REPORT

BREXIT AND REGULATION

Catherine Barnard and Joël Reland

THE CONSTITUTION SOCIETY

THE FEDERAL TRUST
for education & research
enlightening the debate on good governance

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Introduction

Regulatory freedom from the EU has, for several decades, been the defining purpose of British Euroscepticism. As the Common Market began to take more concrete form in the 1980s, with an increasing volume of harmonised legislation to facilitate the four freedoms (free movement of goods, persons, services, capital), Margaret Thatcher's 1988 Bruges Speech served as a clarion call to many in her party.

> *We have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at a European level with a European super-state exercising a new dominance from Brussels.*

Though Thatcher had supported EU integration on free market grounds, a significant number of Conservative MPs railed against it. Their argument was both philosophical and economic. On democratic principles, Bill Cash argued that EU legislation was developed through "unaccountable, unattractive and undemocratic procedures" and that Britain's obligation to follow EU *acquis communautaire* "prevents us from unravelling those unwanted laws at a general election".

From an economic perspective, John Redwood argued that small firms in particular couldn't afford the 'vast HR departments' required to comply with the wide range of EU regulatory requirements to which they were subject – claiming that EU working time rules would cost business £2bn a year in additional administration. The idea of British firms crushed beneath a mountain of 'red tape' was further popularised by sections of the British media, as Brussels correspondents (including the Telegraph's Boris Johnson) wrote colourful dispatches about overly-exacting EU directives – on the permitted bendiness of bananas and dimensions of condoms – which will 'exasperate the British'.

In reality, public opposition to EU regulation never built to a groundswell. Not since the early 2000s had more than 10% of voters listed the EU as one of the most important issues facing the country. Yet pressure was growing from within the Eurosceptic wing of the Conservative Party, alive to the growing electoral challenge from the explicitly anti-EU UK Independence Party (UKIP). In order to pacify those forces, David Cameron delivered his 2013 Bloomberg Speech arguing that people "resent the interference in our national life by what they see as unnecessary rules and regulation" and promising a "new settlement" with the EU followed by an in-out referendum on membership. Cameron secured his renegotiated EU deal in February 2016, with the first section promising to stave off 'ever closer union'.

Yet this was, evidently, not enough for many, as the Leave campaign swept to a surprise victory with its promise to "take back control". After years of Parliamentary shenanigans, Boris Johnson ultimately delivered a 'hard' Brexit deal which placed regulatory freedom from the EU at its very core – for which he was willing to accept a distant economic relationship with the EU and (despite claims Johnson made to the contrary) a regulatory border between Great Britain and Northern Ireland (which remains aligned to large amounts of EU regulation). For Johnson, regulatory sovereignty was not just the defining purpose of Brexit, but of his entire political agenda. His 2019 election manifesto promised to 'Get Brexit Done' so that the UK could 'take back control of our laws' and use 'post-Brexit freedoms' to 'transform' the country in a wide variety of areas including trade, immigration, workers' rights, agriculture, environment, science and technology.

So, five years since the UK broke decisively from the EU rulebook, has that vision come to pass? Much of the assessment which follows draws on *UK in a Changing Europe*'s series of 'Divergence Trackers' which have, since 2021, provided a continuous stocktake of UK-EU regulatory divergence. The picture it paints is complex, but if one clear conclusion can be drawn, it is that the promise that Brexit would allow the UK to "take back control" of its lawmaking has proven deceptively simple and, in many areas, simply incorrect.

The referendum debate and aftermath

Regulation was discussed relatively little in the EU referendum – and where it did appear, it was invariably linked to the wider theme of sovereignty. The central Leave campaign promise to "take back control" was occasionally married to the issue of "making our laws", while Michael Gove asserted 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'. Boris Johnson reprised his old arguments about it being "absolutely crazy that the EU is telling us how powerful our vacuum cleaners have got to be, what shape our bananas have got to be", while a Leave campaign briefing argued that 'damaging single market rules' were designed by 'a small number of large multinationals that lobby Brussels to use regulations to crush entrepreneurial competition'.

Yet there was almost no detailed discussion about which EU laws should be removed, nor what they should be replaced with, nor how long all of this new regulation would take to adopt. The Remain campaign made occasional warnings about the risk of employment protection or food standards being lowered, while Brexiters continued to rail against Working Time rules and the Common Agricultural Policy. A Leave campaign briefing about the costs of EU regulation gave only one example of a law it wanted to scrap (the Clinical Trials Directive, which it called 'silly'). It spent more time celebrating historic philosophies like 'regulatory diversity' ('one of the great advantages of post-Renaissance Europe over China') and Alexander Hamilton's 'competitive federalism' – which it argued were preferable to the EU's 'bureaucratic centralism' which 'increasingly mimics 16th century China in preventing experiments and crushing diversity'. The question of what 'regulatory diversity' meant in practice, or how it could be implemented in twenty first century Britain, where the EU is the UK's most important trading partner, was left for another day.

After the referendum, Theresa May was installed as a Remain-supporting Prime Minister leading a party in which pro-Leave forces had become ascendant. She quickly set to work demonstrating her commitment to delivering Brexit in a form that would prioritise the UK's regulatory freedom. Her October 2016 Party Conference speech promised a "Great Repeal Bill" so that the "authority of EU law in Britain will end" and "our laws will be made not in Brussels but in Westminster". This would see existing EU law converted into British law, so that Parliament is "free to amend, repeal and improve any law it chooses". In her January 2017 Lancaster House speech, May made clear that this necessitated an exit from the EU single market (along with the Customs Union), as otherwise the UK would still be "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."

This hinted at something which had been little discussed during the referendum: the clear trade-off between the UK's post-Brexit regulatory freedom and economic integration with the EU market. The UK could repatriate lawmaking powers to Westminster, but the price would be an exit from the single market and, therefore, significant new trade frictions in terms of paperwork and border checks. Moreover, Northern Ireland would likely have to remain aligned to EU single market regulations for goods in order to maintain an open Irish border (and thus uphold the Belfast/Good Friday Agreement), leading to the regulatory bifurcation of the United Kingdom.

This realisation was, according to her Chancellor Philip Hammond, "like a light bulb going on" for May. By her September 2017 Florence speech, she was arguing that de-harmonisation of regulations would "represent such a restriction on our mutual market access that it would benefit neither of our economies" and instead advocated a "creative" solution to "avoid friction at the border". That solution ultimately took the form of the 'Chequers plan', under which the UK would continue to adhere to all the EU regulations necessary to maintain frictionless trade in goods (leaving freedom to diverge in services sectors) while also ensuring that the entire UK (including Northern Ireland) would leave the EU on the same terms. But prominent Brexiters David Davis and Boris Johnson both resigned from her cabinet over the proposal, saying, respectively, that her plan was 'certainly not returning control of our laws in any real sense', and a 'semi-Brexit' which 'locked in the EU system, but with no UK control over that system'.

May was ultimately unable to devise a solution which satisfactorily reconciled the 'trilemma' of regulatory freedom, frictionless trade in goods and an open Irish border. She was succeeded by a Prime Minister, in Boris Johnson, who was willing to make a more decisive choice. For Johnson, regulatory freedom was the primary imperative of Brexit. He deliberately negotiated a Trade and Cooperation Agreement (TCA) which meant the UK would no longer formally be subject to EU law. For that, he was willing to accept significant new barriers to trade with the EU, in terms of paperwork and checks, and for Northern Ireland to remain subject to EU law on goods which – despite his denials – created a regulatory border with Great Britain.

The vision of 'Brexit opportunities'

In line with the vision of Theresa May's 'Great Repeal Bill', the UK had copied all the EU law to which it was subject onto the domestic statute book as 'retained EU law' (REUL) through what actually became the European Union (Withdrawal) Act (EUWA) 2018. This was important for maintaining the workability of law in the UK in areas as wide-ranging as food safety, airline safety and employment laws.

EUWA 2018 was always intended as a holding position. It created stability and continuity while the government decided how it wished to reshape the legislative landscape post-Brexit. For all the rhetoric about Brexit freedoms and a bonfire of EU law, the government's hands were and continue to be, to some degree, tied. The 'level playing field' provisions in the TCA give the EU the power to impose tariffs on the UK if it reduces existing levels of employment, social, environmental and climate protections, as prominent Brexiters like Jacob Rees-Mogg had advocated. Those same provisions also allow the EU to take action against the UK if the government does not keep pace with new EU rules.

Nevertheless, the UK did gain a significant degree of freedom to diverge from EU law anywhere outside the level playing field areas, and this was something which Boris Johnson's government immediately sought to make use of. The vision was a uniquely Johnsonian mix of deregulation and dirigisme. On the one hand, there was a clear emphasis on cutting back EU-era red tape which, in the words of Lord Frost (the UK's chief Brexit negotiator and then Minister for EU Relations) was 'unnecessarily complex'. A government-commissioned Taskforce on Innovation, Growth and Regulatory Reform (TIGRR), comprising three Conservative MPs, delivered a report in May 2021 arguing that the UK 'should undertake a complete audit of EU derived law and look for further opportunities to deregulate and lower burdens on business', with early candidates identified including financial services, personal data protection and genetic editing. But there was also a role for a more interventionist state. Johnson promised he would actively "decide" where to "stimulate new jobs and new hope" by building "green industrial zones", "freeports" and data centres in less well-off regions. This would be enabled by a new subsidy regime permitting higher state spending in those regions, and he also promised more active work to protect our "landscape and environment" and modernise fishing fleets.

The tension between the slash-and-burn 'Singapore-on-Thames' model and the more interventionist 'de Gaulle-on-Tees' approach implied that the government did not have a clear sense of the new regulatory model it wanted to develop. This became evident in the January 2022 Benefits of Brexit policy paper. Published a year after the TCA took effect, and with very little divergence having been delivered, the report claimed to show 'how the UK is taking advantage of leaving the EU'. Running to 105 pages, the document comprised a long list of potential 'benefits', many of which had nothing to do with leaving the EU (like reforming HGV driver training) or were simply vaguely worded ambitions (like 'defending UK economic interests'). The document gave no indication of which areas would be prioritised for reform, nor what the government's core regulatory principles would be – beyond doing things 'better' (65 mentions) than the EU. If one clear conclusion could be drawn, it was that the government's focus was increasingly on the quantity of divergence – giving the impression of rapid, wide-scale change – rather than the quality of any reform agenda.

The Retained EU Law Bill

The month after the paper was published, Jacob Rees-Mogg was appointed to a new position as Minister of State for Brexit Opportunities and Government Efficiency in the Cabinet Office, and so began a rapid acceleration of the quantity over quality strategy. One of his first acts as minister was to pen an article in *The Sun* inviting readers to 'write to me and tell me of ANY petty old EU regulation that should be abolished'. This set out a vision to remove as many 'regulatory barnacles' encrusted on the British 'ship of state' as possible. 'Through thousands of small changes', Rees-Mogg wrote, 'we can enact real economic change'. The next, and more significant, step was Rees-Mogg's announcement of a plan for a 'Brexit freedoms bill' which would attach a 'sunset clause' to 1,500 pieces of REUL so that they would expire in five years, except where ministers actively chose to retain specific laws. Both strategies implicitly blamed officials for failing to come up with enough ideas for reforming REUL, with Rees-Mogg saying that the sunset clause was meant to 'force radical thinking'.
The bill – which came to be called the Retained EU Law Bill (or the REUL Bill) – was introduced under Liz Truss's brief premiership in September 2022 and, in fact, went further than Rees-Mogg's initial promise. It introduced a sunset clause for *all* REUL (which we now know ran to almost 7,000 pieces of legislation) whereby it would expire in just over a year – on 31 December 2023 (later relaxed to allow departments to extend the deadline to 2026 where desired). This was an extremely radical proposal which made good on David Frost's promise of a year earlier to 'comprehensively review' all REUL and scrap 'all that is not right' for the UK – something which he acknowledged was a 'mammoth task'. A 'Retained EU Law Dashboard' was also established, to provide live data on the amount of REUL which had been retained, reformed or repealed – emphasising how keen the government was to demonstrate divergence in action.

Less consideration was given to the consequences of such rapid divergence. For a start, the government did not know exactly how much REUL was on the statute book. The dashboard initially identified just under 2,500 pieces of REUL as in scope for reform yet, as of early 2026, that number had grown to almost 7,000. This lack of oversight left significant risks that important pieces of legislation (for example on food, gas or airline safety) could expire without anything being put in its place. Moreover, even in cases where REUL was known about, the sunset clause gave officials very little time to develop and implement replacement legislation – creating risks that new laws would not be properly thought through and tested prior to implementation. And, for business, the bill created major uncertainty about the regulatory horizon they would be working towards in the coming years – which effectively stopped UK-based firms from planning ahead and discouraged foreign ones from investing in the UK.

A great irony of this approach was that, for all government's talk of repealing EU law to lift the regulatory burden on business, it was those same businesses who were pushing hardest against a bonfire of EU law – with their protests falling on deaf ears in Whitehall. Boris Johnson's infamous speech at the CBI's annual conference in 2021 (where he lauded Peppa Pig World at length and imitated a car) epitomised Number 10's attitude. But that attitude started to shift once Rishi Sunak became Prime Minister. Facing a cost-of-living crisis driven by rising energy prices and badly exacerbated by the market reaction to Liz Truss and Kwasi Kwarteng's October 2022 'mini budget', Sunak sought to minimise wider economic disruption.

He rebuilt diplomatic relations with the EU – agreeing the Windsor Framework in February 2023 to resolve a number of the tensions over Northern Ireland – and quickly slowed the rate of plans for divergence. This included pausing some reforms which were in train (such as making 'UKCA' conformity assessments for manufactured goods mandatory), with his Business Secretary Grant Shapps saying that it would help 'businesses so they can get on with their top priorities'. His government also opted to remove the sunset clause from the Retained EU Law Bill (which has since become an act), with Kemi Badenoch – who succeeded Shapps as Business Secretary – telling Paraliament in June 2023: "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."

Following this change of policy, the default position, in what became the Retained EU Law (Revocation and Reform) Act (REULA) 2023, was that all retained EU law would stay unless included in a schedule, which removed some regulatory dead wood (mainly expired legislation) but did not make

any significant changes. Of more significance was the decision in the 2023 Act to repeal the legacy of supremacy of retained EU law (so it would no longer take precedence over conflicting national law) and the removal of general principles (such as the need for an effective remedy) which steered the courts' approach to interpretation. Further, a process was undertaken to ensure that aspects of retained EU law, especially EU case law, which might be lost as a result of the repeal of supremacy of EU law, led to further legislation to plug the gap such as in the field of equal pay.

Regulatory results: the repeal of REUL

The key question, then, is how much divergence has been delivered in practice, and what have the consequences been? There is an important distinction to be made between the repeal of existing REUL, and the development of brand-new regulatory frameworks (which were necessitated in many areas by the UK no longer being subject to EU regimes). While the latter has led to quite some quite significant divergence and policy consequences, attempts to reform REUL have delivered very little meaningful change.

A cursory glance at the Retained EU Law Dashboard might suggest otherwise. As of May 2026, it shows that 37% of all REUL has been 'reformed' – with 23% repealed, 13% amended or replaced, and 1% having expired. But a careful dig into the data reveals that this amounts to little more than a glorified regulatory spring clean. The majority of REUL that has been reformed is either no longer of relevance to the UK after Brexit (e.g. regulations concerning the EU's fisheries partnership agreement with the Solomon Islands) or has been amended in a highly technical way (e.g. restated in new legislation, or to clarify who a 'relevant authority' is). It is telling that the two policy areas which have seen by far the most 'reformed' REUL are fisheries, aquaculture and marine (287 pieces) and agriculture and rural development (250) – both areas where the majority of REUL has been made redundant by the UK's departure from the EU's common fisheries and agricultural policies.

UK in a Changing Europe publishes a quarterly divergence tracker which monitors significant plans for divergence (i.e. those which are likely to meaningfully alter the UK's policy approach in any given area). It identified 122 plans for divergence initiated by Conservative administrations from 2021-2024, but very few of these were ever delivered (the reasons for this are discussed later on).

One notable exception has been the loosening of restrictions in England on the use of 'genetic editing' techniques (which accelerate the breeding of plants and animals to create organisms which could have been bred naturally) compared to 'genetic modification' (which involves the transplantation of genetic material to create organisms which could not have been bred naturally). Proponents of genetic editing argue that it has a wide range of environmental and health benefits, allowing farmers to grow crops which are more nutritious and resistant to drought and pests, while also offering commercial benefits to farmers who can market new crops with more niche properties. The UK moved earlier than the EU in liberalising rules on the use of genetic editing (an EU reform is now in process) but the UK may end up having to adopt the EU's rules anyway (which differ slightly from the approach in England) as part of the 'SPS' deal which is now under negotiation. The UK has also legislated to ban the export of live animals for fattening and slaughter on animal welfare grounds – such a ban is forbidden under EU law – and it is unclear whether this will remain in place under an SPS deal.

Tax and enterprise policy has also seen some notable divergence. One of the most-vaunted Brexit opportunities was the introduction of 'freeports' (small economic zones with reduced customs and administrative duties) – and there are now 12 in operation across Great Britain. However, research from UK in a Changing Europe suggests that the economic gains are likely to be negligible, given that freeports were designed for developing economies lacking clear regulation, and they tend to divert investment away from other areas rather than generating additional growth. VAT rules have been reformed to tax wine by strength rather than volume (incentivising the purchase of lower-strength drinks) and to zero-rate duties on solar panels and heat pumps (to encourage their uptake). The cap on bankers' bonuses, introduced after the 2008 financial crisis, has been removed; but the scale of divergence on financial services has been perhaps less than anticipated, given it was identified by the Chancellor in 2022 as a priority sector for regulatory reform.

Beyond this, there have been a handful of symbolic reforms, designed to demonstrate the UK's regulatory autonomy from the EU while having little material effect. In respect of employment law, the government announced a consultation on minor reforms to the working time legislation and legislation on transfer of undertakings (legislation protecting workers' rights when their business is sold or otherwise transferred); while there have also been technical changes to 'GDPR' rules on data protection. This allows government to say it has reformed two of the pieces of EU legislation most regularly criticised by Eurosceptics. Rules on the sale of alcohol have been reformed, so that champagne can be sold in pint-sized bottles (reputedly Winston Churchill's preferred measure), and the government has (without changing the law) clarified how imperial measures can be included on goods packaging (it must be less prominent than the metric measurement).

Obstacles to reform

Why was so little reform of REUL delivered, when it was so central to the government's post-Brexit agenda? Though there are many reasons, the most fundamental is that the government underestimated the costs of divergence. A consultation on better regulation published in October 2021, stated that 'Our laws no longer need to represent a compromise between competing interests among many European states - they can be tailored to our needs and tradition'. From a trade perspective, however, the idea of 'tailored' regulation is an oxymoron. The whole point is to establish common, mutually agreeable standards between as many parties as possible (i.e. a 'compromise') in order to reduce technical barriers to trade. 'Tailoring' regulation to a single country therefore has the opposite effect – increasing barriers to trade due to having differing standards to key trading partners.

This is illustrated by abandonment of a plan to introduce lighter-touch requirements for approving medical devices. Though the UK might well, in theory, have been able to develop a less burdensome process than the EU, it would, overall, have created more bureaucratic hurdles for any manufacturer serving both the GB and EU markets – as they would have needed to go through separate approval processes for each market. Further, because the EU is a much bigger market, most manufacturers would likely prioritise obtaining EU regulatory approval – meaning delays to the arrival of new medical technologies on the GB market. Similarly, a proposal to make the new 'UKCA' mark (denoting a product's conformity with UK technical and safety standards) obligatory for goods circulating on the GB market was abandoned as many foreign manufacturers would not have the time or inclination to get products re-certified just for the GB market. To guarantee a smooth flow of goods, the Sunak government opted to instead continue accepting the EU's 'CE' mark indefinitely.

A related issue was that, contrary to the promises of some in the Leave campaign, the UK's balance of trade was not radically altered by Brexit. The EU remains responsible for around half of all the UK's trade – and divergence from its rulebook inevitably makes that trade harder. Plans to radically reform 'GDPR' rules on data privacy (for instance to get rid of pop-up 'cookies' banners on websites) were shelved as it emerged that this would lead to the removal of the EU's data 'adequacy' decision for the UK – which facilitates free exchange of personal data between UK and EU firms, saving businesses hundreds of millions of pounds a year in admin costs. Meanwhile, in many sectors, such is the UK's reliance on the EU market that there was little point in government even beginning to embark upon plans for divergence. British carmakers, for instance, have continued to align voluntarily with updated EU rules on safety and emissions testing – even though they are not required under UK law – in order to maintain access to the EU market; and there are similar dynamics at play in a wide range of manufacturing and food sectors.

Beneath this was a structural problem of state capacity. The UK had to implement a host of new regimes (such as border checks on EU imports) while also taking on a wide range of regulatory responsibilities which it used to outsource to EU bodies. After six years of continuous decline in civil service numbers, headcount grew by 65,000 (17%) in the five years after the referendum. Yet officials still found themselves heavily overburdened. At the Health and Safety Executive's Chemicals Regulation Division, 25% of staff time was spent on training in 2021-22, while Defra – which was tasked with delivering major reforms on farm subsidies and genetic editing – had to balance this

with urgent requirements to implement new EU import checks and oversee a beefed-up Office of Environmental Protection. This left very little bandwidth in the system for focusing on devising and implementing a more strategic divergence agenda.

It has also taken Brexit to show the UK's regulatory instincts to be a lot more European than many assumed. It is telling that, of the few significant reforms made to REUL, many are about strengthening the hand of the state – in terms of introducing stronger protections for animals, levying higher taxes on alcohol, and encouraging the uptake of net-zero technologies. A fully-fledged UK-US trade deal continues to prove elusive for many reasons, not least because of public opposition to any watering down of food standards. And in many areas, the government has voluntarily opted to match, or even exceed, the EU's regulatory pace.

For example, on climate and environmental policy, the UK's emissions reduction targets are higher than the EU's, the government remains committed to a 2030 phase-out date for petrol and diesel cars (whereas the EU has just abandoned its own 2035 target) and both sides have similar plans in train to reduce packaging waste. The UK's Online Safety Act 2023 (imposing new obligations on platforms to protect users) and Digital Markets, Competition and Consumers Act 2024 (designed to prevent market abuse by big tech companies) bear an unerring similarity to the EU Digital Services Act and Digital Markets Act which were developed a couple of years before. And the UK has continued to increase employee protections post-Brexit, most notably via the Employment Rights Act (ERA) 2025, even if the ERA has not gone as far as the EU, which has developed novel new regimes for protecting platform workers like Uber drivers.

Obligatory divergence

More significant divergence has occurred in areas where the UK government was obliged to establish new regimes after Brexit, because it was no longer subject to EU rules. This includes the three major policy pillars of the 'take back control' agenda – immigration, trade and fish – as well as lesser-discussed areas like subsidy and competition policy. In some cases, the UK has introduced quite radically different rules (immigration, agricultural subsidies) which have had significant consequences. In others (fisheries, trade, industrial subsidies, competition) the promise of major changes in approach have not been matched by reality.

Changes to immigration rules have indeed been profound, though not in the manner that most anticipated (given Michael Gove promised in 2020 that net migration would be brought down to the tens of thousands). With EU free movement having come to an end, the UK set about developing a new 'points-based immigration system' which treated EU and non-EU nationals alike. This regime made it significantly easier for non-EU nationals to get a UK work visa – setting more relaxed salary and skills requirements – and led to net migration hitting record levels in June 2023 at around 900,000 – almost three times higher than in June 2016. This was driven by an increase in students and 'high-skilled' workers, while the UK has experienced labour shortages in 'lower-skilled' sectors, like hospitality and manufacturing, which have historically relied on EU migration. The government has since significantly tightened the rules, with net migration falling to 200,000 in June 2025.

The UK has taken advantage of its 'independent trade policy' to agree new trade deals with a handful of countries, but the economic benefits of these agreements come nowhere close to offsetting what has been lost in terms of trade with the EU. The UK 'rolled over' all the deals it had as an EU member state, converting them into bilateral agreements, and has since signed new ones with Australia, New Zealand, the 'CPTPP' trans-pacific trading bloc and India (the EU has signed similar deals with New Zealand and India). Some industries (e.g. farmers) have expressed concern about exposure to increased competition from foreign imports produced to lower regulatory standards (mirroring concerns in EU member states about a new deal with the South American 'Mercosur' bloc). The UK's new trade deals are, on the government's own estimates, expected to add around 0.5% to GDP by the middle of the next decade, doing little to offset the negative economic effects of Brexit. The most comprehensive study to date of Brexit's economic impact, produced by National Bureau of Economic Research, estimates that it has reduced UK GDP per capita by 6-8% as of 2025.

On fisheries, the UK and EU agreed as part of the TCA that the EU would return 25% of its catch share in British waters over a five-and-a-half-year period. Scottish fishers have seen the value of their catches increase by 8% from 2019 to 2023 – though much of this has come from increased catches *outside* UK waters (up by 17%) rather than catches at home (up 5%) – while English fishers have seen the value of their catches fall by 8%. Though some British boats may be catching more fish, they are finding it a lot harder to export it to their chief export market, with EU fish exports falling by 10% in value between 2019 and 2023 due to post-Brexit trade bureaucracy. This is why, at last year's UK-EU summit, the government was willing to roll over the terms of the fisheries agreement for twelve years (much to the chagrin of Scottish fishers) in exchange for negotiations on an 'SPS' deal which would lift much of the bureaucracy related to food and plant trade.

The EU's Common Agricultural Policy (CAP) has been replaced by a new Environmental Land Management scheme (ELMs) for farm subsidies. The CAP has long been criticised for favouring large landowners and incentivising overproduction, and so Environment Secretary Michael Gove set about developing a new regime which would financially reward farmers for 'public goods' (i.e. environmentally friendly practices), rather than the amount of land they farmed – presenting it as "a once-in-a-generation opportunity to shape the future of English farming". This delivery of the vision has, however, proven challenging. Defra adopted an iterative approach to the new scheme in England (agricultural policy is devolved), adjusting the types and levels of payment on offer to farmers over time as EU 'basic payments' were phased out. Yet farmers found that constant policy changes (overseen by seven different environment secretaries in seven years) created a great deal of uncertainty, while many were also left financially worse off as legacy payments were phased out. The system is still yet to reach settled form, with the Labour government announcing another overhaul in early 2026.

There is also a new regime for industrial subsidies, though here the government's room for manoeuvre was constrained by the TCA's level playing field obligations, which required it to follow the same core principles as the EU state aid regime – with a prohibition on subsidies that could distort UK-EU competition. Yet the UK had freedom to reform the process through which awards are made, and opted for a more permissive approach based on the premise that subsidies are valid unless proven otherwise – in contrast to the EU system where individual awards require formal approval. UK subsidy spending has increased significantly post-Brexit, in response to a range of challenges such as Covid-19, energy costs and net zero. It is, however, hard to tell how much of this is down to the design of the new scheme given there have been similar – and often greater – increases in EU member states such as Germany.

The Competition and Markets Authority (CMA) has new responsibilities for overseeing mergers and acquisitions. Here, policy has gone on something of a journey, with the UK initially departing from the EU approach to adopt a more interventionist stance. Most notably, in April 2023 it blocked Microsoft's acquisition of the video game company Activision, on the grounds that it could stifle competition in the 'cloud gaming' sector; whereas the European Commission had approved the deal due to the 'very limited' size of that sector. This was seen at the time as the UK 'stealing a march' on the EU by doing more to promote innovation in emerging sectors. Yet, just six months later, the CMA approved the deal, with government, spooked by accusations from Activision and Microsoft that the UK was 'closed for business', publishing a 'strategic steer' effectively calling on the CMA to minimise regulatory interventions. This call has been heeded, with the CMA not blocking a single merger in 2025 – the first time that has happened since 2017.

Passive divergence

While the UK may have done little to diverge from the EU, the same cannot be said in reverse. The first von der Leyen Commission (2019-2024) developed 431 new legislative proposals, with major new regulatory agendas around the green transition, industrial competitiveness and the digital economy. Because new and updated EU legislation no longer applies in the UK (except, in many cases, in Northern Ireland), this has created a significant amount of new 'passive' divergence (or 'divergence by default') which has had some significant impacts.

The UK government has never attempted to systematically monitor the extent of passive divergence. As a result, British businesses have had to invest significant time and resource in monitoring new EU legislation, to understand where and how they need to change their operations in order to maintain access to the EU market (which is conditional upon adherence to its regulations). By far the biggest impact has been on product standards – due to a bulk of new directives on the sustainability, traceability, environmental and health impact of goods. The EU has also imposed restrictions on 13 chemical substances found in a wide variety of goods (and classified another 38 as 'Substances of Very High Concern'). This has not been replicated in Great Britain. As the EU restricts a growing number of goods and substances from its market due to the hazards they pose to human health or the environment, there is a risk that Great Britain, without parallel restrictions, becomes an alternative 'dumping ground' for those goods.

The Commission has also set up new protections around the single market which create costs for third country exporters. The EU Carbon Border Adjustment Mechanism, which took effect this year, imposes tariffs and administrative costs on exporters of a range of industrial goods (including steel, fertilisers and electricity) to the EU, to ensure they are paying the same levies on their embedded carbon emissions as if they had been produced in the EU under its 'emissions trading scheme' (ETS). The UK government is now seeking to 'link' its ETS to the EU's, to remove those new trade frictions. Meanwhile, the EU General Product Saftey Regulation (GPSR), which came into force in late 2024, requires all companies selling products into the EU (and Northern Ireland) to have an EU-based 'point of contact', at a cost of €150 per year per product, which has made exporting to the EU prohibitively expensive for many smaller British companies. Upcoming EU rule changes on packaging could have a similar effect, as firms would have to bear potentially significant additional costs from having to produce different packaging depending on whether a good is destined for the GB or EU/NI market.

Nowhere have the effects of passive divergence been felt more strongly than in Northern Ireland, which remains subject to more than 350 EU acts plus amendments – mostly covering goods regulations – under the Windsor Framework (formerly the Protocol on Ireland/Northern Ireland). This means that many new or updated EU laws which increase divergence between Great Britain and the EU, equally create divergence between Great Britain and Northern Ireland, often adding small new frictions to trade. An additional challenge for Northern Ireland, however, is that it is a much smaller market than the EU. So while most GB-based businesses are likely to be willing to bear the costs of adapting to EU rule changes in order to maintain access to the EU market (given its size and value) the same is not necessarily true if they only export to Northern Ireland. This, in turn, risks a curtailment of supplies to Northern Ireland: an effect widely reported in the media when the EU GPSR took effect and some GB-based firms stoped their Northern Irish exports. As the EU rulebook continues to evolve, the GB-NI regulatory border is likely to grow thicker – even if the pace of passive divergence may slow now that the second von der Leyen Commission has put an emphasis on the 'simplification' of regulations it introduced in its first term.

Northern Ireland

The UK's approach to Northern Ireland's regulatory position has evolved significantly over the past five years. Despite Boris Johnson's claims to the contrary, the Northern Ireland Protocol and subsequent TCA created a regulatory border in the Irish Sea, as certain goods – in particular animal and plant-based items – either could no longer be imported into Northern Ireland from GB, or became subject to new border checks and paperwork. Perhaps one reason why the Johnson administration did not pursue greater divergence from the EU is because it would have served to exacerbate the regulatory gap between Great Britain and Northern Ireland – and drawn further attention to the Johnson's false claim about the lack of an Irish Sea border.

Northern Ireland's new-found regulatory position did not necessarily have a negative impact on its trade performance. It remained the only part of the UK with unimpeded access to the EU single market, and University of Sussex research from 2022 suggested this would leave the Northern Irish economy 2.2% larger than had Brexit not happened. However, it created 'trade diversion' between Great Britain and Northern Ireland, with some long-standing supply chains curtailed, and some items (such as seed potatoes) banned outright. The symbolic disconnection from the rest of the UK market was a major problem for Northern Ireland's Unionist community.

Northern Ireland's status was the biggest political sticking point between the UK and EU in the years immediately after the TCA was agreed. In January 2021, the EU sought to use emergency measures to introduce controls on exports of vaccines to Northern Ireland (out of concern it could serve as a 'backdoor' into the UK). This would have run contrary to the core purpose of the Northern Ireland Protocol – to maintain an open Irish border – and the Commission retracted its plans within hours following a major diplomatic backlash. There were also prolonged 'sausage wars' over the Protocol's prohibition on the export of chilled meats from Great Britain to Northern Ireland, with the UK government repeatedly threatening to unilaterally extend the grace period before such bans came into force.

Much of the tension over Northern Ireland was diffused by the Windsor Framework, agreed in February 2023 shortly after Rishi Sunak took over as UK Prime Minister. The Framework revised the Protocol by introducing a 'green lane', enabling a range of goods – mostly in agricultural and food sectors – which meet UK (rather than EU) regulatory requirements to be exported from Great Britain to Northern Ireland, and subjected to far-reduced border controls. To benefit from this, exporters must prove that their goods are 'not at risk' of entering the EU and goods must carry 'not for EU' labelling. The Framework also overturned the ban on export of seed potatoes and allowed Northern Ireland to be subject to certain changes to UK VAT and excise law. Sunak said in 2023 that the green lane 'removes any sense of a border in the Irish Sea', although in reality customs paperwork is submitted, but on a monthly basis rather than on each consignment, and the scale of visual checks on goods has been significantly reduced but not abandoned outright.

The Windsor Framework was followed by new UK government commitments to minimise future divergence between Great Britain and Northern Ireland. A January 2024 command paper entitled 'Safeguarding the Union' aimed to address Unionist concerns about the extent of – and potential for future – regulatory divergence. This promised (though never delivered) an Act of Parliament to prohibit the UK from making a 'future agreement with the European Union which has an adverse effect on the operation of the United Kingdom's internal market'; as well as legislation requiring ministers to assess whether bills have any adverse impacts on the Northern Ireland's place in the UK internal market. It also stipulated that 'not for EU' labelling would have to be applied to goods no matter where in the UK they were being sold (at not insignificant administrative cost to businesses), to avoid the risk that businesses stopped exporting to Northern Ireland in lieu of having to obtain the labels.

The position of trying to minimise any new 'active' UK divergence which would increase regulatory gaps with Northern Ireland has been continued by the Labour government. However, the challenge remains that Northern Ireland is still significantly exposed to passive divergence – as detailed above. There are two 'democratic consent' safeguards within the Windsor Framework to try address this. The first, known as the 'Stormont Brake' allows Members of the Legislative Assembly (MLAs) in Northern Ireland to ask the UK government to block the application of *updates* to EU law, if 30

or more MLAs from 2 or more parties register their objection to a rule change which 'would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist'. The second, known as an 'applicability motion' requires the application of *new* EU legislation to be supported by a 'cross-community' majority of unionist and nationalist MLAs.

Yet these mechanisms have proven of little effect so far. For a start, the threshold for the use of the Stormont Brake is very high (i.e. the 'significant impact' requirement) and the UK government has powers to overrule the consent mechanisms. The Stormont Brake has, in fact, been triggered only once, in late 2024 over an updated EU regulation on the labelling of chemical substances. However, the UK government rejected the request on the grounds that the "specific test wasn't met for doing so". Similarly, an applicability motion on a new EU regulation on the naming of craft products did not obtain the necessary cross-community consent, but the UK government opted to apply the legislation anyway, as it deemed it 'would not materially impair the free flow of goods or divert trade between Great Britain and Northern Ireland'. Westminster has since unilaterally approved the application of multiple pieces of new legislation in Northern Ireland – undermining its obligation to first obtain an applicability motion.

This speaks to a tension between managing UK-EU and GB-NI divergence. There is a risk for Westminster that if it seeks to block the application of EU law in Northern Ireland, without clear justification in terms of the potential trade disruption, then this will be seen by the EU as an act of bad faith, which risks souring wider relations. The Labour government has been keen to avoid this, and instead sought to assuage 'sincere and genuine concerns' in Northern Ireland by promising to look into aligning with the EU laws in question on a UK-wide basis. It is, however, yet to act on any of those commitments. This may not be for want of trying, but rather stem from a lack of capacity within the state for doing so, as discussed in greater detail in the final section on Labour's plans for regulatory 'alignment' with the EU. Not for the first time, Northern Ireland has proven to be the canary in the Brexit coalmine.

The UK internal market

Northern Ireland was not the only devolved administration which faced new regulatory challenges post-Brexit. After all, the UK's devolution settlement, agreed in the 1990s, was premised on EU membership. The single market and customs union guaranteed the free movement of goods between all parts of the UK, while the application of EU acquis meant a large proportion of legislation was harmonised across the four nations, even in areas of devolved competence (like environmental law). Post-Brexit, the possibility emerged for new divergence within the 'UK internal market', with Holyrood and the Senedd free to take quite different regulatory approaches, especially given their stated desire to maintain parity with EU standards (the Scottish government passed a 2021 'Continuity Act' granting it powers to maintain alignment with EU law changes) while Westminster was fixated on divergence.

The Johnson government's rather blunderbuss solution to this potential problem was to pass the UK Internal Market Act (UKIMA) 2020, which sought to prevent intra-UK divergence by establishing two new '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 the other 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. These principles are subject to very narrow exceptions.

Taken together, the UKIMA significantly blunts the ability of the devolved governments to chart their own regulatory course. For instance, a Scottish ban on the production and sale single-use plastic cutlery would not, in principle, be binding on English companies – allowing them to continue to sell plastic cutlery to Scottish customers, even though a Scottish company could not do so. The only way to avoid this is for a targeted 'exclusion' to the UKIMA to be agreed to by the UK government, as occurred in the plastic cutlery case. Yet Westminster rejected Scottish attempts to seek an exclusion in relation to its 'deposit return scheme' (DRS) which incentivises users to recycle drinks containers by charging them a small fee which is returned upon recycling. Unlike the DRS in

England, Scottish ministers wanted to include glass bottles in their scheme and sought an exclusion, which was denied on the grounds that it could lead to 'permanent divergence' which 'would add cost and complexity to the schemes in particular to hospitality and retail sectors, as well as adding consumer inconvenience'.

The UKIMA has been condemned by the Scottish and Welsh governments for its 'chilling effect' on their regulatory freedom, and the Welsh government launched a judicial review of the Act in 2022, characterising it as an 'unwarranted attack on devolution and the right of the Senedd to legislate without interference in areas devolved to Wales' – which the Court of Appeal dismissed as premature. The devolved governments have ultimately passed very little legislation to maintain alignment with EU law, despite their stated ambition to do so. In more recent years, there have been some tentative efforts to strengthen devolved policymaking abilities, with the four nations collectively agreeing – first with the Sunak administration and then with Starmer's – to new rules banning single-use vapes. Greater use appears to be being made of intergovernmental forums to try to mutually manage intra-UK divergence, and the Labour administration notably agreed to an exclusion in February 2026 which allows the Welsh government to include glass bottles under its DRS (the Scottish government has seemingly given up on plans to do the same).

The Labour government's decision to seek formal regulatory alignment with the EU in certain sectors also has major implications for the devolved administrations. The sectors in question include 'SPS' (animal and plant health standards), where powers are largely devolved, and emissions trading, where the devolved governments jointly govern the UK scheme. This in effect amounts to Westminster unilaterally deciding to limit devolved competencies in certain policy areas by re-aligning them to EU law. Yet, because the Scottish and Welsh governments take a presumption in favour of alignment, they have protested very little. This situation could, however, change, if they feel that they continue to be systematically excluded from 'decision-shaping' processes over applicable EU law in future, or if Westminster seeks an exemption from EU rules which the devolveds do not want (or vice-versa).

Labour's turn to alignment

The approach to regulatory divergence has changed significantly under the Labour government. UK in Changing Europe's divergence trackers identified a slowdown in attempts at active divergence once Labour took office – accelerating a trend which began under Rishi Sunak. There are a few select areas where the government is still interested in doing things differently to the EU (financial services, AI, trade deals) but for goods sectors in particular (where the clear majority of UK exports go to the EU and the post-Brexit trade frictions have hit hardest) attempts to diverge have largely stopped.

The most significant shift in policy has, however, been the turn towards regulatory 'alignment' with EU rules. This is something which Conservative administrations would not countenance, with Rishi Sunak arguing in his final party conference speech that "to align us with the European Union" is to "never seize the full opportunities of Brexit". Keir Starmer, on the other hand, argues that Brexit has "significantly" hurt the UK economy and that this must be addressed through closer alignment with EU single market rules. His Chancellor Rachel Reeves has gone further still, using her 2026 Mais lecture to argue that divergence "should be the exception, not the norm" and that "when the economic gains [of alignment] exceed the costs, the trade-off is worth making". For the Conservatives, regulatory sovereignty was an absolute concept which could not be reneged on, while for Labour it is fungible; the government is prepared to give it up in many areas in exchange for closer economic ties.

In practice, Labour's alignment agenda takes two forms. First is voluntary alignment – which means taking unilateral action to mirror EU rules, without being formally subject to them. This is exemplified through the Product Regulation and Metrology Act (PRMA), which gives ministers broadly-defined powers to mirror EU product safety regulations through secondary legislation. The draft bill's explanatory notes identify a range of EU new regulations which could be in scope – such as those on online marketplaces, toy safety, AI and lithium-ion batteries for e-bikes. The stated purpose is to "keep pace" with regulatory advancements which protect consumers while "preventing additional costs for businesses and [to] provide regulatory stability".

It is important to emphasise that voluntary alignment does not remove any of the trade barriers created by Brexit. Copying the rules of the single market does not give a state preferential access to it. Instead, it minimises both the emergence of new passive divergence which would otherwise create further trade complexities, and the risk of Great Britain becoming a dumping ground for products the EU deems unsafe. The government has, however, only once used its powers under the PRMA to align with the EU – in relation to noise emissions testing for outdoor equipment – despite promising to look at potential action in a range of areas including vehicle emissions testing, universal chargers, craft products, substance labelling and regulating online marketplaces.

This underlines that voluntary alignment is easier said than done; with significant official capacity needed to monitor relevant EU legislation, decide where to align, and then implement the necessary legislation. Given that the EU continues to regulate on products at significant pace, it seems highly unlikely that Whitehall has the systems in place to offset all but a small proportion of the new passive divergence which is set to emerge.

The second part of Labour's agenda is 'dynamic' alignment. This involves the UK becoming formally subject to EU legislation in selected areas – including as it is updated over time – in exchange for a significant reduction in post-Brexit trade barriers (namely paperwork and checks). Dynamic alignment is more economically and politically consequential, as it makes trade with the EU significantly easier in those sectors, but means the UK is subject to EU legislation in perpetuity, with only minimal 'decision-shaping' powers (i.e. participation in preparatory legislative consultations but not voting rights) over the rules to which it is subject. Following a UK-EU summit held in May 2025 – the first bilateral summit between the two sides since Brexit – the two sides published a 'Common Understanding' stating their intention to pursue new agreements facilitating trade in SPS goods, electricity and carbon permits. All three agreements are underpinned by a UK commitment to dynamic alignment with EU law and subject to ongoing negotiations.

These pending agreements raise democratic, institutional and economic questions for MPs and ministers. From a democratic perspective, the government is set to bring forward the European Partnership Bill, giving it powers to align with EU law via secondary legislation. This means MPs will have minimal ability to scrutinise the legislation being aligned with, and no powers to amend it. The only meaningful say they have is whether to approve or reject the piece of legislation in question, and the size of the government's majority means that there is no serious threat of any legislation being rejected. The dissolution of the European Scrutiny Committee after the last election further means there is no body in the House of Commons dedicated to scrutinising EU-derived legislation or the decisions the government is making around alignment.

From an institutional perspective, implementing dynamic alignment is potentially challenging. As Professors Nick Sitter and Ulf Sverdrup have written of Norway's experience: 'Alignment is not a fixed state. It is a continuous, demanding process of adaptation that requires constant political attention and administrative capacity – and cross-party support for dynamic alignment.' Whitehall will have to implement alignment from a standing start: first adopting a large chunk of EU legislation (at least 76 legislative acts in the case of SPS) in order to get up to speed, and then implementing additional rule changes as they emerge over time. Given the struggles it has had in implementing even basic voluntary alignment, this could prove a major strain on state resources. There are also serious risks that a future Prime Minister of a more Eurosceptic persuasion could simply refuse to maintain dynamic alignment, raising questions about the long-term viability of any agreements.

For now, however, the Labour Party is increasingly emphatic in its view that closer alignment is in the UK's best economic interests. Where once it was coy about its plans for EU relations – hiding behind vague promises to 'make Brexit work', 'reset' relations and enact 'ruthless pragmatism' – it now states unambiguously that closer ties to the EU are the "biggest prize" for the UK economy because, it claims, Brexit has reduced UK GDP by 8%. But the problem remains that, by the government's own estimates, its new agreements on dynamic alignment would – if completed – add only 0.3% to UK GDP by 2040. The Prime Minister and Chancellor have made it clear that they now want to go further in aligning with EU single market rules in other sectors (they have not specified which, but it might include industrial goods, chemicals or medicines) in the hope of securing greater economic gains.

But the challenge is twofold. First, further sector deals on alignment will not significantly shift the economic dial. Bigger gains could be made by rejoining the single market or the EU outright, but those remain government red lines. Second, even additional sectoral alignment deals will prove hard to come by, as the EU will be averse to allowing the UK to 'cherry pick' the parts of the single market to which it gets access. At a minimum, it will demand that the UK makes budgetary payments and accepts the free movement of people in return, given these are conditions which Switzerland has accepted in exchange for integration with a wider set of single market sectors. But, for Labour, a return to free movement of people is another a clear red line which it will not cross.

Conclusion

In the five years since the TCA took effect, the UK has done little to deliver on the promised regulatory "opportunities" of Brexit. There have been some consequential changes to rules on agricultural subsidies, immigration and trade policy – though not always with the impacts that were anticipated. In other areas where the UK promised 'nimbler' regulatory frameworks – such as data protection, medical devices and financial services – the scale of divergence has been limited, due to a range of factors including ongoing dependence on the EU market, capacity constraints, and a lack of direction-setting from the top. And it has also become apparent that in plenty of sectors – like climate, employment standards and product safety – the UK's instincts are in fact very similar to the EU's.

Over time, the economic costs of divergence have become increasingly apparent, and the rate of reform has slowed accordingly. The current government takes the view that, in most sectors, there is more to be gained economically from aligning with EU rules than diverging. This, in turn, raises difficult questions about how much regulatory autonomy the UK is willing to cede in exchange for preferential access to the single market. There is an evident tension between the current government's lamentation that Brexit has caused major economic damage, and its self-imposed 'red lines' which have led to a strategy of piecemeal, sector-by-sector alignment which will deliver only minimal dividends. A decade after the referendum which David Cameron promised would settle the EU question "once and for all", the UK is still struggling to find a satisfactory balance between regulatory freedom from the EU and access to its internal market.

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