the obligation to harmonise regulations, because to concede this to a third country would put them in a preferential position to EU member states who are obliged to comply with EU rules. And of course, it is entirely within the EU's gift whether to negotiate agreements offering such deep market access. At present, there is little evidence the EU is interested in such agreements on anything other than animal and plant health ('SPS') and emissions trading.

The regulatory options for the UK's trading relationship with the EU

UK IN A CHANGING EUROPE

	REPLICATION		INTEGRATION	
	Automatic recognition	**Voluntary alignment**	**Equivalence**	**Enhanced agreements**
How does it work?	UK recognises regulatory approvals made by the EU.	UK copies EU law. Either 'loose' alignment with the spirit of EU law or 'strict' alignment with the letter.	Acknowledgement by UK or EU that the other's regulations are equivalent to its own in a given sector.	Sectoral UK-EU agreements which either recognise equivalent standards or align the UK to EU rules.
Benefits	Reduces administrative costs for companies serving the GB and EU markets, as they do not need two sets of regulatory approvals. Frees up UK regulatory capacity to focus on areas where it wants to regulate differently.	Helps avoid new UK-EU and GB-NI divergence. Enables UK to keep pace with key regulatory developments. Can be done ad hoc: where useful to GB business but not where disadvantageous. Signal of UK readiness for formal alignment with EU rules in future (if desired).	Removal of some trade barriers created by Brexit, without having to negotiate a binding mutual agreement.	**'Simple' agreements** (no UK alignment with EU rules) remove a limited number of barriers to trade. **'Advanced' agreements** (UK alignment with EU rules) remove most/all trade barriers in the given sector.
Costs & limits	Does not remove trade frictions created by Brexit or give UK firms deeper access to EU market. Asymmetrical – UK approvals are not recognised by EU. Requires trust in EU regulatory standards.	Does not remove trade frictions created by Brexit or give UK firms deeper access to EU market. Lack of democratic oversight, as EU rules replicated via statutory instrument. Significant administrative resources required to align on a widespread basis. Positions the UK as de facto 'rule taker'.	Less regulatory certainty than with mutual agreements, as decisions are unilateral and can be made/withdrawn at any time and become politicised. Only possible in a limited number of sectors. Requires trust in the partner to maintain equivalence.	**'Simple' agreements** will only lead to a limited reduction in trade friction. **'Advanced' agreements** require UK dynamic alignment with EU rules and oversight role for the ECJ. UK has to establish systems for implementing EU rules and monitoring alignment. Negotiations can be lengthy.
Sectors in scope	Conformity assessments (already in place), food standards, medicines, chemicals, vehicles.	Anything, in theory. The Product Regulation and Metrology Bill focuses on product regulations.	Financial services, data protection.	Conformity assessments, professional qualifications, SPS, energy, chemicals, ETS, defence industry.
Who decides?	Unilateral decision for the UK.	Unilateral decision for the UK.	Unilateral decision for either party. These could in theory be mutually coordinated.	Bilateral negotiation of a legally-binding agreement.
EU attitude	Not a matter for the EU.	Not a matter for the EU.	No signs the EU is willing to go beyond the very few equivalence decisions it has already adopted.	The EU is more open to 'advanced' agreements. It has indicated potential interest in SPS and ETS.

Note: options exclude those ruled out by the UK government, namely membership of the single market and customs union.
It is possible to adopt more than one model simultaneously.

AUTOMATIC RECOGNITION

HOW DOES IT WORK?

Automatic recognition involves the UK recognising regulatory approvals made by other jurisdictions. For example, goods which carry a 'CE' marking – denoting conformity with EU safety, health and environmental standards – are automatically permitted for sale across the UK, even though no UK authority has independently tested those goods to ensure compliance with domestic standards. This avoids foreign manufacturers having to get their products re-approved for the GB market – which would serve as a major disincentive to exporting to the GB and could create gaps in supply chains – and allows UK companies to serve the GB and EU markets with a single CE mark. It does not oblige the EU to provide the same privileges in return – UK-made goods cannot access the EU market using their domestic 'UKCA' mark.

WHERE COULD IT BE DONE?

Automatic recognition could theoretically be adopted in any areas where goods require a regulatory approval prior to sale. The obvious areas to look at are those where, post-Brexit, the UK has had to establish a regulatory approval regime distinct from the EU's, even though UK and EU standards remain more or less the same.

This is already happening in the case of the EU 'CE' mark, as explained above. The UK has also in practice been accepting EU assessments of the safety of animal and plant goods, given the delay in implementing its own border controls on imports of agrifoods from the EU. A border control regime is now being phased in, but this is creating some significant administrative costs for importers. The UK could opt to address this by reverting to a trust-based system, with fewer or no mandatory checks on EU-originating goods. Former Brexit Opportunities Minister Jacob Rees-Mogg advocated this approach not only for EU agrifood imports but also those from other trusted partners like New Zealand – and suggested it could be applied to other categories of imports.

Other areas where this approach might be taken include chemicals, where the UK's own 'REACH' database of safety registrations is imposing huge administrative costs on businesses even though it broadly replicates the existing EU system. During the increasingly drawn-out transition, many chemicals continue to circulate in the UK on the basis of their EU approval – but the UK could go further and opt to accept EU approvals in perpetuity. Meanwhile, the Medicines and Healthcare Products Regulatory Agency has explored the

possibility of partnerships with a number of countries (including Australia, Canada, Singapore and Switzerland) to automatically replicate approvals of new medicines made by those jurisdictions – following a recommendation by the then-UK Chief Scientific Adviser as part of his 'Pro-Innovation Regulation of Technologies Review'.

BENEFITS, COSTS AND CHALLENGES

The benefit of automatic recognition is that it reduces the bureaucratic costs associated with importing goods to Great Britain, as foreign manufacturers do not have to get products re-assessed specifically for the GB market – which can be a significant burden. Automatic recognition provides businesses with greater certainty that compliance with EU standards will be sufficient for access to the entire UK market now and into the future.

Automatic recognition could also address significant regulatory capacity problems which the UK has faced since Brexit. The UK does not have anywhere near enough facilities to carry out safety tests for all manufactured goods and chemicals which circulate on its market – meaning some degree of automatic recognition of EU approvals will likely be required for the foreseeable future. It would also free up capacity for regulators to focus on issues where the UK might want to take a different approach to the EU – such as novel foods and medicines, and overhauling clinical trials rules.

The main challenge with automatic recognition is that it gives the UK less regulatory oversight of its imports. For instance, if you have no checks on EU agrifood imports, there is a risk that the GB becomes a target for counterfeit products which are not in fact certified for sale throughout the EU – a risk exacerbated by the loss of UK access to EU alert systems. There was a significant rise in such cases during the period before the UK implemented its new border control regime. Items like infected meat pose a potentially significant risk to public health and biosecurity.

Another challenge is that the effect of automatic recognition is asymmetrical, because the EU does not recognise UK approvals in return. That means EU businesses benefit from simplified access to the UK market, while UK firms face greater administrative barriers in the other direction.

A final issue is that, if the UK regulatory regime relies largely on accepting approvals from the EU (or other jurisdictions), its own domestic regulation risks become outdated. A perverse consequence is that UK-made goods, with a UK approval, could be eschewed by consumers anxious to purchase imports manufactured to meet higher standards. For example, EU vehicle safety rules have recently been updated to implement more stringent standards than in Great

Britain. That means that consumers in the UK can choose between a new car with an EU approval – guaranteeing it is made to the latest safety standards – or a UK one, which does not provide that guarantee (even though it might well in fact meet the new EU standards). The UK could seek to address this risk by maintaining regulatory harmony with the EU through voluntary alignment.

VOLUNTARY ALIGNMENT

HOW DOES IT WORK?

Voluntary alignment involves the UK replicating new and updated EU rules and regulations, without being obliged to do so by the EU. This can be 'loose' voluntary alignment with the spirit – but not the letter – of new EU rules, or 'strict' alignment which replicates new EU law on the UK statute book. Voluntary alignment does not remove any of the barriers to trade created by Brexit. Copying the rules of the single market does not give you preferential access to it. However, it could help avoid passive divergence, which has the potential to create new GB-EU and GB-NI trade frictions.

WHERE COULD IT BE DONE?

There are already some examples of the UK undertaking 'loose' voluntary alignment. For example, the UK's Digital Markets, Competition and Consumers (DMCC) Act 2024 gives the CMA powers to protect competition in digital markets by imposing conduct requirements on a prescribed list of very large tech companies – and bears an uncanny resemblance to the EU's Digital Markets Act (DMA), which took effect in 2022. The UK has also followed the EU in planning a Carbon Border Adjustment Mechanism (CBAM) to levy tariffs on carbon emissions embedded in certain imports, though their start dates and scope differ. The purpose of loose voluntary alignment is to avoid the UK becoming a regulatory outlier. Without the DMCC Act, UK consumers could miss out on a variety of digital rights and protections provided those in the EU while, without the UK CBAM, carbon-intensive goods risk being dumped on the UK market to avoid new EU carbon import tariffs.

The Product Regulation and Metrology Bill (PRMB) is a model of 'strict' voluntary alignment. This allows the UK to exactly replicate EU rules and regulations related to the environmental impacts of products – albeit with the ability to introduce deviations if desired. On a liberal interpretation of the bill, this could allow the UK to replicate much of the most significant new EU legislation related to product standards. The government could seek to enact strict voluntary alignment in additional areas: by expanding the scope of the PRMB; by developing a similar bill covering a different regulatory area (like services); or through the introduction of individual pieces of legislation which effectively mirror EU ones (though this might require primary legislation, which is not the case under PRMB).

BENEFITS, COSTS AND CHALLENGES

Strict alignment with new EU regulations provides a guarantee to businesses that they can continue serving both the UK and EU markets while working to the same technical standards – increasing business certainty and avoiding potential administrative complexity – and helps avoid new divergence between Great Britain and Northern Ireland.

It also has the potential to help the UK's overburdened regulatory state. Legislation can be passed more quickly by mirroring the EU, thus minimising the risk of unwanted lags in UK regulation around, for example, safety risks arising from evolving technologies like e-bikes, online marketplaces or toys.

Loose alignment with new EU regulations, like the CBAM or the regulation on deforestation-free products, can help the UK avoid become a dumping ground for goods which are no longer considered acceptable for the EU market due to the environmental, health or social risks they pose.

Voluntary alignment is also a potential stepping stone to a closer EU trading relationship in the future, if this is something the UK wants. If the UK voluntarily aligns with the bulk of new EU regulations in a certain area, this might be seen as a demonstration of good faith and willingness on the UK side to bind itself more closely into the EU's economic orbit through deeper regulatory alignment. For example, voluntary UK alignment with new EU manufacturing or veterinary rules could serve as a precursor to new agreements on conformity assessments or SPS, which involve either mutual recognition or dynamic alignment.

The main cost of voluntary alignment is the bureaucratic effort required. Officials will be required to monitor a wide range of EU legislation an ongoing basis, assessing the extent and potential impacts of divergence, and deciding where to align. This is likely to be time-consuming, as even European Economic Area (EEA) countries – which are formally notified of all new single market legislation they need to adopt and benefit from a surveillance authority overseeing implementation – struggle to keep pace with EU legislative changes. The UK will not benefit from such a deeply institutionalised approach to alignment, making it an even more unwieldy task. The government may come to question whether the limited economic gains likely to arise from voluntary alignment (especially in the short term) justify the significant administrative effort it requires.

EQUIVALENCE

HOW DOES IT WORK?

Equivalence involves one party formally recognising the other's regulations as equivalent to its own – without them necessarily being exactly the same. This results in the removal of regulatory barriers to trade. So, for example, the EU's recognition of the UK's data protection rules as equivalent simplifies the sharing of personal data between the UK and EU.

WHERE COULD IT BE DONE?

Data protection and financial services are the two obvious areas. The EU 'adequacy' decision on data protection is estimated to have saved UK companies hundreds of millions of pounds a year in reduced administrative costs. The adequacy decision was set to expire in June 2025 – reflective of the EU's concern at the time that the UK might seek to diverge from EU data protection legislation after Brexit – and it is up to the EU whether to renew it. The decision has been extended by six months to 27 December 2025, giving the EU time to assess the impact of planned changes to UK data protection rules under the Data (Use and Access) Bill. The Information Commissioner's Office asserts that these should not imperil adequacy, though the EU is under no obligation to renew, even if the UK regime remains perfectly aligned to its own.

The potential for equivalence decisions to be politicised is reflected in the EU having only granted the UK a single such decision on financial services (relating to clearing houses). Even here, the EU only reluctantly extended the equivalence decision to 2028 because EU firms made it clear that they were still very reliant on London for that particular service. Other countries – like the USA and Singapore – enjoy a far greater number of equivalence decisions even though they are less aligned with EU regulations. This state of affairs reflects the EU's view of the UK as a direct competitor for providing financial services within Europe. The UK on the other hand has been much more generous in granting equivalence decisions to EU financial services.

BENEFITS, COSTS AND CHALLENGES

The benefit of equivalence decisions is that they allow for the removal of technical barriers to trade without the need to negotiate any kind of binding mutual agreement. However, because they are unilaterally granted, they are not a viable basis for a comprehensive trading relationship. They are more limited in scope and provide less regulatory certainty than mutually negotiated agreements, due to the ease with which they can be adopted and removed.

An alternative, and more integrated, approach can be found in a UK-Switzerland financial services agreement, signed in December 2023. This is a negotiated agreement allowing UK firms in certain sectors (insurance and reinsurance, investment services, over-the counter derivatives, central counterparties) to provide services in Switzerland while largely following UK regulation, and vice-versa. This is in effect a form of mutual recognition (discussed in the next section) based on the idea of 'deference' – where the UK and Switzerland acknowledge that their regulatory systems produce common outcomes. This means the two sides have a binding, mutual agreement on improved market access, but without having to harmonise their legislation. The UK-Swiss agreement is seen as a genuinely innovative approach to regulatory cooperation, but needs strong political will to be replicated elsewhere. Because of the lack of regulatory harmonisation, it relies on a high degree of trust between the negotiating parties not to significantly diverge in approach – something which is still seemingly lacking in the UK-EU relationship, especially when it comes to financial services.

ENHANCED AGREEMENTS

HOW DOES IT WORK?

Enhanced agreements are mutually negotiated and remove barriers to trade. The most common approach is 'mutual recognition' – a concept related to, but distinct from, equivalence. Whereas equivalence involves *one* side acknowledging the parity of the other's regulations, mutual recognition involves *both* sides doing so – even if their rules are not exactly the same. If the UK and EU mutually recognised each other's qualification requirements for a particular profession (e.g. architects) it would be easier for a UK-qualified architect to work in the EU, and vice-versa. The UK Internal Market Act also uses mutual recognition to guarantee a good made in one part of the UK can be freely traded in any other part.

Mutual recognition is a potentially attractive model for the UK, as in principle it could reduce barriers to trade in certain sectors, without the need for formal alignment with the EU rulebook. However, in practice the term can be something of a misnomer, as many of the EU's mutual recognition agreements (MRAs) are anything but mutual, and instead require the partner country to adopt relevant EU legislation, while the EU does not do the same. There is an important distinction between 'traditional' or 'simple' MRAs – which do not involve alignment with EU regulations but remove only a limited number of barriers to trade – and 'advanced' or 'deep' MRAs which involve formal alignment with EU regulations and remove most or all barriers to trade.

WHERE COULD IT BE DONE?

A Frontier Economics report for Best for Britain argues that 'deep regulatory alignment' between the UK and EU in goods and services could boost UK GDP by over 3%. Deep regulatory alignment is defined as a 'comprehensive approach to mutual recognition by the UK and the EU of each other's regulations'. This seems to imply the UK and EU recognising each other's rules as equivalent in more or less all sectors of the economy, without comprehensive UK dynamic alignment with EU regulations. The blunt truth is that comprehensive mutual recognition of this type would be wholly unacceptable to the EU, as the UK would get the main benefits of single market membership (unfettered EU market access for its goods and services) without the countervailing obligations (being subject to the common EU rulebook, as well as other obligations like freedom of movement and a budget contribution).

A more viable model for the UK is something akin to Switzerland's relationship with the EU, widely characterised as a 'patchwork' of sector-specific agreements, some of which involve mutual recognition. These allow Switzerland access to the EU internal market in five areas – air transport, land transport, the free movement of persons, conformity assessment and trade in agricultural products – in exchange for regulatory alignment. Switzerland has also linked its emissions trading scheme to the EU's, and new agreements have recently been signed creating a 'Common Food Safety Area' and allowing Swiss participation in the EU electricity market.

The UK might seek agreements in some of the areas covered under the EU-Swiss relationship (though it is unlikely to countenance a return to free movement), and the economic benefits of this could be fairly significant. The absence of regulatory harmonisation on plant and animal health regimes (known as 'SPS') is responsible for many of new administrative costs faced by UK exporters to the EU, creating new paperwork and checks at the border which slow down and increase the cost of trade. The creation of a separate UK conformity assessment regime has been a major administrative headache for UK businesses, while the UK's exit from the EU internal energy market has increased the cost of electricity trading, and its exit from the EU emissions trading scheme could create significant new export costs once the EU CBAM kicks in next year. The uncertainty about the US's continued contribution in Ukraine and the future of NATO also means the UK and EU will have to go further and faster in deepening defence cooperation, which could result in the UK gaining access to EU defence procurement schemes normally reserved for those in the single market.

BENEFITS, COSTS AND CHALLENGES

Simple MRAs do not require UK alignment with EU law but bring only limited economic gains. The UK could, for example, seek sector-specific agreements on the mutual recognition of professional qualifications – making it easier for certain 'regulated' professionals, (e.g. doctors, lawyers, architects) to have their qualifications recognised in an EU member state and vice-versa. However, any work they undertake would have to be short-term and they would still have to comply with local visa requirements. Similarly, a simple MRA on conformity assessments would not lead to UK conformity assessments being accepted on the EU market – the only change is that assessments for both the UK and EU markets could be done by the same body – thus leaving a large regulatory obstacle still in place.

Moreover, in many of the most obvious areas for MRAs, the EU is likely to insist on deep, rather than simple, agreements. The EU sees no benefit in a simple MRA on conformity assessments, and rejected such a proposal from the UK

during the TCA negotiations, as the main consequence would be EU companies being able to get their goods certified by UK bodies rather than EU ones – driving economic activity away from the EU. That means a UK-EU deal is more likely to look like the 'deep' or 'advanced' EU-Swiss MRA, which requires Switzerland to unilaterally adopt the majority of EU product regulations, with no say over those rules. The benefit is that EU and Swiss product safety approvals are treated as interchangeable – so a Swiss conformity assessment mark is sufficient for a good to be sold on the EU market, and vice-versa.

The EU does have a veterinary agreement with New Zealand that involves a form of mutual recognition without regulatory alignment, but this removes only a limited amount of trade bureaucracy, and the EU does not consider it a suitable model for the UK because the volume of UK-EU agrifood trade is much higher and happens over a much shorter distance. Again, any EU-UK deal is more likely to resemble an EU-Swiss one, which requires Switzerland to unilaterally align with EU plant and animal health standards and participate in a 'common veterinary area', but means no checks or paperwork on agrifood trade. Mutual recognition of emissions trading schemes (ETS), which would exempt the UK from EU CBAM paperwork and tariffs, would also most likely require UK alignment with the rules of the EU system – including the EU setting the price of the UK tariff applied to emissions.

The TCA calls for the UK and EU to find a way to solve the inefficiencies in energy trading created by the UK leaving the EU Internal Energy Market (estimated to increase costs by hundreds of millions of pounds a year) by creating a new trading model, but this has so far been unsuccessful, due to the technical complexity of the issue. The UK could seek to break the impasse by rejoining the EU's Internal Energy Market, but this would require it to give up a degree of sovereignty over the regulation of its energy trading.

The obvious incentive for the UK to seek agreements involving regulatory alignment with the EU is much smoother trade in selected sectors – often characterised as 'privileged' or selective access to the single market. But, of course, there is no guarantee the EU will agree to negotiations. The EU appears to be open to deals on SPS and ETS because it suits its own strategic interests (supporting the Windsor Framework and avoiding electricity price increases). But, beyond those, it is far from clear that it is willing to offer the UK the benefits of deep access to the single market in selected areas (e.g. energy, conformity assessments or professional qualifications) without it signing up to the free movement of people (as this is one of the single market's core 'four freedoms') and making budgetary payments – both of which Switzerland does.

The EU-Swiss relationship sets important precedents for what will be on offer. The EU will likely insist that any UK alignment with EU rules is 'dynamic' (i.e. maintaining alignment with EU rules as they change over time), to match the requirements it has imposed upon Switzerland as part of its recently updated Partnership Agreement. The original set of EU-Swiss agreements were not dynamic, and therefore required regular review and renegotiation, much to the EU's chagrin. The new agreements address this issue and, in exchange, Switzerland gains the right to be consulted on EU legislation to which it is dynamically aligned, giving it greater powers to shape EU law. The EU could also insist on the UK making payments into the EU budget, as Switzerland does.

The implementation of MRAs could also be challenging. Alignment with EU rules does not mean they magically appear on the UK statute book – plenty of administrative effort is required to make that happen. For instance, if the UK agrees to dynamic alignment with EU SPS rules, it would have to go through the process of transposing the necessary legislation into UK law and have to establish a process for being notified of and adopting relevant changes to EU law over time – which are frequent when it comes to SPS.

EEA member states (Iceland, Liechtenstein and Norway) are supported by the EFTA Surveillance Authority which keeps them abreast of EU legislative changes from the proposal stage, giving them advance notice of legislation and a chance to try and influence it. The Authority also oversees their implementation of new EU law. The UK would not have access to this but could try and agree some form of notification mechanism with the EU. An alternative model is the Windsor Framework, where any new or updated EU legislation which is applicable to Northern Ireland is applied automatically, without a formal adoption process, unless democratic consent mechanisms are triggered. This is administratively neater, but provides weaker democratic oversight.

Finally, there is the issue of who would oversee the UK's implementation of EU law, to ensure alignment is properly established and maintained; and how disputes over the application of EU law would be resolved. The EFTA Surveillance Authority and EFTA court fulfil those respective functions on behalf of the EEA states – a system with which both the EU and EEA are broadly content – while Switzerland has up to now largely undertaken its own monitoring – a system with which the EU is less satisfied. This has led to the new EU-Swiss package deal creating a Joint Committee to oversee Switzerland's implementation of EU law and a new arbitration process for disputes – with the European Court of Justice (ECJ) serving as the ultimate arbiter. The EU would insist on creating similar oversight and dispute resolution structures, including a role for the ECJ, as part of any comparable agreements with the UK.

CONCLUSION

Based on recent political signals, it seems that the UK's regulatory relationship with the EU might become increasingly Swiss. What that means is that it is a growing patchwork. The TCA provides a baseline set of conditions for economic cooperation, with the potential to build deeper links over time. There are places in the TCA which foreshadow deeper cooperation, for example on linking emissions trading schemes or mutual recognition of professional qualifications, and other areas where there is interest in expanding the agreement – for example agreements on SPS or youth mobility.

The UK's Minister for EU Relations, Nick Thomas-Symonds has talked up a strategy of 'ruthless pragmatism', based on the pursuit of 'mutually beneficial areas of interest for both sides'. That implies looking issue-by-issue through the relationship to decide where new patches should be added to the TCA quilt. To deliver on that strategy, the government will need to do two things. First, it will need to decide which sectors to focus on in pursuing closer EU links (it might consider the much greater costs which Brexit has imposed on goods trade than services). Second, it will need to decide how far it is willing to go in trading off regulatory autonomy for the removal of trade barriers in each case.

In some cases, it might opt for a strategy of replication, where the UK does not have to formally cede sovereignty to the EU, or obtain EU consent to begin negotiations, but the economic gains will be limited to largely offsetting additional economic costs from further passive divergence. Elsewhere, it might pursue a strategy of integration, sacrificing sovereignty in exchange for the removal of more trade barriers – but of course this is entirely dependent on the EU's willingness to enter into negotiations and allow the UK to 'cherry pick' its relationship.

For the time being, the UK government does not appear to have committed to one particular approach. Some of its proposals, for instance an SPS agreement and linking emissions trading schemes, imply a willingness to accept dynamic regulatory alignment in exchange for much smoother trade. At the same time, its Product Regulation and Metrology Bill adopts a model of replication when it comes to product standards. And of course, there are also plans in train for deregulation in financial services and AI, which is likely to create divergence with the EU.

These approaches need not be contradictory. The UK could plausibly seek deeper integration with the EU in some areas, while opting to maintain more

autonomy in others. But getting that balance right requires a clear vision about the regulatory position the UK wants to occupy long-term. Otherwise, there risks being a conflict of purpose – especially as UK deregulation to appease the United States could significantly reduce the EU's appetite for a reset in its trading relationship with the UK.

The UK's regulatory story over the past ten years has been characterised by leaders unwilling to confront trade-offs and unable to set a clear direction of travel – leading to business uncertainty, low investor confidence, and low growth. Whatever regulatory path this government chooses to take, adopting a clear strategy which it follows consistently is an essential prerequisite to success.

UK in a Changing Europe promotes rigorous, high-quality and independent research into the complex and ever changing relationship between the UK and the EU. It is based at King's College London.

020 7848 2630
info@UKandEU.ac.uk
@UKandEU

www.ukandeu.ac.uk

How to cite this publication:
Reland, J. (2025) Regulating after Brexit. London: UK in a Changing Europe.
https://ukandeu.ac.uk/reports/Regulating after Brexit/

KING'S College LONDON